

Pupil Transportation Contracts and Other Service Provider Agreements

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Practice Area: School Law

With the indefinite closure of schools last week came the realization by many school districts that the need for contracted services has ceased, or drastically changed for the foreseeable future. Many school districts have been contacted by their transportation providers requesting significant modifications to their contract or, in some instances, full performance of the contracts. School districts are now confronted with the difficult choice of deciding to continue expending funds while transportation services are shut down, seek modifications to the contracts to repurpose transportation services or cease payments to the transportation service providers altogether. The transportation provider's concern is not unwarranted – like many other companies, the providers are attempting to ensure continuation of its workforce to allow for services to resume in full once the crisis is abated. This brief Alert seeks to raise awareness of the issue as has been presented to us by several clients and otherwise encourage, to the extent possible and consistent with individual district needs, a collaborative approach among school districts.

As an initial matter, several transportation providers have intimated to school districts that schools are mandated under state or federal law to continue paying for transportation services. Make no mistake: there is no mandate – state, federal or otherwise – that requires school districts to continue to pay for services that are not provided. Nevertheless, there remain many reasons school districts should seek to find common ground with their service providers. Many districts are taking one of the following approaches: (1) fulfilling the terms of the agreement through full payment of contracted amounts despite not receiving any service in return; (2) modifying the contract as to the services provided (*i.e.*, meal or supply delivery) and/or the payments required; or (3) ceasing payment of all sums owed under the contract for the duration of the school closure. All of the approaches involve mid-term contract modification and, therefore, present legal risk. In addition, it is important that school districts review and understand existing contract terms relating to these extraordinary circumstances (often referred to as force majeure clauses) impacting the parties' legal rights and responsibilities. If you are confronting these issues, we encourage you to seek legal counsel to guide you through both the decision-making process and, ultimately, contract modification. As well, we encourage you to speak with your colleagues around the state to understand how others are working through the challenges.

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