

Board of Education Special Meeting
Tuesday, March 24, 2020 6:00 PM Mountain
Dundy County Stratton High School
P.O. Box 586
400 9th Avenue West
Benkelman, NE 69021-0586

1. Call to Order and Notice of Open Meetings Act

Procedural Item

1. The Board of Education reserves the right to enter into Closed/Executive Session for 1) the protection of the public interest or 2) the prevention of needless injury to the reputation of an individual, and the individual has not requested a public meeting. When making a motion to enter into Closed/Executive Session, the member making such a request should be as specific as possible keeping the previously listed stipulation in consideration.
 2. If the Board is in agreement, a motion may be to enter into Closed/Executive Session to 1) discuss a personnel matter or 2) for the prevention of needless injury to the reputation of the individual, or 3) to discuss litigation and for the protection of the public interest.
 3. Action Concerning Matters Discussed in Executive Session.
- 2.

3. Roll Call

Procedural Item

4. Verification of publication and notice

Consent Item

To verify that notice of the meeting was given by publication in the Benkelman Post, a legal newspaper for Dundy County Stratton and by written notice to each member of the board, the designated method of giving notice.

5. Vertification of publication Passed with a motion by Jason Frederick and a second by Steve Guernsey.

- | | |
|-----------------------|---------|
| 6. Brad Baney: | 7. Yea |
| 8. Jason Frederick: | 9. Yea |
| 10. Steve Guernsey: | 11. Yea |
| 12. Nick Ladenburger: | 13. Yea |
| 14. Kent Lorens: | 15. Yea |
| 16. Toby Marlin: | 17. Yea |
| 18. Sandy Noffsinger: | 19. Yea |
| 20. Shad Stamm: | 21. Yea |
| 22. | |

23. Business meeting

Action Item

- A. Discuss consider and take all necessary action regarding the operation of the district during the coronavirus pandemic

Action Item

- B. Return to work form approved Passed with a motion by Sandy Noffsinger and a second by Nick Ladenburger.

- | | |
|----------------------|--------|
| C. Brad Baney: | D. Yea |
| E. Jason Frederick: | F. Yea |
| G. Steve Guernsey: | H. Yea |
| I. Nick Ladenburger: | J. Yea |
| K. Kent Lorens: | L. Yea |
| M. Toby Marlin: | N. Yea |
| O. Sandy Noffsinger: | P. Yea |
| Q. Shad Stamm: | R. Yea |
| S. | |

COVID-19 RESOLUTION

WHEREAS, the school district is facing closure based on the statewide outbreak of COVID-19; and

WHEREAS, the President and the Governor have declared a state of emergency, and in the event of a disaster, emergency, or civil defense emergency, each school district or educational service unit may make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes and to minimize the disruption to education services regardless of existing statutory limitations and requirements pertaining to appropriation, budgeting, or the manner of entering into contracts; and

WHEREAS, the board of education wishes to minimize disruption of the school district's operations and provide any authority necessary for the superintendent or his or her designee to take any actions necessary during the closure;

NOW, THEREFORE, be it resolved that the superintendent, in consultation with the Board President, is authorized to pay all claims and take any other action authorized by law during the emergency and any resulting school closure, which the board will review and approve once the board resumes regular operations.

[OPTIONAL: AUTHORITY TO PAY STAFF OR PROVIDE ADDITIONAL LEAVE] NOW, THEREFORE, be it further resolved that the superintendent is authorized to assign and utilize staff as necessary prior to, during, and after a closure, and to provide any leave, pay any compensation, and enter into agreements with staff for the purposes of protecting the health and safety of the school community, continuing the efficient operations of the school district, and ensuring staff return to work in the school district in the event of a closure.

Approved on _____, 2020.

Families First Coronavirus Response Act

- Effective April 2, 2020, ends December 31, 2020
- Creates two new types of ***employer-paid*** leave:

1. EMERGENCY PAID SICK LEAVE-

- ✓ available immediately (regardless how long they've been employed) for the following reasons:
 - a. Employee is subject to a government-imposed local quarantine or isolation order.
 - b. Employee has been advised by a health care provider to self-quarantine
 - c. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - d. Employee is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a health-care provider to self-quarantine.
 - e. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to Covid-19 precautions.
 - f. The employee is experiencing any other substantially similar condition specified by certain government official.
- ✓ 80 hours for full-time employees, pro-rata for part-time (avg 30 hours/week=60 hours of paid leave)
- ✓ If you can telework, you are not sick.
- ✓ School closing is not sufficient in and of itself to qualify.

2. EMERGENCY FAMILY AND MEDICAL LEAVE

- ✓ Eligible to those employees employed for 30 days
- ✓ 12 weeks total-first 10 days or two weeks are unpaid which employee would use above sick leave, next 10 weeks are paid at 2/3 regular rate of pay
- ✓ Available to those employees unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age (reasons d, e, or f above).

Unemployment

- ✓ One week waiting period eliminated
- ✓ Waives work search requirements
- ✓ *Generally*, can only receive ¼ pay and still receive benefits, but a claim would need to be filed to determine.

- ✓ Receiving unemployment benefits would cause a break in service for retirement purposes so service year credit could be lost as well as a reduction in benefits

**RETURN TO WORK AGREEMENT
IN EXCHANGE FOR LEAVE DURING COVID-19 CLOSURE**

This Agreement is made by and between Dundy County Stratton Public Schools, referred to herein as the "District," and _____, referred to herein as the "Employee."

WHEREAS, the District has closed or will soon be closing due to the outbreak of COVID-19 within the District;

WHEREAS, the District employs the Employee pursuant to a work agreement and/or employment terms contained in District Policy;

WHEREAS, the District needs quality non-instructional staff to be able to function and serve students, and those staff are difficult to recruit, retain, and train;

WITNESSETH, as the result of the District's closure due to COVID-19 and the interest of the parties to minimize its transmission, protect students and the public, and ensure that employees affected by a school closure return to service with the District afterwards, the parties agree as follows:

- 1. School Closure.** The District will be closed for a definite or indefinite period of time.
- 2. Return to Work.** The Employee is employed on an "at will" basis and could resign from his or her position at any time, without any reason, to pursue other employment or interests. In exchange for the benefits provided to the Employee by this Agreement, the Employee agrees that during the term of the District closure:
 - a. The Employee will not resign his or her position with the District;
 - b. The Employee will not seek additional employment, other than part-time, temporary employment during the closure;
 - c. The Employee agrees to return and perform all duties for the District for a period of at least six (6) months, unless otherwise allowed to resign or is terminated by the Superintendent.
- 3. Payments During Closure:** In exchange for the Employee's promises in this Agreement, the District agrees to provide the following to the Employee.
 - a. The District will provide paid leave at 2/3 (67%) of the Employee's average weekly earnings during the six-week period from January 20 to February 28, 2020.

- 4. Deductions.** Any payment made pursuant to this agreement shall conform to the statutes and regulations governing deductions from compensation and shall be subject to the School Employees Retirement Act.
- 5. Repayment.** If the Employee does not return to work for the District for at least the next six (6) months, the Employee agrees that the Employer may deduct from the Employee's pay any amounts paid pursuant to this Agreement.
- 6. Other Applicable Leave.** Employees who take leave pursuant to this Agreement and who also qualify for state or federal leave, including FMLA leave, are subject to the requirements of the school district's policy and federal laws.
- 7. Policies, Rules and Regulations.** The Employee agrees to comply with all of the District's procedural requirements to request and be granted leave.
- 8. Continued At-Will Employment.** The Employee is employed on an "at-will" bases. Regardless of any benefit or payment conferred by this Agreement, it creates no property right in continuing employment and the Employee's employment may be terminated by the District for any lawful reason, including for any misuse of the leave or payments provided herein.
- 9. Length of Agreement.** The terms of this Agreement shall remain in effect and supplement the other terms and conditions of the Employee's employment until the sooner of: (a) the conclusion of the 2019-2020 contract year; or (b) the school district receives notification from the Nebraska Commission of Education COVID-19 transmission no longer poses a public health risk to the District's population.

Employee

Executed on _____, 2020

Superintendent

Executed on _____, 2020

-->

[Welcome](#)
[Policy Service](#)
[KSBlog](#)
[Calendar](#)
[Services](#)
[Contact us](#)



[Welcome](#)
[Policy Service](#)
[KSBlog](#)
[Calendar](#)
[Services](#)
[Contact us](#)
[KSB School Law](#)
[March 14, 2020](#)

You Say You Want a RESOLUTION, Well, You Know! School Board Resolution, Authority, and Considerations under COVID-19

[KSB School Law](#)
[March 14, 2020](#)



All of KSB's guidance, sample documents, and links to key agency guidance can be found here, at our dedicated COVID-19 page: ksbschoollaw.com/covid19

We've had many requests for the webinar recording, which you can access directly from our COVID-19 site, or by following this link: [KSB COVID-19 WEBINAR](#)

During KSB's impromptu COVID-19 webinar on Friday, March 13, 2020, we proposed to circulate a sample resolution which would give the superintendent the authority to take non-discretionary actions in the event of a possible disclosure. There is also an optional provision

attempting to account for the staff leave and payment issues we discussed. You can access that resolution [here](#), and as always, you should consult with your school district's attorney and receive advice prior to adopting a resolution.

Your board may also want to consider a variety of additional issues in anticipation of a possible school closure. We have tried to come up with a list of the key COVID-19-related issues your board may also want to consider. Where we have already provided guidance on these issues, we linked it below. As always, you should consult your school district's attorney on each issue, because your existing policies, contracts and other unique situations will require customization of these resolutions for your district:

- **Leave considerations for certificated staff covered by the negotiated agreement.** As you know, the NSEA proposed an addendum to modify your negotiated agreement. KSB has also posted a modified version which requires staff to use leave provided by your negotiated agreement. [Here is our update about both addendums, your options, and other considerations.](#)
- **Leave considerations for classified staff and certificated staff not covered by the negotiated agreement.** Upon request, KSB or your school's attorney can work with you on documents you may need to provide any necessary pre-closure leave and post-closure continuation of pay and benefits to employees not paid by law. The board could consider a motion or resolution authorizing the superintendent to sign these agreements, provide paid administrative leave, or implement additional leave.
- **Authority to suspend, cancel or reschedule certain events, such as prom, graduation, and school trips.** Although we believe that the superintendent has the authority to take these steps without formal board action, it may be helpful politically if the superintendent has formal board authority to take these steps since they will likely be unpopular with at least some members of your community. [Here is guidance provided by Nebraska DHHS regarding closures.](#) It specifically suggests *not* to hold events with an expected attendance of 250 or more people prior to community transmissions and to limit gatherings to 20 or fewer after community transmissions have begun.
- **Authority to pay other non-discretionary claims.** In the event of a prolonged closure, the board may want to give the superintendent authority to make certain payments even if the board cannot or does not meet—for example service payments on a bond or payments to food vendors who are still providing items for the school's food program. The more specific this grant of authority is from the board, the less likely you will be to face a challenge from a disgruntled patron in the future.
- **Authority to assign staff as needed prior to a closure, during a closure, and after a closure.** Again, although superintendents already have the authority to assign staff as needed, this may be politically useful and will signal that staff assignments will be both unpredictable and may change without much notice. This could include assigning staff to perform certain duties at home (although be mindful that such an assignment will almost certainly convert the employee's leave day to a duty day.)
- **Authority to hire additional classified staff or contract for sanitation and other services as needed.** Many administrators have asked about authority to hire staff or contract for services in the event deep cleaning or other services are needed due to COVID-19. Most districts already have a policy conferring classified staff hiring

authority to the superintendent or his or her designee, and a policy outlining the superintendent's ability to contract for services. However, a resolution specifying this may be appreciated by your administrators.

- **Waiver of doctor's note requirements for student absences related to illness.** Many schools require a note from a physician after student absences last for "X" number of days. Given the testing limitations for COVID-19 and the public policy desire for anyone sick to stay home, your board and administration should consider suspending those types of requirements under your mandatory attendance policies for the remainder of the year. A simple motion vote could accomplish this if it is on your board's agenda.

There are certain duties which we believe that the board cannot simply delegate to the superintendent. Our quick, non-inclusive list of those items includes the following:

- **Authority to hire and/or discharge certificated staff.** By statute the board must take these actions. This includes entering into a contract with administrators.
- **Authority to waive or change credit hour requirements for graduation.** Again, this is a statutory function of your board. Although we believe you will eventually be called upon to allow your seniors to graduate with a truncated set of credits and classes, the board will be the one required to take that action.
- **Authority to open and select bids, initiate a bond or override election, or amend the district's budget.** These are core board functions that, by statute, cannot be delegated by the board of education.
- **Authority to modify your negotiated agreement.** The board must approve negotiated agreements, so although the board can approve an addendum regarding leave, it cannot delegate to the superintendent the authority to modify the negotiated agreement without board approval.

We hope these considerations are helpful. If you have any questions, please contact Karen, Steve, Bobby, Coady, or Jordan, or contact your school district's attorney.

Newer Post [Protecting Patient Zero - Maintaining Student Confidentiality While Responding to COVID-19](#)

Older Post [So You Want to Skip Your Board Meeting... Coronavirus and Board Governance](#)

Subscribe

Sign up with your email address to receive news and updates.

Email Address

Sign Up

We respect your privacy.

Thank you!
Featured



Mar 22, 2020

[A COVID-19 Legal “To Do List” and Resources, All in One Place!](#)

Mar 22, 2020

Mar 22, 2020



Mar 22, 2020

[We. Are. Faaaaamily! The Families First Coronavirus Response Act and Public Schools/ESUs](#)

Mar 22, 2020

Mar 22, 2020



Mar 19, 2020

[Q&A with KSB, Round 3!](#)

Mar 19, 2020

Mar 19, 2020



Mar 17, 2020

[Q&A with KSB, Round 2 - THIS AFTERNOON!](#)

Mar 17, 2020

Mar 17, 2020



Mar 15, 2020

[Protecting Patient Zero - Maintaining Student Confidentiality While Responding to COVID-19](#)

Mar 15, 2020

Mar 15, 2020

[**Blog archives**](#)

[Back to Top](#)

[Disclaimer](#)

**Dedicated to Excellence in Serving the Legal Needs of Public
Schools and Education Related Clients.**

© KSB School Law, PC, LLO

T. Discuss consider and take all necessary action regarding the interim superintendent contract for Rick Haney

Action Item

U. Approve the Interim Superintendent contract of Rick Haney as presented. Passed with a motion by Kent Lorens and a second by Steve Guernsey.

V. Brad Baney: W. Yea

X. Jason Frederick: Y. Yea

Z. Steve Guernsey: AA. Yea

BB. Nick Ladenburger: CC. Yea

DD. Kent Lorens: EE. Yea

FF. Toby Marlin: GG. Yea

HH. Sandy Noffsinger: II. Yea

JJ. Shad Stamm: KK. Yea

LL.

24. Adjournment

Action Item

25. Motion to Adjourn Passed with a motion by Nick Ladenburger and a second by Steve Guernsey.

26. Brad Baney: 27. Yea

28. Jason Frederick: 29. Yea

30. Steve Guernsey: 31. Yea

32. Nick Ladenburger: 33. Yea

34. Kent Lorens: 35. Yea

36. Toby Marlin: 37. Yea

38. Sandy Noffsinger: 39. Yea

40. Shad Stamm: 41. Yea

42.