In this issue

Navigating back to school

Challenges
Delays
Uncertainties
Options
KASB hires Member Engagement Director

Austin Harris said his K-12 education in Tonganoxie helped make him into who he is today and he wants to give back to public education to help students now and in the future.

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“It takes time,” Austin said, while he also noted he wants to remain as flexible as possible because of the many issues surrounding education. “It’s a crazy time right now and no one knows what is next,” he said.

In his spare time, Austin likes to build furniture and play golf, especially with his grandfather. 🏌️

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Media Specialist.

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Celebrating Public Schools

IN THIS ISSUE

6 Federal fighting
With Congress at an impasse, President Donald Trump has taken out his pen to sign executive orders. But are his orders in order and what does this mean for education?

8 Moderate meltdown
Moderate Republicans are a vanishing political breed in the Kansas Legislature. In at least 10 contests in the state House and Senate, moderate GOP candidates were defeated in the Aug. 4 primary, signaling a more pronounced conservative lean in the Statehouse.

10 COVID-19 data
KASB Data Chief Ted Carter reviews for education leaders how to access and use information about the coronavirus pandemic on the Kansas Department of Health and Environment website.

15 HIPAA questions
There are a lot of questions surrounding what school districts must do, what they can do, and what they should do concerning health and safety precautions. First and foremost, individual privacy will be extremely important.

16 FAQs on Governor’s Executive Order
The Kansas State Department of Education has put together answers to questions about Gov. Laura Kelly’s order on school operations during the pandemic.

19 AG on Governor’s Executive Order
Kansas Attorney General Derek Schmidt says local school districts can opt out of Gov. Laura Kelly’s order on masks, social distancing, temperature checks at schools.

20 More Guidance
Medical groups have weighed in with recommendations on when schools should use on-site, hybrid and remote learning.

COLUMNS

4 President’s Perspective
In riding this unprecedented roller coaster as the school year begins, let us become what we want to be -- respectful, compassionate, empathetic and courageous.

5 I’m From Kansas
The rule of the “5 whys.” When you hear a solution or a policy or an idea that someone is pitching for returning to school, wearing a mask, social-distancing, playing sports, or whatever hot-button issue you are working on, ask ‘why?’.

COVER STORY

12 Difficult choices
Local boards are facing bitter criticism – possibly up to physical threats – no matter which decisions they make for the new school year. At least some of the difference of opinion may come from the fact that Kansans are having different experiences with the COVID-19 pandemic.
Let’s stop hurrying up to wait and become the change we want to be.

The last five months have been a roller coaster as we all got in line to see how COVID-19 would impact our lives. Just like at the amusement park, our entire society has hurried in anxious anticipation to wait for the next hill or corner turned to change our course of action.

You’ve all heard that expression that epitomizes the experience we are living today. We hurry up to make a deadline and wait for the response and more data to inform detours and necessary course corrections. It’s tiresome and not going to change any time soon, but we have been elected for moments just like these. It is our response to the peaks and valleys that people will remember.

In the words of Lin-Manuel Miranda, composer of the Broadway hit Hamilton, history has its eyes on us, quite literally. For the first time, many public meetings are being live streamed and the public is standing in line to place their judgments. They too have been waiting, so they can hurry up and wait for the next protocol to be released. The problem is there is no “right” answer for everyone. We must make decisions for our neighbor’s children whether they have immune compromised systems or athletes with COVID-induced mental health concerns.

We must listen to perspectives which allow us the most comprehensive data from which decisions can be made ... and then we must weigh the risk and become the change we are asking from our state and national leaders.

To stay with the Hamilton theme, we are in the room where it happens. We have access to individual students’ stories. We have access to staff concerns who entered a profession in times where public health was not a consideration to mitigate how their gifts are utilized. We have access to public health officials on the front lines watching the virus morph over time without consistent symptoms.

We must listen to perspectives which allow us the most comprehensive data from which decisions can be made ... and then we must weigh the risk and become the change we are asking from our state and national leaders.

As everyone has an opinion and access to information from a multitude of sources, we must demonstrate the ability to use critical thinking skills and truly listen. We need to acknowledge bias and rise up. We cannot throw away our shot to show our students what true leadership looks like. We cannot make political judgments and continue categorizing complex humans into silos.

Each of our experiences inform our perceptions and we need to recognize every person is in the same seat on this COVID ride, filled with anticipation to go down that hill racing forward then suddenly whipped up and around a turn we didn’t expect.

Mutual respect at our board tables and compassion in our communities can turn the tide, one decision at a time. There is no fortune teller we can engage to tell us our future. We must write it for the common good and take our shot at making lasting change. The political climate forces us to choose between parties when we may not fit fully in either box. We aren’t tied by that system in schools. The time is now to engage families in the process of planning for their children’s future. We are in redesign, redesigning education to keep each other safe in a global pandemic without putting the brakes on education.

Let’s demonstrate empathy and courage by acknowledging our vulnerability and planning to respond to those human needs. Let’s take our shot and make it one heard around the world. Let’s start a new revolution to ensure the voices who need to be heard are amplified.

Mostly, let’s stop hurrying up to wait and become the change we want for our future.
To find out why, ask ‘why?’ again and again

“In your answer in the form of a question, please…”

Alex Trebek has played the smartest man in the world for 35 years on the popular game show Jeopardy.

Even though we all know the answers are on the cards, we somehow project on him a kind of supreme knowledge. Don’t we all tend to mislead ourselves similarly and think we could most definitely win at Jeopardy? We get the one answer out of ten but somehow remember that one and not the nine we missed. So maybe we viewers, and Alex, aren’t as smart as we think? But the thing that Alex gets right every time is he demands the answer in the form of a question.

This reminds me of a simple decision-making strategy I learned a long time ago. When I first learned it, I didn’t realize that I was annoying the heck out of my parents. When my own kids discovered the strategy, it was clear just how effective and annoying it could be. Later, some professor coined the approach as “5-whys,” probably wrote a book, and made a little walking-around money.

Why? Why? Why? Why? Why? It is how kids learn and a strategy that we should consider using in these complicated times when there is no best solution. When there are no 100 percent right solutions, it is time to ask a lot of questions.

When you hear a solution, or a policy, or an idea that someone is pitching for returning to school, wearing a mask, social-distancing, playing sports, or whatever hot-button issue you are working on right now, ask ‘why?’

In this age of TV pundits telling us what we should think, news delivery systems designed to reinforce our thinking, and shouting down echo chambers, school leaders are forced to make decisions that do two things:

1. Assure the health and safety of children and staff;
2. Assure that children learn the knowledge and skills they need to be successful adults.

This is not a time for echo chambers, Facebook research, or YouTube solutions. It is a time to be inquisitive and not dogmatic, to seek first to understand, then to be understood. It is time to search for answers by breaking down barriers, not drawing lines in the sand.

As you embark on your mission of inquiry, keep some of the questions we learn in high school debate class in mind:

- What is your evidence? What conclusion did the author or researcher reach? Who is reporting the information? What are the author or researcher’s credentials? And of course, why did the author or researcher reach that conclusion. Did you learn from that “fact” from the Journal of the American Medical Association or your high school buddy’s Facebook post? (Unless of course your high school buddy is an eminent virologist who publishes in the JAMA.)

My challenge to you is to return to your 2-year-old self, or if it makes you feel better, we can call it the Alex Trebek approach -- give your answer in the form of a question: “why?”

When you hear a solution, or a policy, or an idea that someone is pitching for returning to school, wearing a mask, social-distancing, playing sports, or whatever hot-button issue you are working on right now, ask why? Then ask why again. And again. And again.

Guaranteed to annoy your friends, neighbors, and colleagues and guaranteed to help you question your own beliefs. Don’t forget the what, how, and the who, but start with the why.

One last thing -- watch how gracious Alex is when someone gets it wrong. 🎎
Congress at odds over COVID relief

By Leah Fliter, lfliter@kasb.org

Congressional negotiations to produce a new stimulus bill that could include billions of dollars in new funding to help K-12 schools have stalled as Kansas school districts grapple with the costs of reopening buildings during the COVID-19 pandemic.

President Donald Trump has reacted to the stalemate by issuing Executive Orders on student loan repayment, unemployment compensation, evictions, and payroll tax deferrals, but those could be modified or rejected by Congress.

Meanwhile, a joint study by the national superintendents and school business officers’ organizations estimates the average U.S. school district could spend up to $1.7 million in previously-unbudgeted costs to safely reopen schools, and members of Congress will soon return to their home districts to campaign for re-election. KASB continues to monitor the stimulus negotiations.

Competing proposals

The U.S. House passed its version of a stimulus bill, entitled the HEROES (Health and Economic Recovery Omnibus Emergency Solutions) Act, in May. The bill offers $3 trillion in overall funding, with $58 billion earmarked to K-12 schools. Because the House is controlled by members of the Democratic Party, the HEROES Act is often referred to as the “Democratic proposal.”

The HEROES Act includes $1.5 billion to help close the “homework gap” for students who do not have reliable access to broadband internet service.

KASB, the National School Boards Association and other partners support $4 billion in homework gap funds. Kansas school leaders tell KASB that aside from concerns about student and staff health and safety, their next biggest concern about reopening school buildings is lack of student access to broadband internet service. You can read more about the continuing nationwide push here and here.

The HEROES Act rejects Education Secretary Betsy DeVos’ rule that could change how school districts allocate Title I funds to their local private schools. KASB opposes the DeVos rule and has filed comments to that effect. Read more here.

The U.S. Senate, which is controlled by the Republican Party, has introduced the HEALS (Health, Economic Assistance, Liability Protection and Schools) Act. This “Republican proposal” spends $1 trillion overall with $70 billion pegged for K-12. It conditions the amount of aid a school district would receive on its plans to reopen. Districts reopening fully in person would receive full HEALS funding; those with at least 50 percent would receive half-funding; those choosing to open fully remotely would receive no funding. KASB and NSBA oppose this provision because local school boards are the best arbiters of reopening decisions.

The Senate bill includes no homework gap funding. It does not address the DeVos private school Title I funding rule.
The Senate bill does, however, create a new voucher program entitled “Education Freedom Scholarships” funded through an as-yet-unidentified, one-time appropriation giving funds to parents to use for educational expenses including homeschooling and private schooling. KASB opposes vouchers, tuition tax credits or “choice” plans to aid private elementary or secondary schools which are not subject to the same legal requirements as public-school districts.

Please watch KASB’s News Briefs and social media channels for the latest updates on negotiations. 🚀

<table>
<thead>
<tr>
<th>COMPARISON OF HEROES ACT, HEALS ACT AND KASB/NSBA POSITIONS, CHART ADAPTED FROM ASA</th>
<th>HOUSE DEMS (HEROES)</th>
<th>SENATE GOP BILL (HEALS)</th>
<th>KASB/NSBA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONEY FOR K-12</td>
<td>$58 billion</td>
<td>$70 billion</td>
<td>Schools need at least $175 billion</td>
</tr>
<tr>
<td>DISTRIBUTION MECHANISM</td>
<td>63% on the state’s relative share of the population aged 5–24 and 39% on the state’s relative number of low-income children</td>
<td>60% population and 40% based on Title I share</td>
<td></td>
</tr>
<tr>
<td>MAINTENANCE OF EFFORT PROVISIONS</td>
<td>States must give “assurances” that they will provide at least as much funding for K–12 as a percentage of total state spending, in fiscal years 2020, 2021, and 2022 as they did in fiscal year 2019 or For K–12 in fiscal years 2020, 2021, and 2022 as the average funding level across the previous three fiscal years.</td>
<td>States must maintain K-12 funding as a proportion of funding for this year equivalent to the portion they spent in FY19</td>
<td></td>
</tr>
<tr>
<td>IDEA SUPPLEMENTAL FUNDING</td>
<td>None</td>
<td>None</td>
<td>Support at least $13 billion in IDEA funding for 2020-21 school year.</td>
</tr>
<tr>
<td>IDEA IMPLEMENTATION FLEXIBILITY</td>
<td>None</td>
<td>None</td>
<td>Support temporary, targeted flexibility</td>
</tr>
<tr>
<td>HOMEWORK GAP FUNDING</td>
<td>$1.5 billion distributed through FCC, net necc. E-Rate</td>
<td>None</td>
<td>Support $4 billion allocated through existing federal E-rate program</td>
</tr>
<tr>
<td>USE OF CARES FUNDS BY DEPT OF ED</td>
<td>Reverses Education Department rule on equitable services and requires implementation to be as under Title I includes new limitations on the Secretary’s ability to establish priorities, preferences, or restrictions on the use of funds that are not outlined in the HEROES Act</td>
<td>No fixes.</td>
<td>Oppose Equitable Services rule</td>
</tr>
<tr>
<td>FUNDING FOR PRIVATE SCHOOLS</td>
<td>Private schools are eligible for funding from the first portion and later portions of funding. Creates a new voucher program called “Education Freedom Scholarships” modeled on DeVos voucher plan except that it does not create a new federal tax credit it just gives money as a one-time appropriation. Money can be spent on any educational expense (private school, homeschool, etc.).</td>
<td>Oppose vouchers, tax credits and other “choice” programs for private schools not subject to the same legal requirements as public schools.</td>
<td></td>
</tr>
<tr>
<td>LIABILITY PROTECTIONS FOR DISTRICTS</td>
<td>None</td>
<td>Governor will receive a plan from LEA on how they will physically reopen. Upon receipt of the funds, State would award funding to LEAs according to re-opening status. A district that has at least 50% in-person instruction would be eligible automatically for funding. A district that does not provide in-person instruction to any students will not be eligible for any funding. A district that offers hybrid learning options to less than 50% of students would have funding determined on a pro-rata basis.</td>
<td>Oppose conditioning funding on reopening status. Favor local control.</td>
</tr>
<tr>
<td>FUNDING BASED ON REOPENING STATUS</td>
<td>None</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Kansas state primary election results indicate a conservative shift ahead

By Mark Tallman, mtallman@kasb.org

The 2020 primary election results indicate a conservative shift among state Senate and House Republicans, with a number of moderates losing races.

In general, conservative Republicans in the Legislature have sought less state spending, which could include school funding; more support for funding non-public school programs, such as vouchers; more opposition to the policies of Democratic Governor Laura Kelly and more support for constitutional amendments that could limit the judiciary in school funding issues.

State Senate

Seven incumbent Republican state senators were defeated. Six were viewed as moderates. All were elected four years ago and helped repeal the income tax cuts supported by Republican Gov. Sam Brownback and passed by a more conservative Legislature.


Fagg, Straub, Claeys and Peck have no Democrats filed to run against them in the general election, so are almost certainly going to the Senate (unless something changes when vote totals are finalized).

House of Representatives


State Board of Education

Former Kansas House member and Johnson County Community College Trustee Benjamin Hodge won the Republican nomination to replace Steve Roberts, who did not run for reelection, defeating JCCC professor David Krug. He will face Democrat Melanie Haas in the general election.

Republican State Board Chair Kathy Busch won over Trish Hileman in Wichita, and will face Democrat Betty Arnold, former member of the Wichita USD 259 Board of Education.

Three other state board members, Democrat Ann Mah, Topeka, and Republicans Deena Horst, Salina, and Jim McNiece, Wichita, have no opposition at this time for the general election.
KASB seeks applications for president-elect designee

The KASB Nominating Committee is seeking applications for nominations to serve as KASB president-elect designee.

Applications must be emailed or postmarked by 5 p.m. Aug. 28. The position will be up for election at the annual KASB Convention in December. Candidates will be scheduled for a one-hour interview by the Nominating Committee on Sept. 12. All interviews and deliberations are confidential.

The president-elect designee serves as an ex-officio, non-voting member of the board of directors until assuming the office of president-elect. The KASB board of directors meets five times a year with most meetings held at the KASB office in Topeka. The president-elect designee participates in the NSBA Federal Relations Network and NSBA Leadership Conference.

How does the census impact K-12 education funding?

46.4% of public school children in Kansas are enrolled in the free or reduced price lunch program (2017 - 2018).


Kansas received over $137 million for school breakfast and lunch programs in FY2016.

Source: GW University, Counting for Dollars, National School Lunch Program $106,497,000, National School Breakfast Program $31,271,000

Title 1 is the largest federal aid program for public schools. Local educational agencies in Kansas received $109 million in Title 1 grants in FY2016.

Source: GW University, Counting for Dollars, Title 1 Grants to LEAs: $109,134,862.

Click the graphic above to visit the #2020Census form. The Census determines Ks special ed funding, Title 1 grants, and more. Send your families to http://my2020census.gov. Deadline has been extended to Sept. 30.
How to use KDHE’s coronavirus data

Identifying COVID-19 statistics for your area

As we move into the fall and continue to work through the challenges of opening schools, it is important to have consistent, reliable data to work with. The Kansas Department of Health and Environment has created a website with current information on COVID-19 in Kansas. This article will review how to access and use this information.

The KDHE Coronavirus (COVID-19) Response site can be found at https://www.coronavirus.kdheks.gov/. The site includes the following sections:

• **COVID-19 Cases in Kansas**
  This page shows the actual number of tests, cases, and deaths by county.

• **A Plan to Reopen Kansas**
  This page includes resources for healthcare providers, FAQs, toolkits, and several other valuable resources.

• **Travel Information**
  This page information related to traveling into and out of Kansas.

• **Testing for COVID-19**
  This page includes information on Kansas’ testing strategy and related resources.

In this article, we focus on the COVID-19 Cases in Kansas page, however we encourage you to spend some time on the other pages to see what information and resources are available.
(Please note that the later chart uses a charting method that many, including myself, consider a questionable practice; it displays two different vertical axes on top of one another, which can be misleading. For more on this, check out this blog post: https://blog.datawrapper.de/dualaxis/)

The Cases listed are cumulative and do not reflect the current active cases. The colors on the map indicate whether cases are remaining fairly constant (grey), or if they are increasing (darker blue indicates higher increases).

By default, the page shows statistics for the state as a whole. However, clicking on a county will update the charts below and the summary info above to represent just that county.

Once you have selected your county and the charts have updated, you can download them as PowerPoint Slides, a PDF, or an image file by clicking on the download icon in the lower right corner of the page:

In addition to this information which can be filtered down by county, there are charts and graphs for the following:

- Hospital Capacity
- Reopen Kansas Metrics
- Case Characteristics
- Case Rates
- Testing Rates
- Cluster Summary
- Hospital Summary
- Death Summary

These additional charts are all at the state level and do not provide county breakdowns, except for the Case Rates and Testing Rates pages, which includes cases by county. Many of these can be downloaded using the instructions provided above as well.

For more on KDHE’s COVID statistics, click here to watch KASB’s Lunch and Learn from August 5th, where KDHE’s Ashley Goss reviewed the site, how to use the data, and which statistics are likely to be the most useful.
Questions about when and how to reopen Kansas schools this fall – and how to keep them operating – have become perhaps the most contentious issues this generation of Kansas school leaders have ever faced.

The State Board of Education’s vote on whether to approve Governor Laura Kelly’s plan to delay all schools’ start dates until after Labor Day created more than 1,000 pages of public comment and tens of thousands of individual responses on the State Department of Education webpage. Local boards are facing bitter criticism – possibly up to physical threats – no matter which decisions they make.

At least some of the difference of opinion may come from the fact that Kansans are having different experiences with the COVID-19 pandemic. To explore those differences, KASB looked at the multiple ways the pandemic is measured, and the geographic variances across the state.

First, let’s look at the statewide trends. Since the first cases were reported in early March, nearly 29,000 Kansans have been diagnosed with COVID-19, with about half of those added since the end of June. That means about 1 percent of the state’s population has been reported with the disease. According to national data, that ranks Kansas about 33rd among the 50 states in COVID cases based on population.

But there are big differences among Kansas counties in COVID. In early August, statewide there were just under 10 cases per 1,000 Kansans. Six counties (Ford 63.1 cases per thousand, Seward 52.6, Finney 45.4, Clark, 22.1, Wyandotte 28.5, and Lyon 19.6) are double the state average or higher. Nine counties had rates between 10 and 20 percent.
Among the other state’s largest counties, the number of cases are higher because of large populations, but the case rate per 1,000 is below the state average (Johnson 8.7, Sedgwick 8.7, Shawnee 8.2 and Douglas 5.6).

On the other hand, 64 of 105 counties had less than 5 cases per 1,000.

Case rates per population show the cumulative impact of the pandemic in an area since it began, but not how fast cases are currently changing. The State Board of Education’s Navigating Change school reopening guidance suggests that whether schools open for all students onsite, use a hybrid of onsite and remote learning or have all students learning remotely should be based on the trend in cases; whether they are rising, declining or holding steady.

The Kansas Department of Health and Environment COVID cases website provides information on daily new cases for each county going back to the beginning, and the “Reopening Kansas Metrics” provide a trendline or the previous two weeks (with some lag in reporting).

Between July 15 and July 26, daily new case rates in Kansas were actually trending down, from about 16 per 100,000 to 8 per 100,00. Among the largest counties, most were also declining or steady. In many of the smallest counties, “steady” means less than a handful of cases over a two-week period. Determining trends can be difficult because the number of relatively small.

The KDHE website also provides trend data on hospitalizations and deaths. Tracking new hospital admissions by date over the last two weeks in July saw a downward trend from an average of about 13 to 10, and new deaths basically steady at around 3 per day statewide. Those numbers are too few to provide meaningful trend data in most counties.

Yet another measure is the rate of positive tests. Statewide, about 10 percent of those tested are positive. KDHE data provides daily results of both the number of positive and negative tests and the percent positive, statewide and for each county.

From June 23 to July 28, among the larger counties, Sedgwick, Wyandotte had positive test rates greater than 10 percent most days and some days over 15 percent.

In Shawnee, Douglas and Johnson, most days were between 5 and 10 percent positive.

In a sample of smaller districts, most days had either zero percent or no tests reported, with just occasional days higher than 10 percent.

Continued on page 14
None of these metrics or restrictions are currently required. Local school boards will make these decisions unless superseded by a state or local health order. Local boards are weighing several factors.

One is the balance between health concerns for students and staff and the evidence that many children do not do as well academically or emotionally in a remote learning environment. Another is weighting the current local circumstances against that concerns that a pandemic can quickly emerge in different areas. A third is determining which criteria to use, especially when different measures may point to different actions. The actual number of students and staff who decide to return to school versus those who decide to stay home, retire, resign or seek reassignment or take leave may determine how schools actually operate.

Finally, it is important for school leaders to understand that any decisions they make may be subject to change very quickly based on the course of the pandemic in each community.

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**Difficult decisions**

*Continued from page 13*

None of these metrics or restrictions are currently required. Local school boards will make these decisions unless superseded by a state or local health order. Local boards are weighing several factors.

One is the balance between health concerns for students and staff and the evidence that many children do not do as well academically or emotionally in a remote learning environment. Another is weighting the current local circumstances against that concerns that a pandemic can quickly emerge in different areas. A third is determining which criteria to use, especially when different measures may point to different actions. The actual number of students and staff who decide to return to school versus those who decide to stay home, retire, resign or seek reassignment or take leave may determine how schools actually operate.

Finally, it is important for school leaders to understand that any decisions they make may be subject to change very quickly based on the course of the pandemic in each community.
Addressing the HIPAA in the room

With the Governor’s Executive Order 20-59 and the Kansas State Department of Education’s (KSDE) guidance, there are a lot of questions surrounding what district must do, what they can do, and what they should do concerning health and safety precautions. Taking temperatures of student and staff is one of these issues. If you are a district that will be taking temperatures, there are some things that you should keep in mind when choosing a method.

First and foremost, individual privacy will be extremely important. For students, we have to keep in mind the federal and state laws that protect educational records (FERPA) and biological information (Kansas Student Data Privacy Act). For employees, we have privacy interests that we also have to consider. But the question that has been asked more frequently since temperature discussions have started is where the Health Information Portability and Accountability Act (HIPAA) fits into the conversation.

Generally speaking, public school districts and community and technical colleges are not covered entities under the HIPAA. Because of the nature of school districts and the fact that they do not typically maintain PHI, or they do not conduct “transactions” with any PHI they may have, and therefore do not fall under the definition of a covered entity. To review the HHS guidance, go here. However, although districts and community and technical colleges do not generally fall under the definition in normal conditions, they can put themselves under the definition through certain actions such as temperature checks. If districts want to avoid finding themselves with potential HIPAA violations as a covered entity, consider the following:

1. Privacy is important while conducting temperature checks.
   a. when and where are the checks performed?
   b. Who is present when the checks are performed?
   c. How will unacceptable temperature ranges be communicated?
   d. How will temperature logs be maintained and secured?
   e. How will information be communicated to students and parents/guardians?

2. Who is performing the check?
   a. Nurses are medical professionals and may inch you closer to being a covered entity.

3. Communicating all the aforementioned information with parents/guardians.

Should you have any specific questions concerning what methods your district is using, please contact KASB attorney, Sam Blasi at sblasi@kasb.org.
Frequently Asked Questions

Executive Order 20-59

Updated August 6, 2020

Do county commissioners or local boards of education have the authority to amend or overturn the requirements in Executive Order 20-59?
Legal opinions differ on this question. The Kansas State Department of Education recommends at a minimum that schools implement the Navigating Change 2020 guidance.

Where should K-12 public and private schools require that all students, faculty, staff, vendors and other visitors cover their mouth and nose with a mask?
K-12 public and private schools shall require all students, faculty, staff, vendors and other visitors cover their mouth and nose with a mask or other face covering as defined in Executive Order 20-59 in all public or private K-12 school attendance centers. This includes any location where students attend school – whether the building is owned and operated by the district or not. This does not include locations where students may visit for field trips. Executive Order 20-59 outlines eight exceptions to this requirement.

Does Executive Order 20-59 apply to 3- and 4-year-old pre-k students?
Yes, if those students are enrolled in a location that is a K-12 attendance center. Preschool students are students, so they must wear masks while in public or private K-12 school attendance centers. Children who are NOT students and who are 5 years of age or under are exempt from this requirement.

If the pre-k student is enrolled in a separate building that is only used for early childhood programming (does not include any elementary students), Executive Order 20-59 does not require them to wear a mask.

Early childhood administrators may consider resources to engage families, such as https://conscioussubject.com/e-learning/webinars/four-ways-to-help-with-mask-wearing/. Administrators might also connect with community Head Start programs and other early

Kansas leads the world in the success of each student.
childhood programs that have continued providing services during the pandemic to discuss successful strategies and lessons learned.

**Are masks required while students attend physical education class or engage in physical activity?**

1(c) exempts the wearing of masks while engaged in an activity during which it is unsafe or impossible to wear a mask or other face covering.

**Are students with special health care needs required to wear masks?**

1(e) exempts persons with a medical condition, mental health condition, or disability that prevents wearing a face covering – this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. 1(f) exempts persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.

For further frequently asked questions pertaining to special education legal requirements and this exemption, please consult School Year 2020-21 KSDE Guidance on Compliance with the Individuals with Disabilities Education Act and the Kansas Special Education for Exceptional Children Act for Re-Opening Schools during the COVID-19 Pandemic.

**Can students remove masks in classrooms if they are six feet apart?**

No. Executive Order 20-59 does not provide for a time to not wear the masks while in a classroom unless one of the eight exemptions apply. Paragraph 2 requires individuals to maintain a 6-foot distance from other individuals with only infrequent or incidental moments of close proximity EXCEPT during in-person instruction in classrooms when masks or other face coverings are worn.

**Are students still required to social distance while eating?**

Yes.

**Is there a difference between hand washing and using hand sanitizer?**

Executive Order 20-59 does not specify how hands must be sanitized. Students and faculty shall sanitize their hands at regular intervals throughout the school day and no less than once per hour.

*Kansas leads the world in the success of each student.*
Executive Order 20-59 Frequently Asked Questions – August 6, 2020

Can we take students’ temperatures prior to boarding a bus?
Yes, temperatures can be taken at any time prior to entering the building for the first time each day.

Districts may consider providing thermometers to families and educate them about screening for COVID-19 symptoms to avoid requiring parents to come pick up students exhibiting symptoms.

Can we take students’ temperatures in the hallway prior to entering the classroom?
No, temperatures must be taken prior to entering the building for the first time each day.

Are schools required to maintain records of students’ temperatures?
No, there is no requirement to document the students’ temperatures.

The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, sex, disability or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 S.W. Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.
AG: schools can opt out of governor’s order

By Mark Tallman, mtallman@kasb.org

Attorney General Derek Schmidt has issued a formal opinion that county commissions can modify or repeal Gov. Laura Kelly’s executive order dealing with masks and other requirements in K-12 schools, and that local school boards can make their own decisions in those areas.

On July 20, Kelly issued executive order 20-59, which requires all K-12 schools, public and private, to follow four requirements to mitigate the spread of COVID-19: masks or face coverings for all persons with limited exceptions, social distancing in most areas of the school, and hand sanitizing and temperature checks for all persons upon first entering school. It took effect Monday.

A group of state legislators asked the Attorney General whether counties and school boards can modify or opt out of the Governor’s order. Although the new opinion is not a ruling by a court, it could be influential in whether the order is actually enforced, because enforcement of such executive orders is the responsibility of local district or county attorneys, or the attorney general’s office.

Regarding counties, the opinion notes that during the special session, the 2020 Legislature amended state law to allow, until January 26, 2021, the board of county commissioners of any county to issue an order relating to public health that contains provisions that are less stringent than the provisions of a statewide executive order issued by the Governor. For example, a number of counties voted to opt out of or modify the Governor’s general order requiring masks to be worn in public.

The Attorney General says that the Governor’s school order is clearly a statewide order concerning public health, and that counties may modify the order if their commissions follow procedures required by state law, including a finding that, after consultation with local health officials, “implementation of the full scope of the provisions in the governor’s executive order are not necessary to protect the public health and safety of the county.”

Concerning school districts, the attorney general noted that under the Kansas Constitution, “Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards,” and that the Legislature has statutorily granted school boards powers commonly referred to as “home rule.”

K.S.A. 2019 Supp. 72-1138, states in part: “(e)(1) The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools. (2) The power granted by this subsection shall not be construed to relieve a board from compliance with state law.”

The new opinion states that requirements included in Executive Order 20-59, such as wearing masks, social distancing, washing hands, and temperature takings, appear to be matters that fall within the local school board’s authority to “adopt policies” appropriate to maintain, develop and operate local public schools. “(2) The power granted by this subsection shall not be construed to relieve a board from compliance with state law.”

The opinion then says that E.O. 20-59 does not properly apply to school districts because the order does not comply with several provisions of the state law giving the Governor to authority adopt such orders. The emergency management law requires the Governor to specify which statutes are being suspended by an executive order, and E.O. 20-59 does not specify that it is overriding school home rule authority. In addition, the Attorney General says it does not appear that school board home rule authority is the kind of law can be overridden by the Governor under the emergency management powers granted by the Legislature.

Although the new opinion is not a ruling by a court, it could be influential in whether the order is actually enforced, because enforcement of such executive orders is the responsibility of local district or county attorneys, or the attorney general’s office.
New COVID-19 guidance for schools

By Mark Tallman, mtallman@kasb.org

The Kansas State Board of Education has accepted a new set of criteria local district officials can use to determine when schools should be open for onsite learning and other activities based on trends in COVID-19 cases.

The “Kansas School Gating Criteria” document was put together with input from the University of Kansas Pediatrics, Kansas Academy of Family Physicians, Kansas Chapter of the American Academy of Pediatrics, Kansas Department of Health and Environment and education leaders who headed committees that produced KSDE’s Navigating Change guidelines.

The new medical guidance suggests that the learning model (onsite, hybrid or remote), student activities and access to schools for spectators, visitors, and playgrounds should be determined by considering “gating” criteria and assigns one of four colors for each: green, yellow, orange and red, with red the highest risk level.

Kansas Education Commissioner Randy Watson emphasized the guidance were recommendations and that the final decisions would be made locally.

The gating criteria are:

1) Student Absenteeism. Based on school building level of absenteeism compared to the average daily attendance last year, 2019-20 (for example, 95%). Green: absenteeism rate less than 3 percent above last year’s baseline; Yellow: 3-6 percent above last year’s baseline; Orange: 6-9 percent above last year’s baseline; Red: more than 10 percent above last year’s baseline.

2) Positive Test Rate. Two-week county percent of positive tests out of all tests performed. Green: equal to or less than 5 percent positive; Yellow: between 5.1 and 9.9 percent; Orange: between 10 and 14.9 percent; Red: equal to or over 15 percent.*

3) Incident Rate. Two-week cumulative county incident rate (the number of new cases per 100,000 population). For example, 15 cases in a county of 50,000 would equal 30 cases in a county of 100,000, or one case for a county of 4,000 would equal 25 cases in a county of 100,000. Green: 0-50 new cases per 100,000; Yellow: 51-100 new cases; Orange: 101 to 150 new cases; Red: 151 or more new cases.*

4) Trend in Incident Rate. Whether the county incident rate is decreasing, stable or increasing. Green: decreasing; Yellow: stable; Orange: stable; Red: increasing.*

5) Local or referring hospital capacity. Green: more than 30 percent capacity; Yellow: more than 20 percent capacity; Orange: more than 10 percent capacity; Red: less than 10 percent capacity at local or referring hospitals.

* Data available on Kansas Department of Health and Environment COVID information page.

Based on these criteria, local school leaders can determine an overall risk level by color. The guidance recommends the following learning environments and restrictions based on those factors.

1) Learning Environment for students

- Green: Onsite allowed for all.
- Yellow: On-site for grades PK-5 and Hybrid (part time onsite, part time remote) for 6-12.
- Orange: Hybrid for grades PK-5 and Remote Only for 6-12
- Red: All grades Remote Only.

2) School Activities

- Green: Onsite following Navigating Change guidelines. Facilities should limit capacity to allow for six-foot social distance.
- Yellow: No “all school” activities. Small group activities limited, masks and social distancing required, stable groups with limited numbers. No high-risk activities. No group travel, conditioning/practice may continue with modifications.
- Orange and Red: remote only.

3) Spectators and Audience

- Green: Onsite following Navigating Change guidelines. Facilities should limit capacity to allow for six-foot social distance.
- Yellow: Allowed. Distancing by household groups; masked if indoors. 6’ social distancing required; total group numbers limited per guidelines.
- Orange and Red: Remote only.

4) Visitor Access

- Green: Onsite following Navigating Change guidelines.
guidelines. Facilities should limit capacity to allow for six-foot social distance.

- Yellow: Limited, by appointment. Masks and social distancing required; building access requirements must be met.
- Orange: Extremely limited, by appointment. Masks and social distancing required; building access requirements must be met.
- Red: None allowed.

### 5) Playgrounds

- Green: Onsite following Navigating Change guidelines. Facilities should limit capacity to allow for six-foot social distance.
- Yellow: Open. Capacity to allow for 6’ social distancing; total group numbers limited per guidelines.
- Orange: Open. Capacity to allow for 6’ social distancing; masks required if less than 6’ social distance maintained; total group numbers limited per guidelines.
- Red: Closed.

All of these recommendations are subject to change based on actions of federal, state, county and local authorities.

The guidance also offers strategies to consider to promote full time onsite learning for K-5 students:

**Students should be grouped together in cohorts of less than 15 students per group.**

1. Either have class sizes with less than 15 students per class,
2. OR have separate cohorts within classes of less than 15 students per cohort with adequate physical distancing between cohorts and no mixing of groups other than the teacher.

**Safe but unused facilities within the district and community should be utilized to spread out students.**

3. Middle and high school buildings should be utilized when those students are learning remotely.
4. Sports and recreation facilities should be utilized when otherwise not in use.
5. Outside areas should be utilized weather permitting.
6. Schools should work with their community to utilize additional community locations to space out students for on-site education. This may include community buildings, churches, restaurants, etc.
7. Locations should be consistent between classes/cohorts.

**Nurses, special education teachers, administrators, and other staff should work in teams and be prepared to travel between sites as needed to provide services.**

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### School Activities

<table>
<thead>
<tr>
<th>Green</th>
<th>Yellow</th>
<th>Orange</th>
<th>Red</th>
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</thead>
<tbody>
<tr>
<td>On-Site following Navigating Change guidelines. Facilities should limit capacity to allow for 6’ social distancing.</td>
<td>No all school activities. Small group activities limited; masks and social distancing required; stable groups with limited group numbers. <strong>No high risk activities.</strong> No group travel. Conditioning/practice may continue with modifications</td>
<td>Remote Only</td>
<td>Remote Only</td>
</tr>
</tbody>
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August 2020 21