



Shortening the School Year: 2008-2009

As Oregon's economic woes deepen and financial uncertainty grows, some districts are considering early closure or a shortened school year for 2008-09 or beyond. There are several issues districts should consider before deciding to shorten the school year.

Instructional hours and standardization status

OAR 581-022-1620 sets minimum standards for student instructional hours. Shortening the school year, however, may put districts under the minimum. Student and staff activities related to the closing of the school year are not counted as part of total instructional hours.

The rule also requires "no fewer than 265 consecutive calendar days between the first and last instructional day of each school year at each grade level."

OAR 581-022-0102 (50) sets the *units of credit* requirement for a high school diploma and OAR 581-022-1131 sets out requirements for students to receive units of credit for their course work. Only a *standard* or *conditionally standard* school can have these credits count towards graduation.

Consequences and remedial actions

To receive state school funds, school districts must maintain standard schools in compliance with all state requirements in OAR Chapter 581, Division 22. Each year districts must submit a Division 22 Assurance Form showing compliance to the state Department of Education (This year the form is due February 27,

2009). The Division 22 Assurance Form and information about the form can be found at: <http://www.ode.state.or.us/search/page/?id=733>.

Standard schools must meet the minimum requirements for student instructional hours. Districts may apply for a waiver, but according to a 1990 opinion from the Attorney General, they may not use a waiver to shorten the school year due to financial hardship.

To make sure districts do not lose state school funding as a result of not meeting the minimum standard for instructional hours due to financial hardship, they must notify the Department of Education.

R If districts decide to shorten the school year and will not meet minimum standards for instructional hours *before* submitting the 2008-09 Division 22 Assurance Form, they should indicate they will not be in compliance on the form.

R If districts decide to shorten the school year after the form is submitted they must immediately notify the Department of Education of their non-compliance.

Districts designated as non-compliant must develop a plan, approved by the school district board, to correct the deficiency by the next school year and submit that plan to the State Superintendent for approval.

When the plan is accepted districts are designated *conditionally standard*. If the deficiencies cannot be



corrected before the beginning of the next school year, the State Superintendent may extend the period of time to meet standards by an additional year. If districts then fail to meet standards, state school funds may be withheld.

Employment Contract Language and Collective Bargaining Agreements

There are three main contract language options which determine how to proceed with the decision to shorten the school year:

- R contract bars
- R enabling language
- R no mention of either

The flowchart in Appendix A shows how to identify the type of contract language districts are dealing with and the steps to take in each case.

Contract Bars

Employment contracts and collective bargaining agreements may contain language that bars shortening the school year. The specific language of the contract will determine how much freedom districts have.

Districts should review contract language with their labor consultant or school attorney before deciding to shorten the school year. Watch for language such as, “The work year for 2008-09 shall be 190 workdays.”

Maintenance of Standards clauses can also bar districts from shortening the school year. For example: “Employees covered by this Agreement shall not suffer a reduction in compensation or economic benefits presently in effect by the execution of this Agreement, except those reductions that are expressly and specifically set forth in the terms of this contract.” Layoff or discipline/dismissal procedures are the reduction methods typically set forth in a contract.

This kind of language may appear in a variety of articles within the agreement. If it is present, districts may request a voluntary re-negotiation of the provision or implement layoffs instead.

Enabling Language

Occasionally, contracts contain language

specifically addressing shortening the school year. For example: “If sufficient funds are not available, then the number of contract days for teachers shall be eliminated/reduced by up to 15 days with a proportionate reduction in annual salary [and benefits]¹. The exact number of contract days to be reduced shall be determined by the district. The salaries on the salary schedules represent the salaries for a 190 day contract.”

In some contracts there is specific language addressing school closure due to lack of funds. For example: “If the District closes its schools because of a lack of funds, no member of the bargaining unit shall be entitled to any salary or fringe benefits provided in this Agreement while the schools are closed.”

Other contract language that would allow districts to unilaterally shorten the school year and reduce compensation accordingly might be a cluster of language:

R “The district hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and invested in it . . . except as specifically limited by this Agreement . . .”

R “The district has the unqualified right to establish the school calendar.”

R “This Agreement does not guarantee any level of employment.”

R “The work year shall be up to 190 workdays per school year.”

R “The salaries on the salary schedule represent the salary for 190 workdays.”

If the contract has this language, districts may be able to unilaterally shorten the school year, but it is still a good idea to include local unions in the discussions before a decision is made. Analyze the contract thoroughly. If this language is not present or only partially present, districts should seek advice from their labor consultant or attorney.

¹ Language that allows unilateral reduction of insurance contributions associated with early closures is rare.



No Language

If the agreement has neither contract bars nor enabling language, districts will need to bargain with the local union. Appendix B has sample memorandums of Agreement for the licensed and classified unit. Appendix C has two versions of sample contract language which may be useful models for district proposal.

Bargaining Obligations

A contract may contain language allowing the agreement to be reopened when funding issues arise. For example: “The Board, if it experiences an unexpected revenue shortfall which would affect the Board’s ability to fund the economic provisions of this Agreement, may reopen negotiations.” The interim (90-day) bargaining process is usually used for these re-opened negotiations.

If the current agreement does not have language either barring or enabling shortening the school year, the interim bargaining process (ORS 243.698) is available.

If the district is currently in bargaining, it may not use the interim procedure. Proposals that allow shortening the school year should be submitted in successor agreement negotiations.

Before deciding to shorten the school year districts should have all labor agreements (teachers, classified, administrator, supervisors and directors) analyzed by a labor consultant, attorney or human resource staff member.

Special Education

Districts must comply with state and federal mandates regarding services for special education students. A budget shortfall does not allow districts to curtail services to these students.

If the school year is shortened, some students may lose ground and therefore qualify for extended year services.

IEPs do not usually contain the actual number of days in the school year, but it is essential to examine these documents. In general, out-of-district placements must be maintained even if the school year is reduced.

Districts may also need to look at the requirement for “maintenance of effort.” This requires spending at least as much money as was spent in the prior year. Remember, however, this is a fiscal standard not a time standard.

High School Seniors

Diploma requirements are set by law. Shortening the year may impact students’ ability to meet course credit and attendance requirements.

Districts may have some flexibility in case of a shortened year, but the school must still be designated as *standard* or *conditionally standard*.

Unemployment

If districts lay off employees so they no longer have jobs with the district or shorten the school year by more than a week, affected employees may be eligible for unemployment benefits. Under ordinary circumstances, school employees released for summer break are not considered unemployed and may not apply for benefits. According to Oregon law,² districts do not have to pay benefits to employees during an established and customary vacation period or holiday recess. Laying off employees or shortening the school year are not established and customary events, however and employees affected by these changes may apply for benefits. It’s important to note that everyone who applies for unemployment is subject to a one-week waiting period. If districts shorten the school year by a week or less, affected employees will not be eligible for unemployment unless they fail to earn the actual unemployment benefit amount in that week.

The *waiting week* is defined³ as any period of seven consecutive calendar days ending at midnight. The law⁴ also says this definition does not allow benefits for less than seven days or for the same

²ORS 657.221

³ORS 657.010(15)

⁴OAR 471-030-0005



period more than once.

Districts pay for unemployment insurance benefits. No contributions come from employee wages. Currently, an unemployed person can draw a maximum benefit of \$482 per week for up to 26 weeks (or \$12,532). The minimum benefit is \$113 per week for up to 26 weeks (or \$2,938).

The actual benefit amount is a percentage of the employee's total wages during the previous 12 months.⁵ If a person earned at least \$9,040 during that period, he or she is eligible for 26 weeks of benefits. If the employee earned less than that amount, he or she will receive one-third of the amount earned, paid at \$113 a week. Benefits are considered taxable income.

During periods of high unemployment benefit extensions may be available. The Employment Department mails each affected individual a notice of potential eligibility and an application form.

There are three ways for districts to pay for unemployment insurance:

R Direct Pay.⁶ Districts are billed quarterly for an amount equal to the regular and extended benefits paid to claimants. In good times, this is probably the least expensive plan; about 75-80 percent of districts use it.

R Tax Rate.⁷ Districts may choose to make unemployment part of their tax liability. The rate varies from 0.78 to 5.4 percent of payroll salary, depending on unemployment claim history.

R Trust Fund.⁸ Districts may also join the Local Government Employer Benefit Trust Fund. This fund will pay the direct pay invoice mentioned above. To join, districts must notify the Employment Department no later than Jan. 31 of a calendar year.

Not all employees who separate from their

⁵ORS 657.150(4)

⁶ORS 657.505(6)

⁷ORS 657.405 to 657.495

⁸ORS 657.505(a)

employers are eligible for unemployment insurance. If the employee voluntarily leaves work without good cause or is discharged or suspended for work misconduct, they are not eligible for benefits.

Good Cause means a grave or serious situation that would cause a reasonable and prudent person to quit a job. Misconduct means a willful or wantonly negligent violation of the employer's standards of behavior for employees or disregard of the employer's interest.

If an employee starts to receive retirement pay after he or she receives unemployment insurance benefits, it may, depending on the amount or type of retirement benefits, make the employee ineligible for unemployment, reduce benefits or have no effect at all. Social Security does not affect benefits unless the employee does not want to work, limits work or works less than full time.

If unemployment benefits are reduced or denied to a former employee, he or she may appeal the decision. Employment Department decisions may be reviewed through a hearings process. An Administrative Law Judge (ALJ) employed by the Employment Department acts as a neutral factfinder, conducts the hearing and issues a written decision. ALJ decisions may be appealed to the Employment Appeals Board (EAB). Decisions of the EAB may be appealed to the Oregon Court of Appeals. Employers also have the same appeal rights as former employees.

The Oregon Employment Department's website offers information about eligibility, the waiting period, notification and claims and answers frequently asked questions. Visit the site at: <http://findit.emp.state.or.us/uiinfo.cfm>.

Summary

There are a number of issues districts need to consider before deciding to shorten the school year.

R The minimum requirement for student instructional hour;

R Contract language which bars or enables the district to take such a step;

R The obligation to bargain;

R Special education requirements;



-
- R The impact on high school seniors; and,
 - R The cost of paying unemployment insurance.

It is essential districts carefully consider the implications of these issues and consult a labor expert, attorney or human resource staff member before taking action.

*By Lisa Freiley, Oregon School Boards Association,
Director of Legal, Labor and Employment Services*