

## General Guidance re Potential School Closures

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The purpose of this communication is to share guidance regarding whether public school teachers can strike and what options school districts have if they must close schools.

Arizona statutes do not expressly prohibit public employees from striking (like New York) or expressly allow public employees to strike (like California and Colorado).

The Arizona Attorney General's office has opined twice that public employees are prohibited from striking. The Arizona Court of Appeals cited a New Jersey case to say that the public maintenance employees did not have a right to strike. Communications Workers of America v. AZ Board of Regents, 498 P.2d 472, 17 Ariz. App. 398 (1972). Additional statutes address strikes in Title 23 of the Arizona Revised Statutes.

If public employees stage a "walk out," the main concern will not be whether the walk out is legal but what are the practical implications. The following statutes and policies may apply:

### **1. School Closure**

ASBA has a standard policy (Governing Board Policy ID re School Day) that states:

The Superintendent may close the schools, delay the opening of schools, or dismiss school early for emergency reasons and to protect the health and safety of students and staff members, shall prepare rules for the proper and timely notification of concerned persons in the event of such emergency closing, and shall in all cases inform the Board President as soon as possible.

Superintendents could use this policy to exercise discretion to close schools, whether that is done in advance or the day of a walk out. Superintendents may want to create the "rules" discussed in Governing Board Policy ID if their districts have this policy.

### **2. Practical Q&A re School Closure**

- a. Can districts operate programs to house students in the event of a walk out? In my opinion, yes. The District will need to maintain sufficient supervision levels. The District has authority to run community education programs.
- b. Can districts transport students? Yes.
- c. Can districts serve meals? Mark Frantz of ADE confirmed this week as follows: USDA has indicated that if the school is open (allowing kids on campus) then districts are able to serve reimbursable meals and claim them.
- d. Will classified staff get paid? If schools must be closed due to a staffing shortage, classified staff members may not get paid if there are no tasks for them to complete.

- e. Will certificated staff get paid? This question is complicated and fact specific. Different scenarios include: (1) schools stay open and certificated staff use a sick day or a personal day; (2) schools close and certificated staff are required to work extra day(s) to make up the instructional time; and (3) schools close and staff do not have to make up instructional time.
- f. Can staff who walk out be penalized or disciplined? This is also fact specific. Staff can be disciplined for misuse of leave policies. Districts will need to follow their relevant policies and procedures. One court decision in Arizona stated that school districts could not alter their sick leave procedures after a sick in was staged to apply retroactively and require a doctor's note. *Godbey v. Roosevelt School District No. 66*, 131 Ariz. 33, 638 P.2d 235 (App. 1981). Districts will not be able to ask for a doctor's note to verify illness if absences are less than three days under the Fair Wages and Healthy Families Act (Proposition 206).

### **3. One Hundred and Eighty (180) School Days/Instructional Hours**

State law states as follows:

Arizona law requires instruction to be offered for at least one hundred and eighty (180) days each school year **OR** for a prescribed number of instructional hours depending on the grade level. A.R.S. § 15-341.01 and A.R.S. § 15-901; School Finance External Guideline GE-18.

ADE finance confirmed with our office this week that in certain instances, school districts have obtained approval to have less than a 180 day school year. In those instances, districts have maintained sufficient instructional minutes.

If a district must close schools, each school must evaluate whether the district must extend the school year to meet instructional hour requirements or the 180 days of instruction in order to satisfy requirements for full-time average daily membership. This review will vary depending on the grades impacted and required hours of instruction. For example, full time seventh and eighth grade students must be offered 1,000 hours of instruction annually while high school must offer 720 hours of instruction.

A.R.S. § 15-341.01. One hundred eighty day school year; definition

A. Notwithstanding any other law, school instruction shall be conducted in each public school in this state for school sessions that total at least one hundred eighty days each school year. The superintendent of public instruction shall cause all relevant school funding formulas to be adjusted to reflect instruction on the one hundred eighty days' equivalency. The department of education shall adjust the amount of state aid distributed to school districts pursuant to section 15-971 to correspond to the increased number of school days prescribed by this section.

B. For the purposes of this section, "one hundred eighty days" means one hundred eighty days of instruction or an equivalent number of minutes of instruction per school year based on a different number of days of instruction approved by the school district governing board or charter school governing body.

Practical considerations include as follows:

School districts may have to file an alternative calendar with ADE. School districts file their school calendars with ADE Finance because it is used by ADE to determine the 180 day requirement, dates for the 40th and 100th day counts, and the final day of the year. Boards may have to take action to approve calendar adjustments.

Districts should be cognizant of ASBA Governing Board Policy IC re School Year which states that the school year shall be not less than 180 days. Boards may have to suspend that policy if the school year will be less than that.

Of primary importance is whether ADE will fund the day(s) if schools close. The Superintendent of Public Instruction has indicated in news coverage that she has asked for information from the Attorney General's office; we do not believe that a request for a formal Attorney General opinion has yet been issued.

#### **4. Unlawful to Picket**

A.R.S. § 23-1301. Definitions

In this article, unless the context otherwise requires:

1. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.
2. "Person" includes a natural person, a corporation, association, company, firm or labor organization.

A.R.S. § 23-1322. Unlawful picketing

- A. It is unlawful for a labor organization to picket any establishment unless there exists between the employer and the majority of employees of such establishment a bona fide dispute regarding wages or working conditions.
- B. It is unlawful for a labor organization to engage in picketing or to induce others to engage in picketing if the purpose of the picketing is to coerce or induce an employer or self-employed person to join or contribute to a labor organization.

If persons picket schools on the sidewalks, the above statute may come into play. While sidewalks are "traditional public forums" for purpose of expressing first amendment activities, districts can exercise reasonable time, place and manner restrictions. For instance, a school will need to make sure egress and ingress are not blocked.

Please use this general guidance to formulate questions applicable your district and to work with counsel to get more specific answers.