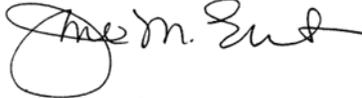




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to the Minimum Instruction Requirement for State Aid

**DATE:** December 7, 2017

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Discussion

Should the Board of Regents amend §175.5 of the Commissioner's Regulations relating to the minimum instruction requirement for State Aid?

### Reason(s) for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee for discussion at its December 2017 Board of Regents meeting (Attachment A is a copy of the proposed amendment).

### Procedural History

A Notice of Proposed Rule Making will be published in the State Register on December 27, 2017. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Education Law §3604 requires that school districts be in session for 180 days, or be at risk of losing State aid. During the 2016-2017 school year, the Department received a number of concerns through the Fraud, Waste, and Abuse hotline relating to some districts not fully complying with the 180-day requirement, despite reporting compliance to the State Aid Office. At the same time, many questions arose from the Governor's declaration of a statewide snow emergency in March 2017 during which all state agencies were closed. As a result of these two circumstances, in April 2017 the State Aid Office issued a guidance memorandum to districts, reminding them of the rules associated with the 180-day requirement. This memo generated a number of questions and concerns in the field.

In an effort to provide greater clarity to the field and implement any necessary updates to the rules to adjust to modern practices, the Department convened a 180-day Advisory Committee to recommend possible statutory and regulatory amendments to streamline, clarify, and modernize the existing 180-day instructional requirement for State Aid purposes. Individuals from a wide range of stakeholder groups from across the state, including over 120 school districts, participated in either the Advisory Committee and/or in five regional meetings or a questionnaire to provide feedback to the Department on these issues (Attachment B is a list of school districts and stakeholder groups that participated on the Advisory Committee, the regional meetings, and questionnaire). The five regional meetings were held in:

- New York City (NYC and Hudson Valley)
- Long Island
- Batavia (Western New York, Finger Lakes, and Southern Tier)
- Albany (Capital District, Central New York, Mohawk Valley)
- Canton (North Country)

## **Current 180-day Statute, Regulation, and Guidance**

As noted above, Education Law §3604 requires that school districts to be in session for 180 days<sup>1</sup>, or risk losing State Aid. Under Part 175 of the Commissioner's regulations, school districts and BOCES must provide a minimum number of instructional hours per day to meet this requirement. Minimum instructional hours per day are based on grade level (two and one-half hours for half-day kindergarten, five hours for full-day kindergarten through grade six, and five and one-half hours for grades seven through twelve). It is important to note that, under Part 175 of the Commissioner's

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<sup>1</sup> Education Law §1704(2) and §3604(7); Charter schools are also required to have a minimum of 180 days of instruction but may have additional days of instruction pursuant to their charter, and are not included in this State Aid discussion as charter schools are paid through a charter school tuition formula and not State aid Full Time Equivalents.

regulations, lunch does not count toward the minimum daily instructional requirement. The Department has also interpreted the statute and regulations as not counting recess toward the minimum daily instructional requirement. This minimum daily requirement, when multiplied over the statutorily required 180 school days of instruction, means that over the course of a school year, school districts and BOCES are required to provide a minimum of 900 hours of instruction for full-day kindergarten through grade six and 990 hours of instruction for grades seven through twelve.

Education Law §3604 and Part 175 of the Commissioner's regulations also address exceptions and special provisions pertaining to Superintendents' Conferences, staff development days, parent-teacher conferences, and extraordinary weather conditions:

- No sessions may be held on legal holidays (except for Election Day, and both Washington's and Lincoln's Birthday) or on Saturdays. (Education Law §3604(8))
- Up to five days may be waived for weather/safety concerns **only** if there are no remaining scheduled vacation days between the event and the end of the Regents exam period. (Education Law §3604(7))
- Up to four deficiencies of student time can be forgiven if used for Superintendent's Conferences, provided that two such days are for "staff development activities relating to implementation of the new high learning standards and assessments," and up to two days may be used at the end of August. (Education Law §3604(8))

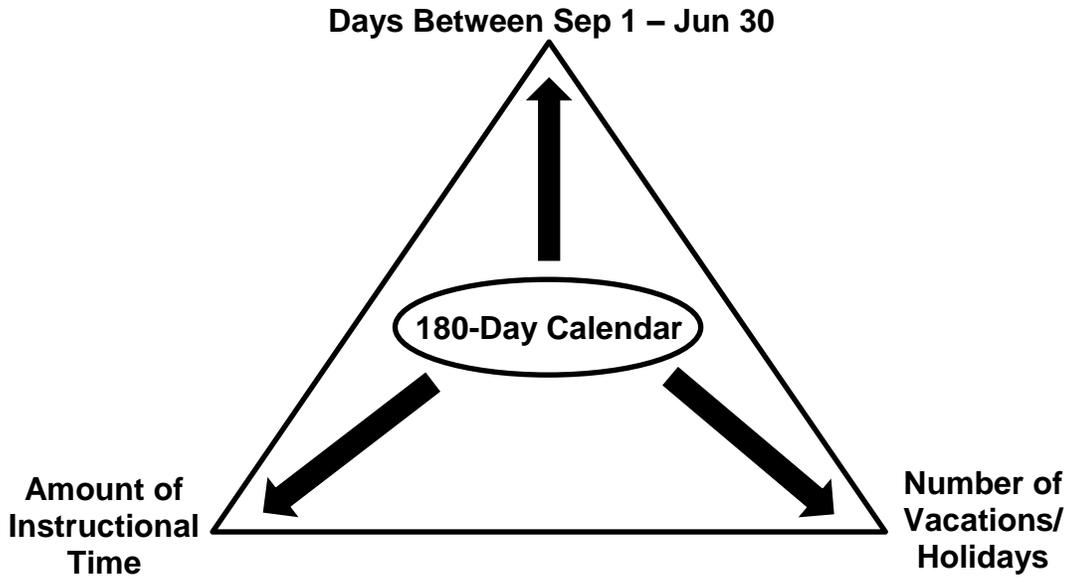
### **Competing Tensions in Calendar Development**

Through the Advisory Committee process and the regional meetings held across the state, it became apparent that there are multiple factors that are considered in the development of a school district calendar, and that many of these factors are in conflict with one another.

These factors could be organized into three simple categories:

- The amount of instructional time provided to the student;
- The number of calendar days within which districts may schedule session; and
- The number of holidays districts observe and student/teacher vacation periods they schedule.

The factors, as a result of a fixed calendar, necessarily have tensions built in among them. If a district favors more time for one of these factors, mathematically there is less time for the others.



In developing any statutory or regulatory changes, these tensions among these competing factors must be considered and weighed against one another.

It is also important to view the current rules in New York State in comparison to the rest of the nation. Attachment C ranks the states and the District of Columbia by the minimum number of instructional hours required of their local school districts.

### **Feedback from the Advisory Committee**

In light of the existing rules and competing tensions, the following key issues were highlighted by school districts and stakeholders through the Advisory Committee process:

- **Flexibility:** Districts have wide-ranging calendar needs, including differences in holiday observances, vacation practices, professional development practices, and parent-teacher conferences. The 180-day rules should allow districts to meet their individual challenges to the best of their own local ability, including considering session days outside of the typical Labor Day through Rating Day period.
- **Clarity:** The current regulations and guidance are confusing and antiquated. Updating these documents with clear language and providing examples and model calendars will assist districts in designing their calendars consistent with the rules.
- **Snow Days/Emergencies:** Often, during adverse weather or other conditions, school district officials may be prohibited by other municipal and state officials from holding school in session, and it is at times unfair to force districts to make up those days.

- **Collective Bargaining Agreements (CBAs):** Some of the current allowances and limitations in local school district calendars may be included within local teacher contracts. Some contracts may need to be revisited to ensure compliance with the proposed amendment.
- **Recess:** The Advisory Committee gathered feedback about the issue of recess in the development of school scheduling to support students. District officials noted that, based on districts' past interpretations, it was unclear if the changes to the regulations would impact recess at schools.

## Proposed Regulation and Statute Changes

In an effort to address the concerns from the field, the purpose of the proposed amendment is to provide districts with more flexibility in establishing their school calendars, while maintaining the current minimum amount of instructional time. For instance, rather than require a *daily* minimum amount of instructional time, the proposed amendment requires the following *hourly* requirements for the entire school year, spread out over 180 days:

- For pupils in half-day kindergarten, a minimum of 450 instructional hours.
- For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.
- For pupils in grades seven through twelve, a minimum of 990 instructional hours.

The additional flexibility afforded to districts under this proposed regulation will provide districts with greater opportunities in a number of areas. First, they will be able to hold half-day sessions, especially around holidays, that will count toward the minimum requirement. Second, it will provide them with more opportunities for integrating professional development activities into their calendar without adversely impacting instructional time for students. Third, it will also free up time throughout the school year that can be used for other activities, such as additional parent-teacher conferences and/or recess. The Department believes this flexibility will allow districts to make local determinations, within their communities, about the length of lunch, the inclusion and length of recess time, and/or parent conferences in the school calendar. To better demonstrate how this flexibility can work, Attachment D provides examples of how this new construct compares with the existing regulations.

The proposed amendment is only a minimum. Therefore, the Department also recommends adding a provision to the regulations to make it clear that nothing in the proposed regulation should be construed as precluding school districts and BOCES from lengthening the school day and/or school year beyond the annual minimum instructional requirement. Extensions may include both instructional and non-instructional activities including but not limited to homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district or BOCES has determined is necessary for the development of the whole child and/or to improve student achievement.

### “Shortened Session” Days for Staff Development and Parent-Teacher Conferences

Currently, in addition to the four statutory Superintendent’s Conference days, districts also have the option of utilizing “shortened session” days for staff development or parent-teacher conferences, if the instructional time in their daily calendars sufficiently exceeds the minimum that a full weeks’ worth of hours are provided in less than five full days. Since shortened session days will no longer be needed under the proposed amendment, the restrictions on this allowance will be eliminated. Districts that currently offer shortened sessions and employ more than the current daily minimum instructional hours will be able to schedule such conferences and activities as they see fit, within the 180-day calendar, so long as they meet the annual total minimum hours of instruction. This will provide greater flexibility to hold conferences and activities in any block of time as the district sees fit and at any point during the year—including within the same week, or a week with a holiday.

### Snow Days and Vacation Breaks

Based on feedback from the Advisory Committee, the Department also recommends pursuing legislative changes to provide additional flexibility for districts in cases where a state or local emergency requires closure for weather or public safety reasons that are beyond the control of the school superintendent. The Department also recommends pursuing legislative changes to allow districts, at their local discretion, to schedule session days outside of the traditional Labor Day through Rating Day time period, as well as legislation to make the penalty for failing to meet the 180-day requirement more fair and equitable.

New guidance resulting from these regulatory changes will recommend that districts work with their calendar committees and communities to review their scheduled breaks and snow day assumptions, knowing that snow day contingencies are best incorporated into the calendar. In the event that such days are not fully utilized, districts will be able to provide additional days-off or additional instructional days toward the end of the school year at their local discretion.

### Proposed Regulation

The Department proposes an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement, as explained above (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts additional flexibility when establishing their school calendars. The proposed amendment also seeks to provide clarity around existing procedures relating to the scheduling of examinations, superintendent conference days, and extraordinary weather conditions. This revision will provide school districts with maximum flexibility in providing instructional time for their students.

### **Related Regents Items**

A description of this process was first included in the September 7, 2017 Senior Deputy Commissioner's Update/Report to the Board.

### **Recommendation**

N/A

### **Timetable for Implementation**

Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be submitted to the Board of Regents for consideration at its March 2018 meeting. If adopted at the March 2018 meeting, the proposed amendment will become effective on March 28, 2018.

## **Attachment A**

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 1704 and 3604.

Section 175.5 of the Regulations of the Commissioner of Education is repealed and a new section 175.5 is added to read as follows:

Section 175.5. Minimum instructional hours and use of superintendents' conference days for State aid purposes.

(a) Purpose. The provisions of this section are intended to provide school districts and boards of cooperative educational services (BOCES) with flexibility in meeting the 180-day requirement in order to receive State aid pursuant to sections 1704(2) and 3604(7) of the Education Law for actual instructional time provided to students. Nothing in this section shall be construed to preclude school districts and BOCES from lengthening the school day and/or school year beyond the annual minimum instructional requirement for both instructional, and non-instructional activities, including but not limited to, homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district or BOCES has determined is necessary for the development of the whole child and/or improve student achievement.

(b) Definition. "Instructional hours" shall mean an hour or a fraction of an hour, during which students are receiving instruction from a certified teacher pursuant to Part 80 of this Title in an academic subject and/or periods of time during which students are engaged in supervised study activities, including completing homework and/or the review of homework. Instructional hours shall not include periods of time where instruction and/or supervised study time is not provided to students, such as lunch or recess.

(c) Annual Hourly Requirement. Commencing with the 2018-2019 school year, for the purpose of apportionment of State aid, any school district or BOCES must be in session for at least 180 school days, and during such 180 days the school district and BOCES must meet the following minimum annual instructional requirement:

(1) For pupils in half-day kindergarten, a minimum of 450 instructional hours.

(2) For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.

(3) For pupils in grades seven through twelve, a minimum of 990 instructional hours.

(d) School calendar development. To ensure that school districts and BOCES meet the annual instructional requirement in order to receive State aid, it is recommended that school districts and BOCES establish school year calendars that exceed the minimum requirements as provided herein by at least the average number of emergency days that such district or BOCES has taken over the previous five school years.

(e) Unscheduled school delays and early releases. Instructional hours that a school district or BOCES scheduled but did not execute, either because of a delay to the start of a school day or an early release, due to extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or such other cause as may be found satisfactory by the commissioner, may still be considered as instructional hours for State Aid purposes for up to two instructional hours per session day, provided, however, that the superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an extraordinary condition existed on a previously scheduled session day and that school was in session on that day.

(f) Double or overlapping sessions. The provisions of subdivision (c) of this section shall not apply to schools which operate on double or overlapping sessions, provided the written approval of the commissioner to operate such sessions has been obtained prior to the scheduling of such sessions for any school year.

(g) The provisions of subdivision (c) of this section shall not apply where the prior written approval of the commissioner has been obtained to conduct, in a given school year, an experimental or alternative program involving daily sessions consisting of fewer hours than would otherwise be required by the provisions of subdivision (c) of this section.

(h) Use of superintendents' conferences.

(1) Superintendents' conferences to provide staff development activities that are related to implementation of the new high learning standards and assessments, general

staff orientation, curriculum development, or in-service education may be credited toward the annual instructional requirement set forth in subdivision (c) of this section as follows:

(i) 10 hours for half-day kindergarten;

(ii) 20 hours for full-day kindergarten and grades one through six, and

(iii) 22 hours for grades seven through twelve.

Provided, however, that (A) two and one-half hours for half-day kindergarten, (B) five hours for full-day kindergarten and grades one through six, or (C) five and one-half hours for grades seven through twelve shall be considered one superintendents' conference day authorized pursuant to section 3604(8) of the Education Law, and provided that such conferences occur on days when the regular day schools of the school district may legally be in session, and provided further that such conference days may not be scheduled for routine school administrative matters such as the grading of assignments, the preparation of pupil assignments, record-keeping, or the preparation of lesson plans. Such superintendents' conferences, in hours totaling two superintendent conference days authorized pursuant to section 3604(8) of the Education Law, may be held, if the school district so elects, in the last two weeks of August, subject to collective bargaining requirements pursuant to article fourteen of the civil service law.

(i) Regents examinations and other state assessments.

(1) Regents examinations. For only the grade levels sitting for a Regents examination, a district may schedule the average number of instructional hours it provides on non-examination days for days on which Regents examinations or Rating Day are held, and have such hours count toward the annual minimum hourly requirement. On such days, attendance need not be taken, and attendance may not be assumed and claimed for State Aid purposes under any circumstances. If grades seven through twelve are housed in the same building, school district officials may excuse the students from any grade level for which an examination is not being offered if their class schedules are disrupted by the Regents examination schedule and if staff are needed to properly administer such examinations.

(2) New York State Assessments. Session days during which New York State Assessments, including but not limited to the Grades 3-8 English language arts and

mathematics assessments, are administered are days on which attendance must be taken and which count toward the annual minimum hourly requirement.

(3) Other state assessments. On session days during which alternative and/or pathway assessments, as defined in section 100.2(f) and (mm) of this Title, are administered, attendance must be taken and only actual instructional hours for pupils in attendance, including the examination time, may be included within the instructional hour requirement. Grade levels that are excused from instruction on those days may not have hours count toward the requirement.

(j) Short session aid deduction. For the purposes of reducing State Aid pursuant to section 3604(7) of the Education Law, one day shall mean:

(1) For pupils in half-day kindergarten, two and one-half hours.

(2) For pupils in full-day kindergarten and grades one through six, five hours.

(3) For pupils in grades seven through twelve, five and one-half hours.

In the event that a school district or BOCES has a total deficiency in hours that equals a fraction of hours per day pursuant to this paragraph, such deficiency shall be rounded up to the next day.

(k) Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on June 30, 2018 during the term of such agreement and until the entry into a successor collective bargaining agreement to the extent required under article 14 of the Civil Service Law.

**Attachment B – School Districts and Stakeholder Groups that Participated on the Advisory Committee, Regional Meetings, and Questionnaires**

**Advisory Committee – Participating Groups**

BOCES District Superintendents  
Northeast Charter Schools Network  
Conference of Big 5 City School Districts  
Empire State Supervisors and Administrators Association  
New York State United Teachers  
NYS Association of School Business Officials  
NYS Coalition for Independent and Religious Schools  
NYS Council of School Superintendents  
NYS Federation of School Administrators  
NYS Parent Teacher Association  
NYS School Boards Association  
School Administrators Association of NYS

**Capital District**

Burnt Hills-Ballston Lake  
Capital Region BOCES  
Catskill  
The Diocese of Albany  
Guilderland  
Hudson  
Hunter-Tannersville  
Loudonville Christian School  
Mohonasen  
North Colonie  
Rensselaer  
Schenectady  
Shenendehowa  
South Colonie  
Stillwater  
Waterford-Halfmoon  
Watervliet

**Central New York**

Canastota  
DeRuyter  
Fayetteville-Manlius  
Lafayette  
Mexico  
Onondaga  
Onondaga-Cortland-Madison BOCES  
Syracuse  
Westhill

**Finger Lakes**

Brighton  
Brockport  
Catholic Schools of the Diocese of  
Rochester  
Churchville-Chili  
Derech HaTorah  
Dundee  
Gates-Chili  
Genesee Valley Educational Partnership  
Gorham-Middlesex  
Honeoye Falls-Lima  
Livonia  
Monroe 1 BOCES  
Oakfield-Alabama  
Palmyra-Macedon  
Pittsford  
Red Creek  
Rochester  
Seneca Falls  
Talmudical Institute of Upstate NY

**Hudson Valley**

Arlington  
Croton-Harmon  
East Ramapo  
Eastchester  
Highland  
Mahopac  
Pleasantville

Port Chester  
Rye Neck  
Scarsdale  
Wallkill  
Yonkers

**New York City**

Agudath Israel  
The Archdiocese of New York  
Jewish Education Project  
NYC Department of Education

**Long Island**

Bayshore  
Carle Place  
Deer Park  
Diocese of Rockville Center  
Eastern Suffolk BOCES  
Elwood  
Garden City  
Glen Cove  
Great Neck  
Herricks  
Hewlett-Woodmere  
Island Trees  
Kings Park  
Longwood  
Massapequa  
Mineola  
Mount Sinai  
Nassau BOCES  
Oceanside  
Patchogue-Medford  
Plainview-Old Bethpage  
Port Washington  
Remsenburg-Speonk  
Sachem  
Smithtown  
Three Village  
West Hempstead  
West Islip  
Western Suffolk BOCES  
William Floyd

**North Country**

Ausable Valley  
Canton  
Clifton-Fine  
Copenhagen  
Elizabethtown-Lewis  
Franklin-Essex-Hamilton BOCES  
Gouverneur  
Hermon-DeKalb  
Jefferson-Lewis BOCES  
Keene  
LaFargeville  
Malone  
Massena  
Peru  
Sackets Harbor  
Saranac Lake  
South Jefferson  
St. Lawrence-Lewis BOCES  
Ticonderoga

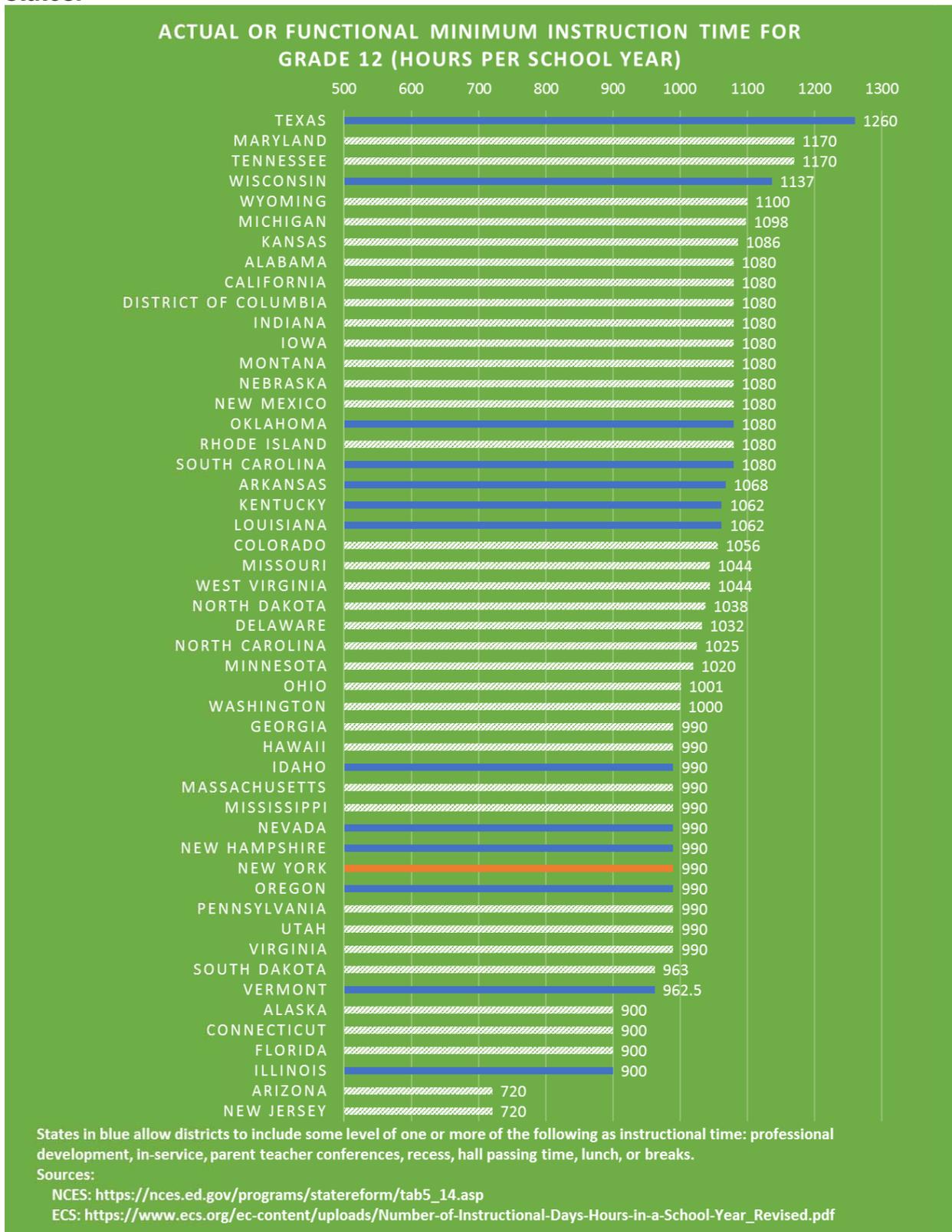
**Southern Tier**

Addison  
Broome-Tioga BOCES  
Chenango Forks  
Hornell  
Horseheads  
Roxbury  
Unadilla Valley  
Walton

**Western New York**

Andover  
Belfast  
Diocese of Buffalo Department of  
Catholic Schools  
Ellicottville  
Erie 1 BOCES  
Erie 2 BOCES  
Houghton Academy  
Iroquois  
Lancaster  
North Tonawanda  
Scio  
Wellsville

**Attachment C – How the current/proposed minimum hours compare to other states.**



Note: This chart excludes Maine, where equivalent hours per year cannot be calculated. Per sources cited above, Maine requires 175 days per school year, but does not specify a minimum hours per day or hours per school year.

## Attachment D – Examples of Greater Flexibility

In converting from a system of required daily minimum hours to one that counts all hours over the course of a full school year, there are certain key changes in what districts will be able to do with their calendars and remain in compliance with the 180-day rule. This change will not impact the vast majority of session days throughout the school year.

Where the proposed regulations could change whether or not a day would count, the below examples compare how weeks with common variances throughout the school year count toward the existing and proposed requirements. This is a small snapshot of the different possibilities that would be allowed under the proposed regulation. All but one of these examples assume the required hours for grades seven through twelve.

### Regular Full-time Week

Description	Mon	Tue	Wed	Thu	Fri
Start Time	8AM	8AM	8AM	8AM	8AM
Dismissal	3PM	3PM	3PM	3PM	3PM
Instructional Hours During Day	6.0 hours				
Does it currently count?	Yes, as 1 day				
Does it Count Under the Proposed Regulation?	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 6 hours toward the yearly 990 hours.

### Week of Thanksgiving

Description	Mon	Tue	Wed	Thu	Fri
Start Time	8AM	8AM	8AM	N/A	N/A
Dismissal	3PM	3PM	12PM	N/A	N/A
Instructional Hours During Day	6.0 hours	6.0 hours	3.5 hours	None	None
Does it currently count?	Yes, as 1 day	Yes, as 1 day	No	No	No
Does it Count Under the Proposed Regulation?	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 6 hours toward the yearly 990 hours.	Yes, as 1 day and 3.5 hours toward the yearly 990 hours.	No	No

**Week with Additional Staff Development/Parent-Teacher Conferences (Previously “Shortened Sessions”)**

<b>Description</b>	<b>Mon</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>
Start Time	8AM	8AM	8AM	8AM	8AM
Dismissal	2:30PM	2:30PM	2:30PM	2:30PM	12PM
Instructional Hours During Day	5.5 hours	5.5 hours	5.5 hours	5.5 hours	3.5 hours (conferences from 12PM-3PM)
Does it currently count?	Yes, as 1 day	No; Did not meet minimum hours for the week to qualify for “shortened session” time.			
Does it Count Under the Proposed Regulation?	Yes, as 1 day and 5.5 hours toward the yearly 990 hours.	Yes, as 1 day and 5.5 hours toward the yearly 990 hours.	Yes, as 1 day and 5.5 hours toward the yearly 990 hours.	Yes, as 1 day and 5.5 hours toward the yearly 990 hours.	Yes, as 1 day and 3.5 hours toward the yearly 990 hours.

**Last Week of School (Elementary Grades Example)**

<b>Description</b>	<b>Mon</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>
Start Time	8AM	8AM	8AM	8AM	8AM
Dismissal	12PM	12PM	12PM	12PM	12PM
Instructional Hours During Day	3.5 hours				
Does it currently count?	No	No	No	No	No
Does it Count Under the Proposed Regulation?	Yes, as 1 day and 3.5 hours toward the yearly 900 hours.	Yes, as 1 day and 3.5 hours toward the yearly 900 hours.	Yes, as 1 day and 3.5 hours toward the yearly 900 hours.	Yes, as 1 day and 3.5 hours toward the yearly 900 hours.	Yes, as 1 day and 3.5 hours toward the yearly 900 hours.