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Kristey S. Williams
Representative, 77th District

Aug. 25, 2020

To Chairman Fred Patton and Members of the Special Committee on Kansas Emergency Management Act:

Thank you for the opportunity to provide an K-12 education overview as it relates to the Emergency Management Act. As the coronavirus pandemic continues, it's become increasingly apparent that despite our best efforts, our existing emergency management statutes cannot sufficiently address the complexities and unknowns of our present pandemic, and thus future pandemics.

With that in mind, it's important any changes to the Emergency Management Act provide clear and direct language free of ambiguity. *Let's end the confusion!*

On the topic of education, we can all agree that the pandemic has adversely affected education in Kansas. With two kids remaining in a public high school, it's very much on my mind as not only a Legislator, but as a parent. This summer, the *Brookings Institute* recently published a report that indicated the *'preliminary COVID Slide estimates suggest students could begin fall 2020 with roughly 70% of the learning gains in reading from the prior year relative to a typical school year. In mathematics, students may show even smaller learning gains from the previous year, returning with less than 50% of the gains. In lower grades, students may be nearly a full year behind in math compared to what we would observe in normal conditions.'*

Remote learning, for most students, is often a pale shadow of direct-contact learning. As a Legislature, it's my hope we will provide the support necessary to safely and responsibly encourage schools to meet in-person. When this does not happen, we further compound other risk factors that exist for our children, especially for the most vulnerable.

In addition to academic 'slide', many doctors and psychiatrists have warned of increasing numbers of teenage suicides (second leading cause of death between ages 15-24), depression, and other socio-emotional problems as a result of greater isolation, neglect, and even abuse. The *total* well-being of our children must be weighed as we begin opening our schools, engaging on emergency management discussions, and considering policy that impacts the physical, psychological, and economic health of our communities.

I've attached important topics for consideration, including adding language to define roles and responsibilities for Local School Boards relating to executive orders, addressing differences of public and private schools during a pandemic, and examining the number of school contact hours required by law and what constitutes meeting those contact hours.

Thank you for the privilege of addressing your committee today. Please let me know if I can be of further assistance.

Sincerely,

Representative Kristey Williams

Education Issues During the Disaster Emergency of 2020

1. Exclusion of private schools from the provisions of Section 7 of HB 2016.

Section 7 of HB 2016 provides that any executive order issued under K.S.A. 48-925 that has the effect of closing public or private schools must be approved by the State Board of Education before becoming effective. This gives the State Board the ability to indirectly close private schools.

The Kansas Constitution and state law do not grant the State Board authority to oversee private schools unless the private school has elected to be accredited by the State Board. To the avoid the appearance of State Board oversight of all private schools, Section 7 could be amended to strike the reference to "private school." As a result of such legislative action:

- Any executive order issued by the Governor that had the effect of closing private schools would become effectively immediately with respect to private schools regardless of any action taken by the State Board of Education.
- Private schools would most likely be treated similar to other private businesses in terms of the application of executive orders relating to public health.
- As with other executive orders relating to public health, the local board of county commissioners would have authority to issue less stringent public health orders that could allow private schools located in the county to remain open.

Alternatively, the Legislature could amend Section 7 to require State Board approval for orders affecting public schools and private schools that are accredited by the State Board. All private schools that are not accredited by the State Board would then be treated as described above.

2. Codification of the State Board of Education's guidance on meeting the statutory school term requirements.

K.S.A. 72-3115 requires that each school district provide at least 1,116 hours of instruction for grades 1 through 11, and 1,086 hours for grade 12 each school year. These hours are usually counted as the school district provides each day of in-person instruction during the school year.

During SY 2020-2021, many school districts are offering remote learning environments in lieu of in-person instructions, and in some cases are only offering remote learning without any option for in-person instruction for an extended period of time. For school finance verification purposes, the State Board is requiring the following with respect to the enrollment of remote learning students:

- Student must be enrolled on Sept. 21.

- Student must have daily connection with a teacher. Such connection can be through telephone and/or interactive video conferencing as onsite students.
- Student must have daily connection with a local teacher that is employed by the district. Such connection can be through telephone and/or interactive video conferencing. Note: Contact is required with at least one teacher, not all teachers.
- Students must maintain a daily log of activities signed by the student, parent or responsible adult and submitted to the district.

A student is enrolled as a remote learner if:

- The student is regularly enrolled in the school district he or she would have normally attended on-site.
- The student is not enrolled in a virtual school full time.
- Curriculum and instruction are prepared, provided and/or supervised by the school district in which the student is regularly enrolled.
- Student must maintain a daily log of activities signed by the student and parents and submitted to the school district.

The State Board also has provided guidance on meeting the 1,116/1,086 school term hours required by K.S.A. 72-3115.

The 1,116-hour school-term requirement applies to schools and districts rather than individual students. However, each student regularly enrolled must have the opportunity to attend for at least 1,116 hours each school term. Because of the COVID-19 pandemic, some students may be unable to attend the school that they would normally have attended on-site. Therefore, for any student regularly enrolled, school districts must ensure the same number of hours are available for remote learners as are available to on-site learners. For the 2020-2021 school year, minutes attended for these individual students will be based on the Remote Learning log provided and signed by the student and their parent or guardian.

This remote learning guidance is currently only applicable for the 2020-2021 school year, and is subject to modification by the State Board. The issue is whether these policies and procedures should be codified in statute as requirements that apply at any time a school district ceases to offer in-person instruction for an extended period of time.

Additionally, any school district that believes it cannot meet the 1,116-hour requirement may apply for a waiver from the requirement under K.S.A. 72-3117, which was amended by SB 142 during the 2020 Session. A second issue is whether any additional requirements should be added to K.S.A. 72-3117 for the grant of such a waiver. Such additional requirements could include:

- The provision of direct contact instruction by a licensed teacher communicating directly with a student or students *via* remote communication or face-to-face interaction, including remote communication by either audio or video communication, or both.
- A minimum number of hours of direct contact instruction for elementary students in the subject of reading that is equivalent to 50.0 percent of the typical instructional hours such students receive in reading when they are attending school.
- A minimum number of hours of direct contact instruction for secondary students in the subjects of English language arts and math that is equivalent to 50.0 percent of the typical instructional hours such students receive in those subjects when they are attending school. This recommendation would be superseded by any continuous learning plan established by a college or university offering dual or concurrent enrollment in courses in these subjects.
- Accountability metrics of student participation and academic progress. This should include determining student participation in direct contact instruction and regular student assessments to determine academic progress.
- Additional services for students identified as at-risk and any student who has an individualized education program.

3. Clarification that locally elected school boards have the authority to govern the daily operation of public schools, including public health policies and procedures for staff, students, and visitors entering school district buildings.

In his recent opinion, Attorney General Op. No. 2020-8, the Attorney General opined that local school boards have been granted broad authority to operate public schools under K.S.A. 72-1138, which is the statutory authority for school boards to execute their constitutional authority under Art. 6, Sec. 5 of the Kansas Constitution. Article 6, Section 5 states:

Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

The Attorney General stated that "[t]he requirements included in Executive Order 20-59, such as wearing masks, social distancing, washing hands, and temperature takings, on their face appear to be the sorts of matters that fall within the local school board's authority to 'adopt policies' appropriate to 'maintain, develop and operate local public schools.'" According to the Attorney General, to the extent a statute does limit or otherwise restrict the exercise of this local school board power, the local school board may adopt its own public health policies.

K.S.A. 72-1138 is a general grant of authority to local school boards. The issue is whether the Legislature should clearly grant the authority to adopt policies concerning public health to local school boards and clarify the local school boards authority regarding such matters in relation to any authority of the Governor or the State Board over such matters.

4. Clarification of the duties and obligations of the three governing bodies who are delegated authority over public education under Article 6 of the Kansas Constitution.

Article 6, § 1 of the Kansas Constitution grants the Legislature the authority to establish public schools. Section 2(a) delegates general supervisory authority over public education to the State Board. Section 5 provides that the local operation of public schools is to be governed by locally elected boards of education. Finally, § 6 grants the Legislature the authority to provide for the finance of public education.

The Kansas Supreme Court has held that the general supervisory powers of the State Board are self-executing. No legislative enactment is necessary for the exercise of such powers, and the lack of any legislation cannot act as a bar to the exercise of such powers. The Court has further held that the general supervisory powers of the Board "mean something more than to advise but something less than to control."

The State Board's general supervisory authority does not preclude legislation in those areas where the State Board has executed its constitutional powers. However, any legislation enacted with respect to a self-executing power cannot "thwart a self-executing provision of the constitution." Companion legislation must facilitate and not abrogate the State Board's authority. For example, K.S.A. 72-3214 has long provided basic curriculum requirements for elementary education in Kansas. This statute can be read as facilitating the State Board's mission of promoting quality education in this state.

Section 5 places the daily operation of public schools under the governance of locally elected boards of education. Generally, it falls to these boards of education to adopt policies and procedures for implementing the standards established by the State Board. For example, the State Board sets the standard for academic proficiency in mathematics for each of the grades, but it is the local school board that approves the curriculum to be used in the district to meet that standard.

In the context of remote learning environments and public health orders, the issue is whether the Legislature should grant specific authority to school districts to adopt relevant policies on these topics. The Legislature has often done so in the past, including authorizing local school district policies on the prevention of bullying and administration of medicine.

5. Require school districts to make up school hours for students receiving at-risk student services.

The State Board has stated that "[t]he purpose of the Kansas At-Risk Program is to provide at-risk students with additional educational opportunities, interventions, and evidence-based instructional services to assist in meeting State Board of Education outcomes." The issue is how do school districts accomplish the intent of providing "additional educational opportunities" when exclusively using remote learning environments.

Some possible means of providing additional educational opportunities include:

- Providing additional educational opportunities outside of regular school hours once in-person instruction has recommenced.
- Making up in-person instructional time at the end of the school year.
- Providing summer school for students needing these services.

Subject to certain limitations under K.S.A. 72-5153, school districts have broad discretion as to how and when at-risk student services are provided by district staff. School districts are not required to provide any of the above examples under current law. A statutory amendment would be necessary to mandate the provision of such services.

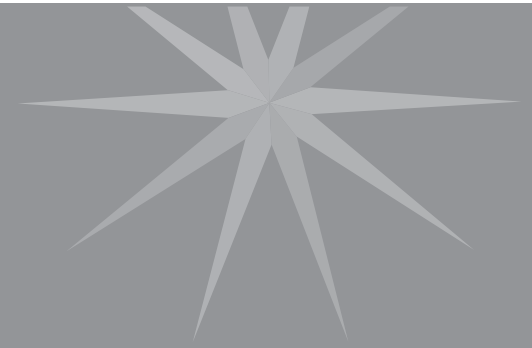
6. Provide education savings accounts for students whose resident school district does not provide in-person instruction.

Education savings accounts (ESA) are generally state-managed money accounts where state funding that would have been distributed to the student's resident school district is redirected into an individual account held on behalf of the student. The student's parents may then access the funds in the account to pay for an alternative education to public school, such as private school or private tutoring.

With many school districts using remote learning environments exclusively, parents are looking for alternative education options that involve in-person instruction. The use of an ESA would potentially give those parents more flexibility in finding an alternative education for their child.

In the past legislation has been introduced to establish ESAs for certain eligible students. Generally, this legislation has taken all or almost all of the BASE aid for the school year and transferred that amount to an account held by the State Treasurer on behalf of the student. The legislation requires the parent of the student to enter into an agreement with the State Treasury to only use the funds in the account for the student's education.

The eligibility criteria for such a program under these circumstances could be that the student's resident school district is not offering any form of in-person instruction for an extended period of time.



Funding Remote Learning

Funding Remote Learning



Funding Students in the Remote Learning Environment

The following conditions must be met in order to count students as enrolled and attending on the Principal's Building Report/Superintendent's Organization Report (SO66) who are not onsite September 21, 2020. Verification records must be made available to the auditor from the Kansas State Department of Education in order to receive funding enrollment credit and funding for the student.

Verification for Audit:

Student must be enrolled on Sept. 21.

Student must have daily connection with a teacher. Such connection can be through telephone and/or interactive video conferencing as onsite students.

Student must have daily connection with a local teacher that is employed by the district. Such connection can be through telephone and/or interactive video conferencing. Note: Contact is required with at least one teacher, not all teachers.

Students must maintain a daily log of activities signed by the student, parent or responsible adult and submitted to the district.

Defining Remote Learning

For the 2020-21 school year, for funding purposes, a student is a remote learner if:

- The student is regularly enrolled in the school district he or she would have normally attended on-site.
- The student is not enrolled in a virtual school full time.
- Curriculum and instruction is prepared, provided and/or supervised by the school district in which the student is regularly enrolled.
- Student must maintain a daily log of activities signed by the student and parents and submitted to the school district. An example of a remote learning daily log is on page 4.

Frequently Asked Questions Related to Remote Learning

Will state funding for remote learning students be based on the number of hours in the student's daily activity log?

Yes. For the 2020-2021 school year, attendance time for remote learners will be calculated the same as students attending on-site. For example, if a Remote Learning student's daily log shows on average one hour of learning activity each day, that will equate to one hour or .2 funded student FTE (1 hour = 60 minutes/360 minutes = .166 FTE or .2 funded FTE). For a Remote Learning student to be funded as a full-time student, the student must participate in six hours (360 minutes) of learning activity each day.

Will remote learners be eligible for weighted funding, including at-risk, Career Technical Education (CTE), and Bilingual?

At-risk: If the remote learning student qualifies for free lunch under the National School Lunch Program, then at-risk funding would also be provided.

CTE: If the remote learning student is regularly enrolled in a CTE course approved for additional .5 funding through the Pathways process and the course curriculum and instruction is provided by the instructor of record for that course, then CTE weighting would also be provided.

Bilingual weighting: If the Remote Learning student meets the English Learner criteria as outlined in the enrollment handbook and bilingual contact hours are provided to that student by an ESOL endorsed teacher and documented in a daily contact minute log, then bilingual weighting would also be provided. Districts also have the option to receive bilingual weighting based strictly on a head count.

Transportation weighting: If a student is a remote learner as of Sept. 21 and transportation is made available, transportation weighting also would be provided.

Does the 1116 hour School Term requirement apply to remote learners?

Yes. The 1,116 hour school-term requirement applies to schools and districts rather than individual students. However, each student regularly enrolled must have the opportunity to attend for at least 1,116 hours each school term. Because of the COVID-19 pandemic, some students may be unable to attend the school that they would normally have attended on-site. Therefore, for any student regularly enrolled, school districts must ensure the same number of hours are available for remote learners as are available to on-site learners. For the 2020-2021 school year, minutes attended for these individual students will be based on the Remote Learning log provided and signed by the student and their parent or guardian.

Remote Learning Daily Log

Date: _____ USD: _____

Student name: _____ Student ID: _____

Student grade: _____ School: _____

Name of teacher(s) who made contact today: _____

CLASS	ACTIVITY	ASSIGNMENTS COMPLETED		TEST TAKEN		TOTAL MINUTES
		Y	N	Y	N	

I certify that I am enrolled and participating in courses offered through the USD listed above.

Student signature: _____ Date: _____

I certify that my child is enrolled and participating in courses offered through the USD listed above.

Parent, guardian or responsible adult's signature: _____ Date: _____



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August 11, 2020

ATTORNEY GENERAL OPINION NO. 2020- 8

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Senator Masterson and Representatives Williams, Arnberger, Bergquist, Carpenter, Delperdang, Erickson, Helmer, Hoffman, Huebert, Humphries, Landwehr, Mason, Owens, Rhiley, Seiwert, A. Smith, Tarwater, Thimesch, Thomas, Waggoner, and Wasinger
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Hon. Barbara Wasinger
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Re: Militia, Defense and Public Safety—Emergency Preparedness for Disasters—Disasters; Responsibilities of Governor; State of Disaster Emergency; Powers of Governor During State of Disaster Emergency; Orders and Proclamations

Synopsis: Because Executive Order 20-59 is a statewide order relating to public health, boards of county commissioners have statutory authority under L. 2020 Special Session, Ch. 1, § 33 to issue an order relating to public health that is less stringent than the provisions of Executive Order 20-59, if the required statutory findings are made. Boards of county commissioners, acting as a county board of health, also have authority under L. 2020 Special Session, Ch. 1, §§ 37 and 38, to review, amend, or revoke any orders issued by a local health officer as a result of an executive order of the governor. In addition, local public schools also may obtain such flexibility from their local school boards, which ordinarily have statutory and constitutional authority to adopt local policies governing matters such as wearing masks, social distancing, washing hands, and temperature taking in local schools, and Executive Order 20-59 has not displaced that preexisting local authority. Cited herein: K.S.A.

19-212; K.S.A. 2019 Supp. 48-925; K.S.A. 65-201; 65-202; 72-516; K.S.A. 2019 Supp. 72-1138; K.S.A. 75-3708; L. 2020 Special Session, Ch. 1, §§ 5, 7, 25, 33, 34, 36, 37, 38; Kan. Const. Art. 6, §§ 2, 5.

* * *

Dear Senator Masterson and Representatives Williams, Arnberger, Bergquist, Carpenter, Delperdang, Erickson, Helmer, Hoffman, Huebert, Humphries, Landwehr, Mason, Owens, Rhiley, Seiwert, A. Smith, Tarwater, Thimesch, Thomas, Waggoner, and Wasinger:

As State Senator and State Representatives for your respective districts, you request our opinion on the legal authority and flexibility of two types of local government entities regarding the governor's Executive Order 20-59¹ ("Requiring COVID-19 mitigation procedures in K-12 schools") and proposed Executive Order 20-58² ("Delaying the 2020-2021 K-12 school year") had it become effective. First, you inquire about the legal authority of boards of county commissioners to adopt public health orders that are less stringent than provisions of those two executive orders. Second, you ask about the authority of local school boards in governing the subject matter covered by those two executive orders in ways that may differ from the provisions of those orders. Because the State Board of Education did not affirm³ delaying the 2020-2021 school year for grades K-12 as stated in the proposed Executive Order 20-58⁴ and that order is not in effect, we consider questions about it moot and will address your questions only as they apply to Executive Order 20-59.⁵

We note what should be obvious: We provide our legal opinion on the relative legal authorities of the governor, boards of county commissioners and local school boards and express no opinion about the wisdom or advisability of whatever policy decisions any of

¹ Executive Order No. 20-59, *Kansas Register*, Vol. 39, No. 30, pg. 986, July 23, 2020, [https://sos.ks.gov/publications/register/2020/Vol 39 No 30 July 23 2020 pages 967-992.pdf](https://sos.ks.gov/publications/register/2020/Vol%2039%20No%2030%20July%2023%202020%20pages%20967-992.pdf) (last accessed August 2, 2020).

² Executive Order No. 20-58, (unsigned), <https://kslib.info/DocumentCenter/View/8445/EO-20-58> (last accessed August 3, 2020).

³ The law provides that the governor shall not issue an executive order pursuant to the Kansas Emergency Management Act "that has the effect of closing public or private school attendance centers in [Kansas] unless and until such [proposed executive order] is affirmed" by a resolution adopted by a majority of the State Board of Education members. The "best interest of the students" standard is to be used by the State Board of Education to determine whether to affirm a proposed executive order. L. 2020 Special Session, Ch. 1, § 7.

⁴ Summary of the July 22, 2020 State Board of Education Special Meeting, <https://www.ksde.org/Portals/0/Board/Documents/Bd%20Summary%20for%20July%2022%202020%20Sp%20Mtg.pdf?ver=2020-07-30-092652-653> (last accessed August 1, 2020).

⁵ In general, we think the legal analysis under the Kansas Emergency Management Act (KEMA) for Executive Order 20-58 would be similar to that for Executive Order 20-59 but would be complicated by the role of the Kansas State Board of Education in orders that have the effect of closing school attendance centers. For example, if the State Board of Education were to vote to affirm such an order issued by the governor under authority of the KEMA, it would be necessary also to analyze the effect, if any, of the Kansas Constitution's grant to the State Board of Education of general supervisory authority over local public schools, educational institutions and all the educational interests of the state. See Kan. Const. Art. 6, § 2.

those entities may make. Before addressing your questions, we provide some background that may be helpful in understanding the context in which your questions arise.

Background

During the 2020 Special Session of the legislature, the legislature enacted HB 2016⁶ in response to the 2020 COVID-19 pandemic in Kansas and the governor signed the bill into law. The following provisions of the new law are relevant to this opinion. First, the law ratified and continued from March 12, 2020, through September 15, 2020, the COVID-19-related state of disaster emergency proclaimed by the governor.⁷ However, the new law restricts the scope of authority granted to the governor pursuant to this extended state of disaster emergency⁸ and also prohibits the governor from declaring any new COVID-19-related states of disaster emergency during 2020 (while the legislature is not in Session) unless the governor makes an application to the State Finance Council and such action is approved by a vote of at least six of the eight legislative members⁹ of the State Finance Council.¹⁰

Second, until January 26, 2021,¹¹ the law specifically limits the scope of authority granted to the governor by K.S.A. 2019 Supp. 48-925(c)(11), which is a sort of catchall delegation to exercise emergency powers, duties and functions. The statute now specifies that this catchall authority may be exercised only in conformity with the Constitution of the State of Kansas, the Bill of Rights, and with the statutes of the State of Kansas, except any

⁶ L. 2020 Special Session, Ch. 1, §§ 1 through 43 was approved by the governor on June 8, 2020, and effective upon publication in the *Kansas Register* on June 9, 2020. See *Kansas Register*, Vol. 39, No. 23A, pgs. 755-771, July 23, 2020, [https://sos.ks.gov/publications/register/2020/Vol 39 No 23A June 9 2020 pages 753-776.pdf](https://sos.ks.gov/publications/register/2020/Vol%2039%20No%2023A%20June%209%202020%20pages%20753-776.pdf) (last accessed August 1, 2020).

⁷ Specifically, the law ratified and continued the COVID-19-related state of disaster emergency proclaimed by the governor on March 12, 2020, that was ratified and continued by 2020 House Concurrent Resolution 5025 through May 1, 2020; the COVID-19-related state of disaster emergency proclaimed by the governor on April 30, 2020, that was extended and continued by the State Finance Council through May 26, 2020; and ratified and continued the COVID-19-related state of disaster emergency proclaimed by the governor on May 26, 2020. L. 2020 Special Session, Ch. 1, New § 5(a).

⁸ The governor does not have the power or authority to restrict businesses from operating, to restrict the movement or gathering of individuals, or to alter or modify any provisions of the elections laws. L. 2020 Special Session, Ch. 1, § 33(e), and (f).

⁹ K.S.A. 75-3708 provides, in pertinent part, "There is hereby created the state finance council consisting of nine members. The members of the finance council shall be (1) the governor, (2) the president of the senate, (3) the speaker of the house of representatives, (4) the majority floor leader of the senate, (5) the minority floor leader of the senate, (6) the chairperson of the senate committee on ways and means, (7) the majority floor leader of the house of representatives, (8) the minority floor leader of the house of representatives, and (9) the chairperson of the house of representatives committee on appropriations."

¹⁰ L. 2020 Special Session, Ch. 1, New § 5(b).

¹¹ L. 2020 Special Session, Ch. 1, § 34 provides that on January 26, 2021, K.S.A. 2019 Supp. 48-925 reverts to the law as it was prior to the amendments by 2020 Special Session, Ch. 1, § 33. Put simply, the amendments made in § 33 are temporary and only in effect until January 26, 2021.

regulatory statute specifically suspended under the Kansas Emergency Management Act (KEMA).¹²

Third, until January 26, 2021, the law authorizes the board of county commissioners of any county to issue an order relating to public health that contains provisions that are less stringent than the provisions of a statewide executive order issued by the governor.¹³ Any board of county commissioners issuing such an order shall make the following specific findings and include them in the order: 1) the Board has consulted with the local health officer or other local health officials regarding the governor's executive order; 2) following such consultation, implementation of the full scope of provisions in the governor's executive order is not necessary to protect the public health and safety of the county; and 3) all other relevant findings to support the Board's decision.¹⁴

Fourth, the law amends K.S.A. 65-201 to require any board of county commissioners to act as the county board of health.¹⁵ It also provides that any board of county commissioners may review, amend, or revoke any order issued by the local health officer, including orders issued as a result of an executive order of the governor.¹⁶ Similarly, the law amends K.S.A. 65-202(c) to authorize the board of county commissioners of any county affected by any order issued by its local health officer regarding remediation of any infectious disease, including orders issued as a result of an executive order of the governor, to review, amend or revoke such order.¹⁷ Counties are prohibited from exempting themselves from or effecting changes in K.S.A. 65-201 and K.S.A. 65-202, and amendments thereto.¹⁸

Analysis

With this background firmly in mind, we turn to your specific questions regarding Executive Order 20-59. On July 20, 2020, the governor issued Executive Order 20-59, which outlines procedures "to ensure that K-12 schools can operate as safely as possible and mitigate the spread of COVID-19."¹⁹ We will address whether boards of county commissioners are authorized to adopt less stringent requirements than the provisions of Executive Order 20-59. We will also address whether local public school boards have flexibility to deviate from those provisions.

¹² L. 2020 Special Session, Ch. 1, § 33(c)(11).

¹³ This new specific authority is consistent with the general authority of boards of county commissioners to "perform such other duties as are or may be prescribed by law." K.S.A. 19-212.

¹⁴ L. 2020 Special Session, Ch. 1, § 33(h)(1), (2), and (3). *See also* FN 11.

¹⁵ L. 2020 Special Session, Ch. 1, § 37(a).

¹⁶ L. 2020 Special Session, Ch. 1, § 37(b).

¹⁷ L. 2020 Special Session, Ch. 1, § 38(c)(2).

¹⁸ L. 2020 Special Session, Ch. 1, §25(a)(39).

¹⁹ *See* FN 1.

Authority of Boards of County Commissioners

K.S.A. 2019 Supp. 48-925(h), as amended by L. 2020 Special Session, Ch. 1, § 33²⁰ provides:

(h) The board of county commissioners of any county may issue an order relating to public health that includes provisions that are less stringent than the provisions of an executive order effective statewide issued by the governor. Any board of county commissioners issuing such an order must make the following findings and include such findings in the order:

- (1) The board has consulted with the local health officer or other local health officials regarding the governor's executive order;
- (2) following such consultation, implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and
- (3) all other relevant findings to support the board's decision.

Accordingly, any board of county commissioners in Kansas has statutory authority under L. 2020 Special Session, Ch. 1, § 33 to issue a local order relating to public health that is less stringent than the provisions of an executive order of the governor issued under the authority of the KEMA, if, 1) the governor's order is an "executive order effective statewide", 2) the order is "relating to public health", and 3) the three required statutory findings are made.²¹

We start our analysis with the rules of statutory interpretation established by the Kansas Supreme Court:

We must, first, try to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When a statute is plain and unambiguous, we should not speculate about the legislative intent behind that clear language, and we should refrain from reading something into the statute that is not readily found in its words.²²

Effective Statewide: Executive Order 20-59 is an "executive order effective statewide." First, the plain and unambiguous text of the order addresses mitigation procedures in all

²⁰ See FN 11.

²¹ Although newly enacted in statute, this county "opt out" authority as it is colloquially known previously was widely exercised by all but a few counties to adopt provisions less stringent than Executive Order 20-52 (requiring masks or other face coverings in public). See <https://www.kansas.com/news/politics-government/article244091222.html> (last accessed August 10, 2020).

²² *Montgomery v. Saleh*, ____ Kan. ____, 2020 WL 3479264, at *4 (Nos. 117, 518 and 117,519, June 26, 2020) (internal citations omitted).

K-12 schools without any geographical or other relevant limitation. The order's text specifically applies to all public and private K-12 schools,²³ and there is at least one unified school district in each county in Kansas.²⁴ Second, the order is issued under authority of the state of disaster emergency proclaimed by the governor on March 12, 2020, which included "[a]ll 105 counties in Kansas";²⁵ and further proclaimed by the governor on April 30, 2020,²⁶ and May 26, 2020,²⁷ which each included "[a]ll 105 counties in Kansas; Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe of Kansas; Prairie Band of Potawatomi Nation; and Sac and Fox Nation of the [sic] Missouri in Kansas and Nebraska"; and codified and extended by 2020 House Bill 2016, which specifically referenced the governor's proclamations and extended them without imposing any geographical limitation.²⁸ Thus, because the state of disaster emergency authorizing Executive Order 20-59 is in effect statewide and because the order itself applies to all K-12 schools in the state and does not impose or suggest any geographical limitation, we conclude that Executive Order 20-59 is an executive order effective statewide.

Relating to Public Health: Executive Order 20-59 is an "order relating to public health."²⁹ The Act neither defines nor provides standards for determining whether an order is one relating to public health, so we interpret the phrase by giving words their ordinary meaning. "Public health" generally is defined as "the art and science dealing with the protection and improvement of community health by organized community effort and including preventive medicine and sanitary and social science."³⁰ The purpose of the Kansas emergency response that includes Executive Order 20-59 is to protect and improve the health of the people of Kansas in general by combating the spread of COVID-19, a contagious or infectious disease that has become a global pandemic that is causing sickness and death in Kansas. That analysis of the statute's text is reinforced by the context in which Executive Order 20-59 was issued and by the plain and unambiguous text of the order itself.

²³ The text of proposed Executive Order 20-58 specified that it did not apply to non-accredited private schools. The text of Executive Order 20-59 contains no such exemption.

²⁴ See K.S.A. 72-516. See also, Kansas State Department of Education 2019-2020 Kansas Educational Directory of Kansas Unified School Districts, <https://www.ksde.org/Portals/0/Directories/2019-20%20Educational%20Directory/19-20-KSEDD-USD-Map.pdf?ver=2019-12-17-165921-913> (last accessed August 1, 2020).

²⁵ State of Disaster Emergency Proclamation, March 12, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/03/2020-03-12-Proclamation.pdf> (last accessed August 2, 2020).

²⁶ State of Disaster Emergency Proclamation, April 30, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/03/043020-COVID-19.pdf> (last accessed August 2, 2020).

²⁷ State of Disaster Emergency Proclamation, May 26, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/05/2020-05-26-Proclamation.pdf> (last accessed August 2, 2020).

²⁸ L. 2020 Special Session, Ch. 1, New § 5(a).

²⁹ K.S.A. 2019 Supp. 48-925(h) addresses a *county* order "relating to public health" and does not specify that the governor's order must also be one relating to public health. In this case, we analyze the governor's order because if it is an order "relating to public health," then any less-stringent county order would necessarily relate to the same subject and therefore also be an order "relating to public health." Consequently, it is unnecessary to address that statutory ambiguity because both orders are "relating to public health."

³⁰ Public Health. Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/public%20health#h1> (last accessed August 10, 2020).

The text of Executive Order No. 20-59 describes the COVID-19 pandemic as a public health emergency,³¹ states that the “trend of increased COVID-19 spread is a danger to the health and safety of every Kansan”³² and asserts that it is necessary because the “safety and health of teachers, administrators, and students will be unnecessarily imperiled if schools reopen without commonsense mitigation measures in place.”³³ Executive Order 20-59 was issued under authority of the proclamations of a state of disaster emergency discussed above, and the text of those proclamations makes clear that the emergency is predicated on the effects of the global COVID-19 public health emergency in Kansas.³⁴ The order generally requires K-12 public and private schools to require all persons at a school attendance center to wear a mask, social distance, wash hands, and check temperatures³⁵ in an effort “to ensure that K-12 schools can operate as safely as possible and mitigate the spread of COVID-19.”³⁶ Thus, because the obvious purpose of the order is to respond to the global public health crisis in Kansas by attempting to mitigate the spread of COVID-19, and because the text of both the order itself and the state of disaster emergency proclamations upon which the order is predicated make that clear, we conclude that Executive Order 20-59 is an order relating to public health and so too would be any county order adopting any less-stringent provisions.

Required Statutory Findings: Having concluded that Executive Order 20-59 is an “executive order effective statewide” that is “relating to public health”, the only requirement remaining before a board of county commissioners may adopt a less-stringent provision than that in Executive Order 20-59 is making the three mandatory statutory findings.³⁷ Whether a board of county commissioners satisfies this statutory requirement is a question of fact outside the scope of this opinion.

Despite the above, it has been suggested that boards of county commissioners may not adopt orders less restrictive than the governor’s when the orders at issue involve the

³¹ Executive Order No. 20-59, *WHEREAS* clause 2.

³² Executive Order No. 20-59, *WHEREAS* clause 10.

³³ Executive Order No. 20-59, *WHEREAS* clause 11.

³⁴ “On March 7, 2020, the Secretary of the Kansas Department of Health & Environment (KDHE) confirmed the first case of novel coronavirus (COVID-19) in the state of Kansas and considers that a public health emergency exists within the state of Kansas.” State of Disaster Emergency Proclamation, March 12, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/03/2020-03-12-Proclamation.pdf> (last accessed August 10, 2020). “On March 20, 2020, the president granted the State of Kansas an Emergency Declaration and directed the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to provide appropriate assistance for required emergency measures to save live [sic] and to protect property and public health and safety, and lessen or avert the threat of a catastrophe in the state.” State of Disaster Emergency Proclamation, April 30, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/03/043020-COVID-19.pdf> (last accessed August 10, 2020). “This Proclamation is necessary to protect Kansas from the current economic disaster and the imminent threat of additional disasters due to new spikes or outbreaks of COVID-19 cases.” State of Disaster Emergency Proclamation, May 26, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/05/2020-05-26-Proclamation.pdf> (last accessed August 10, 2020).

³⁵ Executive Order No. 20-59, *WHEREAS* clause 13.

³⁶ Executive Order No. 20-59, *NOW, THEREFORE* clause.

³⁷ L. 2020 Special Session, Ch. 1, § 33.

regulation and oversight of local schools because county commissions have no legal authority over schools³⁸ and “[t]here is no indication that K.S.A. 2019 Supp. 48-925(h) [as amended] was intended to broaden a county commission’s powers to regulate where previously it had no such power.”³⁹ This suggestion is unpersuasive for at least two reasons. First, it has no basis in the plain and unambiguous text of K.S.A. 2019 Supp. 48-925(h), which does not distinguish executive orders of the governor relating to public health that apply in schools from other executive orders. Second, it misapprehends the nature of the 2020 Special Session House Bill 2016 amendments to KEMA. Prior to 2020 House Bill 2016, KEMA’s statutory scheme included various procedures and mechanisms that limited the governor’s authority to exercise the emergency powers it delegated.⁴⁰ The new provision in § 33 of 2020 House Bill 2016 granting authority to boards of county commissioners operates as a further check on the *governor’s* power—an additional procedure or mechanism that limits the governor’s exercise of emergency powers granted by KEMA, including any that apply to schools—not a freestanding grant of authority to boards of county commissioners to regulate schools.⁴¹

For the reasons above, we conclude that any board of county commissioners has the authority under L. 2020 Special Session, Ch. 1, § 33 to issue an order relating to public health that is less stringent than the provisions of Executive Order 20-59 if the required statutory findings are made.

Authority of Local School Boards

Local school boards are granted authority under the Constitution of the State of Kansas to manage their own affairs:

Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected

³⁸ “Schools are managed by local school boards in conjunction with the state board of education. Kan. Const. Art. 6, §§ 2, 5.” Letter to the Attorney General from Clay Britton, Chief Counsel, Office of the Governor, July 28, 2020.

³⁹ Letter to the Attorney General from Clay Britton, Chief Counsel, Office of the Governor, July 28, 2020.

⁴⁰ For example, the governor could exercise KEMA emergency powers only while a properly proclaimed state of disaster emergency was in effect (K.S.A. 2019 Supp. 48-925(b), as amended by L. 2020 Special Session, Ch. 1, § 33(b)), and the length of any emergency proclamation was limited unless ratified by action of the legislature (K.S.A. 48-924(b)(4)). Similarly, the governor could exercise KEMA emergency powers only by issuance of orders or proclamations. K.S.A. 48-924(b)(1).

⁴¹ Notably, however, the legislature did separately grant new, permanent authority to boards of county commissioners to review, amend, or revoke any order issued by the local health officer, including orders issued as a result of an executive order of the governor. L. 2020 Special Session, Ch. 1, § 37(b) (amending K.S.A. 65-201). The legislature also granted the board of county commissioners of any county affected by any order issued by its local health officer regarding remediation of any infectious disease, including orders issued as a result of an executive order of the governor, the authority to review, amend or revoke such order. L. 2020 Special Session, Ch. 1, § 38(c)(2) (amending K.S.A. 65-202). These new authorities do not expire on January 26, 2021. Thus, the legislature plainly intended to increase the role of boards of county commissioners in determining what health orders are in effect within their respective counties and drew no distinction in the statutes between orders directed at schools or directed otherwise.

boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.⁴²

While the Kansas Supreme Court has ruled that constitutional authority is not self-executing,⁴³ the legislature has granted local school districts limited statutory authority to execute that constitutional authority through K.S.A. 2019 Supp. 72-1138, which is often colloquially referred to as the “school district home rule statute.”⁴⁴ It states, in pertinent part:

(e)(1) The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools. (2) The power granted by this subsection shall not be construed to relieve a board from compliance with state law.

The requirements included in Executive Order 20-59, such as wearing masks, social distancing, washing hands, and temperature takings, on their face appear to be the sorts of matters that fall within the local school board’s authority to “adopt policies” appropriate to “maintain, develop and operate local public schools.” Put another way, if Executive Order 20-59 did not exist, we think a local school board could exercise its authority to adopt for its local schools the same requirements contained in that executive order.⁴⁵ Thus, our analysis begins with an understanding that each local school board has *preexisting* home rule authority to decide the matters covered by Executive Order 20-59 unless the legislature by statute or the governor’s executive order has abrogated that preexisting local

⁴² Kan. Const. art. 6, § 5.

⁴³ “It appears clear that the legislature under § 1 of Article 6 has the broad duty of establishing the public school system. The local school board’s duties under § 5 of Article 6 are not self-executing but are dependent upon statutory enactments of the legislature. However, we do not imply that the legislature has carte blanche over the duties and actions of local school boards. The respective duties and obligations vested in the legislature and the local school boards by the Kansas Constitution must be read together and harmonized so both entities may carry out their respective obligations.” *Unified Sch. Dist. No. 229 v. State*, 256 Kan. 232, 253 (1994) (citing *Unified Sch. Dist. No. 380, Marshall Cty. v. McMillen*, 252 Kan. 451, 464 (1993)).

⁴⁴ K.S.A. 2019 Supp. 72-1138(e). See also, Letter to the Attorney General from Angela E. Stallbaumer, Attorney and Assistant Executive Director for Legal Services, Kansas Association of School Boards, July 28, 2020.

⁴⁵ Moreover, the State Board of Education has provided extensive guidance to local school districts on mitigating the spread of COVID-19. Navigating Change 2020: Kansas Guide to Learning and School Safety Operations, Kansas State Department of Education, August 5, 2020, https://www.ksde.org/Portals/0/Communications/Navigating%20Change/Navigating_Change.pdf?ver=2020-07-15-183032-667 (last accessed August 11, 2020). To the extent a local school boards may act consistent with that guidance, it could rely for legal authority on the *combination* of its preexisting local authority and in addition the general supervisory authority of the State Board of Education.

authority.⁴⁶ We are unaware of any state statute that denies local school boards authority over the matters covered by Executive Order 20-59,⁴⁷ so we will focus exclusively on whether Executive Order 20-59 has done so.

Neither the plain text of Executive Order 20-59 nor that of K.S.A. 2019 Supp. 48-925, which is the statutory basis for that executive order, suspends the preexisting authority of local school districts to make decisions regarding wearing masks, social distancing, washing hands, and temperature takings.⁴⁸ To exercise the emergency powers delegated by K.S.A. 2019 Supp. 48-925, the governor must “specify the provision or provisions of subsection (c) [of K.S.A. 2019 Supp. 48-925] by specific reference to each paragraph of subsection (c) that confers the power under which the order was issued.”⁴⁹ Pursuant to that statutory requirement, Executive Order 20-59 specifies it was issued under authority of K.S.A. 2019 Supp. 48-925(c)(1)⁵⁰ and (c)(11). We will analyze each in turn.

K.S.A. 2019 Supp. 48-925(c)(1) authorizes the governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statute, order or rule and regulation would prevent, hinder or delay in any way necessary action in coping with the disaster.” Executive Order 20-59 does not exercise authority derived from that subparagraph to suspend local school board home rule authority for at least two reasons. First, the plain text of Executive Order 20-59 does not purport to do so.⁵¹ In fact, despite citing (c)(1) as a statutory subsection that confers the power for its issuance, Executive Order 20-59 does not specify *any* statute that it suspends, and K.S.A. 2019 Supp. 72-1138 (school board home rule authority) is not mentioned in the executive order nor are local school boards mentioned at all. Second, we doubt K.S.A. 2019 Supp. 72-1138 is a statute that may be suspended under authority of

⁴⁶ We also recognize that a local school board's authority must be exercised consistent with the general supervisory authority of public schools, educational institutions and all the educational interests of the state granted to the State Board of Education by the Kansas Constitution. See Kan. Const. art. 6, § 5. The relationship between the authority of local school boards and the State Board of Education is not presented by your questions or addressed in this Opinion.

⁴⁷ The legislature did not enact any provision in L. 2020 Special Session, Ch. 1 that explicitly rescinds the preexisting authority of local school districts to adopt policies that the board deems appropriate for operating public schools during this pandemic. We have not researched other statutes previously in existence but have no reason to suspect they denied local school boards authority over the subject matter addressed by Executive Order 20-59. See K.S.A. 2019 Supp. 72-1138(e).

⁴⁸ See K.S.A. 2019 Supp. 48-925(c)(1).

⁴⁹ L. 2020 Special Session, Ch. 1, § 33(g). See also FN 11.

⁵⁰ K.S.A. 2019 Supp. 48-925(c)(1) authorizes the governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statute, order or rule and regulation would prevent, hinder or delay in any way necessary action in coping with the disaster.”

⁵¹ The absence of any language in Executive Order 20-59 purporting to preempt local authority stands in stark contrast with previous executive orders issued in response to COVID-19 in which the governor has specifically claimed to exercise authority to preempt local authority. See, e.g., Executive Orders 20-07 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-16, 20-17, 20-18, 20-21, 20-22, 20-24, 20-25, 20-28, 20-33, 20-35, 20-36, 20-37, 20-38, 20-44, 20-45, 20-50, 20-55, and 20-57.

K.S.A. 2019 Supp. 48-925(c)(1).⁵² That subparagraph does not grant the governor authority to suspend *any* statute; rather, it is limited to permitting the governor to suspend only certain provisions of “regulatory statute[s] prescribing the procedures for conduct of state business.” K.S.A. 2019 Supp. 72-1138 does not “prescrib[e] the procedures for conduct of state business” but instead grants statutory home rule authority to local school boards. We also doubt K.S.A. 2019 Supp. 72-1138 is a “regulatory” statute within the meaning of K.S.A. 2019 Supp. 48-925(c)(1). In the absence of a statutory definition, we turn to the common meaning of “regulatory” which is “of or relating to regulation”.⁵³ “Regulation” is an authoritative rule dealing with details or procedure.”⁵⁴ By that definition, K.S.A. 2019 Supp. 72-1138 does not regulate anything; rather, it grants home rule authority to local school boards.

K.S.A. 2019 Supp. 48-925(c)(11), a sort of catchall delegation of emergency power, authorizes the governor to “perform and exercise such other functions, powers and duties ... as are necessary to promote and secure the safety and protection of the civilian population.” But that subparagraph was significantly amended by L. 2020 Special Session, Ch. 1, § 33(c)(11) and now includes explicit restrictions on its previously sweeping language. By the statute’s terms, the authority of (c)(11) now may be exercised only “in conformity with the constitution and the bill of rights of the state of Kansas and with the statutes of the state of Kansas, except any regulatory statute specifically suspended under the authority of subsection (c)(1).”⁵⁵ Given that plain and unambiguous statutory language, subparagraph (c)(11) does not enable Executive Order 20-59 to suspend local school board home rule authority for at least three reasons. First, Executive Order 20-59 does not mention K.S.A. 2019 Supp. 72-1138; thus, that statute has not been “specifically suspended under the authority of subsection (c)(1).” Second, the same doubt that K.S.A. 2019 Supp. 72-1138 is a “regulatory” statute, as discussed above, applies here because the plain text of (c)(11) now incorporates the “regulatory statute” limitation. Third, the plain text of (c)(11) authorizes the governor to issue *only* orders that are “in conformity with ... statutes of the state of Kansas” that have not been properly suspended; because K.S.A. 2019 Supp. 72-1138 has not been (and likely cannot be) suspended by executive action, K.S.A. 2019 Supp. 48-925(c)(11) authorizes only executive orders that are “in conformity with” school district home rule.

For the reasons above, the preexisting statutory and constitutional authority of local school boards to adopt local policies for the operation of local schools regarding wearing masks,

⁵² We recognize that the school district home rule statute itself specifies that the self-governing authority of local school boards is limited by state law, see K.S.A. 2019 Supp. 72-1138(e)(2), and that makes our analysis on this point a somewhat closer call. But the initial question would be whether K.S.A. 2019 Supp. 48-925(c)(11) grants the governor emergency power that can suspend a local school board’s home rule authority granted by K.S.A. 2019 Supp. 72-1138, and for the reasons set forth herein we think the answer is “no.”

⁵³ Regulatory. Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/legal/regulatory> (last accessed August 10, 2020).

⁵⁴ Regulation. Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/regulation> (last accessed August 10, 2020).

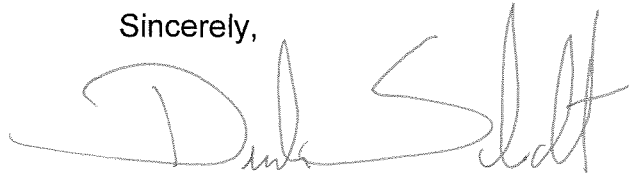
⁵⁵ L. 2020 Special Session, Ch. 1, § 33(c)(11). See also, FN 11.

social distancing, washing hands, and temperature takings in local schools has not been displaced by Executive Order 20-59.⁵⁶ Consequently, local school boards retain their authority to adopt different or modified local requirements on these subjects.⁵⁷

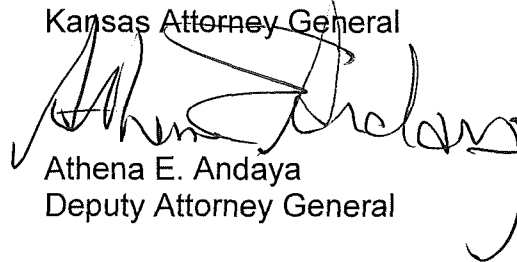
Conclusion

Local public or private schools that seek flexibility to deviate from the requirements set forth in Executive Order 20-59 may obtain that flexibility from a less-restrictive order adopted by the board of county commissioners. Because Executive Order 20-59 is a statewide order relating to public health, boards of county commissioners have statutory authority under L. 2020 Special Session, Ch. 1, § 33 to issue an order relating to public health that is less stringent than the provisions of Executive Order 20-59, if the required statutory findings are made. Boards of county commissioners, acting as a county board of health, also have authority under L. 2020 Special Session, Ch. 1, §§ 37 and 38, to review, amend, or revoke any orders issued by a local health officer as a result of an executive order of the governor. In addition, local public schools also may obtain such flexibility from their local school boards, which ordinarily have statutory and constitutional authority to adopt local policies governing matters such as wearing masks, social distancing, washing hands, and temperature taking in local schools, and Executive Order 20-59 has not displaced that preexisting local authority.

Sincerely,



Derek Schmidt
Kansas Attorney General



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Deputy Attorney General

DS:AA:sb

⁵⁶ Although we need not and do not analyze and decide this related question, it is reasonable to presume the same preexisting authority also would enable a local school board to require more-stringent COVID-19 mitigation in the operation of local schools than is mandated by either Executive Order 20-59 or by any less-restrictive county order.

⁵⁷ Because constitutional and statutory home rule apply only to the local board of education for public schools, private schools may not retain similar local authority under this analysis. To the extent private schools may wish to adopt different or modified local requirements on the subjects covered by Executive Order 20-59, they would need to obtain authority to do so from the board of county commissioners, which could adopt a less-restrictive order permitting greater local decision-making by private schools.

Kansas At-Risk Pupil Assistance Program



Guidelines for 2019-20

1. What is the purpose of the Kansas At-Risk Pupil Assistance program?

The purpose of the Kansas At-Risk Program is to provide at-risk students with additional educational opportunities, interventions, and evidence-based instructional services to assist in meeting State Board of Education outcomes.

2. What does the term “additional educational opportunities” mean?

The intent of the At-Risk Pupil Assistance Program is to provide “additional educational opportunities” which are evidence-based educational services offered to at-risk students above and beyond regular educational services.

K.S.A. 72-5153(c) Expenditures from the at-risk education fund of a school district shall only be made for the following purposes:

- a. At-risk educational programs based on evidence-based best practices identified by the State Board of Education;
- b. personnel providing educational services in conjunction with such programs; or
- c. services contracted for by the school district to provide at-risk educational programs based on best practices.

3. Does an at-risk student have to be a free-lunch student?

No, free lunch applications determine the funding while academic needs determine who is identified and served.

4. What is the definition of an at-risk student and what criteria identify an at-risk student?

At-risk students can be defined by one or more criteria. Predominantly, a student who is not working on grade level in either reading or mathematics is the major criteria used.

An at-risk student is one who meets one or more of the following criteria (a-j):

- a. Is not working on academic grade level.
- b. Is not meeting the requirements necessary for promotion to the next grade; is failing subjects or courses of study
- c. Is not meeting the requirements necessary for graduation from high school. (e.g., potential dropout)
- d. Has insufficient mastery of skills or is not meeting state standards
- e. Has been retained
- f. Has a high rate of absenteeism
- g. Has repeated suspensions or expulsions from school
- h. Is homeless and/or migrant



- i. Is identified as an English Language Learner
- j. Has social emotional needs that cause a student to be unsuccessful in school

- *Students are often at-risk as a result of the following situations:*

- Low attachment to or involvement with school
- Continual or persistently inappropriate behavior
- Repeated discipline infractions
- A high rate of transition or mobility
- Living in an environment of poverty
- Living in an environment of limited educational achievement
- Has a drug or alcohol problem
- Is pregnant or is a parent or both
- Participates in gang or gang-like activity
- Is adjudicated as a juvenile offender
- Is a "child in need of care" (CINC)

5. May students identified for special education services receive at-risk services?

Yes, students with disabilities may be served by the at-risk funds if the services are not the same area of service being provided by special education funds as identified on the student's IEP. For example, a student with a disability receiving special education instructional support in the area of reading could receive at-risk instructional support in the area of mathematics, but not in reading.

6. What are districts to use to identify at-risk students?

Districts are to use some form of diagnostic assessment and/or evidence-based educational criteria to identify students who are at-risk to determine their needs and to guide their interventions.

7. What assessments or data can be used to identify at-risk students?

Some examples of data and assessments that can be used to select and serve at-risk students include:

- a. Records of performance demonstrating a lack of growth
- b. State assessment results
- c. Local assessments
- d. Performance based assessments
- e. Norm referenced assessments
- f. Screening assessments
- g. Diagnostic assessments such as:
 - Qualitative Reading Inventory
 - Degrees of Reading Power
 - Gates MacGinitie
- h. Supplemental services needed through the school day

8. What are some examples of how at-risk services can be delivered?

The primary means of providing additional services that are above and beyond what is offered to all students primarily includes additional time or additional staff hired specifically to work with identified at-risk students.



Some appropriate examples of how at-risk services can be delivered are:

- a. Extended year
- b. Before school
- c. After school
- d. Summer school
- e. Extra support within a class
- f. Tutorial assistance
- g. Class within a class

9. May alternative, virtual and charter schools be funded with at-risk funds?

Yes, alternative, virtual and charter schools can use at-risk funding to provide educational services to identified at-risk students.

10. May at-risk funds be used to fund an instructional coach for K-12?

Yes, at-risk funds may be used to hire instructional coaches who work with teachers of at-risk students in grades K-12.

11. How may at-risk funds be used to support direct instruction?

Funds used to support direct instructional services provided to at-risk students includes the hiring of teachers or paraprofessionals (who are appropriately supervised by licensed staff) to offer additional services to at-risk students.

12. May at-risk funds be used to support administrative salaries?

In general, at-risk funds **cannot** be used to support administrative salaries unless the administrator is providing direct instructional services and/or support services to identified at-risk students beyond their regular contract duties. However, if an administrator is fully employed to serve a school that has 100% of its students identified as at-risk based on the at-risk criteria in question #4, at-risk funds can be used to support the administrator's salary. An alternative school is an example in which this situation might apply.

13. May at-risk funds be used to support classroom teacher salaries?

Yes. At-Risk funds may be used for a proportion of a classroom teacher's salary. The proportion that may be paid must be equal to or lower than the proportion of at-risk students in the teacher's class(es). The district would need to be able to verify that evidence-based best practices are being used in the teacher's classroom in order to pay a proportion of their salary.

14. May at-risk funds be used to support social workers, counselors or translators salaries?

At-risk funds can be used to support social workers, counselors or translator's salaries if they are providing direct instructional services and/or support services to identified students. The support services provided should directly impact the reason(s) for which the student was identified as at-risk.

15. May at-risk funds be used to support resource officer's salaries?

No. At-risk funds **cannot** be used to support resource officer's salaries.



16. May at-risk funds be used to support clerical staff salaries?

If clerical staff are fully employed to serve a school that has 100% of its students identified as at-risk according to the criteria in question #4, at-risk funds can be used to support that person's salary. An alternative school is an example of a school that might meet the 100%.

17. May funds be used to support professional development activities?

No, at-risk funds must be spent on additional educational opportunities and instructional services to assist in closing the achievement gap of at-risk students. At-risk funds, however, may pay the salaries of instructional coaches who work with teachers of at-risk students.

18. May at-risk funds be used to purchase equipment?

At-risk funds can be used to purchase equipment that will be used to support at-risk student learning; however, those purchases should be limited to 25% of the total at-risk allocation.

19. May at-risk funds be used for qualified preschool students?

Yes.

20. May at-risk funds be spent on transportation?

Yes, funds may only pay for transportation for at-risk students attending after school programs, extended school or summer school.

21. How must high-density at-risk funds be spent?

School districts that qualify to receive the high-density at-risk weighting pursuant to this section shall spend any money attributable to the school district's high-density at-risk weighting on the at-risk best practices approved by the state board. [K.S.A. 72-5151](#)

22. What student records must be kept for the at-risk program?

Annual records must be kept at the district on the following:

- a. List of students served
- b. Selection criteria including name of assessment and/or evidence-based educational criteria

Link to Evidence-Based Best Practices homepage <http://www.ksde.org/Default.aspx?tabid=748>

23. What information on at-risk must districts report at the end of each school year?

According to the school finance law, districts must report annually the following information:

- a. The number of at-risk pupils served or provided assistance
- b. The type of service(s) provided
- c. The research (e.g., student assessment data) upon which the district relied in determining the need for the service or assistance existed
- d. The results (e.g., student impact data) of the service(s) or assistance provided
- e. Any other information required by the State Board

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