



## Legislative Trend Report: September 3, 2020

### **Executive Summary:**

In response to the National Emergency Declaration to the Novel Coronavirus (COVID-19) pandemic issued by President Trump on March 13, 2020, and the plethora of legislative and other policy movements implemented by states and governors, AESA is providing ESA leaders with a high-level overview of the COVID-19 policy changes and proposals impacting the U.S. public school system. Specifically, the following text focuses on the proposed and enacted state legislative and administrative policies affecting Local Education Agencies (LEA) to provide a national picture of the states' educational response to the COVID-19 pandemic.

The data in this paper is from bi-partisan organizations, such as the National Conference of State Legislatures (NCSL) and the Education Commission of the States (ECS), and overviews policies from 48-states in the areas of assessment and accountability, Online learning, instructional time, grade promotion and graduation requirements, and civil liability protections in the context of the COVID-19 pandemic. AESA intends for this document to serve as a resource for those advocates interested in understanding the state policy trends impacting LEAs during the 2020-21 school year (SY). Please note that this report is not exhaustive, but rather, shows a snapshot of the current U.S. policy landscape.

### **Assessments and Accountability:**

Since the U.S. Dept. of Ed's (USED) and President Trump's decision to issue assessment waivers to all 50 states, Puerto Rico, and the District of Columbia for the 19-20 SY, national, state and local educational stakeholders have debated how, and if, LEAs should restart their 2020-21 statewide summative assessments in (1) English language arts (ELA) and mathematics; and (2) science. While this issue has garnered significant attention from multiple education stakeholders, including governors, state legislatures and USED, there has been a lack of national consensus on how or when school districts should begin assessing students to measure the impact of the pandemic on student growth and comply with federal testing requirements.<sup>1</sup> According to the Council of Chief State School Officers report, *Restart & Recovery: Assessment Considerations for Fall 2020*, the issues facing federal, state and local policymakers around assessments concern factors related to timing, state and local education

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<sup>1</sup><https://www.nciea.org/sites/default/files/publications/Assessment%20Considerations%20for%20Fall%202020%20.pdf>

organization resource capacity, educator practices and complexities around delivering assessments across subject areas and grade spans.<sup>2</sup>

For the most part, legislatures have been slow to respond to concerns around testing. However, some states have moved to offer districts additional flexibilities around assessments and accountability requirements during the 20-21 SY. Specifically, this is evident by (1) Louisiana's passage of [SCR 72](#), which requires the state board of elementary and secondary education to determine the necessity to suspend all statewide assessments in SY 20-21; and (2) Wisconsin's enactment of [AB 1038](#), which will prohibit pupil performance on statewide assessments administered in SY 19-20 from counting towards the evaluation scores assigned to teachers or principals under the state's accountability system in SY 20-21.

Moreover, Ohio introduced [SR 542](#), which, if passed, would urge the U.S. Sec. of Ed. to extend school assessment waivers to the 20-21 school year. New York has also shown interest in addressing assessment during SY 20-21. Specifically, this is evident by the introduction of [A 10922](#), which, if passed, would require school districts to exclude annual professional performance reviews of classroom teachers and building principals from the accountability ratings during the 2020-21 school year. A full list of the actions by states on assessments is included in the chart below.

**Figure 1:**

State	Policy Action	Description	Date of Action	Status
LA	<a href="#">SCR 72</a>	The Act requests the state board of elementary and secondary education "review the necessity to suspend all statewide assessments for the 2020-21 school year, due to the impact of the school closures caused by COVID-19."	June 1, 2020	Enacted
WI	<a href="#">AB 1038</a>	The Act prohibits the department of public instruction from publishing a school and school district accountability report in the 2020-21 school year.	May 28, 2020	Enacted
OH	<a href="#">SR 542</a>	The bill would urge the U.S. Sec. of Ed. to extend school assessment waivers to the 20-21 school year.	August 19, 2020	Introduced
NY	<a href="#">A 10922</a>	The measure would not require school districts to complete annual professional performance reviews of classroom teachers and building principals during the 2020-21 school year due to the coronavirus pandemic. The act would expire June 30, 2021.	August 27, 2020	Introduced
GA	<a href="#">Announcement</a>	Gov. Brian Kemp and State School Superintendent Richard Woods announced	June 18, 2020	N/A

<sup>2</sup> ibid

		that the state will seek a standardized testing waiver for the 2020-21 school year. Both emphasized the need to focus on "...remediation, growth and safety for students" instead of standardized tests to meet the challenges brought on by the pandemic.		
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An analysis of these findings shows that only a handful of states are taking steps toward codifying their 20-21 assessment and accountability procedures and requirements. This may be due to a variety of factors impacting school district operations during the pandemic. Regardless, it is likely that there will be more policy movement on assessments as the stages of the COVID-19 pandemic continue through the 20-21 SY.

#### **Online Learning and the Digital Divide:**

Before the start of the COVID-19 pandemic, online instruction was a growing space in educational policy and was primarily offered by K-12 institutions as a strategy to provide students with supplemental, flexible and individualized learning experiences. According to statistics from ECS, virtual schools enrolled nearly 300,000 students across 35 states in 2017-18 and typically featured blended or fully remote instruction.<sup>3</sup> Since March 2020, however, virtual learning has taken on a new level of significance for federal, state and local decision makers due to forced school closures in nearly every state during the peak of the COVID-19 pandemic and remaining questions concerning how to safely re-open LEAs in SY 20-21.<sup>4</sup> According to a May 2020 report from the American Enterprise Institute (AEI), 56% of LEAs relied mostly on online learning platforms; 28% of districts relied regularly on workbook packets, and 16% of LEAs were dependent on both online learning platforms and workbook packets to deliver instruction at the end of the 19-20 SY.<sup>5</sup> Specifically, these metrics indicate that online instruction was one of the top policy issues for districts nationwide in SY 19-20 and 20-21, thus, signifying a dramatic change from previous school years.

Compared to research that shows increases in LEAs perceptions of the importance of online learning procedures and requirements, an analysis of recently enacted and introduced legislation indicates that some state legislatures are also working to codify policies around improving virtual instruction. Evidence of this is apparent by the Mississippi legislature's decision to enact [HB 1788](#), which will establish the Response Broadband Availability Grant Program to support public school districts for costs related to expanding broadband access in underserved areas. Similarly in New Jersey, the enactment of [A 4132](#), which, among other provisions, requires the commission of education to issue guidance on providing remote instruction to students who may not have access to a computer or broadband connectivity at home, and establishes the mandatory length of instructional time required under a virtual day of learning. Specifically, these examples highlight some of the work states are doing to improve remote instruction. Iowa, Illinois, Massachusetts, Michigan, Vermont, and Wisconsin have also enacted or advanced legislation concerning the funding procedures and requirements of virtual learning in SY 20-21. A full list of the legislative actions by states on virtual learning is included in the chart below.

<sup>3</sup> <https://www.ecs.org/wp-content/uploads/Virtual-School-Policies.pdf>

<sup>4</sup> <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html>

<sup>5</sup> <https://www.aei.org/covid-19-education-response-longitudinal-survey-c-erls/>

**Figure 2.**

State	Policy Action	Description	Date of Action	Status
IA	<a href="#">IA SF 2310</a>	The act requires schools to include a list of online coursework offered in the school improvement plan. Additionally, the law directs the board of education to develop rules to ensure online coursework meets state standards and orders the department of education to maintain a list of approved online providers. Moreover, the measure permits districts to offer world language, financial literacy and computer science online.	June 29, 2020	Enacted
IL	<a href="#">SB 1569</a>	Among other things, this law enables up to five remote or blended days of online education to count towards pupil attendance calculations and permits schools and districts to use approved programs under the state's e-learning database for remote or blended instruction.	June 18, 2020	Enacted
MA	<a href="#">H 4733</a>	If passed, the bill would establish a competitive matching grant program to assist public school districts in improving student instruction and assessment by using information technology. Specifically, the bill would allocate \$50M to enhance or expand remote learning environments. Additionally, the bill would permit funds to be used to reimburse costs declared by the governor on March 10, 2020.	July 31, 2020	Passed Second Chamber
MI	<a href="#">HB 5911</a>	The Act requires districts to enroll eligible pupils in up to two virtual courses, upon the request of the student during an academic term, semester, or trimester. Additionally, the bill sets requirements for virtual programs. These requirements include (1) the primary district determines that it is in the best interest of the pupil; (2) the pupil agrees with the recommendation of the district; and (3) the district, in collaboration with the pupil, has developed an education development plan in accordance with	August 27, 2020	Enacted

State	Policy Action	Description	Date of Action	Status
		guidance from the state department of education.		
MS	<a href="#">HB 1788</a>	The act establishes the Response Broadband Availability Grant Program to support public school districts for costs related to expanding broadband access in underserved areas.	July 9, 2020	Enacted
NJ	<a href="#">A 4132</a>	The Act requires the commission of education to issue guidance on providing remote instruction to students who may not have access to a computer or broadband connectivity at home, and establishes the mandatory length of instructional time required under a virtual day of learning	July 2, 2020	Enacted
VT	<a href="#">VT H966</a>	The act appropriates \$213,200,000 from the Coronavirus Relief Fund to cover necessary broadband connectivity, information technology and economic relief expenses incurred to school districts while responding to the pandemic.	July 2, 2020	Enacted
WI	<a href="#">AB 1038</a>	The act requires each school board to submit a report to the department of public instruction on the implementation of virtual instruction by November 1, 2020.	May 28, 2020	Enacted

After analyzing the policy actions in the chart above, it is apparent that eight states have advanced policy changes to assist districts with the delivery of remote instruction. From this total, three states (Vermont, Massachusetts, and Mississippi) focused on ed-tech and broadband connectivity funding, three states (Michigan, Illinois, Iowa focused on establishing requirements and procedures around virtual instruction, and one state (Wisconsin) focused on providing oversight on the implementation of virtual learning.

#### **Instructional Time, Grade Promotion and Graduation Requirements:**

As is the case with the other policy issues compiled in this paper, the COVID-19 pandemic has had a significant impact on the policies, processes and requirements concerning school districts' instructional time, grade promotion and secondary graduation procedures. According to ECS, before the pandemic, states differed in a myriad of ways on their processes for calculating instructional time and selection of criterion for grade promotion and secondary graduation.<sup>6</sup> As evidence of this, in fiscal year 18-19, 31 states plus the District of Columbia required at least 180 days of instruction, 14 states placed

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<sup>6</sup> <https://www.ecs.org/50-state-comparison-instructional-time-policies/>

parameters around school start and finish dates and, 35 states differentiated the hours/minutes in a day or year or the days in a year, based on grade levels.<sup>7</sup>

Although states have differed greatly on these policy areas in the past, the impact of the COVID-19 pandemic has affected this aspect of school district operations in uniform ways. Unsurprisingly, this phenomenon has been consistent with findings from AEI, which, on average, show that schools canceled eight days of instructional time because of either an extended spring break, a shortened academic year, or a lag between closing buildings and starting remote learning.<sup>8</sup>

In an analysis of the actions by state legislatures, it is clear that only a small portion of states are responding to the needs of local school system leaders by introducing or enacting legislation concerned with providing districts with additional flexibilities around instructional time, grade promotion, or secondary graduation requirements. One example of this is California's advancement of [AB 117](#) past the first chamber of the state's General Assembly. If passed, this bill would help prevent the loss of funding related to instructional time penalties by deeming the instructional days and minutes requirements to have been met during the period a school was closed due to COVID-19. Another example of this work is evident through Iowa's enactment of [SF 2508](#), which waived the minimum school day and instructional time requirements for school districts closed on or before April 12, 2020. The next instance of states doing important work around graduation requirements can be seen through Pennsylvania's decision to introduce [HB 2788](#). If passed, this legislation would permit parents to elect to have their child repeat a grade level to make up for any lost educational opportunities during the 19-20 and 20-21 school years. Finally, Ohio's enactment of [HB 197](#) is also an example of states' work to pass legislation around graduation requirements. Specifically, this Act permits public schools to grant a diploma to any student on track to graduate and for whom the principal, in consultation with teachers and counselors, has determined is eligible for high school graduation at the time of a forced school closure.

Outside of the legislative arena, states also implemented new policy actions on graduation and grade promotion requirements by instituting changes to state educational regulations. For example, Colorado's state department of education [published guidance](#) for districts on state graduation requirements; in Mississippi, the state board waived certain end-of-course assessments that could not be administered; in North Carolina, the state board of education [announced](#) that seniors will receive a pass/fail designation for SY 19-20; and, in Tennessee, the state board of education released [guidance](#) for what components must be included in an LEA's continuous learning plan for the 2020-21 SY, including how the LEA will meet instructional time requirements.

The summation of these findings shows that both state legislatures and school boards of education are playing integral roles in shaping districts instructional time, grade promotion and graduation requirements.

#### **Civil Liability Protections:**

Due to the immense pressure facing districts as they prepare to start school this fall, as well as AASA's desire to protect superintendents against the onslaught of lawsuits that LEAs will incur as they re-open

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<sup>7</sup> *ibid*

<sup>8</sup> <https://www.aei.org/wp-content/uploads/2020/06/School-district-responses-to-the-COVID-19-Pandemic-Round-6.pdf>

school buildings, this section of the report examines the work of state legislatures to temporarily codify immunity protections against civil liability actions related to the COVID-19 pandemic for superintendents and other administrators.

Based on a review of legislative policy proposals from ECS, 4-states have introduced measures that provide liability protections for school system leaders. Of these localities, two states (Alaska and Arizona) failed to advance their legislation. In contrast, the New Jersey bill, [S 2634](#), would provide immunity protections to school districts against actions regarding contraction of COVID-19. The bill also makes immunity protection contingent on whether the K-12 institution made reasonable efforts to prevent or mitigate exposure to COVID-19. At this point, only one state, Louisiana, has successfully enacted legislation that provides immunity protection from civil liability cases for K-12 institutions during states of public health emergencies for infectious disease. A comprehensive list of immunity legislation is listed in the chart below.

**Figure 3:**

State	Policy Action	Description	Date of Action	Status
AL	<a href="#">SB 330</a>	This bill would have granted civil immunity for business entities health care providers, educational entities, churches, governmental entities, and cultural institutions operating in this state, as well as individuals associated with these entities, from certain damages claimed by individuals who allege that they contracted or were exposed to Coronavirus, during a declared state of emergency. Specifically, the bill's language protects the aforementioned entities from economic damages, non-economic damages, for mental anguish and emotional distress, compensatory damages, consequential damages, punitive damages, and any other damages arising from any injury, death, or property damage.	May 5, 2020	Failed
AZ	<a href="#">HB 2912</a>	Under the bill, a school operating in AZ during a state of emergency order related to the COVID-19 outbreak or before April 1, 2021, whichever is later, is not liable to a person who contracts COVID-19, including after entering and remaining on the premises of the school.	May 21, 2020	Failed
LA	<a href="#">HB 59</a>	The bill provides immunity from civil liability cases for public, charter, and public post-secondary education institutions during state of emergencies or public health emergencies for infectious disease.	July 8, 2020	Enacted

State	Policy Action	Description	Date of Action	Status
<b>NJ</b>	<a href="#"><u>S 2634</u></a>	The bill provides immunity protections for school districts and employees against actions relating to a person's exposure to COVID-19. The immunity would be based on good faith reasonable compliance with or exceeding applicable health and safety measures to prevent or mitigate a person's exposure.	June 29, 2020	Enacted
<b>MS</b>	<a href="#"><u>HB 1788</u></a>	The act establishes the Response Broadband Availability Grant Program to support public school districts for costs related to expanding broadband access in underserved areas.	July 9, 2020	Enacted
<b>NJ</b>	<a href="#"><u>A 4132</u></a>	The Act requires the commission of education to issue guidance on providing remote instruction to students who may not have access to a computer or broadband connectivity at home, and establishes the mandatory length of instructional time required under a virtual day of learning	July 2, 2020	Enacted

The results of this scan show that many states have yet to introduce or enact liability protections for school districts. This may be due to a variety of reasons related to the legislative calendar, pressures to oppose such measures from teacher unions, and possibly the hope that the federal government will provide these protections through the next Coronavirus economic recovery package. That said, it is likely that liability protections will continue to rise as a high-priority issue for state legislatures attempting to re-open school with in-person instruction.