

2: DAYS, HOURS, AND ATTENDANCE REQUIREMENTS

As specified in Section 101 of the State School Aid Act (MCL 388.1701), a local school district must provide each pupil with the required minimum number of days and the required minimum number of hours of pupil instruction in each school fiscal year. Section 101 also establishes a minimum daily attendance requirement that districts must reach during each scheduled day of instruction.

Days of Instruction:

During the 2015-16 school year, all districts must provide at least 175 days of instruction pursuant to Section 101(3)(a) unless:

- A collective bargaining agreement that provides a complete school calendar was in effect for employees of a district as of July 1, 2013, and that school calendar is not in compliance with this subsection, in which case Section 101(3)(a) does not apply to that district until after the expiration of that collective bargaining agreement.

Beginning with the 2016-17 school year, all districts must provide at least 180 days of instruction pursuant to Section 101(3)(b) unless:

- A collective bargaining agreement that provides a complete school calendar was in effect for employees of a district as of June 24, 2014, and if that school calendar is not in compliance with this subdivision, then Section 101(3)(b) does not apply to that district until after the expiration of that collective bargaining agreement.

Pupil instructional days for kindergarten may be scheduled for a half-day session, a full-day session, or an alternative-day session; thus, kindergarten is not required to meet a minimum number of days.

Hours of Instruction:

Each district shall schedule to provide at least 1,098 hours of pupil instruction to pupils in grades K-12. Pupils scheduled to receive less than 1,098 hours of pupil instruction during the school year must have their memberships prorated based on the actual number of instructional hours provided.

Day and Hour Requirements for Special Education:

Districts shall adhere to the day and hour requirements described above for special education pupils unless one or more of the following apply.

R 340.1754 Early childhood special education programs shall be available for a minimum of 360 clock hours and 144 days of instruction. Full-time equated memberships for special education pupils who are not enrolled in kindergarten but are enrolled in a classroom program under R 340.1754 shall be determined by dividing the number of class hours scheduled and provided per year by 450.

R 340.1755 Early childhood special education services shall be provided for a minimum of 2 hours per week, but not less than 72 clock hours within 180 school days. Full-time equated memberships for special education pupils who are not enrolled in kindergarten but are receiving early childhood special education services under R 340.1755 of the Michigan Administrative Code shall be determined by dividing the number of hours of service scheduled and provided per year by 180.

R 340.1862 Special education services provided under the educational direction of an early childhood special education teacher and described in an individualized family service plan shall be provided for not less than 72 clock hours over 1 year. The time line begins upon receipt of signed parental consent to provide services. Full-time equated memberships for special education pupils who are not enrolled in kindergarten but are receiving early childhood special education services under R 340.1862 of the Michigan Administrative Code shall be determined by dividing the number of hours of service scheduled and provided per year by 180.

Hours that early childhood pupils with an IEP or IFSP only receive related services (not instruction), such as speech, occupational therapy, physical therapy, or psychological or social work services, may not be counted for pupil membership purposes.

IEP Reduced Schedule - Pupils who are medically or emotionally incapable of attending school for the number of day or hours required in Section 101 may have a reduced schedule as specified in the pupil's IEP. This may include a pupil convalescing from illness or recuperating from a physical injury. The medical or emotional reason a pupil cannot attend a full day should be documented in the pupil's record or IEP. Such reasons should be documented by medical or psychological personnel.

Day and Hour Requirements for Alternative or Innovative Education:

Districts are expected to adhere to the day, hour, and attendance requirements provided in Section 101 for alternative education pupils unless the program, building, or district, has a waiver from the State Superintendent that is valid for the current school year, which allows the district to deviate from the day, hour, or attendance requirements.

Districts operating a Department approved alternative education program that does not provide instruction for pupils in all of grades K-12 may request a waiver from the standard attendance requirements identified in Section 101(3)(f) and Section 101(3)(g).

Additionally, Section 101(9) affords districts operating a Department approved alternative education program, or another innovative program that is approved by the Department, the opportunity to request a waiver from the State Superintendent that would allow the district to deviate from the day or hour requirements provided in that section.

Attendance Requirement:

Section 101(3)(f) provides a standard minimum attendance requirement of 75% of the enrolled pupils who are scheduled for instruction for a given day. However, Section 101(3)(g) states that for any day of pupil instruction that is added to the end of the instructional calendar, the minimum attendance requirement is 60% of the enrolled pupils who are scheduled for instruction that day.

Section 101(3)(h) allows districts that do not provide instruction for pupils in all of grades K-12 that operate a department-approved alternative education program the option of requesting a waiver from the attendance requirements stated above, allowing the district to maintain an attendance requirement of 50% of the enrolled pupils who are scheduled for instruction on a given day.

While the instructional time remains countable toward the day and hour requirements, instances where a district fails to meet the attendance requirement will generate a state aid adjustment that correlates with the difference between the requirement and the actual percent in attendance for the day.

Exceptions to the Day, Hour, or Attendance Requirements:

Section 101 provides the following exceptions to day, hour, and attendance requirements:

Reduced Schedule (MCL 388.1701(7)(c)) – A pupil in grades 9 to 12 for whom a reduced schedule is determined to be in the individual pupil's best educational interest must be scheduled for a number of hours equal to at least 80% of the required minimum number of hours of pupil instruction to be considered a full-time equivalent pupil. A pupil in grades 9 to 12 who is scheduled in a 4-block schedule may receive a reduced schedule under this subsection if the pupil is scheduled for a number of hours equal to at least 75% of the required minimum number of hours of pupil instruction to be considered a full-time equivalent pupil.

Seat Time Waiver Program (MCL 388.1701(9)) – This legislation provides the State Superintendent with the authority to waive the day and hour (seat time) requirements stated in Section 101(3) for a Department approved alternative education program or an innovative program.

Alternative or Innovative Program Waiver (MCL 388.1701(9)) – Upon application by the district for a particular fiscal year, the superintendent may reduce for a district the minimum number of hours, days, or attendance requirements for a Department approved alternative education program or an innovative program.

A) Calendars

Intermediate school districts, local school districts, and public school academies must adhere to the requirements of Section 1284b of the Revised School Code (MCL 380.1284b), which prohibits the instructional calendar year from beginning before Labor Day.

As established by Section 1284a of the Revised School Code (MCL 380.1284a), districts and public school academies must also comply with the common calendar established by the intermediate district when scheduling the winter break and spring break.

Finally, instruction may not be held on any of the public holidays provided in Section 1175 of the Revised School Code (MCL 380.1175).

Districts must have a waiver from the State Superintendent to deviate from these provisions of law.

1) Labor Day Requirement (MCL 380.1284b)

The board of a school district or intermediate school district or the board of directors of a public school academy **shall not schedule pupil instruction prior to Labor Day**. Public schools are not prohibited from offering or requiring professional development for its personnel before Labor Day.

Exceptions:

If, on September 29, 2005, a district or public school academy was operating a year-round school or program or an international baccalaureate academy that provided 1,160 hours of pupil instruction per school year, the requirement to start school after Labor Day does not apply to that school or program.

If, after September 29, 2005, a district or public school academy began operating a year-round school or program, the district must apply to the State Superintendent for a waiver from the requirement to start school after Labor Day. The State Superintendent will grant the waiver if it is determined that the school or program is a bona fide year-round school or program established for educational purposes. If the school has already been operating a year-round school, the school must request approval from the Department to establish that the school is recognized as a bona fide year-round school.

An intermediate school district is exempt from the requirement to start after Labor Day if the intermediate school district (1) contracts with a constituent district or public school academy to provide programs and services for pupils, (2) operates a program or service within a building owned by a constituent district or public school academy within the boundaries of the intermediate school district, or (3) provides instructional programs or services to pupils of a constituent district or public school academy. In each of these situations, the intermediate school district is exempt from the Labor Day requirement only if the constituent district or public school academy is exempt pursuant to one of the exceptions described above. The programs or services provided by the intermediate school district must be provided according to the school district's or public school academy's calendar.

In addition, a public school that operates all of grades 6-12 at a single site, that aligns its high school curriculum with advanced placement courses as the capstone of the curriculum, and that ends the second semester concurrently with the end of the advanced placement examination period is exempt from the requirement to start school after Labor Day.

Note: Regardless of the exceptions mentioned above, instruction must not be held on the Friday before Labor Day.

2) Common Calendar Requirement (MCL 380.1284a)

An intermediate school district, in cooperation with its constituent districts (including public school academies within the intermediate district), shall adopt a common school calendar to apply to all of its constituent districts and to its intermediate school district programs. The intermediate school district shall post the common school calendar on its website. The common calendar shall meet both of the following:

- a. Compliance with Sections 1284 and 1284b of the Revised School Code (MCL 380.1284 and 380.1284b).
- b. Identification of the dates for each school year when school will not be in session for a winter break and a spring break for the current year and the succeeding four years. The common calendar must have specific winter break days and spring break days. If a district wants to deviate from the common calendar, it must obtain approval from the ISD and a waiver from the Department.

Districts are also encouraged to identify common dates for professional development days in the common school calendar.

Exceptions:

A district that has a collective bargaining agreement that provides a complete school calendar in effect prior to October 1, 2007, does not have to comply with that common calendar until such time that the district's collective bargaining agreement expires. In order for this provision to apply, the calendar provided under the collective bargaining agreement must not comply with the current common calendar.

If, on October 1, 2007, a district or public school academy was operating a year-round school or program or an international baccalaureate academy that provided 1,160 hours of pupil instruction per school year, the requirement to comply with the common school calendar does not apply to that school or program.

If an intermediate school district or a district began operating a year-round school or program after October 1, 2007, the intermediate district or district must apply to the State Superintendent for a waiver from the common calendar requirement. The waiver application shall provide documentation that the school or program meets year-round requirements.

A district that operates all of grades 6-12 at a single site, that aligns its high school curriculum with advanced placement courses as the capstone of the curriculum, and that ends its second academic semester concurrently with the end of the advanced placement examination period is exempt from the common school calendar requirement.

3) Instruction Shall Not Be Held on the Following Legal Holidays

Section 1175(1) of the Revised School Code (MCL 380.1175) reads in part: "January 1, New Year's day; the last Monday of May, Memorial or Decoration day; July 4; the first Monday in September, Labor day; the fourth Thursday of November, Thanksgiving day, and December 25, Christmas day, shall be public holidays in the public schools of this state. If 1 of these days falls on Sunday, the Monday following shall be a public holiday in the public schools. A

school session shall not be held on the public holidays described in this subsection in a public school in this state.”

4) District, Building, or Program Calendar

A district may operate using a district-wide school calendar that is universal to all buildings and programs within the district, the district may operate using building or program calendars that are specific for each building or program, or the district may operate using calendars for clusters of buildings or programs within the district. The calendar must indicate the total scheduled days and hours of pupil instruction for the year. The school calendar should also indicate the days and times that teacher professional development is scheduled (and if professional development time will be used toward the instructional hour requirement pursuant to the exception set forth in Section 101(10) of the State School Aid Act, MCL 388.1701).

Pupil instructional days and instructional hours may vary within a calendar but the minimum required days and minimum required hours for the school fiscal year must be met by each grade level or program, calculating the hours to the nearest tenth or hundredth. A full-time special education early childhood classroom program pupil must be scheduled for 450 hours of pupil instruction. A special education early childhood pupil scheduled for 360 hours or more but less than 450 hours must be a prorated FTE.

- a. **A district-wide calendar** is one in which the days of operation are universal to all buildings and programs within the district, including the beginning and ending dates of the school year and all vacation days. The individual building and program hours of operation may vary on the universal days for activities such as parent/teacher conferences and staff development. (The individual building or program may count only those days and hours that pupil instruction was scheduled for that building or program.)
- b. **An individual building or program calendar** is one in which the days of operation pertain to that individual building or program. When uncontrollable circumstances occur that require a particular building or program to alter the planned schedule, it is acceptable for a district to switch that particular building or program from a district-wide calendar to an individual building or program calendar for the purpose of determining compliance with the minimum instructional hour requirements.
- c. **A cluster of buildings or programs calendar** is one in which the days of operation are common to a group of buildings or a group of programs within the district. When uncontrollable circumstances occur that require several buildings or programs to alter the planned schedule, it is acceptable for a district to switch that group of buildings or programs from the district-wide calendar to a calendar that is universal to that group of buildings or programs.

B) Counting Pupil Instructional Hours toward a Pupil's FTE

A minimum of 1,098 instructional hours MUST be scheduled and provided to generate full time equated memberships for pupils in grades K-12, including alternative education. Instructional hours are based upon the actual time that instruction is scheduled and provided for a given grade level or group of pupils (to the nearest tenth or hundredth). Instructional hours may vary between buildings, programs, or grade levels. Some non-conventional pupils may be provided fewer than the minimum required hours.

1) Pupil Instructional Hours

A local school district may count time toward the minimum instructional hour requirement in a particular building, program, or grade level, without penalty, if the district has evidence that all of the following have occurred:

- a. Pupils and certified teachers were present and engaged in instruction.
- b. Instruction was scheduled and available for the entire pupil membership.
- c. The class was offered for credit or, in the case of an elementary school pupil, the class was required for grade progression.
 - o Exceptions to this requirement MUST meet the following criteria: The content of the hours pupils were scheduled with teachers in “non-subject classes” such as seminars, achievement hour, focused instructional time, etc., was academic in nature and included such activities as tutoring, mentoring, or advising, and had a pupil/teacher ratio which fell within the range of the regular academic classes for the building but in no case was more than 35:1. For this purpose, “academic” is defined as counting toward a district’s total instructional hours other than periods such as study hall.
- d. A maximum of 30 minutes per day of passing time between class periods may have been counted as pupil instruction unless the building administrator was able to demonstrate the need for additional passing time. (Note: A district may choose to schedule more passing time than necessary but may not count it for membership.)
- e. Passing time to the first class period and from the last class period was excluded.
- f. Breakfast period was excluded; however, breakfast in the classroom (for example, during homeroom or first period) while instruction was taking place may be counted.
- g. Lunch period was excluded.
- h. Only one passing time to or from lunch period was counted.
- i. Time used in passing from the bus, at the beginning of the day, or to the bus, at the end of the day, was excluded.
- j. In elementary school buildings, a recess of a reasonable duration may have been counted if supervised by a certified teacher. The total number of minutes of recess that may be counted if supervised by a certified teacher shall not exceed 30 minutes each school day. Recess time used for passing from the bus at the beginning of the school day or passing to the bus at the end of the day, or a recess to provide breakfast or lunch to pupils shall not be counted; recess time scheduled adjacent to lunch may be counted.
- k. Homeroom may have been counted if it was of a reasonable length (no more than 15 minutes, which includes passing time) and if it was not determined to be a study hall by the ISD auditor.
- l. Not more than two study halls may have been counted and ONLY if supervised by a certified teacher AND the local school district provided at least 90 more hours than the minimum number of hours of instruction.
- m. If a pupil in grades 9 to 12 who enrolled in a cooperative education program (as defined in Section 3 of the State School Aid Act, MCL 388.1603) or a special education pupil was unable to receive the minimum number of hours of pupil instruction solely because of travel time between instructional sites during the school day, that travel time, up to a maximum of three hours per school week, may have been considered to be pupil instruction time for the purpose of determining whether the pupil received the minimum number of hours of pupil instruction. (However, if a district has demonstrated to the satisfaction of the Department that the travel time limitation created undue costs or hardship to the district, the Department may consider more travel time to be pupil instruction time for this purpose.)
- n. In grades 7 through 12, instructional time that is part of a junior reserve officer training corps (JROTC) program may be counted as pupil instruction if the following

requirements have been met: (1) the instructor has met all of the requirements established by the United States Department of Defense and the applicable branch of the armed services for serving as an instructor in the JROTC program, (2) the board of the district or intermediate district employing or assigning the instructor complies with the requirements of Sections 1230 and 1230a of the Revised School Code (MCL 380.1230 and 380.1230a) with respect to the instructor to the same extent as if employing the instructor as a regular classroom teacher.

- o. A pupil of a district that begins its school year after Labor Day who is enrolled in an intermediate district program that begins before Labor Day shall not be considered to be less than a full-time pupil solely due to instructional time scheduled but not attended by the pupil before Labor Day.

Note: Section 6 of the State School Aid Act (MCL 388.1606) provides that membership is based on the number of full-time equated “pupils in grades K to 12 actually enrolled and in regular daily attendance” on the pupil membership count day and the supplemental count day. Section 6(8) defines “pupils in grades K to 12 actually enrolled and in regular daily attendance” to mean “pupils in grades K to 12 in attendance and receiving instruction in all classes for which they are enrolled on the pupil membership count day or the supplemental count day, as applicable.” It further provides that pupils who are absent from a class and do not meet the 10/30 day rule shall have their membership FTE prorated.

Of significance to this, Section 6(8) defines a “class” to mean “a period of time in one (1) day when pupils and a certificated teacher or legally qualified substitute teacher are together and instruction is taking place.” Thus, the period of time where pupil instruction is not being provided by a certificated teacher or legally qualified substitute teacher is not a “class” and may not be counted for purposes of determining the number of full-time equated pupils.

In addition to the pupil membership provisions in Section 6(8), Section 163 of the State School Aid Act (MCL 388.1763) provides that “a district or intermediate district employing teachers or counselors not legally certificated shall have deducted the sum equal to the amount paid the teachers or counselors for the period of non-certificated or illegal employment.”

Based on a finding in the Auditor General’s audit report of the Pupil Membership Accounting and Reporting Process released January 31, 2014 and concurrence from the Department’s legal counsel, the two statutory references above require that the use of non-certificated teachers must result in both the adjustment of the foundation allowance for any pupil membership FTE associated with the teacher and a school aid adjustment equal to the salary paid during the period of non-certificated or illegal employment.

2) Professional Development Time

Pursuant to Section 101(10) of the State School Aid Act (MCL 388.1701), districts may no longer count professional development hours toward the instructional hour requirement unless a collective bargaining agreement that provides for the counting of up to 38 hours of qualifying professional development for teachers as pupil instruction was in effect for employees of a district as of July 1, 2013. In that case, until the school year that begins after the expiration of the collective bargaining agreement, a district may count up to the contractually specified number of hours of qualifying professional development for teachers as hours of pupil instruction.

The hours for the teacher professional development program must be part of the school fiscal year and must be conducted at a time that pupils are not scheduled for pupil instruction if it is to be counted toward the instructional hour requirement. The sessions must be a least one-hour in length. The teacher group participating should be a recognizable group such as the district’s entire staff of teachers, a group of teachers from a building, or a group of teachers for several grade levels. The actual pupil instructional hours

versus teacher professional development hours may differ by building or by grade level. However, in scheduling and counting the 1,098 hours, at least 1,060 hours must be actual pupil instructional time and not more than 38 hours may be teacher professional development time. A program that operates fewer than 1,098 hours may count a pro-rated number of qualifying teacher professional development time based upon the actual number of hours the program operates as related to the 1,098 hours requirement.

Example: A district that counts 38 hours of teacher professional development time toward the minimum required hours for grades one through twelve must prorate the hours of professional development to 19 hours for their half-day kindergarten program since they only provide 549 hours.

Qualifying professional development for teachers means professional development that is focused on one or more of the following:

- a. Achieving or improving adequate yearly progress as defined under the No Child Left Behind Act of 2001, Public Law 107-110.
- b. Achieving accreditation or improving a school's accreditation status under section 1280 of the Revised School Code, MCL 380.1280.
- c. Achieving highly qualified teacher status as defined under the No Child Left Behind Act of 2001, Public Law 107-110.
- d. Integrating technology into classroom instruction.
- e. Maintaining teacher certification.

If the number of teacher professional development hours for a defined group of teachers varies, the lowest number of hours provided to all of the teachers in the group may be counted toward the instructional time requirement (for a district that meets the exception in Section 101(10)). For example, if the teachers in a middle school all attend a seven-hour in-service, and if each of the teachers also individually attends seminars ranging from two to six hours in length, the total number of teacher professional development hours that can be counted as instructional time for the middle school building is $(7 + 2) = 9$ hours.

3) Forgiven Time

The first six (6) days (or equivalent hours) of scheduled pupil instruction that is not provided because of conditions not within the control of school authorities such as severe storms, fires, health conditions, and infrastructure issues, shall be counted toward the required 1,098 hours of pupil instruction.

A district may request **an additional three (3) days (or equivalent hours)** of forgiven time from the State Superintendent to be applied to instructional time that was canceled due to conditions not within the control of school authorities, such as severe storms, fires, health conditions, and infrastructure issues. The district's request for additional forgiven time must provide:

- a. The number of days and hours of additional time requested.
- b. The number of instructional days and hours originally scheduled.
- c. The total number of pupil instructional days and hours canceled during the school year, the reasons for the cancellations, and the dates that pupil instruction was canceled.
- d. The number of rescheduled pupil instructional days and hours already provided during the year, as well as planned rescheduled days and hours.

- e. The district's rationale for requesting additional forgiven time in lieu of rescheduling instruction. A district must be specific regarding any hardship that would be suffered by the district from rescheduling the time.

C) State School Aid Adjustment for Failure to Meet the Minimum Required Days, the Minimum Required Hours, or the 75% Attendance Requirement:

1) Failure to Meet the Minimum Required Days

Districts shall provide at least 175 days of pupil instruction unless the district has met one or more of the exceptions identified earlier in this section. Please note that most of the exceptions apply to individual or groups of students, and may not waive the requirement for the entire district membership.

A district failing to comply with the minimum required days of pupil instruction shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of days the district (if operating on a district-wide calendar), the building or program (if operating by a building or program calendar), or the cluster of buildings or programs (if operating by a calendar for a cluster of buildings or programs) was in noncompliance in relation to the required minimum number of days.

Example: In a district on a district-wide calendar, the original calendar had 177 days of pupil instruction scheduled. School was canceled on nine scheduled days. There were five days on which school was canceled due to snow and ice, two days were canceled due to widespread pupil illness, one day was canceled due to a power outage, and one day was canceled due to basketball playoffs. All of the school closures occurred prior to April 1 of the school year in question. Even when including the six forgiven days, this district is short one day as follows:

Days Scheduled:

$$\begin{array}{r}
 \text{Day Requirement} = 175 \text{ days} \\
 - \text{ Days Scheduled} = 177 \text{ days} \\
 \hline
 = \text{ Surplus Days Scheduled} = 2 \text{ days}
 \end{array}$$

Cancellations:

$$\begin{array}{r}
 \text{Snow Days} = 5 \text{ days} \\
 + \text{ Pupil Illness} = 2 \text{ days} \\
 + \text{ Power Outage} = 1 \text{ day} \\
 + \text{ Basketball Championship} = 1 \text{ day (not eligible for forgiven time)} \\
 \hline
 = \text{ Total Cancellations} = 9
 \end{array}$$

Forgiven Days:

$$\begin{array}{r}
 \text{Forgiven Days Provided Under Section 101} = 6 \text{ days} \\
 + \text{ Surplus Days Scheduled} = 2 \\
 \hline
 = \text{ Total Days Available To Offset Cancellations} = 8
 \end{array}$$

Days To Reschedule:

$$\begin{array}{r}
 \text{Canceled Days} = 9 \text{ days} \\
 - \text{ Days Available To Offset Cancellations} = 8 \\
 \hline
 = \text{ Days To Reschedule} = 1
 \end{array}$$

Day Deduct Calculation:

$$\begin{array}{r}
 \text{Total State Aid} = \$10,700,000 \\
 - \text{ Non-Plaintiff Durant Debt Service (Sec. 11g)} = \$100,000 \\
 - \text{ Adult Education Participants (Sec. 107(1))} = \$100,000 \\
 \hline
 = \text{ Total Adjusted State Aid} = \$10,500,000
 \end{array}$$

Daily Adjusted State Aid:

$$\begin{array}{r} \text{Total Adjusted State Aid} = \$10,500,000 \\ \div \text{Day Requirement} = 175 \text{ days} \\ \hline = \text{Daily Adjusted State Aid Deduct} = \$60,000 \text{ per day} \end{array}$$

Day Requirement Shortfall Deduct:

$$\begin{array}{r} \text{Days Short of Requirement} = 1 \\ \times \text{Daily Adjusted State Aid Deduct} = \$60,000 \text{ per day} \\ \hline = \text{\$60,000} \end{array}$$

2) Failure to Meet the Minimum Required Hours

A minimum of 1,098 hours of pupil instruction MUST be scheduled and provided to generate full time equated memberships for pupils in grades K-12, including alternative education, unless the district has met one or more of the exceptions identified earlier in this section. Please note that most of the exceptions apply to individual or groups of students, and may not waive the requirement for the entire district membership.

A district failing to comply with the minimum required hours of pupil instruction shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of hours the district (if operating on a district-wide calendar), the building or program (if operating by a building or program calendar), or the cluster of buildings or programs (if operating by a calendar for a cluster of buildings or programs) was in noncompliance in relation to the required minimum number of hours.

Example 1: In a district on a district-wide calendar, the original calendar had 1,098 hours of pupil instruction scheduled. School was canceled due to inclement weather on four 6-hour days. There were four days on which school was delayed two hours due to fog and three days on which school was released two hours early due to a power outage. Even when including the 36 forgiven hours (6 days at 6 hours per day), this district is short two hours as follows:

Hours Scheduled:

$$\begin{array}{r} \text{Hour Requirement} = 1,098 \text{ hours} \\ - \text{Hours Scheduled} = 1,098 \text{ hours} \\ - \text{Professional Development Hours} = 0 \\ \hline = \text{Surplus Hours Scheduled} = 0 \text{ hours} \end{array}$$

Cancellations:

$$\begin{array}{r} \text{Weather Cancellations} = 4 \text{ days at } 6 \text{ hours each} = 24 \text{ hours} \\ + \text{Fog Delays} = 4 \text{ days at } 2 \text{ hours each} = 8 \text{ hours} \\ + \text{Power Outage – Early Release} = 3 \text{ days at } 2 \text{ hours each} = 6 \text{ hours} \\ \hline = \text{Total Cancellations} = 38 \text{ hours} \end{array}$$

Forgiven Hours:

$$\begin{array}{r} \text{Forgiven Hours Provided Under Section 101} = 36 \text{ hours (assume 6-hour day)} \\ + \text{Surplus Hours Scheduled} = 0 \\ \hline = \text{Total Hours Available To Offset Cancellations} = 36 \end{array}$$

Hours To Reschedule:

$$\begin{array}{r} \text{Canceled Hours} = 38 \text{ hours} \\ - \text{Hours Available To Offset Cancellations} = 36 \\ \hline = \text{Hours To Reschedule} = 2 \end{array}$$

Hours Deduct Calculation:

$$\begin{array}{r}
 \text{Total State Aid} = \$10,700,000 \\
 - \text{ Non-Plaintiff Durant Debt Service (Sec. 11g)} = \$100,000 \\
 - \text{ Adult Education Participants (Sec. 107(1))} = \$100,000 \\
 \hline
 = \text{ Total Adjusted State Aid} = \$10,500,000
 \end{array}$$

Hourly Adjusted State Aid:

$$\begin{array}{r}
 \text{Total Adjusted State Aid} = \$10,500,000 \\
 \div \text{ Hour Requirement} = 1,098 \text{ hours} \\
 \hline
 = \text{ Hourly Adjusted State Aid Deduct} = \$9,562.84 \text{ per hour}
 \end{array}$$

Hour Requirement Shortfall Deduct:

$$\begin{array}{r}
 \text{Hours Short of Requirement} = 2 \\
 \times \text{ Hourly Adjusted State Aid Deduct} = \$9,562.84 \text{ per hour} \\
 \hline
 = \text{ - } \$19,125.68
 \end{array}$$

Example 2: In a district on a district-wide calendar, the original calendar scheduled 1,104 pupil instructional hours. School was canceled for inclement weather on two days, or 12 hours, and on had two days that school was on a two-hour fog delay. The district exceeds the minimum hours (1,098) as follows:

Hours Scheduled:

$$\begin{array}{r}
 \text{Hour Requirement} = 1,098 \text{ hours} \\
 - \text{ Hours Scheduled} = 1,104 \text{ hours} \\
 - \text{ Professional Development Hours} = 0 \\
 \hline
 = \text{ Surplus Hours Scheduled} = 6 \text{ hours}
 \end{array}$$

Cancellations:

$$\begin{array}{r}
 \text{Weather Cancellations} = 2 \text{ days at } 6 \text{ hours each} = 12 \text{ hours} \\
 + \text{ Fog Delays} = 2 \text{ days at } 2 \text{ hours each} = 4 \text{ hours} \\
 \hline
 = \text{ Total Cancellations} = 16 \text{ hours}
 \end{array}$$

Forgiven Hours:

$$\begin{array}{r}
 \text{Forgiven Hours Provided Under Section 101} = 36 \text{ hours (assume 6-hour day)} \\
 + \text{ Surplus Hours Scheduled} = 6 \\
 \hline
 = \text{ Total Hours Available To Offset Cancellations} = 42
 \end{array}$$

Hours To Reschedule:

$$\begin{array}{r}
 \text{Canceled Hours} = 16 \text{ hours} \\
 - \text{ Hours Available To Offset Cancellations} = 42 \\
 \hline
 = \text{ Hours To Reschedule} = 0
 \end{array}$$

3) Failure to Meet the Attendance Requirement

With the exception of days that are rescheduled at the end of the school year, a district's daily pupil attendance must meet a minimum 75% pupil attendance requirement in order to avoid a state aid deduction. The percentage of pupil attendance is based upon the actual number of pupils enrolled and scheduled for pupil instruction compared to the number of pupils actually in attendance on that day. Districts must have a procedure in place to capture this information at the building level and the district level. Pupils enrolled in a self-paced, off-site, alternative education program with a seat-time waiver are excluded from the 75% attendance calculation. A district that has a day on which pupil attendance falls below the minimum 75% attendance requirement shall receive state aid for that day in that

proportion of 1/180 that the percentage in attendance bears to the required percentage. That is, the penalty calculation for not having 75% of the scheduled pupils in attendance is the daily amount of state aid attributable to the number of the district's pupils below 75% who were not in attendance.

If a district reschedules 1 or more days of pupil instruction at the end of the school year in order to comply with the required minimum number of days of pupil instruction, these days must have at least 60% of the district's membership in attendance to avoid a state aid deduction. If attendance falls below 60% on any of these days, then the district shall receive state aid in that proportion of 1/180 that the actual percentage of attendance bears to 60%.

Example: The district had one day on which only 68% of those pupils who were enrolled and scheduled for pupil instruction were in attendance. The district's annual state aid, after adjusting for adult education payments and Durant-related payments, is \$10,500,000. The penalty calculated is:

75% Requirement Deduct Calculation:

$$\begin{array}{r}
 \text{Total State Aid} = \$10,700,000 \\
 - \text{Non-Plaintiff Durant Debt Service (Sec. 11g)} = \$100,000 \\
 - \text{Adult Education Participants (Sec. 107(1))} = \$100,000 \\
 \hline
 = \text{Total Adjusted State Aid} = \$10,500,000
 \end{array}$$

Daily 75% Requirement Adjusted State Aid:

$$\begin{array}{r}
 \text{Total Adjusted State Aid} = \$10,500,000 \\
 \div \text{Day Requirement} = 180 \text{ days} \\
 \hline
 = \text{Daily Adjusted State Aid} = \$58,333.33 \text{ per day}
 \end{array}$$

Percentage of Pupils In Attendance:

$$\begin{array}{r}
 \text{Total Scheduled For Attendance On Day District-wide} = 200 \text{ pupils} \\
 \div \text{Total In-attendance On Day District-wide} = 136 \text{ pupils} \\
 \hline
 = \text{Percentage of Pupils In Attendance} = 68\%
 \end{array}$$

Percentage Short Of Attendance Requirement:

$$\begin{array}{r}
 \text{Minimum Attendance Requirement} = 75\% \\
 - \text{Percentage of Pupils In Attendance} = 68\% \\
 \hline
 = \text{Percentage Short Of Attendance Requirement} = 7\%
 \end{array}$$

Percentage Short Bears To Percentage Required To Attend:

$$\begin{array}{r}
 \text{Percentage Short Of Attendance Requirement} = 7\% \\
 \div \text{Minimum Attendance Requirement} = 75\% \\
 \hline
 = \text{Percentage Short Bears To Percentage Required To Attend} = 9.33\%
 \end{array}$$

State School Aid Adjustment

$$\begin{array}{r}
 \text{Daily Adjusted State Aid} = \$58,333.33 \text{ per day} \\
 \times \text{Percentage Short Bears To Percentage Required To Attend} = 9.33\% \\
 \hline
 = \text{\textbf{-\$5,442.50}}
 \end{array}$$

Note: The percentage in attendance is calculated only for those buildings, programs or grade levels that are in session. The number of pupils in buildings, programs or grade levels that have canceled the day, or that are otherwise not in session, should not be included in the calculation of the percentage of attendance for that day.

D) Statutory and Other References

<u>State School Aid Act:</u>	<u>Revised School Code:</u>	<u>Administrative Rules:</u>
MCL 388.1606	MCL 380.1175	R 340.10
MCL 388.1701	MCL 380.1230	R 340.10a
MCL 388.1763	MCL 380.1230a	R 340.1754
	MCL 380.1280	R 340.1755
	MCL 380.1284	R 340.1862
	MCL 380.1284a	
	MCL 380.1284b	

Other References:

No Child Left Behind (NCLB) Act of 2001, Pub. L. No. 107-110, § 115, Stat. 1425 (2002)

E) Question and Answer

Pupil Attendance – Meeting the 75% Attendance Requirement:

Q #1 May the alternative education program be exempt from the 75% attendance rule?

A #1 The alternative education program is part of the K-12 system; therefore, attendance must be taken and the pupils in this program are a part of the 75% attendance requirement. However, pupils in a self-paced, off-site, alternative education program under a seat time waiver are exempt from the 75% attendance requirement. Also, a district that operates an alternative education program and does not provide instruction in all of grades K-12 may apply to the State Superintendent for a waiver to meet a 50% attendance requirement as specified in Section 101(3)(h) of the State School Aid Act.

Q #2 A building was closed for the entire day due to a water main break. Pupil attendance district wide met the 75% attendance requirement for the day even when including the pupils from the closed building in the calculation. Can the district count the day for all buildings, even the one that was closed, since the attendance requirement was met?

A #2 No. The day and hours may only be counted by buildings that provide instruction that day. The open buildings retain the ability to count the day and hours even if they are unable to meet the 75% attendance requirement (although a state aid deduction would be incurred for the buildings).

The closed building would not be allowed to count the day or hours unless the district had a balance of forgiven time that could be applied to the day and hours for the building. A deduction would be incurred for the building if the cancellation caused the building to miss the days or hours requirement.

Counting the First 6 Days or Equivalent Number of Hours of Canceled Pupil Instruction (Forgiven Time):

Q #3 What is the maximum number of "forgiven" hours that a district has available. We have been told that it all depends upon the district's location in the state.

A #3 Section 101(4) of the State School Aid Act grants all districts in the State of Michigan the right to count up to the first 6 days or equivalent number of hours of canceled pupil instruction for situations beyond the control of school authorities such as severe storms, fires, epidemics, utility power unavailability, water or sewer failure, or health conditions. *Anything in excess of 6 days or equivalent number of hours of canceled pupil instruction would have to be rescheduled if the excess hours that were canceled cause the district to*

fall short of the required 1098 hours.

Under Section 101(4), a district can request up to three (3) additional days of forgiven time if instruction was canceled due to conditions that are beyond the control of the school authorities.

Q #4 District plans 38 hours of teacher professional development time to be counted toward the minimum required 1,098 hours of pupil instruction. Two days (12.6 hours) of teacher professional development were canceled because of a snowstorm. Does the district get to count those canceled hours as part of the 38 hours that the district is allowed to count as pupil instruction?

A #4 No. Section 101(4) of the State School Aid Act reads in part: "Except as otherwise provided in this subsection, the first 6 days or the equivalent number of hours for which pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, utility power unavailability, water or sewer failure, or health conditions ... shall be counted as hours and days of pupil instruction." Section 101(10) of the State School Aid Act reads in part: "Until 2014-2015, a district may count up to 38 hours of qualifying professional development for teachers as hours of pupil instruction." Section 101(4) does not state that teacher professional development hours canceled due to conditions beyond the control of the school authorities may be counted. The reasonable interpretation of Section 101(10) is that those teacher professional development hours have to be held in order to count. Therefore, canceled teacher professional development time does not apply to the hours of canceled pupil instruction that may be counted toward the 1,098 hours requirement.

Counting Pupil Instruction Time:

Q #5 According to the Pupil Accounting Manual, each pupil must have 1,098 hours of instruction with a certified teacher to qualify for state aid without penalty. If our middle school building was to implement a type of "responsibility room" where a pupil could be scheduled for an hour depending on his or her behavior, could this be counted as contact time? Would the room be considered instructional?

A #5 The time spent in a "responsibility room" would be considered instructional time that is countable toward membership if the "responsibility room" is supervised by a staff member who holds a valid Michigan teacher certificate, and if attendance records are maintained for the pupils assigned to the "responsibility room" for each period of the day.

Q #6 The district's alternative education program uses Plato software for math instruction and assessment. Is it permissible to staff the computer lab with a paraprofessional during pupil instructional class time, and then have a certified teacher of record issue the pupil credit and grade?

A #6 Yes. Administrative Rule 340.11(2)(e) allows a pupil to take up to two virtual courses per count that are taken on-site with an adult present who is not a certificated teacher if a mentor certificated teacher, who is employed by the school district, is assigned.

Q #7 One third of the high school population has five minutes less of pupil instruction each day than the remaining two thirds of the high school pupils. Do we do a weighted average to calculate the pupil instructional time for the high school?

A #7 No. The five minutes per day could add up to 15 hours per year. This could mean that one third of the high school pupils would be short the minimum required pupil instructional

hours.

If the hour shortfall was the result of the district's schedule for the pupils, the FTE claimed for the pupils would need to be prorated by the district according to the number of instructional hours to be provided.

If the shortfall was the result of something unplanned, and the district was unable to add time to the schedule to allow the pupils to reach the 1,098-hour requirement by the end of the school year, the shortfall would result in a state aid adjustment.

Passing Time:

Q #8 The district utilizes block scheduling. Four days a week, the district runs a normal A or B schedule. Each Monday, the district runs "skinnies" (all eight blocks). Due to the physical size of the building and passing through all eight classes, the high school uses more than 30 minutes of passing time on Mondays. The Pupil Accounting Manual states that a maximum of 30 minutes per day of passing time may be counted unless a building administrator is able to demonstrate the need for additional passing time. Do the size of the building and the class schedule qualify as factors that can show the need for more than 30 minutes per day? Does this need to be documented?

A #8 The high school administrator would request that the ISD auditor investigate allowing additional passing time to be counted. If the auditor agrees that additional time should be provided on Mondays, due to the distance between classes, hall congestion, and the increased number of class periods during the day, the auditor will authorize the additional time. The district will maintain documentation of the ISD auditor's decision in its records for future audits.

If the additional passing time is not allowed, the district may choose to schedule more passing time than necessary and not count the excess time toward membership.

Lunch Time:

Q #9 A certified teacher monitors the lunch period. The district wants to count this lunch period as instructional time for the special education pupils claiming the goals and objectives are to teach feeding skills. May the district count the lunch period toward the minimum required instructional hours for this group of pupils?

A #9 As a rule, lunch periods are not countable instructional time.

However, some pupils with IEPs may be allowed to have their lunch period counted. The goals and objectives must be a part of the individual pupil's IEP and specify how the lunchtime activity relates to the individual pupil's educational needs. In addition, the certified special education teacher must be with the pupil(s) during the lunch period.

Seminar vs. Study Hall:

Q #10 What are the recognizable differences between a study hall and a seminar?

A #10 A study hall is that period in a day when pupils from any grade level are in a room and each pupil is individually working on homework for any class. The teacher or study hall monitor's purpose is to maintain a quiet area for studying. A seminar is that period in time when a small group of pupils and a certified teacher are together for a specific class and serves the purpose of mentoring or tutoring. The teacher/pupil ratio in a seminar is no more than 35:1.

Using Teacher Professional Development Time:

- Q #11** The district wants to use the 38 hours of teacher professional development time toward the minimum required hours for some pupils but not for all pupils. How is this done?
- A #11** Section 101(10) of the State School Aid Act allows a district to apply up to 38 hours of qualifying teacher professional development time toward the minimum required hours that the district must provide all pupils in grades 1-12. A program that operates fewer than 1,098 hours may count a prorated number of those 38 hours. Qualifying professional development is defined in Section 101(10) as meeting certain criteria. Those hours are applied to the district as a whole, to a specific building, or to a specific grade level, not to a specific pupil. Only the minimum number of hours, which all teachers of the specified group of pupils were provided, may be counted toward the 1,098 hours for that specified group. If the district is applying 20 hours of professional development time toward the 1,098 hours for grades 9-12, two things must happen: all teachers for grades 9-12 must have been provided a minimum of 20 hours of professional development and a full-time pupil in grades 9-12 would have to be scheduled for a minimum of 1,078 hours (1,098 – 20).

Release Time:

- Q #12** A local church approached the district about the possibility of release time for some pupils. Administrative Rule 340.2(7) allows a pupil to attend religious instruction for “not more than 2 class hours per week, off public school property during school hours” without impacting a pupil’s enrollment as 100% FTE. What does “not more than 2 hours” mean? Does the travel time count toward those two hours?
- A #12** Pursuant to Administrative Rule 340.2(7), the pupil may be released up to two hours per week to attend religious instruction without the district having to pro-rate the pupil’s FTE count for membership purposes. However, a request for this release must come in writing from the pupil’s parent(s), guardian, or person acting in loco parentis. The church cannot make such a request. Two hours is exactly that – two hours. For example: if school is released at 3:30 p.m. every day and if the pupil leaves at 1:30 every Wednesday to attend catechism class, that meets the criteria. The district does not have to adjust the pupil’s FTE count by 72 hours (2 hours x 36 weeks). The time needed for the pupil to travel to attend catechism is part of the two hours if the travel occurs during the normal school day.

Nonpublic Pupil Travel Time:

- Q #13** District A has two nonpublic pupils attending the district. One pupil is enrolled only in band and the parents transport the pupil to the public school for class. The second pupil is enrolled only part-time in vocational education and District A transports this pupil to the intermediate school district’s CTE center. May District A count the travel time for each of these pupils?
- A #13** Section 101(7)(d) of the State School Aid Act permits a district to count travel time between instructional sites for a pupil in grades 9-12 enrolled in a cooperative educational program or for a special education pupil if the travel time is the sole reason that the pupil does not receive enough hours to be a full FTE. Travel is not the only reason the described nonpublic pupils cannot meet the minimum required 1,098 hours of pupil instruction. Nonpublic pupils enrolled in a public school for nonessential courses are meant to be only part-time pupils. (See Section 6(6) of the State School Aid Act.)

When Travel Time Cannot Be Counted:

Q #14 The morning career and technical education pupils arrive back at the high school approximately 23 minutes prior to lunch. It is too late for these pupils to attend a class period that has already been in session for thirty minutes. The district would like to count a 5-minute passing time to lunch in addition to the travel time thus increasing the FTE count for each of these pupils from .90 FTE to .91 FTE. May the district do this?

A #14 A district may count one passing time to or from lunch, be it the passing time from an immediately preceding class to lunch, or the passing time from lunch to a class. Since these pupils are passing from a 23-minute "downtime" period to lunch instead of from a class to lunch, the passing time cannot be counted.

However, if the district transformed the 23-minute period into a seminar, the district could count the passing time. In addition, filling the gap in instructional time might allow the district to count travel time for these pupils (if they meet the requirements of Section 101(7)(d) of the State School Aid Act) if the resulting total instructional time (instructional hours + travel time) equated to at least 1,098 instructional hours.

MCL 388.1701(7)(d) provides:

If a pupil in grades 9 to 12 who is enrolled in a cooperative education program or a special education pupil cannot receive the required minimum number of hours of pupil instruction solely because of travel time between instructional sites during the school day, that travel time, up to a maximum of 3 hours per school week, shall be considered to be pupil instruction time for the purpose of determining whether the pupil is receiving the required minimum number of hours of pupil instruction. However, if a district demonstrates to the satisfaction of the department that the travel time limitation under this subdivision would create undue costs or hardship to the district, the department may consider more travel time to be pupil instruction time for this purpose.

Legal Holidays:

Q #15 Our district was in session on the Monday following a public holiday that fell on a Sunday. Can the district count this as a day of pupil instruction?

A #15 No. Section 1175(1) of the Revised School Code states that if a public holiday falls on Sunday, the Monday following shall be a public holiday for public schools. The section goes on to state that schools shall not be in session on the public holidays described in the section.

Q #16 Our district had scheduled pupil instruction for Monday, January 2. Upon learning that legislation requires that school districts observe a legal holiday on Monday if the legal holiday falls on Sunday, our district converted January 2 from pupil instruction to a teacher professional development day. May the district now count those teacher professional development hours toward the minimum required pupil instructional hours?

A #16 Yes. Section 1175(1) forbids public schools from being in session on a legal holiday, meaning that the district cannot provide pupil instruction. Staff professional development is allowable.

Starting Prior To Labor Day:

Q #17 May a district schedule professional development days prior to Labor Day?

- A #17** Yes. Section 1284b of the Revised School Code does not prohibit a school district, intermediate school district, or public school academy from offering or requiring professional development for its personnel that is conducted before Labor Day.

Incarcerated Pupil:

- Q #18** May a special education program serving emotionally impaired pupils claim a “homebound/hospitalized” situation for a pupil who has been incarcerated in the local jail and provide the two one-hour non-consecutive sessions per week to claim a full FTE? There is no medical or therapeutic service being provided and there is no physician’s statement indicating such a need.
- A #18** No. A homebound/hospitalized pupil must have a medical reason the pupil cannot attend school during regular hours substantiated by a medical doctor’s statement.
- Q #19** May a special education program serving emotionally impaired pupils claim a “home-based” situation for a pupil who has been incarcerated in the local jail and provide the two one-hour non-consecutive sessions per week to claim a full FTE?
- A #19** No. According to Section 6(4)(u) of the State School Aid Act, membership for home-based pupils is always prorated. The proration is based on the number of hours of instruction the district actually provides to the pupil divided by the 1,098-hour minimum. However, if the pupil has been permanently expelled (mandatory expulsion), the expelling district may provide the pupil with two one-hour individualized instructional periods per week with a certificated teacher and count the pupil for a full membership pursuant to Sections 1311(3) or 1311a(3) of the Revised School Code. The type of services provided shall meet the requirements of Section 6(4)(u) of the State School Aid Act and the services may be contracted for in the same manner as services for homebound pupils under Section 109 of the State School Aid Act.