

**AGENCY OF EDUCATION  
Montpelier, Vermont**

**TEAM:** Legal

**ACTION ITEM:** Will the State Board of Education authorize the Secretary to, on its behalf, grant waivers of up to 10 school days for any unanticipated closures under 16 V.S.A. 1071(c) that are the result of consultation with the Secretary of Education and the Commissioner of Health or an order of the Department of Health in the 2019-2020 school year?

**SECRETARY'S RECOMMENDED ACTION:**

That the State Board authorize the Secretary to, on its behalf, grant waivers of up to 10 school days for any unanticipated closures under 16 V.S.A. 1071(c) that are the result of consultation with the Secretary of Education and the Commissioner of Health or an order of the Department of Health in the 2019-2020 school year.

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

**BACKGROUND INFORMATION:**

State statute and State Board of Education (SBE) Rules require each public school to operate for at least 175 days of student attendance. 16 V.S.A. § 1071(a)(1); SBE Rule 2311. 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. When a petition is sought for emergency reasons, the SBE will consider the school district's calendar to determine if a substantial number of contingency days were included, particularly if the cause is inclement weather conditions.

The closure or dismissal of a school due to the current outbreak of novel coronavirus, COVID-19, may qualify as an emergency closure under the SBE's rule and the statute. SBE Rule 2311.3 states that contingency days, not calendar waivers, should be used "particularly if" the cause of closure is inclement weather. It would seem that the rule gives preference to waiver requests that arise out of unforeseen circumstances, beyond weather.

Closing a school or dismissing students in response to an outbreak COVID-19 is a consequential decision that necessitates balancing public safety with the instructional and nutritional needs of students. It is important that any decision to close schools be made in the interest of safeguarding public health only, and in consultation with the Secretary of Education and the Commissioner of Health.

It is unknown at this time whether there will be a need for school closure or dismissal in the 2019-2020 school year. If the need does arise, it will be important for superintendents, school boards and the Agency of Education to have certainty about whether make-up days will also be required.

**POLICY IMPLICATIONS:** None.

**EDUCATION IMPLICATIONS:** Ensuring consistency of response to potential need for preemptive school closure.

**FISCAL IMPLICATIONS:** None.

**STAFF AVAILABLE:** Emily Simmons, General Counsel