



Memorandum

Date: January 2020
To: Senate Committee on Early Learning and K-12 Education
From: Ben Omdal, Staff Counsel, Senate Committee on Early Learning & K-12 Education
Re: K-12 Education Responses to COVID-19

As a project for the 2020 interim, members of the Senate Early Learning and K-12 Education Committee directed staff to gather and summarize information regarding the K-12 education system's response to COVID-19. This memorandum provides a brief summary of district and state responses to these issues, as well as related topics.¹

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I. Introduction

On March 13, 2020, Governor Inslee ordered all public and private K-12 schools in Washington State to close in response to the spread of COVID-19.² The Office of the Superintendent of Public Instruction (OSPI) issued guidance soon thereafter that stated, "Although schools are closed and are not providing traditional in-person instruction, education must continue."³

School districts in Washington performed remote learning for the remainder of the 2019-20 school year, where districts provided instruction through online platforms, hard-copy materials, and various

¹ This memorandum is not meant to function as a comprehensive study of district practices in Washington state, nor as a document of legislative intent, program endorsement, or policy prescription.

² Proclamation No. 20-09 (March 13, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-09%20Coronavirus%20Schools%20Amendment%20%28tmp%29.pdf>.

³ OSPI, Bulletin No. 024-20 (March 23, 2020), https://www.k12.wa.us/sites/default/files/public/bulletinsmemos/bulletins2020/4_Guidance%20for%20Long-term%20School%20Closures%20as%20of%20March%202023.pdf.

other modalities. At the beginning of the 2020-21 school year, the majority of school districts in Washington (79% of districts, comprising 94% of Washington K-12 students) started with some form of remote or distance learning (i.e. not in-person).⁴ Other districts began the year with a hybrid approach, a blend of remote learning and in-person learning, while 14 districts began the year with in-person learning only.⁵

Legal Authorities for School Closures and Epidemic-Related Policies. Under Washington state law (the Revised Code of Washington, or "RCW"), a variety of statutes exist relating to the ability of the Governor, state agencies, and school districts to make and enforce policies in an emergency or similar situation.⁶

Gubernatorial Authority. Washington law allows the Governor to proclaim a state of emergency wherein the Governor may, among other things, prohibit certain activities, waive or suspend certain types of statutory and regulatory obligations and limitations (with extension by the Legislature), and enforce emergency proclamations.⁷ These abilities include the prohibition of activities that the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace.⁸

School Districts. In addition to the Governor's emergency powers, school districts also have the statutory authority to close schools and make the majority of instructional decisions.⁹ Upon the expiration of an emergency proclamation from the Governor, school districts have general authority to make instruction and building-opening decisions.¹⁰

Local Health Officials. Furthermore, local health officers and departments have the ability to order school closures in their jurisdiction based on their authority to control and prevent the spread of dangerous, contagious, or infectious disease.¹¹ The Secretary of the Washington State Department of Health (DOH) also has the authority to act in the event that local health authorities fail or unable to act, or when in an emergency "the safety of the public health demands it."¹²

State Agency Action. In response to COVID-19, state agencies performed a variety of actions, including the issuance of guidance documents and regulatory action.¹³ The rules issued by agencies covered a variety of educational areas, including instructional requirements, health and safety guidelines, child care, and graduation requirements. The following is a brief, non-exhaustive selection of rules issued in response to the pandemic:

⁴ See OSPI, *School Reopening Data* (accessed Oct. 12, 2020), <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/school-reopening-data> (updated Dec. 8, 2020).

⁵ *Id.*

⁶ The term "school districts" is used broadly throughout this memorandum and, unless otherwise noted, encapsulates educational service districts (ESDs), tribal compact schools, and charter schools.

⁷ RCW 43.06.220.

⁸ *Id.* at (1)(f).

⁹ See generally RCW 28A.320.

¹⁰ *Id.*

¹¹ RCW 70.05.070.

¹² RCW 43.70.130.

¹³ Several of these guidance documents are mentioned throughout the memo. See Appendix A for more information.

Agency	Rule	Date	Subject
PESB	WSR 20-07-060	Mar. 12, 2020	Waiver of clinical work/coursework
PESB	WSR 20-07-086	Mar. 16, 2020	Teacher certification extension
PESB	WSR 20-07-106	Mar. 17, 2020	Educator preparation, assessment
SBE	WSR 20-09-063	Apr. 10, 2020	Graduation requirement waiver
OSPI	WSR 20-10-041	Apr. 28, 2020	Apportionment guidelines
OSPI	WSR 20-10-044	Apr. 29, 2020	Continuous learning, closures, grading
SBE	WSR 20-15-153	July 22, 2020	Instructional hour requirements
OSPI	WSR 20-17-086	Aug. 13, 2020	Absence rules for 2020-21 school year

Re-Opening Status in Washington State. On August 5, 2020, DOH issued recommendations for resuming in-person instruction in public and private K-12 education.¹⁴ DOH recommended using cases per 100,000 residents over a 14-day period as a threshold for measuring whether distance learning, hybrid learning, or in-person learning is recommended.¹⁵ Governor Inslee and Superintendent Reykdal announced an update of these metrics in December to the following recommended guidelines:¹⁶

For whom should your community provide in person learning? For School Administrators, Local Health Officers, and Community Stakeholders			
The risk of COVID-19 being introduced into the school and spreading depends on the health and safety measures taken by schools and the level of COVID-19 spread in the community. Consider the following educational modalities based on community transmission and other health and education risks and benefits.			
COVID-19 Activity	HIGH >350 cases/100K/14 days Test positivity >10% Trends in cases and hospitalizations	MODERATE ~50-350 cases/100K/14 days Test positivity 5-10% Trends in cases and hospitalizations	LOW <50 cases/100K/14 days Test positivity <5% Trends in cases and hospitalizations
Education Modality	Phase in in-person learning in groups of 15 or fewer students for pre-K through grade 5 and those with highest needs. Prioritize Pre-K through grade 3, and students in any grade with disabilities, students living homeless, or those farthest from educational justice. If schools can demonstrate the ability to limit transmission in the school environment, add grades 4-5.	Phase in in-person learning. Prioritize Elementary (pre-K - 5) if they are not already receiving in-person learning, and Middle School. If schools can demonstrate the ability to limit transmission in the school environment, add more high school students when case rates are below about 200/100K/14 days.	Provide in-person learning for all students.

According to OSPI as of September 17, approximately 79% of School districts began the school year using remote learning, comprising over 94% of all Washington K-12 students.¹⁷ OSPI reported that 40 districts began the school year in some form of hybrid or a combination of learning

¹⁴ Wash. Dep't of Health, *Tools to Prepare for Provision of In-Person Learning among K-12 Students at Public and Private Schools during the COVID-19 Pandemic* (updated Dec. 16, 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/DecisionTree-K12schools.pdf>.

¹⁵ *Id.*

¹⁶ Office of the Governor, *Inslee announces updated school guidance for in-person instruction* (Dec. 16, 2020), <https://www.governor.wa.gov/news-media/inslee-announces-updated-school-guidance-person-instruction>.

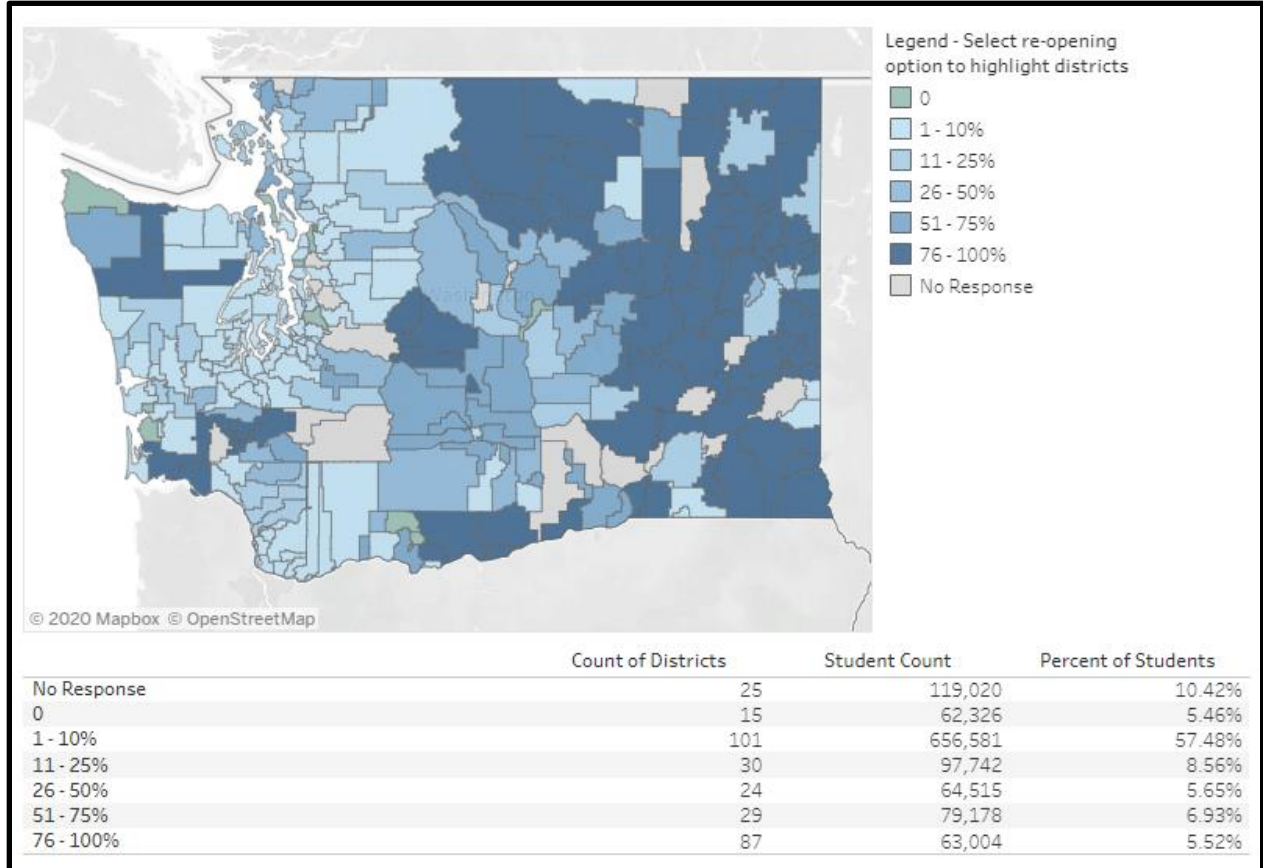
¹⁷ OSPI, *supra* note 4 (accessed Sept. 17, 2020).

modes (about 5% of students) and 14 districts began in-person (2,077 students, comprising 0.18% of all students).¹⁸

As the school year has progressed, additional districts have begun to conduct in-person learning, with focus often at grades K-2. Other districts initially had plans to begin phased-in in-person learning but have delayed those plans due to rising COVID-19 rates in their jurisdiction.

Percent of Students In-Person as of December 8, 2020.

Source: OSPI



¹⁸ *Id.*

II. Legal Issues Related to Educational Information, Technology, and Privacy

When schools began using remote learning, various issues began to emerge relating to privacy, technology, and the access to educational information. Stories from around the country detailed incidents of hacking,¹⁹ privacy concerns,²⁰ and district responses to these matters.

Personal and Technological Privacy Concerns. As more districts began to use online applications for instruction, several types of privacy concerns began to emerge, both from technological- and personal-privacy standpoints. For example, some districts in Washington reported having unauthorized users take over or join teaching sessions, sometimes posting offensive or inappropriate information (also known as "Zoom-bombing" after the Zoom remote communication application).²¹ In the fall of 2020, as districts continued to rely on online platforms for instruction, districts have faced hacking attempts and ransomware attacks, where users are locked out of a platform or interface unless the district pays the hacker a monetary sum.²² According to one analysis, by mid-October at least 63 school districts and colleges had been impacted by ransomware attacks nationwide, impacting up to 1,302 individual schools.²³

States, school districts, and educational platform companies have taken several steps to alleviate these sorts of issues. For example, some school districts have implemented trainings (also known as professional development, or "PD") to instruct teachers on best practices to reduce threats, such as requiring a password for meeting entry, requiring a "waiting room" before users can access the meeting, and other precautions.²⁴ In addition, technology companies such as Zoom and Microsoft

¹⁹ E.g., Joe Heim, *Hackers post stolen information from Fairfax school district*, WASH. POST (Oct. 10, 2020), https://www.washingtonpost.com/local/education/hackers-post-stolen-information-from-fairfax-school-district/2020/10/10/edf5f050-0b1a-11eb-859b-f9c27abe638d_story.html; *As schools shift to online learning, what should they do about cyberattacks?* USA TODAY (Sep. 15, 2020), <https://www.usatoday.com/story/news/education/2020/09/15/covid-19-schools-more-online-learning-safe-cyberattacks/5797590002/>; Hannan Adely, *Cybercriminals Strike Schools Amid Pandemic*, STATELINE (Sep. 22, 2020), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/22/cybercriminals-strike-schools-amid-pandemic?utm_source=National+Conference+of+State+Legislatures&utm_campaign=de329147c3-22_SEPTEMBER-2020_NCSL_TODAY&utm_medium=email&utm_term=0_1716623089-de329147c3-377884264.

²⁰ Mark Lieberman, *Massive Shift to Remote Learning Prompts Big Data Privacy Concerns*, EDUCATIONWEEK (Mar. 26, 2020), <https://www.edweek.org/technology/massive-shift-to-remote-learning-prompts-big-data-privacy-concerns/2020/03>; Sarah Schwartz, *As Teachers Livestream Classes, Privacy Issues Arise* (Aug. 20, 2020).

²¹ Lacey 7th grade class "Zoom bombed" with online gun threat and profanity, KING5 (Sept. 17, 2020), <https://www.king5.com/article/news/local/zoom-bombing-lacey-komachin-health-class-ar15-gun-threat/281-ec876795-6d12-4f47-9331-30286c8002e5>.

²² E.g., Andrew J. Campa, *Ransomware attack hits Newhall schools, halting online classes*, LA TIMES (Sept. 15, 2020), <https://www.latimes.com/california/story/2020-09-15/newhall-elementary-schools-ransomware-attack>. 171

²³ See Heim, *supra* note 19.

²⁴ See, e.g., Tony Wan, *Holding Class on Zoom? Beware of These Hacks, Hijinks, and Hazards*, EDSURGE (Mar. 27, 2020), <https://www.edsurge.com/news/2020-03-27-holding-class-on-zoom-beware-of-these-hacks-hijinks-and-hazards>.

employed new security features and initiated platform updates in order to address the concerns raised by educators and school districts.²⁵

An additional privacy concern raised by parents and educators involved having teachers, administrators, and other students be able (or required) to see into the homes of students and their families. Some educators have raised concerns on the visibility of students' socioeconomic situation,²⁶ while stories from across the nation detailed instances where educators reported the presence of weapons,²⁷ parental conduct,²⁸ and other behavior witnessed during classroom sessions. To address these concerns, some districts instituted a waiver policy to receive the consent of parents and guardians to have their home be included in video instruction, particularly where the sessions were being recorded.²⁹

Federal Educational Rights and Privacy Act Concerns. Additional privacy concerns have also existed with respect to federal law dealing with student and family educational rights and privacy. The Federal Educational Rights and Privacy Act (FERPA)³⁰ prohibits the unauthorized release of certain educational records and guarantees student or family access to these records. Districts and states are required to follow FERPA provisions in order to receive federal funding; however, courts have determined that individuals are not able to use FERPA to bring a lawsuit themselves.³¹

Student Information and COVID-19 Outbreaks. The first area of FERPA concerns is the release of student information in the event of a positive COVID-19 test or a school outbreak. Districts across the country have cited FERPA as a rationale for withholding some information on student (and staff) COVID-19 positive tests, claiming that FERPA does not allow for the release of student information.³² Under the law, however, districts are prohibited from releasing information that makes the student or student's family easily identifiable, but does not prohibit the release of "directory information" or non-identifiable information.³³

Student Educational Records. The other area in which FERPA has been cited as a concern is with respect to what is determined to be an "educational record" under the law. Some districts also

²⁵ See Schwartz, *supra* note 20; 25+ updates for Microsoft Teams for Education for Back to School July 2020, MICROSOFT EDU. BLOG (July 30, 2020), <https://educationblog.microsoft.com/en-us/2020/07/25-updates-for-microsoft-teams-for-education-for-back-to-school-july-2020/>.

²⁶ Schwartz, *supra* note 20.

²⁷ Jaelyn Peiser, *A Black seventh-grader played with a toy gun during a virtual class. His school called the police.* WASH. POST (Sept. 8, 2020), <https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun/>.

²⁸ E.g., Lexi Nahl, *Local teachers say some parents drink, some, and appear half-dressed in online classrooms,* CBS12 NEWS (Sept. 17, 2020), <https://cbs12.com/news/local/local-teachers-say-some-parents-drink-smoke-and-appear-half-dressed-in-online-classrooms>.

²⁹ Zoom recommended this in guidance documents. See *School Administrator's Guide to Rolling Out Zoom*, ZOOM (Mar. 2020), <https://zoom.us/docs/doc/School%20Administrators%20Guide%20to%20Rolling%20Out%20Zoom.pdf>.

³⁰ 20 U.S.C. § 1232g.

³¹ See, e.g., *Curto v. Smith*, 248 F. Supp. 2d 132 (N.D.N.Y. 2003).

³² Shawna De La Rose, *Refreshing staff on FERPA essential as districts implement COVID-19 screening*, K-12 DIVE, [HTTPS://WWW.K12DIVE.COM/NEWS/REFRESHING-STAFF-ON-FERPA-ESSENTIAL-AS-DISTRICTS-IMPLEMENT-COVID-19-SCREENING/581890/](https://www.k12dive.com/news/refreshing-staff-on-ferpa-essential-as-districts-implement-covid-19-screening/581890/).

³³ See 20 U.S.C. § 1232g.

record virtual classroom sessions for later use by students or for training purposes. There is discussion whether these constitute an "educational record" under FERPA and thus subject to heightened privacy restrictions.

In response to these issues, platforms have instituted FERPA protections, such as treating recordings as protected records or requesting parental authorization before recording. In addition, platform providers such as Microsoft have instituted protections into their terms of service to prevent unauthorized release of certain records.³⁴

Copyright Considerations. The use of streaming technology allows for a quicker and more widespread sharing of instruction and classroom activities. As such, remote learning allows for the distribution of copyrighted material, for example with teachers reading books to their class or sharing learning materials from a particular curriculum.

While some publishers have waived copyright protections for their materials,³⁵ in general, most copyright provisions allow for the use of materials for educational purposes. According to the federal government, the majority of educational uses of material falls under the "fair use" doctrine.³⁶ As long as the material was properly purchased and not meant for distribution beyond students, federal law broadly covers most types of display or performance of copyrighted work through remote learning.

III. Access to Broadband Technology and Devices

When districts across the country began to shift to remote learning, access to broadband technology and devices quickly became a focus for districts, states, and federal legislators and agencies. Because of the technological necessities for turning in work, video streaming, and other communication, these entities worked to improve the capabilities of parents, students, and schools to be able to perform these tasks.

Technological Needs and Standards. The federal standard for broadband speeds, as set by the Federal Communications Commission (FCC), is the capability to download 25 megabytes per second (mbps) and upload 3 mbps, a standard often denoted as "25/3."³⁷ For educational purposes, the FCC recommends a standard of 100 kilobytes per second (kbps) per student in school

³⁴ *Family Educational Rights and Privacy Act (FERPA)*, MICROSOFT (Nov. 30, 2020),

<https://docs.microsoft.com/en-us/microsoft-365/compliance/offering-ferpa?view=o365-worldwide>.

³⁵ See Madeline Will, *Reading to Students Online Provides a Sense of Normalcy, Teachers Say*, EDUCATIONWEEK (Mar. 30, 2020), <https://www.edweek.org/teaching-learning/reading-to-students-online-provides-a-sense-of-normalcy-teachers-say/2020/03>.

³⁶ *TEACHing from a Distance and Copyright Considerations*, LIBR. OF CONG. (Mar. 17, 2020), <https://blogs.loc.gov/copyright/2020/03/teaching-from-a-distance-and-copyright-considerations/>.

³⁷ *2015 Broadband Report*, FCC (Feb. 4, 2015), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>.

buildings.³⁸ The Washington State Broadband Office has the goal of a 150/150 standard for home internet by 2028.³⁹

Broadband capabilities vary widely by location, both nationally and in Washington. A number of aspects affect the prevalence of broadband in different communities, including:

- the existing communications infrastructure;
- the ability to expand the infrastructure;
- school technology resources;
- family resources; and
- the rurality of the community or other geographic concerns.

Needs also vary by school district, but generally fall into several areas. To have direct, remote instruction (what is sometimes referred to as "synchronous" learning), students and teachers need enough internet speed capabilities to stream live video, typically while simultaneously running online applications. Where there is not direct video instruction (i.e. situations of "asynchronous" learning), some baseline internet is needed to issue or submit assignments online. Even if students are not receiving or submitting schoolwork online, cell, or television service might be required to receive school information.

Initial School District Response. Because of the varying technological capabilities of districts, School districts experienced different timelines for commencing remote learning following the closures of school buildings in Spring 2020. OSPI recommended a week of planning, followed by a transition to remote learning.⁴⁰

Districts with existing technology infrastructure (such as 1-to-1 devices and robust internet connections) were able to transition quickly,⁴¹ while some districts were initially hesitant to require online instruction due to equity concerns and other considerations.⁴² However, some districts that quickly transitioned to remote learning paused instruction, citing a need for professional development and greater technological access for students.⁴³

³⁸ See *Summary of the E-Rate Modernization Order*, FCC (Dec. 2014), <https://www.fcc.gov/general/summary-e-rate-modernization-order>.

³⁹ Broadband Accessibility and Digital Inclusion Issues: Hearing Before the Washington House Committee on Innovation, Tech. & Econ. Dev. (Sept. 30, 2020) (Presentation by Wash. State Broadband Off.).

⁴⁰ OSPI, *supra* note 3.

⁴¹ See Taylor Soper, *Seattle-area school district closes due to COVID-19, will move 23K students to online learning*, GEEKWIRE (March 4, 2020), <https://www.geekwire.com/2020/seattle-school-district-closes-2-weeks-due-covid-19-will-switch-online-learning-platform/> (describing Northshore School District).

⁴² See Hannah Furfaro, *School in Washington is supposed to resume (remotely) by Monday. Will it?*, SEATTLE TIMES (Mar. 26, 2020), <https://www.seattletimes.com/education-lab/school-in-washington-is-supposed-to-resume-remotely-by-monday-will-it/>.

⁴³ Neal Morton, *Northshore's lesson for Washington schools amid the coronavirus closure: Online learning is hard to get right*, SEATTLE TIMES (Apr. 12, 2020), <https://www.seattletimes.com/education-lab/northshores-lesson-for-washington-schools-amid-the-coronavirus-closure-online-learning-is-hard-to-get-right/>.

At the same time, districts endeavored to continue providing certain services, such as meals, particularly for low-income students.⁴⁴ Districts also used a wide range of modes in order to distribute student work and devices, including transporting items using school bus routes,⁴⁵ creating mobile hot spots in buildings and school buses,⁴⁶ and distributing educational packets.⁴⁷

Federal Aid. In response to COVID-19 and the resulting economic contraction, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020.⁴⁸ Among other things, the CARES Act provided approximately \$13.2 billion to the Elementary and Secondary School Emergency (ESSER) Fund for the purpose of providing emergency relief funds to School districts.⁴⁹ The federal government also passed the Families First Coronavirus Response Act that, among other things, allowed the U.S. Department of Agriculture to waive certain school-meal requirements to allow meals to be provided to all students regardless of income level.⁵⁰

Washington State received \$216 million in ESSER funds, of which 90% was to be awarded to districts based in part on the number of low-income students; the remaining 10% was retained at the state level.⁵¹ Districts have used these funds in an assortment of ways, including the purchasing of technology devices such as computers and wi-fi hotspots.⁵² A full list of allowable uses of ESSER funds can be found in OSPI's guidance *ESSER Funds: Questions and Answers*.⁵³

State and Industry Efforts. In October, OSPI announced the creation of the K-12 Internet Access Program using CARES Act funding.⁵⁴ Under this program, OSPI intends to enter into agreements with local internet service providers, such as Comcast, in order to provide home internet access to low-income families for free during the 2020-21 school year.⁵⁵ In addition, OSPI plans to

⁴⁴ See Ashley Gross, *School meals are becoming an increasingly important lifeline amid the pandemic*, KNKX (Apr. 28, 2020), <https://www.knkx.org/post/school-meals-are-becoming-increasingly-important-lifeline-amid-pandemic>.

⁴⁵ E.g., Allison Needles, *Pierce Transit to dispatch buses as Wi-Fi "hot spots" for students amid school closures*, THE NEWS TRIB. (Apr. 23, 2020), <https://www.thenewstribune.com/news/local/article242213591.html>.

⁴⁶ Jim Allen, *Alarming number of Spokane students aren't engaged in online learning*, SPOKESMAN REV. (May 10, 2020), <https://www.spokesman.com/stories/2020/may/10/alarming-high-number-of-spokane-students-arent-e/>;

⁴⁷ *Drive-in Wi-Fi hotspots launch statewide push for universal public access broadband*, WASH. DEP'T OF COMM. (May 7, 2020), <https://www.commerce.wa.gov/news-releases/community-programs-facilities/drive-in-wi-fi-hotspots-launch-statewide-push-for-universal-public-access-broadband/>.

⁴⁸ Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748, 134 STAT. 281 (Mar. 27, 2020).

⁴⁹ *Id.* at 565.

⁵⁰ Families First Coronavirus Response Act, H.R. 6201, 134 STAT. 178, 179-81 (Mar. 18, 2020).

⁵¹ OSPI, *ESSER Funds: Questions and Answers* (May 2020), https://www.k12.wa.us/sites/default/files/public/communications/ESSER%20Funds%20Q%26A_June%202020.pdf.

⁵² Austin Reid and Jocelyn Salguero, *States Use CARES Act Funds to Address Digital Divide*, NCSL (Oct. 28, 2020), https://www.ncsl.org/ncsl-in-dc/publications-and-resources/states-use-cares-act-funds-to-address-digital-divide-magazine2020.aspx?utm_source=National+Conference+of+State+Legislatures&utm_campaign=d479be740b-education_update_nov_5&utm_medium=email&utm_term=0_1716623089-d479be740b-377884264.

⁵³ OSPI, *supra* note 51,

https://www.k12.wa.us/sites/default/files/public/communications/ESSER%20Funds%20Q%26A_June%202020.pdf.

⁵⁴ *K-12 Internet Access Program*, OSPI (Oct. 2020), <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/k%E2%80%9312-internet-access-program>.

⁵⁵ *Id.*

reimburse school districts who have entered into their own agreements with internet service providers (ISPs), a strategy that districts employed when they determined that cost was a barrier to internet access for many families.⁵⁶

In addition to individual partnerships with ISPs, some districts have also coordinated with other local governmental agencies and vendors to expand wi-fi and telecommunications abilities, including area-wide wi-fi services.⁵⁷ Districts have also partnered with local nonprofits to create grant programs and other ways for students to obtain devices.⁵⁸

Outcomes. As part of its efforts to determine technology needs, OSPI has performed a number of surveys of student technology access and internet connectivity.⁵⁹ Using weighted estimates to adjust for district non-response, OSPI made the following estimates:

Timeline of OSPI District Technology Survey Estimates

	<u>Initial School Closures</u>	<u>Update(s)</u>
Adequate Student Internet Access	76% of students statewide (Mar.)	81% (May) ⁶⁰
Availability of Learning Device	84% of students statewide (Apr.)	97% (Aug.)
District-Issued Device at Home	48% of students statewide (Apr.)	61% (May), 74% (Aug.)

IV. Educational Access for Students with Disabilities, English Learners, and Language Needs

Primary Concerns. As school buildings began to close across the state and the country, one of the primary concerns for educators, parents, and policy makers was the ability to administer special supports to certain student populations. These populations include such students as students with disabilities, English-language learners (ELLs), and students with other language or behavioral needs. These students require services that are often difficult to duplicate in a remote or digital

⁵⁶ *Id.*

⁵⁷ See, e.g., Elizabeth Sustaita, *District to expand connectivity*, SUNNYSIDE SUN (Oct. 7, 2020), https://www.sunnysidesun.com/news/district-to-expand-connectivity/article_1ea18a0c-08cd-11eb-8ac4-df1df785294d.html.

⁵⁸ See, e.g., Allison Needles, *Tacoma school kids who need them can get devices, internet access from new partnership*, THE NEWS. TRIB. (May 6, 2020), <https://www.thenewstribune.com/news/local/article242513171.html>.

⁵⁹ *Student Technology and Connectivity*, OSPI (Sept. 2020), <https://app.leg.wa.gov/committeeschedules/Home/Document/223616#toolbar=0&navpanes=0>.

⁶⁰ In August estimates indicated that 74% of students had adequate internet to support synchronous online learning using a different set of questions than the May survey. OSPI estimates that at the start of the 2020-21 school year, between 80-89% of students had adequate technology and connectivity to learn remotely. *Id.*

environment, particularly for students who might face technological accessibility issues or where language services are not readily available.⁶¹

Providing Services. Shortly after school buildings began to close due to COVID-19, parents and advocates began to express concerns about the lack of services being provided. Specifically, these groups were concerned about services that are required under federal educational laws such as the Individuals with Disabilities Education Act (IDEA).⁶²

While school closures led to more difficulty in providing some services, the federal Department of Education did not provide waivers to special education requirements nor did Congress make any statutory changes in this area. As a result, school districts were and are still required to provide these services in order to continue to receive federal educational funding. This led to confusion by some districts in how to be able to provide such services while having buildings closed.⁶³

Civil Rights Issues. As mentioned, federal laws direct school districts to provide particular levels of services to students with disabilities as a funding condition. The IDEA requires the provision of special education services to eligible students as outlined in a student's individualized education program (IEP), a formal contract that documents a student's educational needs and services. If a school district fails to provide a service identified in a student's IEP, the issue may be resolved informally with the IEP team or formally through filing a citizen complaint, participating in mediation, or requesting a due process hearing.⁶⁴

In response to district and state decisions on these issues, families in Washington and other states have requested due process hearings and filed legal claims, asserting that districts, among other things, were not meeting the requirements under federal law.⁶⁵ These claims have taken a variety of forms, including challenges to state administrative procedure performed by state agencies,⁶⁶ individual actions claiming the lack of student access to a free-and-appropriate education,⁶⁷ and cross-state class action lawsuits.⁶⁸

School District and State Responses. To address these issues, OSPI released a series of guidance documents in the spring of the 2019-20 school year. OSPI, in addition to clarifying comments from

⁶¹ See, e.g., Alec MacGillis, *The Students Left Behind by Remote Learning*, NEW YORKER (Sept. 28, 2020), <https://www.newyorker.com/magazine/2020/10/05/the-students-left-behind-by-remote-learning>.

⁶² Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

⁶³ See Dahlia Bazzaz, *Many families in Washington state are waiting on special education services during coronavirus closures*, SEATTLE TIMES (Apr. 10, 2020), <https://www.seattletimes.com/education-lab/many-families-in-washington-state-are-waiting-on-special-education-services-during-coronavirus-closures/>.

⁶⁴ See generally WAC 392-172A.

⁶⁵ See Alexis Krell and Allison Needles, *Lawsuit: Washington COVID-19 rules deny basic education to kids who can't learn remotely*, THE NEWS TRIB. (Aug. 12, 2020), <https://www.thenewstribune.com/news/coronavirus/article244905377.html>.

⁶⁶ *Id.*

⁶⁷ Corey Mitchell, *A Few Parents Have Sued Over Special Education During COVID-19. Will More Follow?*, EDUCATIONWEEK (July 13, 2020), <https://www.edweek.org/teaching-learning/a-few-parents-have-sued-over-special-education-during-covid-19-will-more-follow/2020/07>.

⁶⁸ Anya Kamenetz, *Families of Children with Special Needs Are Suing in Several States. Here's Why.*, NPR (July 23, 2020), <https://www.npr.org/2020/07/23/893450709/families-of-children-with-special-needs-are-suing-in-several-states-heres-why>.

the Superintendent of Public Instruction and the Governor, issued the following documents (among others):

- *OSPI Continuous Learning Considerations and Policy Issues* (April 15, 2020);
- *Student Learning and Grading Guidance* (April 21, 2020);
- *Supporting Multilingual/English Learners During School Closures* (April 27, 2020);
- *Supporting Migrant Students Under Title I, Part C During School Closures* (April 27, 2020);
- *Class of 2020 Graduation Requirements Frequently Asked Questions* (April 29, 2020); and
- *School Days & Instructional Hours Emergency Waivers & District Reporting Requirements: Frequently Asked Questions* (April 29, 2020).⁶⁹

These documents outlined the recommended approaches to providing these services to students, as well as the various legal requirements and expectations relating to these areas. Beginning in April, school districts were permitted to bring in limited numbers of students to receive services that they were unable to receive remotely, provided that these schools follow COVID-related guidelines.⁷⁰

State and District Plans for the 2020-21 School Year. In preparation for the 2020-21 school year, OSPI released further guidance on a variety of these subjects, with coordination and input from various stakeholders and educators. While most Washington school districts began the year in some sort of remote learning, as with the 2019-20 school year, federal laws on students with disabilities were still in effect. Relevant documents include:

- *Reopening Washington Schools 2020: Special Education Guidance* (July 2020);
- *Reopening Washington Schools 2020: Guidance for Supporting Migrant Students under Title I, Part C* (August 2020); and
- *Reopening Washington Schools 2020: Guidance for Supporting Multilingual/English Learners* (August 2020).⁷¹

V. Professional Development and Continuous Learning

Professional Development in Spring and Fall 2020. The switch to remote learning required an abrupt switch of teaching methodology and technology usage for many districts and educators. Previously, the level of integration of technology into curriculums varied widely by district, grade level, and teacher expertise. Because of COVID-19, many districts and educators not as familiar with certain teaching technologies, such as various online platforms and streaming services, were forced to make these tools a necessary part of their students' education.

⁶⁹ See OSPI, *Novel Coronavirus (COVID-19) Guidance & Resources*, <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources>.

⁷⁰ See OSPI, Bulletin No. 019-20 (March 13, 2020), <https://www.k12.wa.us/sites/default/files/public/bulletinsmemos/bulletins2020/B019-20.pdf>.

⁷¹ OSPI, *supra* note 69.

Initial reporting indicates that the professional development was minimal in the spring due in part to the short timeframes that districts created for themselves to turn over to virtual learning.⁷² Some academic surveys have also found that the majority of training for teachers on technology-based remote instruction was informal or teacher-led.⁷³ As part of federal CARES Act funding, the Office of Financial Management (OFM) released \$2.5 million to OSPI specifically for professional development for educators on the use of learning management systems.⁷⁴

Labor and Bargaining Considerations. Another reason for delaying the start of the school year for some districts was additional negotiations between local bargaining units and school districts on aspects related to COVID-19. In addition to normal areas subject to collective bargaining, the unique nature of the school year led to bargaining on issues such as:

- workplace location (home vs. at school);
- class hours and schedules for remote, hybrid, and in-person learning;
- sick-leave provisions, particularly in the case of testing, infection, or quarantine due to COVID-19;
- employee safety, including sanitation, in-person training requirements, and building safety; and
- instruction expectations.⁷⁵

Unlike some states, Washington did not experience widespread delays in the beginning of the 2020-21 school year due to labor stoppages or strikes.

VI. School-Age Child Care

In the initial Governor Proclamation prohibiting in-person educational, recreational, and other K-12 school programs using school facilities, there was an exception for child care.⁷⁶ School districts, charter schools, and private schools were not precluded from using school facilities for child care programs.

⁷² See, e.g., Jim Allen, *Teachers face a steep learning curve as classroom instruction goes online*, SPOKESMAN REV. (Apr. 21, 2020), <https://www.spokesman.com/stories/2020/apr/21/teachers-face-a-steep-learning-curve-as-classroom-/>.

⁷³ Univ. of Virginia, *Technology as a Pandemic Recovery Resource for Educators* (Aug. 2020), <https://drive.google.com/file/d/1YGqcx2R6fTFHxRXXRvj6i5CWhP4qmj8p/view>.

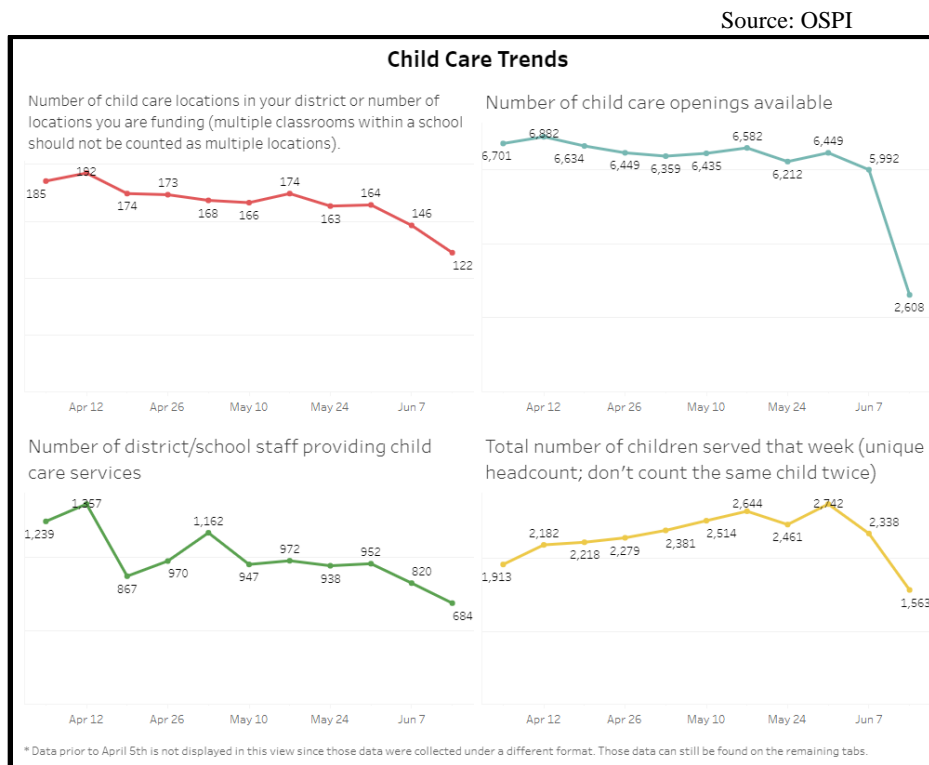
⁷⁴ OSPI, *Funding Approved for Statewide Training in Technology for Educators* (July 30, 2020), <https://content.govdelivery.com/accounts/WAOSPI/bulletins/2980e78>.

⁷⁵ Stephen Sawchuk, *7 Big Issues for Unions and Districts in Remote Teaching Agreements*, EDUCATIONWEEK (Apr. 28, 2020), <https://www.edweek.org/leadership/7-big-issues-for-unions-and-districts-in-remote-teaching-agreements/2020/04>.

⁷⁶ Governor Proclamation 20-08 (March 12, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-08%20Coronavirus%20%28tmp%29.pdf>.

In March 2020, the Governor communicated an expectation that school districts make accommodations to provide child care for health care and first responder families.⁷⁷ Shortly thereafter, OSPI published child care guidance for schools, which included connecting families with existing child care providers and having schools offer child care independently or in collaboration with community-based organizations such as the Boys & Girls Club and YMCA.⁷⁸

OSPI conducted surveys of school districts that included questions about services provided during school closures from April to June 2020.⁷⁹ OSPI created the following graphs to show child care trends.



Since then, OSPI has encouraged schools to communicate with families about their child care needs. "School districts are encouraged to reach out to community child care and youth development programs to determine what is needed, prioritizing referrals to existing programs

⁷⁷ OSPI Bulletin No. 021-02 (March 18, 2020), https://www.k12.wa.us/sites/default/files/public/bulletinsmemos/bulletins2020/2_Guidance%20for%20Long-term%20School%20Closures%20as%20of%20March%2018.pdf.

⁷⁸ OSPI Bulletin No. 025-20 (March 23, 2020), https://www.k12.wa.us/sites/default/files/public/bulletinsmemos/bulletins2020/5_Guidance%20for%20Long-term%20School%20Closures%20as%20of%20March%2023%282%29.pdf.

⁷⁹ OSPI Data Dashboard (last updated July 1, 2020), <https://public.tableau.com/profile/achievement.data.hidden#!/vizhome/ServicesProvidedDuringSchoolClosures/Notes?publish=yes>.

before standing up additional child care options."⁸⁰ OSPI has published additional resources on its website.⁸¹

OSPI Early Learning Planning Guide. OSPI convened three work groups focused on early learning and published an Early Learning Planning Guide.⁸² The guide includes recommended steps and considerations specific to school-based early learning programs for children ages 0-8 years old. The guide includes several implementation actions that address:

- recognizing the unique needs of young children;
- creating meaningful family connections;
- developing inclusive, culturally sustaining, anti-biased approaches;
- establishing strong community partnerships;
- supporting early learning transitions;
- planning for kindergarten/program registration;
- considering staff needs and responsibilities;
- providing professional learning specific to young students; and
- instructional considerations for early learners.

School-Community Partnerships Guide. DCYF and School's Out Washington, in collaboration with a number of state and local organizations, published a framework for ensuring students are learning, have child care if needed and receive social-emotional support during COVID-19.⁸³

For more information, please refer to 2020 interim project on early care and education responses to COVID-19. It can be found on the Senate Early Learning & K-12 Education Committee's website.⁸⁴

VII. Conclusion

For the most up-to-date information on the educational response to the COVID-19 pandemic, please consult the websites of the state educational agencies and the Office of the Governor. Contact staff if you would like any further information.

⁸⁰ OSPI, COVID-19 Guidance & Resources, Child Care, <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources>.

⁸¹ OSPI, COVID-19 Guidance & Resources, Child Care, <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources>.

⁸² OSPI Reopening Washington Schools 2020: Early Learning Planning Guide, <https://www.k12.wa.us/sites/default/files/public/communications/Reopening%20Washington%20Schools%202020%20Early%20Learning%20Planning%20Guide.pdf>.

⁸³ DCYF and School's Out Washington, School-Community Partnerships for Students during COVID-19, https://cdn.shopify.com/s/files/1/0515/3189/files/Partnerships_for_Students_During_COVID-19_-_FINAL_August_2020.pdf?v=1597696100.

⁸⁴ Early Learning & K-12 Education Current Committee Reports and Issues, <https://leg.wa.gov/Senate/Committees/EDU/Pages/Reports.aspx>.

Appendix A: Additional Resources

Office of the Superintendent of Public Instruction

Novel Coronavirus (COVID-19) Guidance & Resources - <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources>

School Reopening Data - <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/school-reopening-data>

K-12 Internet Access Program - <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/k%E2%80%9312-internet-access-program>

Special Education Guidance for COVID-19 - <https://www.k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/special-education-guidance-covid-19>

Washington State Department of Health

Tools to Prepare for Provision of In-Person Learning among K-12 Students and Public and Private Schools during the COVID-19 Pandemic - <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/DecisionTree-K12schools.pdf>

K-12 Schools 2020-2021 Guidance - <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/FallGuidanceK-12.pdf>

State Board of Education

Updated COVID-19 Information - <https://www.sbe.wa.gov/news/updated-covid-19-information>