

Synopsis of School Finance Issues Raised by Recent Executive Orders

Prepared for the Arizona Risk Retention Trust

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The Arizona Department of Education's ("ADE") Roadmap for School Reopening identifies multiple school finance-related issues that present challenges for school districts. *See* Roadmap at page 12 <https://www.azed.gov/communications/2020/03/10/guidance-to-schools-on-covid-19/>.

On June 24, 2020, Governor Ducey issued Executive Order 2020-41 ("First Executive Order") entitled "Prioritizing Kids and Schools During COVID-19" to address some of the identified challenges. *See* https://azgovernor.gov/sites/default/files/eo_2020-41.pdf. The Executive Order provides flexibility to schools regarding distance learning and a hybrid learning model, which may be an option offered by school districts in the 2020-2021 school year upon re-opening or may be required during COVID-19 closures.

On June 29, 2020, Governor Ducey issued Executive Order 2020-44 ("Second Executive Order") entitled "Protecting Public Health for Students and Teachers" which delays the date for reopening schools in person until August 17, 2020. Districts are permitted to engage in distance learning prior to August 17, 2020. The Governor also delayed benchmark testing and required ADE to conduct an analysis of the need to waive the number of school days required by law. *See* <https://azgovernor.gov/executive-orders>.

This guidance is intended to review and address some of the school finance issues raised in the Roadmap and Executive Orders related to distance learning.

Membership

Average Daily Membership ("ADM") is defined as:

The total enrollment of fractional students and full-time students, minus withdrawals, of each school day through the first one hundred days or two hundred days in session, as applicable, for the current year. Withdrawals include students who are formally withdrawn from schools and students who are absent for ten consecutive school days,

except for excused absences identified by the department of education. For the purposes of this section, school districts and charter schools shall report student absence data to the department of education at least once every sixty days in session. For computation purposes, the effective date of withdrawal shall be retroactive to the last day of actual attendance of the student or excused absence.

A.R.S. § 15-901(A)(1) (emphasis added).

School districts generate ADM through enrollment of students in its schools in one of three ways under current Arizona statutes. ADE will apportion concurrent enrollments not to exceed 1.0 ADM. A.R.S. § 15-901(A)(1)(b)(vi).

ADM is apportioned pursuant to three learning plans under state law:

1. Traditional brick and mortar school. A student enrolls in a brick and mortar school in a school district. Student enrollment is reported to ADE in accordance with the annual hours of instruction requirements for full-time and part-time students contained in A.R.S. § 15-901 *et seq.*
2. Arizona Online Instruction program (“AOI”). A student enrolls in an Arizona Online Instruction program approved by the Arizona State Board of Education (“State Board”). Student enrollment is reported to ADE in a different manner than a traditional brick and mortar school—students positively accrue time in a daily log toward the annual hours of instruction requirements and are funded at a maximum of 85% or 95%, respectively for part-time and full-time enrollment. A.R.S. § 15-808 and A.R.S. § 15-901. ADE external guideline SF 0003 specifically addresses calculation of membership for AOI enrollments. *See* <https://www.azed.gov/finance/school-finance-external-guidelines/>. ASBA Governing Board Policy IHBHD addresses AOI instruction.
3. Homebound students. A homebound student may be reported as in attendance for each day in a week in which the homebound student receives at least four hours of instruction. Under current Arizona law, a homebound student is required to provide a medical certification for one of the two following scenarios:
 - a. The pupil is capable of profiting from academic instruction but is unable to attend regular classes at school due entirely to illness, disease, accident or other health conditions for not less than three months of school; or
 - b. The pupil is capable of profiting from academic instruction and is able to attend school intermittently due to chronic or acute health problems totaling three school months during a school year.*See* A.R.S. §15-761. ASBA Governing Board Policy IHBF governs homebound instruction.

Arizona statutes do not currently address any additional funding mechanisms.

Executive Order 2020-41

The First Executive Order issued on June 24, 2020 provides school districts with greatly needed flexibility with respect to receiving funding for learning provided outside a traditional brick and mortar environment.

The First Executive Order allows school districts to submit a distance learning plan to ADE in lieu of seeking approval of as AOI provider through the State Board of Education. The distance learning plan components must include:

- a. Attendance tracking procedures including how attendance is taken for distance learning students and how the school district will ensure all students are contacted and in communication on a regular basis;
- b. A detailed expectations of teachers and other staff working virtually;
- c. A detailed plan and examples for substantive distance learning including modes of instruction, method of content delivery, a process for monitoring learning and a plan to support all students, teachers and staff with a device and internet connectivity;
- d. A detailed plan and examples of how to ensure English language learners and children with disabilities are engaged through distance learning;
- e. A detailed plan and examples of social and emotional learning support including counseling;
- f. A detailed plan and examples of how students will be required to demonstrate mastery and ongoing competency of grade level or advanced grade level content; and
- g. A detailed plan of how the district will conduct benchmark assessments in Math and English Language Arts for all students in grades K-12 during the first six (6) weeks of school.

The First Executive Order permits a school district to begin distance learning upon submission of its plan.

Executive Order 2020-44

Due to the surge of COVID-19 infections, Governor Ducey issued Executive Order 2020-44 delaying in person school until August 17, 2020.

School districts may offer distance learning starting on the district's regular planned start date and must submit a distance learning plan to ADE when distance learning begins or by August 14, 2020, whichever is sooner. Benchmark testing is also delayed "until the first six weeks after in-person classes are allowed to begin." *Id.* at paragraph 1(b).

The Second Executive Order was issued to allow school districts to begin distance learning on its regular schedule and to begin to pay employees on schedule if the employees are permitted to work.

The Second Executive Order clarifies ambiguous language in Executive Order 2020-41 and mandates that students be reported to the State as AOI students while engaged in distance learning under the terms of the Order. *Id.* at paragraph 1(c).

What Does this Mean for School Funding?

The Second Executive Order states that until at least August 17, 2020, school districts that engage in distance learning will be funded according to the AOI formula. The Second Executive Order sunsets by its own terms upon the start of in person learning. Accordingly, it appears that student funding will be at AOI levels until August 17, 2020 if a school district starts school prior to that date via distance learning.

If in person learning begins on August 17, 2020 and the Second Executive Order terminates, then the provisions of the First Executive Order will be in effect (unless further clarified).

If the First Executive Order is effective as it stands now, the following guidance may apply.

The First Executive Order provides flexibility to school districts regarding counting students engaged in hybrid learning or distance learning. For purposes of this guidance, “hybrid learning” is defined as attendance at a brick and mortar school *and* participation in distance learning for at least a portion of the school week. School districts may provide “distance learning” without an AOI approval and, at least arguably, without any brick and mortar environment if the distance learning plan is approved by ADE. Note that subsection 1(a)(iii) of the First Executive Order requires a district’s distance learning plan to “support every student, teacher and staff member in accessing a device and internet connectivity if the plan relies on online learning” (hereafter the “internet connectivity requirement.”)

Paragraph 1(b) of the First Executive Order states that school districts may report students engaging in hybrid learning or distance learning as enrolled in an AOI if the school district complies with the distance learning plan components in the First Executive Order.

Paragraph 3(b) of the First Executive Order states that school districts that offer hybrid learning are eligible to participate in the flexible learning permitted by the Executive Order if the district offers a place for students to learn on its campuses for the same number of days per week and hours per day as offered during the 2019-2020 school year and if the distance learning plan meets all components.

If a school district offers a district learning plan with all requisite components referenced above, then the First Executive Order may provide sufficient flexibility for school districts to count students enrolled in hybrid learning or distance learning as traditional, full time students for ADM receipt under A.R.S. § 15-901.

As noted previously, for students in a hybrid learning environment the district must provide a place for students to conduct their studies on campus during any distance learning. If a student is enrolled in solely a distance learning model, with no brick and mortar environment, the district

must comply with the internet connectivity requirement for every student. As a practical matter, an on-campus option for distance learners may be the only or most effective way to comply with the internet connectivity requirement referenced above.

The Executive Orders do not address whether students may switch from distance learning to in person learning. Most school district desire to provide students with those options; some are requiring students to pick one learning path for a quarter.

ADE will likely be called upon to issue guidance to school districts regarding counting absences for students enrolled in hybrid learning and/or distance learning. ADE has provided flexibility in past guidance for the purpose of stabilization of ADM funding. For instance, in the issuance of ADE Guidelines and Procedure GE-17 (7/07) discussed in more detail below, the School Finance Advisory Committee recognized that costs for space, teachers and other resources are incurred by public schools when they prepare for continuing and pre-enrolled students. Those costs are not reduced or eliminated simply because a student is not in attendance on the first day of classroom instruction. Costs for these resources are fixed in nature and are based on planned requirements that do not vary based on per capita attendance. ADE concluded that public schools should be able to recover costs that result from planning and deploying resources for continuing and pre-enrolled students, provided that the student attends classroom instruction during the first ten days of classroom instruction. *See* GE-17. These same principles apply to the unique and evolving situation schools face with the COVID-19 pandemic.

Ultimately, under the Governor’s AzCARES plan, if a school district complies with the Executive Orders and provides learning as specified, any loss of full ADM during the provision of hybrid or distance learning may be backfilled up to the greater of 98% of 2019-2020 enrollment or the 40th day ADM for 2020-21.

Requisite School Days/Instructional Hours

Executive Order 2020-41 did not alter the statutory requirements regarding days of instruction or instructional hours. School districts must operate for the required 180 days of instruction or the equivalent number of hours and be “physically open” at least the same number of days per week during the 2020-2021 school year as it was for the 2019-2020 school year during the same hours offered prior to the 2020 school closure. An exception to the requirements for a school to be open may be approved by ADE if the school intended to switch schedules for the 2020-21 school year.

The First Executive Order does not define what “physically open” means. School districts planning to only offer on line instruction may need to seek clarification.

The Second Executive Order also requires ADE to conduct by August 31, 2020 an analysis of a waiver of the annual instruction requirements and the impact of such a waiver. *Id.* at paragraph 2. This ADE report foreshadows possible legislative relief of the annual days and hours of instruction for the 2020-2021 school year required by A.R.S. §§ 15-341.01 and -901.

AOI Program Approval through the State Board or Executive Order Compliance

The ADE Roadmap states that school districts must have a State Board-approved AOI program in order to provide distance learning to students that can be included in the school district's ADM calculation. The First Executive Order now offers school districts an alternative path to offering hybrid learning and/or distance learning as described above. The State Board has reopened the application process for school districts for AOI programs. *See* <https://azsbe.az.gov/resources/arizona-online-instruction>. Applications are due to the State Board by July 1, 2020. The State Board will consider those applications at its meeting in advance of school reopenings. Once approved, school districts will be able to provide AOI learning to students and report the time towards ADM as specified in A.R.S. § 15-808 and A.R.S. § 15-901.

Stabilization of ADM Count and Attendance in First Ten Days of School

ADE Guidelines and Procedure GE-17 (7/07) grant school districts leeway if students do not return to school on the first day of class. *See* <https://www.azed.gov/finance/school-finance-external-guidelines/>. GE-17 allows school districts to roll over student enrollment from the 2019-2020 school year and continue to report the student as enrolled if the student attends school in person or through distance learning for at least one day during the first ten (10) days of the school calendar. The school district must maintain documentation demonstrating the student attended school at some point during the first ten days school was in session in order to justify enrollment at the start of the school year. If a student does not attend at least one day during the first ten days of school, the student must be withdrawn.

The Executive Order specifies that school districts offering hybrid learning or distance learning are required to submit to ADE “day one” attendance figures and “may include a student participating in distance learning as in attendance within the first ten (10) days of school.” Executive Order 2020-41 at 1(h). If a student attends either a brick and mortar school or an online program within first 10 days of school, school districts may count them as attending for purposes of solidifying ADM counts and rolling over 2019-2020 numbers. ADE is expected to provide school districts with additional guidance on enrollment and attendance reporting to comply with the requirements of Executive Order 2020-41.

Student Absences

Generally, students with ten consecutive absences must be withdrawn from membership and the effective date of the withdrawal is the last date of attendance by the student. *See* A.R.S. § 15-901(A)(1). ADE provides guidance to school districts on what constitutes “excused absences” in its School Finance Manual at Chapter G (formerly EX-1), available at <https://www.azed.gov/finance/school-finance-external-guidelines/>.

ADE defines “excused absences” as “an absence due to illness, doctor appointment, bereavement, family emergencies, and out-of-school suspensions...” or family vacations based

on the determination of the school district. The COVID-19 pandemic will create school absences that may be excused absences depending on the individual circumstances of the student.

ADE's current guidance states as follows:

Students who have reached the 10% threshold for cumulative absences (excused and unexcused) based on the number of instructional calendar days at their school, and continue to incur absences may generate non-fundable Average Daily Membership (ADM) intervals in AzEDS.

Under Executive Order 2020-41, school districts may count students as attending if the students are engaged in traditional brick and mortar learning environment, a hybrid and/or distance learning model compliant with the Executive Order, an approved AOI or homebound instruction.

Counting Absences for Students with Chronic Health Conditions

State law permits school districts to maintain the attendance and enrollment of students who miss more than ten percent of the school year but who are designated as chronically ill pursuant to A.R.S. § 15-346. That statute defines "pupils with chronic health problems" as follows:

1. Pupils who are not homebound, but who are unable to attend regular classes for intermittent periods of one or more consecutive days because of illness, disease, pregnancy complications or accident as certified by a health professional who is licensed pursuant to title 32, chapter 7, 8, 13, 14, 17 or 25 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15.
2. Pupils who suffer from a condition requiring management on a long-term basis as certified by a health professional who is licensed pursuant to title 32, chapter 7, 8, 13, 14, 17 or 25 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15.
3. Pupils who have an infant with a severe health problem as certified by a health professional who is licensed pursuant to title 32, chapter 7, 8, 13, 14, 17 or 25 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15.

A.R.S. § 15-346(C).

The Arizona School Board Association has a standard Governing Board Policy JHD. For Districts that have adopted that policy, it addresses exclusions and exemption from school attendance and sets out instructional requirements for students who are designated as chronically ill. Districts may need to educate members of its community on the applicability of this exception for some students whose health may not permit them to attend any of the offered programming.

Next Steps

The Governor's AzCARES plan provides budget stability grant options to school districts that comply with the requirements of Executive Orders 2020-41 and 2020-44. ADE will likely provide additional guidance regarding how to submit attendance for students enrolled in hybrid or distance learning after in person attendance begins. ADE must submit a report to the Legislature about a possible waiver of annual instructional requirements as per Executive Order 2020-44; the Legislature may need to address statutory issues related to annual hours of instruction required by A.R.S. § 15-901 should significant closures or delayed re-openings occur during the 2020-2021 school year.

Please follow up with your Trust legal counsel on legal issues related to student membership.

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