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July 13, 2020

Emily F. Kirby  
Special Counsel  
Office of Governor Roy Cooper  
20301 Mail Service Center  
Raleigh, North Carolina 27699-0301

RE: Advisory Letter regarding certain provisions of S.L. 2020-49, which rewrote, in part, S.L. 2020-3

Dear Ms. Kirby:

On July 12, 2020, you asked for an advisory letter from this office addressing whether Section 3.(b) of Session Law 2020-49, which rewrote, in part, Session Law 2020-3, prevents public schools from holding remote learning between August 17, 2020 and August 24, 2020, *i.e.*, the first week after schools open on August 17, 2020. Underpinning your questions is language in Session Law 2020-49 concerning modifications to the 2020-2021 school calendar and the scheduling of remote learning days. Several provisions of the session laws are particularly relevant to the questions you raised.

First, S.L. 2020-3, Section 2.11.(a), in relevant part, states:

The governing body of each public school unit shall develop a Remote Instruction Plan (Plan) for the 2020-2021 school year and shall submit its Plan to the State Board no later than July 20, 2020. The purpose of the Plan is to provide a detailed framework for delivering quality remote instruction to all students within the public school unit during the 2020-2021 school year, as provided in subsection (b) of this section. In describing how the public school unit will implement remote instruction, the Plan shall address all of the following ...

Second, S.L. 2020-3, Section 2.11.(b)(1), as rewritten by S.L. 2020-49, Section 3.(b), states:

[E]ach public school unit shall adopt a calendar that includes 190 days of instruction as follows:

- a. 185 days or 1,025 hours of instruction that include five remote instruction days in accordance with the Plan developed pursuant to subsection (a) of this section. Each of the five remote instruction days may be scheduled in the discretion of the public school unit, except as provided in subdivision (2) of this subsection.
- b. An additional five instructional days that shall be satisfied only by five individually separate and distinct full instructional days and not by an accumulation of instructional hours.

Third, S.L. 2020-3, Section 2.11.(b)(2)c., as rewritten by S.L. 2020-49, Section 3.(b), states:

No remote instruction day shall be scheduled prior to August 24, 2020, unless the school operates on a year-round or modified calendar schedule. A year-round or modified calendar school shall not schedule a remote instruction day prior to the sixth instructional day of the year-round or modified calendar.

Fourth, S.L. 2020-3, Section 2.11.(b)(3), as rewritten by S.L. 2020-49, Section 3.(b), states:

If the governing board of a public school unit determines that additional remote instruction beyond the five days required by subdivision (1) of this subsection is needed to ensure the health and safety of students, a public school unit may provide remote instruction in accordance with the Plan developed pursuant to subsection (a) of this section as necessary to satisfy instructional time requirements.

Implicit in your request for an advisory letter is the question of whether the authority granted to local boards of education in Section 2.11.(b)(3), supersedes the limitations in Section 2.11.(b)(2)c., which prohibits local boards of education from scheduling remote instruction days prior to August 24, 2020. After reviewing the relevant provisions of Session Law 2020-3, Session Law 2020-49, and the legislative history of Section 2.11.(b)(3), it is my opinion that S.L. 2020-3, Section 2.11.(b)(3), as rewritten by S.L. 2020-49, Section 3.(b), permits remote instruction days prior to August 24, 2020.

Because legislative intent controls the interpretation of a statute, the starting point for my analysis was determining the intent of the General Assembly in enacting Session Laws 2020-3 and 2020-49. *Burgess v. Your House of Raleigh*, 326 N.C. 205, 209 (1990). “A statute must be construed in light of the purpose to be accomplished.” *In re Filing by Fire Ins. Rating Bureau*, 275 N.C. 15, 34 (1996). Where the language of a statute is clear and unambiguous, one must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms. *Hylar v. GTE Prods. Co.*, 333 N.C. 258, 262 (1993). A construction which will defeat or impair the object of a statute must be avoided if that reasonably can be done

without violence to the legislative language; and where possible, statutes should be given a construction which, when practically applied, will tend to suppress the evil which the legislature intended to prevent. *In re Hardy*, 294 N.C. 90, 96, 240 S.E.2d 367 (1978). The title of an act may be considered in determining legislative intent. *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 90 (1992). As noted above, S.L. 2020-49 (“AN ACT TO ...MAKE MODIFICATIONS TO THE 2020-2021 SCHOOL CALENDAR REQUIREMENTS TO EXPAND THE USE OF REMOTE LEARNING DAYS ...”), rewrote, in part, S.L. 2020-3 (“AN ACT TO PROVIDE AID TO NORTH CAROLINIANS IN RESPONSE TO THE CORONAVIRUS DISEASE 2019 (COVID-19) CRISIS”).

In my view, it is clear that through the enactment of Session Laws 2020-3 and 2020-49, the General Assembly intended to address concerns about the threat caused by COVID-19 to the health of students, teachers, and staff in our public schools if students, teachers, and staff are required to be physically present in brick-and-mortar classrooms to receive and deliver instruction. For example, Session Law 2020-3, Section 2.2, explicitly states, “The purpose of this Part is to clarify or modify certain requirements in consideration of actions and circumstances related to the COVID-19 emergency, including, but not limited to, the federal testing waiver and the closure of schools for in-person instruction during the 2019-2020 school year.” To that end, for the upcoming school year, S.L. 2020-3, Section 2.11.(a), requires local boards of education to develop Remote Instructional Plans which must detail a framework to be used by the public school unit for delivering quality remote instruction to all students during the 2020-2021 school year. Although not defined, it is evident that “remote instruction” means instruction using online and offline instructional resources and technology to deliver a quality education to students without in-person instruction. *See e.g.*, S.L. 2020-3, Section 2.11.(a)(2) (“The Plan shall identify any learning management system, online instructional resource, or offline instructional resource that will be made available to all students in a grade-level across the public school unit.”)

Session Law 2020-3, Section 2.11.(b), then directs local boards of education to include five remote instruction days into a 215-day school calendar that has August 17, 2020, as the opening date for students and a closing date for students no later than June 11, 2021. *See* S.L. 2020-3, Section 2.11.(b)(1) and (2)a.-c. That subdivision also gives local boards of education discretion in scheduling those remote instruction days, provided they abide by the restrictions in S.L. 2020-3, Section 2.11.(b)(2). *See* S.L. 2020-3, Section 2.11.(b)(1)a. Included in the restrictions on local boards of education’s discretion for scheduling those five remote instruction days is the mandate that: “No remote instruction day shall be scheduled prior to August 24, 2020, unless the school operates on a year-round or modified calendar schedule.” S.L. 2020-3, Section 2.11.(b)(2)c. This restriction, however, is not an absolute limitation on local boards of education’s discretion to schedule remote instruction days but, rather, only a restriction on scheduling the five remote instruction days that S.L. 2020-3, Section 2.11.(b)(1)a specifically requires be built into the school calendar.

As noted above, Session Law 2020-3, Section 2.11.(b)(3), as rewritten by Session Law 2020-49, Section 3.(b), states:

If the governing board of a public school unit determines that additional remote instruction beyond the five days required by subdivision (1) of this subsection is needed to ensure the health and safety of students, a public school unit may provide remote instruction in accordance with the Plan developed pursuant to subsection (a) of this section as necessary to satisfy instructional time requirements.

Thus, by its plain language, this subsection expressly authorizes local boards of education to provide more remote instruction time than the five days required by Section 2.11.(b)(1)a. Moreover, Section 2.11.(b)(3) does not contain the language in Section 2.11.(b)(2)c. that prohibits local boards of education from scheduling the five required remote instruction days before August 24, 2020. Instead, the conditions that must be met for a local board of education to exercise its authority under Section 2.11.(b)(3) are that the local board must first determine that additional remote instruction days are “needed to ensure the health and safety of students” and are “necessary to satisfy instructional time requirements.” Nothing in the plain language of S.L. 2020-49, Section 3.(b) prohibits local boards of education from scheduling additional remote instruction before August 24, 2020.

The legislative history of Section 2.11.(b)(3) further supports my conclusion that the General Assembly intended to exempt the exercise of scheduling authority granted to local boards of education in that Section from the limitations described in Section 2.11.(b)(2)c. As initially drafted, Session Law 2020-3, Section 2.11.(b)(3) stated:

If, during the 2020-2021 school year, a state of emergency or disaster is declared under Chapter 166A of the General Statutes ordering school closure for more than five days, a public school unit providing remote instruction in accordance with the Plan developed pursuant to subsection (a) of this section may use additional remote instruction days as necessary to satisfy instructional time requirements. (Emphasis added.)

Because it is impossible to predict when a state of emergency might force the Governor to close schools, it is possible that the Governor could declare a state of emergency during the month of August and close schools the week of August 17 to August 24. If that were to occur, under the earlier version of the law set forth above, local boards of education would have to schedule remote instruction days during that time to comply with the other provisions of the school calendar law, despite the prohibition in subsection (2)c. Based on the removal of the language from the law requiring a state of emergency declaration and a statewide school closure order by the Governor before a local school system could schedule additional remote instruction, it appears that the General Assembly recognized that any such restrictions on a local board of education’s discretion to provide additional remote instruction days would be too great. Therefore, under the version of the legislation ultimately enacted by the General Assembly, local

boards of education are authorized to schedule more than five remote instruction days, even if schools have not been ordered closed.

This interpretation is further supported by the remaining language in Section 2.11.(b)(3) pertaining to additional remote instruction which states, “The public school unit shall ensure that it is in compliance with all required COVID-19 guidance related to the operation of elementary and secondary schools issued by the State Board of Education, the Department of Public Instruction, and the Department of Health and Human Services.” This language plainly acknowledges the possibility that the SBE, DPI, and DHHS could issue direction requiring school systems to reduce the number of students and staff in school buildings at any given time to comply with social distancing mandates and other measures designed to reduce the spread of COVID-19. Under those circumstances, local boards of education will need the ability to schedule the additional remote instruction allowed under Section 2.11.(b)(3) during the first week of school.

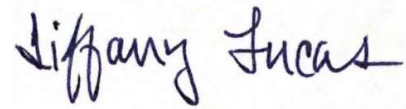
Finally, recognizing that Session Law 2020-49, Section 3.(b), significantly expanded local boards of education’s authority to schedule additional remote instruction days, the General Assembly specifically rewrote Session Law 2020-3, Section 2.11.(b)(2)d., to prohibit local boards from using any of those *additional* remote instruction days for teacher workdays. *See* S.L. 2020-3, Section 2.11.(b)(2)d (“Remote instruction days may be scheduled for use as teacher workdays ...[however] [t]his sub-subdivision only applies to the five remote instruction days scheduled as required by sub-subdivision a. of subdivision (1) of this subsection.”) The fact that the General Assembly included this one limitation on the exercise of local boards of education’s authority to schedule additional remote instruction days demonstrates the legislature’s intent to permit local boards of education to use the additional remote instruction days as they saw fit, including scheduling remote instruction days between August 17 and August 24, 2020, if they determined health and safety needs and calendaring necessities required that action.

In conclusion, it is my opinion that S.L. 2020-3, Section 2.11, as rewritten by S.L. 2020-49, does not prohibit remote instruction during the August 17-24 time period.

I hope this fully answers the questions posed in your letter.

This is an advisory letter only. It has not been reviewed or approved in accordance with the procedures of issuing an official opinion from the Attorney General.

Sincerely,

A handwritten signature in black ink that reads "Tiffany Lucas". The signature is written in a cursive style with a light grey rectangular highlight behind it.

Tiffany Lucas  
Special Deputy Attorney General