



What Executive Order 2020-51 Means for Arizona School Districts

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On July 23, 2020, Governor Ducey signed Executive Order 2020-51 (*Arizona: Open for Learning*) (EO 2020-51). The Executive Order and related Arizona: Open for Learning Plan outline the Governor's plan for resuming educational opportunities for Arizona students. It includes requirements that school districts must follow but leaves the decision of when to resume full in-person learning to governing boards.

The purpose of this document is to provide input on what Executive Order 2020-51 means to school districts and to provide related suggestions based upon our review and analysis of EO 2020-51, the Governor's related Arizona: Open for Learning Plan and the Arizona Department of Education's (ADE) July 24, 2020 FAQ relating to the same.

On August 3, 2020, ADE issued two pieces of guidance to assist school districts with complying with the on-site support services requirements contained in EO 2020-51 and prior Executive Orders: On Site Support Services Overview and Guidance on On-Site Learning Opportunities and Support Services, and District and Charter Waivers, found at <https://azednews.com/arizona-dept-of-educations-on-site-support-services-guidance-and-overview/>.

Checklist for Potential Governing Board Actions:

- ✓ Any changes to the start date of instruction or school calendar.
- ✓ Mitigation plans for health and safety protocols to be implemented.
- ✓ Distance learning plans.
- ✓ Face covering policy or regulation.
- ✓ Board action to approve need to retain workforce during time of closures prior to teacher led in person instruction.
- ✓ Board action to re-open buildings for in person teacher led classroom instruction.

Please see below for further guidance and consult with your Trust legal counsel regarding whether any of the above listed potential governing board items are applicable to your district.

Section 1: Public Health Benchmarks for Opening

What EO 2020-51 says:

The Arizona Department of Health Services (ADHS) will develop public health benchmarks by August 7, 2020. School districts are required to “consider” those benchmarks as one of the factors in determining when to open schools for in person teacher led classroom instruction. School districts must also approve a mitigation plan based upon guidelines issued by the Center for Disease Control (CDC). Districts must post the mitigation plan on their websites.

What EO 2020-51 means:

Once published, governing boards will need to consider the health benchmarks developed in determining when in person teacher led classroom instruction shall resume in school buildings. Districts are required to consider, but are not required to meet the health benchmarks, to reopen brick and mortar classrooms. If a District wants to vary from the health benchmarks, it should proceed with caution.

Many school districts have already developed protocols regarding how they will implement social distancing, increased hygiene and other recommended strategies to reduce the spread of COVID-19. Those protocols may constitute the required mitigation plans.

Tips/Ideas:

Districts may wish to have governing boards adopt the mitigation strategies developed as a board action item and authorize the Superintendent to alter the mitigation strategies as warranted or recommended.

Section 2: Distance Learning Instruction

What EO 2020-51 says:

School districts may count students as attending pursuant to A.R.S. § 15-901 on the first day of teacher led distance learning. Districts must submit distance learning plans to the Arizona Department of Education (ADE) prior to starting distance learning but no later than August 14, 2020. The Executive Order urges but does not require that school districts provide “synchronous” learning.

What EO 2020-51 means:

ADE updated its FAQ on July 24, 2020 regarding the three executive orders issued to date. Prior FAQs indicated the requirement for school districts to operate for a minimum of 180 days was not waived; the updated ADE FAQ states specifically that school districts must have 180 days of instruction or the equivalent number of hours. School

districts may count hours of instruction provided during distance learning toward the requisite number of instructional hours required by A.R.S. § 15-901 under EO 2020-51.

While school districts are encouraged to provide synchronous learning (meaning in real time), this is not required by the Executive Order. Distance learning plans may range from paper and packet learning to real time instruction via a remote platform.

Tips/Ideas:

Districts may wish to have the governing board approve the distance learning plan submitted to ADE. Districts must define the minimum amount of contact needed from a student to count that student as attending for average daily membership (ADM) purposes.

Section 3: Free On-Site Learning

What EO 2020-51 says:

Beginning on August 17, 2020, school districts must provide free on-site support services for students who need a place to go during any time of distance learning. Each school district may develop procedures to ensure it can maintain its mitigation plan, such as social distancing, but such procedures must not limit the availability of, or result in a refusal to provide such services. The services may be provided at specific schools or facilities. Schools districts are encouraged to partner with community organizations to provide the requisite services.

What EO 2020-51 means:

ADE's FAQ published July 24, 2020 states as follows regarding this issue:

Q: How does the free on-site learning requirement differ from in-person, teacher-led instruction? What is the purpose of this requirement?

A: Free on-site learning and support services include but are not limited to student supervision, nutrition, health services, strategic support, or teacher-led/paraprofessional support for students participating in distance learning. On-site support services will be available to a limited number of students with specific needs and does not require traditional teacher-led in-person classroom instruction. These services allow students who need a safe place to go to engage in distance learning away from home. Schools may develop procedures to meet recommendations for physical distancing and other mitigation strategies outlined by the Center for Disease Control and Prevention (CDC).

There is no requirement that school districts transport students to the on-site support services.

ADE's additional Guidance issued on August 3, 2020 includes the following statements:

- School districts can prioritize and manage where and how these on-site services are provided by communicating with their communities to assess students' needs, and determining the school district's available resources, funding sources, partnerships and collaborations to meet that demand.
- On-site support services must begin no later than August 17, 2020.
- Schools must make a physical space available to students who need a place to go during the day and can identify which students "meet this threshold criteria" by asking parents/guardians to identify their evolving needs on an on-going basis, including the targeted service their student requires and their scheduling needs.
- Schools are not required to provide all available support services on-site daily to every student who expresses a need.
- On-site support services must be offered the same number of days each week as school was in session last school year (unless a calendar change was approved for 2020-2021).

ADE's August 3, 2020 Guidance contains a section entitled, "Prioritizing Available Opportunities for On-Site Support Services. It appears to provide schools with flexibility in the scheduling of on-site support services to be able to meet the District's mitigation protocols. For example, the Guidance provides:

- Schools districts and charters have flexibility to determine how to comply with the requirement to provide on-site support services during distance learning.
- Schools are not required to provide all available services to every student who expresses a particular need.
- Schools can implement scheduling and utilization mechanisms to allow them to plan for the anticipated on-site capacity on any given day.

Tips/Ideas:

Neither ADE nor the Governor's office have defined how school districts are to meet the operational requirements of free on-site support services. School districts may employ non-certificated staff to supervise. Schools operating "learning labs" may do so at limited school locations. School districts may set building capacity limits based on need to mitigate the spread but are also charged with not turning students with need away.

There is no requirement that school districts transport students to the on-site support services.

One of the first orders of business will be to determine how many students will be attending on-site support services and what the needs of those students are to appropriately determine staffing needs and facility capacity.

Districts should consider whether choosing not to provide transportation for the on-site support services will impact the receipt of ADM funding, based upon the student's ability to meet the minimum contact requirements under the distance learning plan if the student is unable to get to the site. If school districts choose to provide transportation, districts may wish to seek guidance from ADE regarding funding for those transportation routes.

Schools may partner with community facilities so that the services are provided at an off-site location and may be creative in such partnerships, such as sending staff to the community partner to meet the student needs at that site.

Section 4: Notification to Parents/ Guardians

What EO 2020-51 says:

School districts must post on their websites their distance learning plans, mitigation plans, and plans for on-site support services. Districts must notify parents of the attendance requirements to participate in distance learning and of the availability of the on-site support services during distance learning.

Districts must make "direct contact" with certain subsets of its student population: special education students, English language learners, students who qualify for free and reduced lunch and those in the care of the Arizona Department of Child Safety.

What EO 2020-51 means:

The Executive Order does not define what "direct contact" means. Districts should use increased efforts to contact the more vulnerable populations of students. Direct mailing, e-mail, or phone contact are all appropriate.

ADE's updated FAQ indicates that districts must post the following items by the first day of distance learning instruction: distance learning plan; mitigation plan; and plan for on-site support services.

Tips/Ideas:

[A template for a notice letter to parents \(Appendix I\)](#) is included in this document. ADE is charged with monitoring school districts' efforts to contact and inform parents. It will be important that district staff create and maintain good documentation to prove that direct contact was made or attempted (e.g. phone logs, emails).

Section 5: Face Coverings

What EO 2020-51 says:

EO 2020-51 requires all students over the age of five (5) to wear face coverings until ADHS determines face coverings are no longer necessary. School districts must develop and implement policies regarding face coverings in schools. Districts may incorporate restrictions and exceptions consistent with Centers for Disease Control and Prevention (CDC) guidance. Policies must grant students breaks from wearing the face coverings when they can socially distance (e.g. on the playground with distancing) and allow breaks to take their face coverings off in a safe environment.

What EO 2020-51 means:

The State has ordered face coverings to be implemented on all school campuses. If a student requests an exemption due to a medical condition, the district should follow a process under Section 504 of the Rehabilitation Act to determine if an accommodation may be granted. For example, accommodations offered could include use of a face coverings other than a tight mask (such as a face shield or a bandana) or the option to attend on-line school.

Tips/Ideas:

The Arizona School Board Association is expected to issue sample policy language.

Some considerations for individualizing for each district include:

- To what extent will the district provide face coverings?
- Who will process any request for an accommodation regarding the face coverings?
- Who will enforce face covering requirements (teachers, administrators, etc.) and how will the requirement be enforced?

Section 6: Employees

What EO 2020-51 says:

EO 2020-51 recognizes the public benefit to maintain a school district's work force during school closures for future in-person teacher led instruction. A school district must determine that it has sufficient funds and that the payments are necessary. To be eligible for payment, District employees must remain committed and available to work during the employee's normal work hours during periods of school closures, whether the work is to be performed in-person or remotely or is alternative work for which the employee is qualified to perform *as determined by the District*.

What EO 2020-51 means:

School districts retain the option to furlough employees or reduce their workforce as per policies and state law. However, EO 2020-21 provides school districts with the latitude to continue to pay their employees *even if there is no work for them to do*, so long as the employees commit to working when work is available for them to do.

Tips/Ideas:

Governing boards that exercise the discretion afforded by EO 2020-51 to pay employees may want to maintain data and artifacts that demonstrate the public purpose of continuing to pay staff during periods of closure (e.g. maintaining a properly trained qualified and experienced workforce, avoiding the expense of recruiting and training new staff, risk of staff shortages).

This document contains [a sample Governing Board Resolution \(Appendix II\)](#) that contains a sample resolution provision relating to this portion of EO 2020-51 and other provisions that are designed to address EO 2020-51 and other contingencies that may arise. We would encourage school districts to document the direct and indirect costs associated with reducing and then replacing its workforce if the district chooses to adopt a resolution that allows employees to remain in an on-call status.

Also provided are sample forms for [exempt \(Appendix III\)](#) and [nonexempt \(Appendix IV\)](#) employees that school districts can choose to use to have employees affirm their commitment to work if work is available during periods that in-person instruction is not possible due to building closures.

Section 7: Developmental Preschools

What EO 2020-51 says: School districts may begin immediate operation of developmental preschools to provide in-person services for children with disabilities, as long as the district follows CDC's public health recommendations for childcare facilities. This activity may occur prior to August 17, 2020.

What EO 2020-51 means:

A developmental preschool program typically serves both students with and without disabilities. Often, an individualized education plan for a preschooler with disabilities will include interactions with typical peers to enable learning via peer modeling. EO 2020-51 does not seem to limit school districts from including typical peers within the developmental preschool programs.

Tips/Ideas:

Districts will need to follow all CDC mitigation measures and all licensure requirements in operating developmental preschools. The provisions of EO 2020-51 specifically supersede any conflicting provisions in the two prior executive orders. Please direct any specific questions to Trust counsel.

We will continue to watch for new information from the Governor's Office, ADE and other relevant sources and update our communications accordingly.

Disclaimer: This document has been prepared for general informational purposes only and is not intended as legal advice or a substitute for legal advice.