

In Brief

March 13, 2020

COVID-19: GUIDANCE ON PREPAREDNESS AND RESPONSE

Information surrounding COVID-19 (Coronavirus) is constantly evolving as we learn more about the virus including how it is transmitted, actions which can be taken to prevent its spread, and what effects it has or is projected to have on society. Agencies such as the Center for Disease Control (CDC) and the Illinois Department of Public Health (IDPH) are constantly working to address the concerns surrounding COVID-19 and are regularly publishing updates related to this on their websites. (See <https://www.cdc.gov/coronavirus/2019-ncov/index.html> and <http://www.dph.illinois.gov/>). Frequent review of the CDC and IDPH guidance and recommendations related to COVID-19 (Coronavirus) is advisable for all as this is a fluid situation.

Significantly, Governor Pritzker just ordered all private and public K-12 schools to be closed from March 17 through March 30, 2020. He also designated these specific days as Act of God days, which do not need to be made up at the end of the school year. Also, President Trump just declared a national emergency, directed states to set-up emergency operations and directed hospitals to enact their emergency preparedness response plan.

We note that many colleges have extended spring break periods and are moving classes online. When announcing closures, it is recommended to make clear what public-facing resources or functions will continue to be provided, if any.

This Guidance document is intended to answer common questions that may arise amidst the COVID-19 pandemic. It includes the following sections: General Q&A, Labor and Employment Q&A, Operations, Facilities and Commercial Contracts Q&A, Park Districts Q&A, Student and Special Education Q&A (K-12), and Key Resources.

General Q&A

- 1. Should individuals returning from a location designated with a Travel Warning of Level 3 not attend school or work for 14 days after they returned?**

Per guidance from the IDPH and CDC, it is advised that any individual returning from a location designated with a Travel Warning of Level 3 should not attend school or work for 14 days after returning. As of March 13, 2020, China, Iran, South Korea and most of Europe are at Level 3. Absences for this purpose should be excused.

- 2. Should sick employees, students and participants stay home?**

Yes. In certain circumstances, it may be necessary to send students, participants or employees home. Generally, individuals should be fever free for 24 hours without using fever reducing medicines before returning to school, work or programs. The 24-hour rules should also be applied to episodes of vomiting or diarrhea. For sick individuals with known diagnosis or exposure to

COVID-19, contact IDPH/local health agencies for the most up-to-date guidance before returning them to your organization. Overall, everyone should avoid close contact with people who are sick.

Consult CDC guidance (<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>) and contact and consult local health departments and IDPH in connection with any possible quarantine, student/employee/participant symptoms of fever, cough and difficulty breathing, or known or potential exposure/diagnosed case of COVID-19 in your organization.

3. Should cleaning protocols be enhanced during the COVID-19 pandemic?

Without a diagnosed case or exposure to COVID-19 in your organization, it is advisable to continue to perform routine environmental cleaning, with focus on areas people commonly touch (doorknobs, light switches, countertops, desks, etc.).

If you have a known or potential diagnosed case of COVID-19 in your organization (either through students, staff, participants, vendors or visitors), a more thorough cleaning may be required/recommended. See *Operations, Facilities and Commercial Contracts* section below for further information. We suggest contacting your insurance carrier to determine if such cleaning would be covered by your policies.

4. Will requirements for meetings held pursuant to the Open Meetings Act (OMA) be relaxed during the COVID-19 pandemic?

Possibly, but there is no specific guidance on this yet. At present, public bodies subject to the OMA should continue to provide notice and hold meetings in accordance with the OMA. This includes, but is not limited to, holding meetings “which are convenient and open to the public”, ensuring that “a quorum of members of the public body must be physically present” at the meeting site and allowing any person an opportunity for public comment.

Public bodies may want to consider a “live stream” of any meeting held during the COVID-19 pandemic as a supplemental option to members of the public attending in-person. In addition to the option for in-person public comment, public bodies may want to consider offering a call-in option or write-in option (to be read by a board member or employee at the meeting). If possible, place hand sanitizer stations at the entrance to the meeting room and space the public seating to keep attendees from sitting too close together.

5. Do the timelines set forth in the Freedom of Information Act (FOIA) apply if a public body is closed as a result of the COVID-19 pandemic?

At present, the timelines set forth in FOIA have not been relaxed, even if a public body is closed as a result of the COVID-19 pandemic. Only Saturdays, Sundays and legal holidays as defined in 205 ILCS 630/17 do not count as business days for FOIA purposes. If you are closed due to the COVID-19 pandemic, receipt of FOIA requests should continue to be monitored and timely responses provided. Requests sent to a designated FOIA email should include an automatic reply so that the requester has notice of the closure – but, at this time, it will not excuse compliance with the timeframes.

Labor and Employment Q&A

Overall, it is critical that employers keep the lines of communication about the COVID-19 pandemic open with employees and union leadership. This novel disease presents unique circumstances related to employment considerations that many have not been faced with before. Familiarity and possible flexibility with policies and collectively bargained employment terms may prove to be critical in the coming days and weeks.

1. What should I consider in terms of staffing in the event of a partial or complete closure?

Generally, employers should review policies and collectively bargained agreements (CBAs) regarding staffing levels, scheduling, assignment of duties, and time off (paid and unpaid) conditions and benefits.

If your organization closes as a result of the COVID-19 pandemic, it may be necessary or possible to have all or some employees report to work. Consider whether the job requires student or participant attendance – if not, the employee can be required to report to work or use leave time, as applicable. Consider remote work opportunities (see below), work in connection with e-Learning programs/online teaching or alternative, temporary assignments.

Identify various staffing scenarios and initiate discussions now with employees and union leadership to plan for these scenarios.

2. Am I required to offer remote work opportunities for employees during the COVID-19 pandemic?

Employers should review current employee jobs and classifications to determine all or partial duties that may be performed remotely, if such becomes necessary either due to an organization closure or an employee's personal circumstance related to the COVID-19 pandemic. If an employee requests to work from home, employers should evaluate the request in accordance with their obligations under state and federal law, including requests for reasonable accommodations.

Key factors for remote work opportunities include: (a) whether remote work is a viable option for the position; (b) online or remote accessibility; (c) expectations for employees; and (d) defining the workday, responsibilities and check-in protocols. Note, these factors will affect the terms and conditions of employment for certain employees, so review applicable CBAs and begin the dialogue with union leadership. It is recommended that terms tentatively agreed to by management and labor be memorialized in a written memorandum of understanding and approved/ratified by the governing board. Given the possible need for quick turnaround, at the very least, terms should be memorialized in some written form with signatures, even if handwritten or email.

Additional considerations for school districts include approval, implementation and training of e-Learning programs. Any negotiated terms should be contingent on the District actually implementing e-Learning days.

Additional considerations for colleges include training to support online instruction and coursework, and possible restructuring or alternatives to lab components.

3. Are there any special considerations regarding workdays during the COVID-19 pandemic?

If it is a regular workday for an employee, there should be no change. If your organization is closed, how the closure is categorized will likely matter. Check policies and CBAs for treatment of days for partial or complete closure. Notably, essential personnel (e.g., police, public safety, facilities, etc.) may still be required to report to work.

Some special considerations for school employees will depend on how the “day” is categorized. If a day is designated as an Emergency Day, teachers should not be docked pay as these days are built into the school calendar and will be made up. For other employees, it will be necessary to consult applicable contracts, CBAs and policies. Discussion with union leadership may also be necessary to avoid alleged unilateral changes.

Compensation for an e-Learning Day under an approved program should be based on any prior agreement with applicable unions. Otherwise, consult contracts and policies, and notify/discuss with union leadership.

Compensation for the Act of God days approved by the Governor (March 17-March 30) shall be without loss of pay for school employees. Again, these days do not need to be made up at the end of the school year. At this time, only March 17 through March 30 have been classified as Act of God days for public schools.

Other than the days noted above, compensation for other closure days will need to be evaluated in accordance with contracts, CBAs and policies, and in consultation with union leadership.

In the event of a school closure, boards may want to consider adopting a motion approving all dates of the closure, reason for the closure (COVID-19 pandemic) and deem it to be a public health emergency and act of God.

4. If my organization closes as a result of the COVID-19 pandemic, should I stop paying employees?

Compensation will depend on how a day is designated by the employer, whether the employee is continuing to perform services or whether the employee is absent. There are obviously bargaining and policy considerations embedded in these scenarios.

If the organization is operating normally and an employee is absent due to self-quarantine, regular leave rules should apply.

If the employee is absent at the direction of the employer based on application of the CDC or state/local agency guidance, or based on an organization closure, there will be a question of whether the employer must compensate the employee through existing leave entitlements or an extension of benefits. Employers will need to consider CBA obligations and consult legal counsel.

If an employer intends to provide paid leave or time off beyond what they already provide by statute, contract or CBA, this is a bargainable subject and the employer must have that decision

approved by the board or other governing authority. The employer should create clear documentation of the public purpose for the decision and the limits on the amount of additional leave being granted.

The Illinois Department of Employment Security (IDES) is expected to soon file emergency rules regarding access to unemployment benefits for individuals unemployed due to COVID-19. We will provide guidance about the impact of the rules once published.

5. If my organization closes or an employee is not working, should benefits continue?

If your organization is closed or employees have excused absences (paid or unpaid) in connection with the COVID-19 pandemic, benefits should continue during this time.

6. Should absences related to the COVID-19 pandemic be designated as leave under the Family and Medical Leave Act (FMLA)?

Normally, the FMLA does not cover absences due to non-serious health conditions such as colds and flu. The varying range and degree of absences (personal or for a family member) that could result from the COVID-19 pandemic may, however, trigger employee and employer rights and responsibilities under the FMLA. Given that application of the FMLA will be made on a case-by-case basis, we recommend that you consult with legal counsel on this issue.

Generally, employers should issue an FMLA eligibility notice and send notice of rights and responsibilities to employees who are absent for a COVID-19 related reason. In an effort not to further burden the medical community, employers should waive the requirement for an employee to have a health care provider complete an FMLA certification form for absences for a COVID-19 related reason. Also, employers should treat COVID-19 related absences as “job protected” leave.

7. With Spring Break on the horizon, if my organization remains open, can I ask employees about their travel plans?

In the sole interest of the health and safety of the work environment, you may consider asking/requiring employees to complete a form about their travel plans for Spring Break and travel on other upcoming holidays when your organization is closed. Employers should: (a) treat all employees equally; (b) notify and discuss with union leadership as applicable; (c) use information only in connection with COVID-19 pandemic preparedness and response; and (d) review and act consistently with then-current guidance from key agencies.

Operations, Facilities and Commercial Contracts Q&A

The spread of COVID-19 is having a dramatic impact on public bodies with respect to their employees, students and community participants. In addition to those important concerns, public executives and administrators, particularly those tasked with the business operations, should also consider COVID-19's impact on the public body's operations, facilities, and commercial contracts.

1. What cleaning and disinfection procedures should public bodies use to prevent the spread of COVID-19?

As of March 13, 2020, the Illinois Department of Health ("IDPH") has advised that no special sanitizing process beyond routine cleaning is necessary or recommended to slow the spread of COVID-19, which is a respiratory illness. (See <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/schools-guidance>.)

Transmission of COVID-19 to persons from surfaces contaminated with the virus has not been documented, and transmission generally occurs through respiratory droplets. However, COVID-19 may remain viable for hours to days on many types of surfaces.

If persons suspected or confirmed to have COVID-19 have used a facility, the Centers for Disease Control and Prevention ("CDC") recommends closing off the areas used by the infected persons and wait for as long as practicable before beginning cleaning and disinfection. The cleaning and disinfection process should follow CDC recommendations: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

2. Will the public body's insurance cover the costs of cleaning and disinfection?

If a public body confirms an employee, student, participant, vendor or other invitee test positive for COVID-19, the public body should promptly contact its insurance professionals about a potential claim.

Insurers have a financial interest in limiting additional potential claims and can assist in managing the risk of further transmission. The cost of additional environmental cleaning and disinfection services have been reported to be significant, and, depending on the scope of the policy, the insurer may provide coverage for these costs if there is confirmation of a COVID-19 positive person in the public body's facility.

3. How should public bodies limit the risk of vendors transmitting COVID-19?

It is imperative that, as with their own employees, public bodies maintain communication with vendors that have contact with public bodies' employees, students or participants, or are otherwise present in the public bodies' facilities. Public bodies should confirm that vendors and their personnel are following all CDC and the IDPH recommendations regarding COVID-19.

Public bodies should require their vendors to provide written notice to the public body if the vendor: (a) becomes aware of any employees exposed to COVID-19 who have had contact with

any of the public body's employees, students, or participants, or have been physically present on the public body's property; or (b) the vendor believes that its services will be affected in any way by COVID-19 or any preventative action plan.

Public bodies should determine whether its vendors' services are necessary and/or require adjustment during any closure of a public facility or suspension of public operations. If suspension, termination or adjustment in services is required, public bodies should examine their contract documents to determine whether any adjustment is needed to the vendor's compensation or payments.

4. Should we cancel public bid openings?

In many cases, Illinois public bidding laws require a "public bid opening" for commercial contracts and expenditures. Given federal and state recommendations for "social distancing," public bodies should consult with their legal counsel about rescheduling bid openings or providing alternatives for the "public opening." While an in-person physical "bid opening" is required in many cases, public bodies can provide supplemental attendance measures, such as a video-conference, which can provide vendors with the assurance of a transparent bid opening while encouraging a reduction in the number of attendees physically present at the opening.

5. Should School Districts Continue Providing Meals to Students and How?

For school districts that close due to the COVID-19 pandemic, the ISBE and the IDPH have encouraged schools to continue providing meals to their students. School districts should review their food service contracts and work with their food service management vendors to plan a safe alternative distribution method for student meals during any unanticipated closures.

On March 12, 2020, ISBE received a waiver from the U.S. Department of Agriculture for the congregate feeding requirement, which will provide flexibility to school food authorities and eligible community organizations to distribute meals. School districts must complete ISBE's "Unanticipated School Closure Non-Congregate Meal Form" available at <https://www.isbe.net/Documents/ISBE-66-98.pdf>. More information is available from ISBE at: <https://www.isbe.net/pages/nutrition-and-wellness.aspx>

Students and Special Education Q&A

This section is relevant to K-12 school districts.

1. What obligations does a school district have to provide educational services to its students as a result of a school closure?

As noted above, how the day is categorized matters when determining school district obligations to provide services. A day classified as an Emergency Day will be made up because it is built into the school calendar at the end of the school year and, therefore, there is no obligation to provide services on the day of the closure. Once the five emergency days are used, unless the Illinois State Board of Education (ISBE) approves the school closure day as an Act of God Day, a school district is obligated to either make up a day of school closure or provide educational services on that day

via e-learning. An Act of God Day does not need to be made up and counts toward the required number of student attendance days in the school's calendar. If the day of closure is classified as an emergency day or Act of God day, school districts may use e-Learning to ensure continuity of education and learning although it is not required based on the classification of days.

2. Is the District obligated to deliver specialized instruction consistent with the student's IEP during e-Learning days?

School districts should be creative and resourceful in providing educational opportunities to students with disabilities during e-learning days. However, specialized instruction on e-Learning days will look different since the student is completing work remotely. In its most recent guidance, the U.S. Department of Education indicated that it understands there may be exceptional circumstances that could affect how a particular service is provided. School districts should plan ahead with their teachers on how lessons will be provided to students depending on the nature of each student's disability, and what form of communication the teacher will have with the student to deliver support and services. This support may come in the form of phone calls, emails, and/or video chats with the student and/or parent. Since school districts will not be providing minute for minute direct specialized instruction during times of school closure, upon return to a regular school schedule, teachers should engage in their typical skill assessment to determine a student's progress toward their IEP goals and address any needs on a case by case basis at the next IEP meeting.

3. What are the District's obligations to provide related services as part of an e-Learning program?

School districts should work with their related service providers to review student needs and determine creative options for providing related services during times of e-Learning. For example, the social worker may provide a student an assignment (i.e. story to read, video to watch) that involves a social emotional topic that the student would complete during an e-Learning day. Related service providers should also communicate with their students and/or the students' parents each week during times of school closure to follow-up on the assignments or lessons given, and check-in with the student on how they are functioning. These contacts may be in the form of phone calls, emails and/or video chats or conferences.

4. How should special education teachers and related service providers be communicating with students on e-Learning days?

School districts must ensure that special education students have a means to communicate with their special education teachers and related service providers during e-Learning days, however, school districts can determine the form of communication.

5. Are District's obligated to address IEP goals and collect progress monitoring data during e-Learning days?

In most cases school districts will have limited ability to collect progress monitoring data and evaluate progress on IEP goals since the student is not physically present in school. School staff may evaluate the assignments and educational activities completed by students through the e-Learning activities and use this data to monitor student progress on goals and objectives as appropriate. Upon return to a regular schedule, teachers and related service providers should

engage in their typical skill assessment to determine a student's progress toward their IEP goals and address any needs on a case by case basis at the next IEP meeting.

6. Do e-Learning days count toward the required special education timelines (i.e. annual IEP meetings, eligibility meetings); should school districts proceed with IEP meetings?

Based on the emergency nature of this situation and pandemic declaration, we believe federal and state authorities will provide school districts some flexibility in this regard. Having said that, in its guidance issued on March 10, 2020, ISBE stated that they expect that all districts will comply with requirements to timely convene IEP meetings for students. ISBE suggests that schools avail themselves of the opportunity to ensure parent participation at meetings via alternate means, including telephone or videoconference, which are allowable under the *Individuals with Disabilities Education Act*. Some IEP and eligibility meetings may be able to proceed, via teleconference or video chat, during times of school closure and schools are encouraged to convene IEP meetings when possible. We suspect that ISBE's guidance regarding timelines may change if the period of e-Learning activities is extensive. It may very well be that schools will be able to pause the school day count at the initial date of e-Learning for initial evaluations and reevaluations and begin counting again when school resumes, however, ISBE and the Department of Education have not sanctioned such at this time.

7. How does a District support its students in private therapeutic day schools and residential facilities?

School districts should reach out directly to each private therapeutic day school and residential facility that services a resident student to determine what instruction, e-Learning or educational continuity the private day school or residential facilities will provide during a period of school closure. If the school district is closed and the private day school remains open, the school district should continue to provide transportation for students placed in private facilities. School districts should also request that private placements communicate any school closures to them and directly to parents.

8. What options does a District have if students do not have access to technology or who, by reason of their disabilities, are unable to utilize technology-based learning programs?

Districts should provide alternative methods of delivering educational material for students who do not have access to Wi-Fi or technology or who cannot access technology-based learning due to their disabilities. ISBE recommends that school districts utilizing e-Learning should also make available hard copy packets of the educational materials and activities for students who are unable to access the material/activities electronically.

9. For students whose placement is currently homebound, are we obligated to continue the homebound services during e-Learning days?

For students currently receiving homebound services, the District should provide the tutor and parents the option of continuing the homebound services or temporarily suspending homebound services and providing the student an e-Learning option. If the tutoring is to continue, the tutor should be given access to the appropriate e-Learning activities designed for all students.

10. Should the District excuse absences for students whose parents voluntarily keep them out of school?

ISBE recommends that absences stemming from parents proactively holding their student out of school for health and safety reasons (i.e. “self-quarantine”) should not be counted as unexcused absences, nor should any such student be labelled as truant. Generally, schools are permitted to require doctor’s notes or other documentation to substantiate a student’s absence. Schools should exercise discretion and flexibility in connection with the COVID-19 pandemic.

11. If the District learns a student has travelled to a Level 3 Country, what action can the District take?

Per guidance from the IDPH and CDC, it is advised that any individual returning from a location designated with a Travel Warning of Level 3 should not attend school or work for 14 days after their return. Student absences for this purpose should be excused.

12. Can the District provide breakfast and lunch to students during school closures and e-Learning days?

ISBE was approved for a waiver to provide flexibility to school food authorities and community organizations, who request approval from ISBE, to distribute meals in affected communities. School districts should consider appropriate and approved alternative options for delivering meals to students and families in need, such as sack lunches or meal pick-ups/delivery. This may require coordination and collaboration with food service vendors, support staff and union leadership. Also, consider communication with the community about food pantry and other resources that may be generally available to those with food/meal insecurities. ISBE has also prepared a *Child Nutrition Program Meal Service During COVID-19 Outbreak Q&A* document, which is available on its website.

13. Can transition students continue to participate in community based vocational job sites?

Yes. However, it should be up to the student’s parent, the student and the job site whether to continue. Therefore, if the student or student’s parent indicates a concern with safety and exposure, staff should notify the job site that the student would not be present.

14. What information can the school district disclose to the school community when it learns that a student is out sick due to COVID-19?

The school district can disclose non-personally identifiable information to the school community related to a confirmed COVID-19 case.

15. How should districts proceed if e-Learning is not possible for the District or for specific students for whom e-Learning is not an appropriate way to deliver instruction and educational activities

In its updated guidance, ISBE refers school districts to consult the U.S. Department of Education guidance for updates. ISBE indicates that it recognizes there are certain students for whom e-Learning will not meet the student’s right to receive a free appropriate public education. School districts should consider any available and appropriate alternate means for supporting continued access to educational opportunities. For school districts that cannot reasonably provide e-

Learning opportunities, ISBE provides guidance encouraging school districts to consider providing activities similar to those provided over winter or spring break to keep students engaged in the curriculum and to prevent learning loss. ISBE recommends working with teachers and providers to conduct contingency planning for each grade level and includes resources in its guidance for distance learning and remotely accessible and free online resources.

16. What procedure should the school implement if a student shows up at school when the school is closed?

The onsite school administrator should contact the student's parent/guardian to inform them the school is closed and the student needs to be picked up immediately. If the school is unable to reach the student's parent/guardian, the emergency contacts for the student should be called to pick the student up. If, after an appropriate period of time, emergency contacts cannot be reached the school should contact local law enforcement for assistance.

Park Districts Q&A

Park districts generally are working on plans to respond in the event a program participant, spectator or other park patron reports a case of COVID-19. Much of the content discussed earlier in this publication apply to park districts, however, guidance specific to park districts is set forth below.

1. What additional activities should we require of our managers?

Managers should: (a) monitor guidance related to COVID-19; (b) review and update emergency operations plans, in preparation for possible implementation; (c) identify and begin to prepare department contingency plans if meetings, events and programs are cancelled; (d) develop and implement protocols to share information with stakeholders; and (e) educate program participants and employees on best practices for hand washing and social distancing, and to avoid touching their face and sharing food.

2. Should we close our facilities and suspend our programs?

At this time, it is not specifically recommended that park districts close all facilities and suspend all programming. However, any event where more than 250 people will be assembled should be cancelled or postponed until further notice. This is based on the Governor's directive that all planned gatherings of 1000 people or more within the state are "banned" and events involving 250 or more participants are "discouraged."

3. How do we handle continuing recreational needs?

It is critical that park districts keep the lines of communication about COVID-19 open with program participants, spectators, parents and the community. The following principles should be considered in maintaining communication:

- (a) Regarding park district-sponsored activities, park districts should consider modifications, canceling or rescheduling as appropriate based on published guidance.

- (b) Strongly consider cancelling group field trips to public places.
- (c) Be creative and resourceful in providing recreational opportunities to the community during closures. Modify program activities to enable remote participation and community-based experiences.
- (d) Be cognizant of concerns of discrimination, harassment and bullying in connection with COVID-19. Reports of such behavior should be addressed through park district policies.

Key Resources

We continue to monitor COVID-19 and will provide updated guidance as appropriate on our website (<http://www.rsnlt.com/page/publications/>). Below are additional links for the most-up-to-date resources for schools:

Illinois Department of Public Health:

<http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus>

Centers for Disease Control and Prevention:

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

Illinois State Board of Education:

<https://www.isbe.net/Pages/School-Health-Issues.aspx>

U.S. Department of Education:

<https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/Pages/default.aspx>

Occupational Health and Safety Information:

<https://www.osha.gov/SLTC/covid-19/>

Student Privacy Policy Office:

<https://studentprivacy.ed.gov/resources/ferpa-and-coronavirus-disease-2019-covid-19>

Office of Special Programs:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>