

In Brief

March 28, 2020

Transitioning from “Act of God” Days to “Remote Learning Days”

Just as we began to wind down from our “new normal” last night by gathering around the table for takeout, a puzzle or to binge watch a new Netflix series, the Governor issued Executive Order 2020-15 focused on schools and “days” after March 30, 2020. Emergency rules, guidance and joint statements followed from many agencies dedicated to charting a course for our State’s schools, students, families, teachers, administrators and staff during an unprecedented time. As a follow-up to our March 27, 2020 *Law Alert*, this publication provides an overview of the rules and guidance released last night. Links to the complete documents referenced herein can be found at the end of this publication. We look forward to providing further guidance and answering your questions during our COVID-19 Legal Panel Webinar for School Districts on Monday, March 30, 2020 from 12:30-2:00 PM.

While the majority of this publication pertains only to school districts, new guidance relevant to higher education institutions regarding dual credit courses can be found in the Section below titled “Dual Credit Guidance from IBHE, ICCB and ISBE”.

State Superintendent Declaration of Remote Learning Days

In accordance with recently filed emergency rules, on March 27, 2020, Dr. Ayala declared Remote Learning Days (“RLD”) for schools statewide beginning March 31 and until in-person instruction can resume. For RLD, schools must conduct instruction remotely. **RLD count as pupil attendance days.**

RLD may be met through a district’s implementation of an e-learning program under School Code Section 10-20.56. *Robbins Schwartz is seeking clarification from ISBE that verified, emergency learning plans which may not comply with all statutory requirements are acceptable.*

For schools or districts that have not implemented an e-learning program, they must adopt an RLD Plan approved by the districts’ superintendent or chief administrator. Note that any time after March 30, districts may use up to five (5) Remote Learning Planning Days (“RLPD”) to work on the plan for RLD in partnership with their respective bargaining units. These days can be consecutive or non-consecutive. **RLPD also count as pupil attendance days.**

Each RLD Plan shall address:

- ❖ Accessibility of the remote instruction to all students enrolled in the school or district.
- ❖ When applicable, a requirement that RLD activities reflect the State learning standards.
- ❖ Means for students to confer with an educator, as necessary.
- ❖ Unique needs of students in special populations, including, but not limited to, students eligible for special education, students who are English learners, students experiencing homelessness or other vulnerable student populations.
- ❖ Transitions from remote learning to in-person instruction upon the State Superintendent's declaration that RLD are no longer deemed necessary.

Each RLD plan must be posted on the school or district Internet website where other policies, rules and standards of conduct are posted and shall be provided to students and faculty.

RLD Joint Statement of the Governor, IEA, IFT, IASA, IPA and ISBE

On March 27, 2020, a new Joint Statement was issued by the Office of Governor JB Pritzker, the Illinois Education Association (IEA), the Illinois Federation of Teachers (IFT), the Illinois Association of School Administrators (IASA), the Illinois Principals Association (IPA) and the Illinois State Board of Education (ISBE) regarding the designation of remote learning days beginning March 31, and providing personnel-related guidance. This document suggests that further joint guidance may be forthcoming. Key highlights from the new Joint Statement are as follows:

- ❖ School districts must develop instructional remote learning to allow for student engagement and continuity of instruction. Districts must work with unions to determine how remote learning days will occur.
- ❖ School districts are not expected to extend the school year. Three categories of days count as actual days of pupil attendance:
 - **Act of God Days** (March 17-March 30)
 - **Remote Learning Planning Days** (up to 5 days any time after March 30 to plan for remote learning)
 - **Remote Learning Days** (beginning March 31)
- ❖ No school district will lose any Evidence Based Funding.
- ❖ During the suspension of in-person learning, all school district employees on the district's payroll will get paid as if the schools were functioning normally and they were performing their normal work, regardless of the district's instructional remote learning plans developed during this time. Normal pay includes salary, hourly and stipend pay, as well as benefits. Employees will receive full and normal service credit in their pension systems.

- ❖ Affirms that during the suspension of in-person learning, school districts **can expect school district employees to participate in work activities in some form**. Concrete details of the work, including stipend work, that will occur during this timeframe must be worked out through mutual agreement with the applicable labor union. Negotiations should focus on:
 - Continuity of education through instructional remote learning;
 - Provision of meals;
 - Other student and staff support measures as appropriate for each district to effectuate instructional remote learning; and
 - Ensuring the performance of essential district functions and operations.
- ❖ If work can be performed remotely, it should be. For on-site work, CDC and IDPH guidelines should be followed.
- ❖ **Teacher evaluation and reduction-in-force remains in full force and effect**, including all timelines and existing statutory language.
 - Any teacher evaluation not completed by the end of the year, will be considered “proficient.”
 - Evaluations that have been substantially completed (all classroom observations have occurred, and all professional practice and student growth has been collected) shall be finished remotely.
- ❖ All timelines concerning **professional development plans** (following a “NI” rating) and **remediation plans** (following a “US” rating) are **paused** until such a time when schools reopen statewide.
- ❖ Timeline and notice requirements from a school board regarding **dismissal of a teacher** in contractual continued service as well as the requirement that a hearing be requested within 17 days **remain in place**.
- ❖ For educational support personnel, evaluations that have been substantially completed (all necessary data has been collected) shall be finished remotely.
- ❖ All timelines, notice requirements and procedures remain in place for a district that wishes to remove, dismiss or reduce the hours of educational support staff personnel in order to decrease the number of support staff or to discontinue some particular type of educational support service.

Remote Learning Recommendations During the COVID-19 Emergency

ISBE convened an advisory group that developed specific recommendations and best practices for remote learning in the areas of:

- ❖ General Recommendations
- ❖ Birth through Grade 2
- ❖ Grades 3-5
- ❖ Grades 6-8
- ❖ Grades 9-12
- ❖ Special Education and Related Services
- ❖ Multilingual Education

A few takeaways from the Advisory Groups Recommendations for RLD:

- ❖ Districts will need to work with local unions to determine how instructional remote learning will occur.
- ❖ Instructional remote learning differs from statutory eLearning plans.
- ❖ ISBE supports remote learning that meets local needs and to the greatest extent possible, minimizes the negative impact this moment has on student education trajectory.
- ❖ Instructional remote learning does not eliminate the teacher, but instead works to develop a partnership with families to provide instructional remote learning in these difficult times.
- ❖ All decisions regarding special education must comply with guidance from United States Department of Education
- ❖ RLD can be real-time or flexibility timed. It may or may not involve technology. It can be a blend of all these concepts.
- ❖ Adopt a remote learning approach that is inclusive of, and equitable to, all students regardless of age, location, background and available resources.
- ❖ Time allotted to tasks should be age appropriate. *The Recommendations include minimum and maximum length of instructions/tasks for each of the grades referenced above, along with other suggested activities for social-emotional learning, etc.*
- ❖ Students will not be required to master and will not be penalized for failure to master new content. No educational harm to any child as a result of RLD. *Grading is addressed at length in the Recommendations.*

- ❖ Simplicity is best during this time – simplicity of the framework, of communication structures, of expectations.
- ❖ Consider impact on working conditions, framework of remote plans, acceptable use policies and use of personal devices.

Dual Credit Guidance from IBHE, ICCB, ISBE

The Guidance document issued on March 27, 2020, advises secondary and postsecondary institutions in Illinois on supporting and accommodating students who are enrolled in dual credit courses during the COVID-19 public health emergency.

Echoing the Governor’s prior executive orders, dual credit instruction should continue, *if possible*, during the suspension of in-person instruction, or resume as soon as possible, to ensure students are able to meet the objectives of the dual credit course. However, instruction must not negatively impact a student’s academic standing.

For dual credit courses taught by a high school instructor, the online, alternative or remote instruction that takes place must still meet the standards for college credit. If coursework is being completed, students should receive credit for that work.

If a high school lacks the capacity for online, alternative or remote instruction, it is recommended that the higher education institution work with the high school to share any online resources/platforms needed to ensure student success (e.g., set up Blackboard course section for HS teacher or loan laptops to students in class).

For dual credit courses taught by a college instructor, the higher education institution should work with the high school to transition those students to online, remote or ALT delivery options.

For Career and Technical Education dual credit courses typically delivered in-person but currently being delivered online through an alternative format or via remote instruction after March 17:

- If students can resume in-person instruction and complete hand-on competencies as part of the course, social distancing practices should be adhered to.
- If after April 7, the higher education institution resumes in-person instruction, but the high school does not, opportunities to bring students on campus to complete hands-on competencies should be implemented.
 - Vice-versa, students should be allowed the opportunity to complete the hands-on competencies as part of the course at the high school, even if outside normal timelines. The high school and the higher education institution should work together to finalize plans.

If a course can't be completed in the current semester timeframe:

- Students may be given the opportunity to receive an Incomplete, with an individual plan to complete that work ASAP, within the context of the credit granting higher education institution's policies for completion of work. There should be a focus on students who are expected to graduate in spring of 2020.
- The instructor should make every effort to work with the student and, if possible, their high school counselor to contact the college or university to inquire about their completion policies for dual credit courses.

For students who choose not to continue their dual credit enrollment, given the challenges associated with COVID-19 pandemic:

- Grading should strongly consider the principle of "No educational harm to any student."
- High schools and higher education institutions should be actively engaged with each student to ensure they are not penalized by this situation.
- Institutions may adopt policies to protect the academic standing of students who are not successful in dual credit courses including, but not limited to, options for late withdrawal from a course or taking the course on a pass-fail basis, or both.

Links to Key Resources Cited in this Publication

Governor's Executive Order 2020-15

<https://www.isbe.net/Documents/EO2020-15.pdf>

March 27, 2020 Joint Statement

<https://www.isbe.net/Documents/Joint-Statement-Updated%203-27-20.pdf>

Message from State Superintendent Regarding Remote Learning Days

<https://www.isbe.net/Documents/ISBE-Remote-Learning-Days-Begin-March-31.pdf>

ISBE FAQs on Mandatory Suspension of In-Person Instruction

<https://www.isbe.net/Documents/FAQ-3-27-20.pdf>

Emergency Rule – Remote Learning Days

<https://www.isbe.net/Documents/23-5RG-E.pdf>

Remote Learning Recommendations During the COVID-19 Emergency

<https://www.isbe.net/Documents/RL-Recommendations-3-27-20.pdf>

Joint Dual Credit Guidance During Suspension of In-Person Instruction

<https://www.isbe.net/Documents/Joint-Dual-Credit-Guidance-During-Suspension-of-In-Person-Instruction.pdf>

Special Education Guidance for Schools and LEAs During Statewide Closure

<https://www.isbe.net/Documents/School-Closure-SpED-Guidance.pdf>