

AGENCY OF EDUCATION
Montpelier, Vermont

ACTION ITEM:

- 1) Will the State Board of Education again authorize the Secretary to, on its behalf, grant waivers for any unanticipated closures under 16 V.S.A. 1071(c) in the 2022-2023 school year?
- 2) Will the State Board waive the application of State Board Rule 2311.1 for the 2022-2023 school year?

SECRETARY'S RECOMMENDED ACTION:

- 1) That the State Board authorize the Secretary to, on its behalf, grant waivers for any unanticipated closures under 16 V.S.A. 1071(c) in the 2022-2023 school year.
- 2) That the State Board waive application of State Board Rule 2311.1 for the 2022-2023 school year.

STATUTORY AUTHORITY: 16 V.S.A. § 1071, State Board Rule 2300, State Board Rule 1260.

BACKGROUND INFORMATION:

State statute and Board Rules require each public school to be operated for at least 175 days of student attendance. 16 V.S.A § 1071(a)(1); SBE Rule 2311. A majority of students enrolled in a school must be in attendance for the day to be counted as an instructional day. 16 V.S.A. § 1071(a)(1). The State Board is given authority to grant waivers of the requirement to operate the minimum number of days, "when a public school is closed for cause beyond the control of the school board." 16 V.S.A. 1071(c). Rule 2311.4 provides that school districts shall include no fewer than five contingency days as annual school calendars are developed and adopted. Rule 2311.3 states that waiver requests received between February 1 and June 15 will be considered on a case-by-case basis. Rule 2311.1 provides that closures occurring prior to February 1 of the school year shall be rescheduled and made up, rather than being waived by the State Board. It has been the understanding of the Agency that this rule is intended to require a school to use its contingency days for closures taking place earlier in the school year, while there is time to make adjustments to the school calendar.

Coming out of the pandemic, the Agency anticipates school closures that resulted from 50% or more of the student body being absent due to student and staff illness. The Agency anticipates waiver requests for days that cannot be counted as instructional days, and which took place at the start of the school year (prior to February 1). Under SBE Rule 2311.1, these closures would not be eligible for a waiver.

The State Board has authority to waive its own rules “when necessary for school districts to carry out locally established objectives.” SBE Rule 1260. In the case of days lost prior to February 1 of the school year, the State Board may wish to waive its own rule so that school districts can have more flexibility in determining when to request a calendar waiver and when to make up instructional days, based on the district’s individual needs and objectives. This request appears to meet the threshold stated in Rule 1260.

For the past three school years, the State Board has delegated its authority to grant calendar waivers under 16 V.S.A. § 1071 to the Secretary of Education. The Secretary is again asking for this delegation in the 2022-2023 school year so that the Agency can collect data on school closures, evaluate the educational impact of closures and make decisions on waivers and make up days based on student need and equity of learning opportunity statewide.

POLICY IMPLICATIONS: None identified.

EDUCATION IMPLICATIONS: Ensuring equity of instructional time statewide.

FISCAL IMPLICATIONS: In some cases, depending on local contracts, additional funds are required to provide make-up days.

STAFF AVAILABLE: Emily Simmons, General Counsel