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Legislative Update:
Early State and Federal Responses to Coronavirus-Related School Closures

By: Jim Alrutz

I. INTRODUCTION

By April 7, 2020, every state and territory of the United States, including Washington, D.C., took measures to close schools in response to the global pandemic caused by COVID-19, known colloquially as “the coronavirus.” These measures ranged from a recommendation for school closures to executive orders closing schools for the remainder of the 2019-2020 academic year. The impact of these closures cannot be understated, both in the educational ramifications for students, and in the strain placed on parents who rely on schools for food and childcare during the day. Nearly thirty million children rely on free or reduced-price meals from schools, and an estimated twelve million children did not have access to broadband internet at home at that point in time.

Although forty-nine states have statutes and regulations mandating school responses to a disease outbreak, many states lack comprehensive plans to address remote instruction or student access to services during a school closure. School closures have necessitated rapid action from all levels of government in an attempt to walk a tightrope: relaxing and waiving statutory requirements that would be impossibly burdensome during the pandemic, while continuing to ensure that students are provided with the vital services that schools ordinarily provide. This article will provide a brief overview of the early actions taken at the state and federal level from both legislative and executive agencies, with an eye towards how the government response has addressed the issues of remote learning and food insecurity.

II. STATE LEGISLATIVE RESPONSES

State-level legislative response to the impact of the novel coronavirus on public education has been torpid. The first case of COVID-19 in the U.S. was reported on January 19, 2020, although subsequent evidence has been found that the virus had infected people in the country as early as mid-December 2019. According to the National Conference of State Legislatures, by April 7, 2020, fifteen states still had no legislation pending of any sort to address education during the coronavirus pandemic, and twelve states still have seen no such legislation as of December 11, 2020. Although education policy decisions are generally a matter of district level policy making, a lag of state level action furthers disparity between districts.

Several states have passed spending bills to maintain funding for school nutrition, but only New Jersey has passed a law to specifically address school meals during the pandemic. New Jersey Assembly Bill 3840, enacted on March 20, 2020, requires school

districts to provide meals or vouchers to eligible students throughout the closures caused by the pandemic. California Assembly Bill 2887, an omnibus spending bill which also specifically provided for school meal distribution through the pandemic, failed to pass in November of 2020.

Some states have also passed appropriations to address funding for technology needed to conduct remote education, such as Idaho's Public School Digital Content and Curriculum Fund and Mississippi's Equity in Distance Learning Fund. However, the focus of legislative efforts has been on waiving requirements and protecting school districts from liability for failing to meet statutory requirements for in-school days or teacher evaluations. Although these waivers are significant, few states have directly addressed their lack of comprehensive guidance or plans for how to conduct remote learning. Over the summer, Louisiana adopted a Senate Resolution requesting their State Board of Elementary and Secondary Education to develop online educational resources for the 2020-2021 school year. Mississippi's Equity in Distance Learning Act provided guidance and technical support for schools. New Jersey required the establishment of a Bridge Year Pilot Program for graduating high school students impacted by the pandemic. Laudable as these programs are, they are notable not for their impact, but for being the only legislatively crafted plans to address the impact of distance learning on students.

Other legislative responses have focused on easing statutory requirements to empower governors or district level agencies to make their own decisions. Maine Senate Bill 789, adopted in March of 2020, authorized executive action to waive existing statutory requirements and allow the governor to order a new plan addressing compulsory attendance and nutrition programs. In July, Louisiana Senate Bill 481 suspended many statutory requirements for schools, including accountability plans, nutrition programs, and mandates that school districts institute individual policies, rather than providing blanket guidelines for the whole state. Although these programs create flexibility for quicker and more individualized solutions, a lack of clear guidance from the legislature may lead schools to fail their students. Further, disparity in the responses from state governors will lead to further disparities of impact on the students of different states.

III. EXECUTIVE ACTION BY GOVERNORS

Some state governors took early action to specifically direct schools to continue to provide essential services to students throughout school closures. New York Governor Andrew Cuomo ordered school closures and development of plans for alternative instruction, meal distribution, and childcare, emphasizing children of health care workers and first responders. Illinois Governor J.B. Pritzker issued multiple executive orders impacting schools, including ordering their closure, loosening requirements around the development of e-learning plans, and suspending several Illinois School Code requirements such as educational assessments, attendance, and minimum school days. Although California Governor Gavin Newsom did not formally order school closures, he issued an executive order guaranteeing funding for closed schools and ordered schools to

provide distance learning and school meals during periods of closure. These proactive executive actions may help to alleviate the potential setbacks to students caused by nationwide school closures, but these examples represent the best responses, rather than the standard.

Without national guidance, the resulting disparities in actions by governors has created dramatically different impacts on students. Although Florida Governor Ron DeSantis recommended school closures and distance learning, he elected not to issue a public executive order addressing distance learning or services such as school meals. He publicly considered reopening schools as early as May, claiming falsely that COVID-19 had not killed anyone under the age of twenty-five. The Oklahoma State School Board announced the closure of schools three days after Oklahoma Governor Kevin Stitt announced his intention to keep schools open while monitoring community spread of the virus. Utah Governor Gary Herbert announced a “soft closure” of schools, with a mix of distance learning and packets of work sent home. In the press conference announcing this change, the state superintendent announced that schools would remain open for small group tutoring, but were not intended as a source of childcare, leaving ambiguity as to how often and for how long students could be in school. Governor Herbert has not taken any executive action to address lack of access to computers or wireless internet, which makes distance learning impossible for many Utah students.

The gulf in actions taken by individual governors to address student needs during school closures is vast. Students have been forced to bear the burden of inadequate or incomplete responses by state government, and though federal action may provide some measure of equity and relief, it would not be a complete substitute for proper action at the state level.

IV. FEDERAL ACTION

The only direct congressional relief aid for K-12 schools during the pandemic came from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020. The act provides a two trillion-dollar package of emergency relief intended to stabilize both individuals and businesses big and small during the disruption to ordinary life that COVID-19 has caused. The CARES Act minimally addressed the legal obligations of K-12 institutions, focusing most of its education information on institutes of higher education. However, the act provided an Education Stabilization Fund of over thirty billion dollars, dividing funding between K-12 institutions, higher education institutions, non-public schools, and discretionary funding for the governor of each state to provide support to local educational agencies in need of specific relief. The law does provide that a state applying for funding must maintain support for education comparable to the state’s average support in the three years prior, although the measure of support is purely financial rather than measuring educational efficacy. Further, the Department of Education delayed its release of guidance for when or how the money is being distributed, despite calls from state governors for its rapid distribution.

Perhaps more disconcertingly, the CARES Act also empowers the Secretary of Education to waive federal requirements for funding, including requirements under the Individuals with Disabilities Education Act (IDEA). Such a change, if adopted, would allow schools to apply to waive the mandated timelines to regularly evaluate students and make adjustments to individual education plans. Although educators support the bill for its potential to protect schools from due process complaints and unrealistic expectations, parents and education advocates are concerned that not only will such waivers create an irreparable learning gap but run the risk of long-term damage to student disability rights.

Although there has been no further federal aid towards school meal programs, action has been taken to make distribution easier. The Families First Coronavirus Response Act gives schools greater flexibility in where free meals are served. Additionally, the U.S. Department of Agriculture (USDA), which administers the National School Lunch and Breakfast Programs, has acted to allow some schools to waive federal requirements for their meal programs. These waivers can help remove logistical challenges that distancing practices render unworkable, such as a requirement that participation in a USDA summer meal program requires serving meals in a group setting or waiving a requirement for children to be physically present with their parents during meal pick-ups. The waiver permissions have limits, as the Secretary of Agriculture cannot waive requirements related to the provision of free and reduced-price meals or the maintenance of effort in the program. The USDA suffered an early defeat in court for violating those limits by attempting to roll back the nutritional standards requirements for school meals in violation of the Administrative Procedure Act.

Similar to executive agency action taken to ease regulations and allow states to make decisions without federal oversight, the White House has indicated that states may need to address the issue of school meals themselves, rather than rely on federal support. This is consistent with the Trump administration's rhetoric regarding health supplies, insisting that the public should consider federal aid a backup for states rather than a core plank. The lack of federal support suggests that states will not have recourse if they are unable to provide school meals or conduct remote learning and will be forced to waive requirements rather than fail to meet them. Negotiations over a further stimulus bill to address state and local government funding, including education, have been ongoing since the House of Representatives passed the HEROES Act in May, but have remained stalled.

V. CONCLUSION

While the world adjusts to physical distancing practices and lengthy closures of business, one can hope that state and federal government will continue to develop new tools to address the impact of school closures on America's students. As it stands, the current responses vary in efficacy, leaving students and parents unclear of where to turn for support as state and federal officials take divergent and inconsistent actions to address their concerns. As the situation develops further, we will undoubtedly continue to see disparity in responses from state legislature and governors; the polarization of responses to

COVID-19 will cause further harm to students who live in states where politicians do not seriously reckon with the long-term ramifications of their failure to address these needs.

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