

NEA Issue Guidance: COVID-19 and the Workday

Introduction

Educators and students are returning to school as COVID-19 is surging again in many parts of the country. Some schools must pivot to remote classes due to rising COVID-infections or widespread quarantines. Before the pandemic, teaching was recognized as a challenging and complex profession, but for many educators, it has now reached a tipping point with the ongoing impacts of COVID-19. In addition to instructional challenges, educators constantly worry about the students who do not show up for class, as well as responding to the daily district, student, and parent communications. Many educators have resigned, retired, or left their professions entirely, compounding the stress on members at the start of the new school year.

Since the beginning of the pandemic, affiliates have negotiated memoranda of understanding (MOU) to address the workload issue. Even if your local has not addressed the increasing workload and workday through new MOUs, most collective bargaining agreements contain language on workday definitions that can be enforced to safeguard negotiated time requirements. This guidance recommends ways to address workload issues that may not be already directly addressed within the provisions of your collective bargaining agreement, or where your language could be improved. Even where bargaining is not permitted, you can use these provisions as a framework for discussions with administrators, either as part of a labor-management committee or through meet-and-confer opportunities.

In addition, school districts can use American Rescue Plan funds to lessen the burden on employees and can prioritize staffing, planning and preparation time, and enhanced leaves. See NEA's *The ESSER Funds: Bargaining and Advocacy Guidance for Safe and Equitable Schools* for further guidance.

Workload issues are pervasive across all member categories and the recommendations should be broadly considered in light of your local situation, including existing bargaining laws and state or local regulations.

Length of Workday

Many states – both those that permit collective bargaining and those that do not – define educators' workday and/or prescribe minimum requirements for meal breaks and planning periods. In non-collective bargaining states, this may provide the best, if not the only, source of protection. In collective bargaining states, these provisions often provide a floor of protection,

while permitting more generous negotiated agreements. Your local or state counsel is the best source for determining whether employers are complying with those provisions.

Many collective bargaining agreements already define the employee workday, and those provisions are enforceable. Moreover, many affiliates have negotiated additional language to reflect the unique circumstances associated with COVID-19.

Reminding educators of their rights under these provisions may prompt them to come forward and report potential violations. This can provide opportunities to bring pressure on the employer, and if necessary, pursue grievances, to ensure compliance with these hard-won provisions.

Sample Contract Language

The length of the workday for employees shall remain unchanged from the existing collective bargaining agreement. Bargaining unit members are expected to work and be available during their normal contractual work hours and workdays, no matter whether the District is operating an in-person, hybrid instructional model or 100% remote instructional model.

Should the District determine that due to health and safety considerations, there is a need to stagger start and end times for certain groups of students and staff, the parties will negotiate any impacts on employees' schedules.

All education employees have additional professional responsibilities that add time and stress to their workday and/or week. The following provisions can help mitigate some additional pressures that employees are experiencing.

Communication with students and parents

Sample Contract Language

If the school district temporarily changes the model of teaching, employees shall maintain "office hours" with students. The parties will negotiate the best schedule for office hours, including days and length of time, which may vary for employees, to allow some flexibility related to their personal obligations. Nonetheless, the workday hours and minutes in the negotiated temporary agreement shall not exceed the existing contractually-defined workday in hours or minutes.

On a weekly basis, employees shall post their projected availability to provide extra student support or respond to parental communication. It is understood that employees may have to modify their scheduled availability because of their own circumstances, and they will not be subject to discipline for any necessary changes. (Note: We appreciate that in some cases, some

teachers may have to communicate with families through alternative means such as hard copy or texting, but the burden of maintaining these alternative means of communications should fall to the school district's administration.)

Employees are expected to check their school district email during normal workday hours only. Employees will respond to all family and student communications within [48] hours during business days, when possible, with the understanding that interpreter involvement may take longer.

Updating grades

Sample Contract Language

Teachers will update grades every [two weeks]. If a teacher's workload has increased significantly due to a different model of teaching, the parties will meet to identify needed supports and/or modify this schedule.

Duty free periods/days

Sample Contract Language

The school district will ensure that all plans and schedules maintain duty-free lunch periods, preparation time, and/or existing breaks for all employees.

The parties will negotiate a certain number of "flex days" without student contact time which shall be used to perform responsibilities, including but not limited to grading, assessment design, planning, team meetings, record keeping, and professional learning. Flex days are considered regular workdays and employees are expected to check their email for district and parent/student requests.

Reduction in number of meetings

Local affiliates may want to consider bargaining or collaborating with school districts to reduce the number of staff meetings. Below are some different approaches to consider.

Sample Contract Language

Meetings during the workday should be limited and occur only as needed. Employees should not be required to attend more staff meetings than were required before the onset of COVID-19 unless an emergency arises. Meetings should occur as needed, but not more than [once a week]. Every effort should be made to keep additional meetings to a minimum.

After school staff meetings should be avoided, [but limited to no more than once a month,] unless there are extenuating circumstances.

The school district shall provide at least a week's advance notice for any additional meetings. Employees shall not be penalized if they cannot attend any meetings scheduled beyond the workday.

Employees who are not available to attend the scheduled staff meetings are responsible for watching a recorded version (if made available) and will not be disciplined for missing the meeting.

Circumstances may require an extended workday or in some cases, the School District may try to add additional responsibilities to some employees' schedules. This section includes some recommended language to ensure that employees have input into any scheduled modifications and will be compensated for additional roles and responsibilities.

Compensation

Sample Contract Language

If an employee's workday is extended due to a revised schedule, and the school days for students exceed the contracted workdays as defined by the existing collective bargaining agreement, the School District shall compensate bargaining unit employees for any additional time worked at the appropriate salary rate.

Employees covered by the Fair Labor Standards Act (FLSA) shall be paid for all overtime hours.

Roles and responsibilities, including preparation, planning, and collaboration time

It is important to maintain negotiated and/or state-mandated preparation and planning time, as well as time required for any additional roles and responsibilities to which some employees have been appointed. Because of employees' personal responsibilities at home, employees may prefer some autonomy in scheduling. These provisions address standard contractual planning and collaboration time. Additional training and preparation should be provided if a school district is transitioning to another instructional model.

Sample Contract Language

Professional responsibilities as managed by individual employees may fall outside of the contractual workday and may become untenable for the employee to maintain. If the employee requests a modification of duties, the Association and the School District will collaborate to attempt to modify the employee's existing responsibilities and/or schedule.

Within the contractual workday, employees shall have individually directed planning time, team directed collaborative time, and other non-instructional time, to support the instructional

responsibilities of their job. This shall include collaboration time between teachers and paraeducators.

Employees shall receive appropriate professional learning and time to perform any additional roles and responsibilities. Employees who perform responsibilities in a higher job classification will receive higher pay.

The school district shall provide employees with access to secure virtual platforms to facilitate team planning and collaboration.

Employees shall be provided (number of days, but more than one] to prepare lessons and resources to transition to a new or modified instruction model.

Special education issues

Sample contract language

In cases of evaluation and assessment backlogs, special education employees will not be required to handle backlog cases in addition to a full case load.

The Special Education Committee will monitor caseloads monthly.

Virtual IEP Meetings: IEP meetings shall be held virtually during the workday whenever possible. If additional time beyond the workday is necessary to complete an IEP meeting, the special education teacher at the IEP shall determine whether to schedule an additional IEP meeting date to be held during the workday, or to continue the IEP meeting beyond the workday. If the IEP is extended, all employees will be compensated for the extra time.

The following provisions apply to Specialized Instructional Support Personnel (SISP) who are defined in Every Student Succeeds Act (ESSA) to include school counselors, social workers, psychologists, nurses, speech-language pathologists, occupational therapists who are involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services.

Sample contract language:

[SISP job title] who are addressing student evaluation and assessment backlogs will receive compensation at their per diem rate for hours worked beyond their workday.

When a [SISP job title] and Department Leadership agree that a specific caseload's composition is such that it is not possible/reasonable to complete all core duties within the workday, the



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Department will provide relief from an itinerant, relief-focused credentialed [SISP] within 30 days.

[SISPs] with concerns or specific needs relative to their caseload shall consult with the Special Education Committee and their Coordinator to reach a mutually agreed-upon, equitable alteration in method of service delivery (e.g., as the result of more individual sessions, therapy materials sent home, etc.), contingent upon IEP review and consent to be implemented within [XX] days.

[SISPs] shall establish their own schedules based on students' IEPs and confer with their supervisor regarding designated release days and share such schedules with their supervisor.

Additional Information

For additional information, contact:

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