

'Back to school' still a big question mark in Oregon, but answers for K-12 could come by June 8

By Gary A. Warner
For the Oregon Capital Bureau

Abnormal is the new normal for thousands of students from kindergarten to Ph.D. programs in Oregon during the COVID-19 crisis, lawmakers were told Friday.

"We are learning to fly the plane as we build it," said Jennifer Scurlock, an English teacher at Churchill High School in Eugene.

Scurlock was among those who appeared online during a virtual hearing of the House Interim Committee on Education on Friday. The panel heard testimony from administrators, instructors and students across the spectrum of education levels.

State officials said they expected to have an announcement by the week of June 8 on when and how K-12 public schools will open. Public universities and colleges are still deciding whether some, none or all classes will return to campus in the fall.

All levels of education face major funding shortfalls with revenues plummeting due to closed businesses and widespread unemployment during the crisis.

"We're looking at significant budget cuts to education," said Rep. Janeen Sollman, D-Hillsboro, a member of the committee.

The COVID-19 pandemic forced most schools and colleges to shut classrooms and move teaching online. The difficulties of setting up an online system have been daunting.



Bulletin file photo

School buses at the Bend-La Pine School District transportation yard in Bend.

Students without a computer or online access were faced with trying to keep up.

Ben Cannon, executive director of the Higher Education Coordinating Committee, laid out a bleak financial picture for the committee.

Gov. Kate Brown initially issued an order ending most in-person classes on March 19, with a target reopening date of April 28. On April 17, the order was extended through June 13, effectively through the end of the spring semesters for colleges and universities.

What fall will look like: unknown for now.

The public universities saw their numbers hold steady between winter and spring.

Community colleges saw an 18% drop in enrollment. The biggest fall-off was in the career technical education programs, which lost 27% of their students.

Universities rely on different revenue sources than community colleges.

The four-year universities get 35% of their funding from

tuition and fees.

"Auxiliary" income, which includes dormitory fees, accounts for another 18%.

State funding accounts for 17%. They receive no funds from property taxes.

Community colleges get 35% from state funding, 21% from property taxes and 19% from tuition and fees.

While the federal Higher Education Emergency Relief Fund sent \$134 million to Oregon and the Governor's Emergency Education Relief Fund allocated another \$32.5 million, the near future is looking cloudy to dark.

Cannon said the "best case" is colleges and universities are able to resume in-person activities this summer or fall, with modest modifications to physical layouts, group sizes and other protocols.

The "worst case" is colleges and universities are required to operate remotely throughout all of 2020-21.

The California State University system, the nation's largest,

has already announced nearly all classes this fall will be online.

Cannon said the governor and the Oregon Health Authority would weigh the alternatives. No announcement is scheduled.

Regardless of which method is used, Cannon underscored that keeping the universities and colleges capable of returning at full strength after the pandemic is over was crucial to the state's future.

"Postsecondary education and training are central to Oregon's return to strength and prosperity," Cannon said. "Affordability and access to postsecondary education and training require investments of the state funding."

During the discussion of K-12 schools, the key question on most minds was asked by Rep. Kim Wallan, R-Medford.

"What is going to happen in the fall?" she asked.

"We are deep into planning for the next school year," testified Colt Gill, director of the Oregon Department of Education.

State education officials have held 18 video meetings with 3,000 participants the past two weeks. Teachers, school boards, parents, school workers and others were able to talk about the essential functions needed for schools to move forward in the fall.

The state is also conferring with officials in California, Washington and British Columbia to keep informed on each other's plans.

Gill said he expected that some guidance would be put out the week of June 8 as to what

school will look like this fall.

"Our hope is we can get back to where it is happening in the classroom," he said.

The answer may be different for some of the 197 school districts in Oregon. The right mix of in-class and online teaching depends on public health, school size and other factors.

"Some parts of the state may be a hybrid," Gill said.

Some rural parts of the state may see classroom experiences close to what they looked like prior to COVID-19. But even there, "normal" will have a different look because of minimum physical spacing requirements.

Because of the revenue hit the entire state budget is taking, public schools look to be headed toward a \$500 million deficit.

"That equivalent to 11 school days or 5,400 teachers," Gill said.

Rep. Cheri Helt, R-Bend, a member of the panel, said after the hearing that she hoped the governor would soon call the Legislature into a special session to fill in the budget gaps. First up would be using the \$1.6 billion "Rainy Day Fund," a state account built up over the years in case of an emergency.

"If this isn't a rainy day, I don't know what is," she said.

While there are many crucial and conflicting budget needs, Helt said the state's public schools budget should be made whole in any negotiations.

"We have to make sure we are staffed-up enough to provide the rigor and relevant education students missed during the pandemic," she said.

ODF declares fire season

Blue Mountain Eagle

Oregon Department of Forestry's Central Oregon District entered fire season June 1.

This affects private, county, state and local government lands within the district boundary, according to a press release. Summer weather patterns continue to dry wildland fuels and increase the risk for fire spread. These weather patterns also bring the risk of lightning and increase fire activity in the area. The fire season declaration is intended to reduce human fire starts by restricting some activities related to forest operations and open burning.

"When the district enters fire season it highlights the change of wildland fuel and weather patterns," said Rob Pentzer, acting district forester. "It is an indicator to our landowners, operators and the public that we are trending toward warm, dry weather and we need to change our actions to reduce any potential starts and prevent fires when we can."

The fire season declaration restricts the use of tracer ammunition and exploding targets within the district, as well as the use of blasting materials. Smoking while working or traveling through forest operations is also prohibited. Luminaries (sky lanterns) are always prohibited in Oregon.

All open burning within the Central Oregon District Protection Boundary requires a permit during fire season. Landowners who burned earlier this spring should check their piles to ensure there is no heat or flames as recent warm temperatures can rekindle these burns if any fire remains. When checking piles use a shovel to stir the ashes and feel below the surface for heat. Use water and dirt to extinguish any remaining heat. Check for local restrictions regarding open burning, as some local governments and fire departments have implemented additional burn bans.

These restrictions do not apply to campfires, but following safe burning practices will decrease the risk of fire spread. Always make sure a campfire is dead out before leaving the area and never leave a fire unattended.

Stewardship foresters from local units within Central Oregon District can provide additional guidance as needed.

ODF's Central Oregon District continues to serve landowners and the public as an essential service for Oregonians. Call or email to talk with staff or schedule an appointment. For additional information on ODF's Central Oregon District, including contact information and unit offices, visit odfcentraloregon.com.

State solicitor: Legislature never intended to limit emergency powers Gov. Brown used to order COVID-19 closures

By Jayson Jacoby
EO Media Group

Oregon's solicitor general argued in a brief to the state Supreme Court that the Legislature did not intend to limit the duration of an emergency declared by the governor.

Solicitor General Benjamin Gutman asked the state's highest court to order Baker County Circuit Court Judge Matt Shirtcliff to vacate his May 18 decision granting a preliminary injunction to a group of plaintiffs, led by Elkhorn Baptist Church in Baker City, who sued Gov. Kate Brown on May 6 claiming she exceeded her legal authority in issuing executive orders during the coronavirus pandemic.

That preliminary injunction, which the state Supreme Court temporarily stayed later on the same day Shirtcliff granted it, would "upend the Governor's phased, data-driven process of reopening the state, threatening to squander the sacrifices that Oregonians have already made to keep one another safe," Gutman wrote in his 42-page brief.

"This is not a close case," he wrote. "No reasonable jurist could conclude that a preliminary injunction is warranted in these circumstances."

Gutman noted that most Oregon counties, including Baker County, are in phase one of the state's reopening plan, which relaxed some of the restrictions included in the governor's executive orders.

Gutman submitted the brief on Thursday, as requested by

the Supreme Court.

Attorneys for the plaintiffs and a group of intervenors, including Grant County Sheriff Glenn Palmer and Grant County Commissioner Sam Palmer, have until Tuesday to submit briefs defending Shirtcliff's decision.

At issue is the preliminary injunction the judge granted.

It temporarily prohibited the state from enforcing restrictions in Brown's executive orders, including limits on the number of people in public gatherings, one of the main objections the plaintiffs including 10 churches have cited.

But the Oregon Supreme Court later on May 18 issued a stay that temporarily stopped the preliminary injunction from taking effect.

That remains the case, and the governor's executive orders continue to be in effect.

Even if the Supreme Court rules in the governor's favor and vacates Shirtcliff's preliminary injunction, the lawsuit itself would continue, possibly leading to a trial in Baker County Circuit Court.

The legal debate over the preliminary injunction centers on two state laws — Oregon Revised Statutes chapters 401 and 433.

Chapter 401, the law the governor cited in her initial emergency declaration on March 8, does not have any time limits on an emergency. The declaration can remain in effect until either the governor, or the Legislature, decides to terminate it.

The Legislature has not convened since the pandemic started.

Chapter 433 deals specifically with public health emergencies, and Brown has invoked the law in several of the executive orders she issued following the initial emergency declaration.

Chapter 433 limits the duration of a public health emergency to 28 days.

The plaintiffs contend — and Shirtcliff agreed in his decision granting the preliminary injunction — that by invoking chapter 433, Brown's executive orders are subject to the 28-day limit.

But Gutman, in his brief to the state Supreme Court, argues that Shirtcliff "erred in concluding that those statutes — ORS chapters 401 and 433 — conflict with one another, and that the expiration provisions of chapter 433 effectively limit the duration of a state of emergency declared under chapter 401."

Gutman cites a clause in chapter 433 that states that nothing in that chapter "limits the authority of the Governor to declare a state of emergency" under chapter 401.

Chapter 433 also states, if the governor declares a state of emergency under chapter 401, she "may implement any action authorized" by chapter 433.

The two statutes are not in conflict, Gutman argues, but are instead complementary.

Gutman argues that if the Legislature had intended, when it passed chapter 433,

to limit the governor's authority specifically during public health emergencies, then lawmakers likely would have also amended chapter 401 so that diseases would no longer qualify as disasters under that law.

But the Legislature didn't do so — chapter 401, which the governor invoked in her initial disaster declaration, lists "disease" as one reason for such a declaration.

Gutman also notes that "chapter 433 repeatedly cross-references chapter 401, underscoring that the statutes were meant to harmonize rather than conflict."

Gutman goes on to cite statements by legislators in 2003 when they were considering chapter 433. The record shows, Gutman argues, that lawmakers did not intend chapter 433 to limit the governor's powers under chapter 401.

Gutman includes in his brief a quote from the state's public health officer who stated that an argument could be made that chapter 401, which dates to 1949, gives the governor the authority to take all the actions listed in chapter 433, and more.

Gutman also argues that the 28-day time limit in chapter 433 applies only to the governor's proclamation of a public health emergency, but not on the actions, such as restricting businesses and the movement of residents, that the governor is authorized to take under that law.

Gutman contends that Shirtcliff should not have granted the preliminary injunction

because the plaintiffs' request for that action doesn't satisfy the legal requirements, including a "balance of harms" and whether the injunction is in the public interest.

Gutman argues in the brief that both the balance of harms and the public interest "overwhelmingly weigh against an injunction disrupting the state's ongoing effort to contain the COVID-19 pandemic."

"The threat to the public health caused by suddenly lifting the executive orders overwhelms any harm that plaintiffs and intervenors will suffer from following those orders for now," Gutman writes.

Although the issue of the preliminary injunction doesn't directly involve the plaintiffs' freedom of religion under the Oregon Constitution, the lawsuit does mention both the state and federal constitutional guarantees of religious freedom.

In his brief, Gutman contends that the governor's executive orders do not violate the plaintiffs' rights because the orders "treat faith-based gatherings the same as non-faith-based gatherings that implicate the same public-health concerns. They are neutral laws of general applicability that do not target religion for unfavorable treatment. Faith-based gatherings, just as much as non-faith-based gatherings, pose a high risk of spreading the virus that causes COVID-19, and all those gatherings need to observe reasonable social distancing measures to slow the pandemic."

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