

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 2021-2022 school year?
- 2) Will the State Board waive the application of State Board Rule 2311.1 for the 2021-2022 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 2021-2022 school year.
- 2) That the State Board waive application of State Board Rule 2311.1 for the 2021-2022 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 operate for at least 175 days of student attendance¹. 16 V.S.A § 1071(a)(1); SBE Rule 2311. 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.

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). Superintendents have reported school closures that resulted from 50% or more of the student body being absent because the students were quarantined as close contacts. The Agency anticipates a number of waiver requests for days that cannot be counted as instructional days under the statute, and which took place at the start of the

¹ Act 154 of 2021 (Sec. B.1115) amended the required number of student attendance days to 170, for the 2020-2021 school year. The legislation was not renewed to apply to the 2021-2022 school year.

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 COVID-19 response needs and objectives. This would meet the threshold stated in Rule 1260.

For the past two 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 2021-2022 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, taking into account the need for school closures in the COVID-19 response.

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

STAFF AVAILABLE: Emily Simmons, General Counsel