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Coronavirus Disease-2019

A Guide for Illinois Schools



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COVID-19 is a growing threat for Illinois schools

PREPARATION IS KEY

Since the first reported case of coronavirus disease 2019 (COVID-19) in Wuhan, China, on December 31, 2019, school districts in Illinois have been preparing for a potential outbreak within the state. In so doing, school leaders have faced many difficult legal questions. This document provides answers to some of those frequently asked questions and will be updated as new information becomes available.

Although this document addresses a myriad of legal concerns, schools' primary concern during this outbreak, newly christened as a pandemic, should be the health of its community members. If ever there was a time when legal risks were outweighed by non-legal ones, it is now. However, we hope that these answers to pressing legal questions will help ease your mind.

As always, this legal information is not the same as legal advice, which is essential when applying the law to specific circumstances. The information in this guide is not a substitute for and does not replace the advice or representation of a licensed attorney. For advice on specific issues facing your school district or school, contact your [Franczek attorney](#).



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General Questions

1

What steps should schools take now if COVID-19 has not been identified in their community?

As we described in earlier guidance on [February 10](#) and [March 2](#), schools should take steps now even if they have no reported cases of COVID-19. Recommendations include:

- Identifying a person or office to monitor guidance from public health officials and coordinate response and communication efforts
- Preparing a plan for if, or when, students or staff begin to get sick, including planning for e-learning and school closures
- Communicating with parents, students, staff, and union leadership
- Increasing behaviors to prevent the spread of illness
- Reminding constituencies of the steps that can help prevent the spread of COVID-19 (and viruses in general), and
- Being aware of potential bias, discrimination, and harassment, especially of Asian and Asian-American community members.

Public health officials have not yet recommended cancelling classes or school events in Illinois, nor have they advised cancelling school trips to most destinations. This is true even though Governor Pritzker declared a disaster proclamation over the outbreak on March 9. Of course, many schools have chosen to cancel events, trips, and even classes. Because public health agencies at the Federal, state, and local level make frequent updates, regularly review websites for the [Centers for Disease Control and Prevention](#) (the “CDC”), the [Illinois Department of Public Health](#) (the “IDPH”, which has issued specific guidance [for schools](#)), and local resources for changes to recommendations.

2

When should an individual self-segregate from the school environment because of potential exposure to COVID-19, and for how long?

Per [the IDPH](#), any person exhibiting symptoms of COVID-19 (including fever, cough, and shortness of breath) should be removed from the school environment and should contact a health care professional. For students identified in the school environment as exhibiting symptoms, school officials should contact the student’s parents and have the student wait for the parent in a location where the risk of transmission is limited.

Employees who exhibit symptoms at work should also be directed to an area where they can avoid contact with other employees and sent home as soon as possible. A school that has concerns that a person exhibiting symptoms may have been exposed to the virus should also report the symptoms immediately to the local health department.

Health officials are presently recommending that any individual returning from a location with a Level 3 Travel Alert not attend school or work for 14 days after the return date, even if they exhibit no symptoms. At this time, we are not aware of any recommendations for segregating individuals whose spouse, other family member, or other person they have come in contact with has traveled to a Level 3 country unless an individual is exhibiting symptoms. Schools should monitor guidance for updates.

We are aware that the Illinois State Board of Education (“ISBE”) [guidance](#) entitled “Education-Related Guidance for Illinois Schools and School Districts Regarding Coronavirus/COVID-19” states that school districts “cannot exclude or deny enrollment or education to students who are residents of the district due to travel considerations.” This guidance may conflict with CDC and IDPH recommendations that individuals should not go to work or school for 14 days after returning from a Level 3 country.

3

What information can we share with other members of the school community if an individual has been exposed?

If a member of the school community is confirmed to have COVID-19, schools should notify other members of the community of their possible exposure to the virus per CDC recommendations. Other communications, such as regarding possible exposure of community members and other risks, may be warranted on a case-by-case basis. It is critical, however, that the school maintain confidentiality and not generally identify specific individuals involved.

4

Can we ask for documentation from a physician before allowing an individual with symptoms to return to the school environment?

Yes. Schools should defer to guidance from public health officials regarding whether and when a symptomatic individual is allowed to return to the school environment. A school may ask a member of the school community to provide written clearance from a physician before being allowed to return to the school environment after being identified as symptomatic.

Student Issues

5

If school is open, must student absences based on fear of catching COVID-19 be treated as excused absences?

The answer to this question is not clearly settled. Schools generally are allowed to require doctor's notes or other substantiation for student absences. If a student has an immunodeficiency that places the student at greater risk for severe infection, the student's absence may be warranted on a case-by-case basis. However, because the CDC and other health authorities have not at this time identified Illinois or any locality in Illinois as a high risk for COVID-19, schools arguably should be allowed to deem absences based solely on fear of catching COVID-19 as unexcused.

Nonetheless, ISBE's [guidance](#) states that schools should not count absences that result from a parent's decision to hold a student out of school "for health and safety reasons" as unexcused. The guidance recognizes that school districts are the sole arbiter as to whether a parent's decision to hold a student out of school "for health and safety reasons" is valid, but nonetheless states that absences "should not be counted as unexcused" and the student "should not be labeled as truant" even if the school district decides the health and safety reason is not valid.

6

If a student is absent from school because of self-segregation or quarantine, must the school district provide the student home-based education?

ISBE's [guidance](#) recommends that homebound instruction and other methods be considered to provide continuity of learning for such students. As ISBE points out, schools may complete such homebound instruction through telecommunications or the internet, if possible.

7

Will student absences based on COVID-19 count toward a school district's chronic absenteeism rate?

According to ISBE's [guidance](#), the answer is no. ISBE says it is "working with stakeholders, the Governor's Office, and the General Assembly to ensure that absences relating to public health emergencies are not counted toward the definition of chronic absence."

8

Can schools ask parents/students about their travel plans for Spring Break and other periods when school is out?

Yes. However, avoid requiring responses to such questions and carefully consider how such information will be used. Nothing precludes a school district from asking parents and students about travel plans or tracking results, as long as it treats all students equally. ISBE's [guidance](#) warns, however, that schools should not inquire about travel history "for enrollment purposes." As noted previously, individuals who travel to Level 3 countries should stay home for 14 days after they return from the trip. More difficulty can arise, however, where a student visits a Level 2 country. We currently recommend that schools rely on the CDC and other health officials' recommendations with respect to self-segregation, and the CDC does not currently advise individuals traveling from Level 2 countries to self-segregate. As noted previously, the CDC designations can quickly change, so schools should be prepared in case additional countries are added to the Level 3 list.

9

What student attendance issues should we consider when planning for a potential school closure?

The main question relating to students when cancelling school is whether students will be required to make up missed days. Illinois law requires public schools to plan for a 185-day school year and to actually provide students 176 school days. Of the days identified on the initial calendar, five are emergency days to be used if a planned instruction day is cancelled. If more than five days are cancelled in one school term, school districts must make up any missed days unless ISBE, through its Regional Offices of Education, approves the missed days as "Act of God Days." [105 ILCS 5/18-12](#). School districts can request that missed days be considered Act of God Days through IWAS [online](#).

Accordingly, if COVID-19 requires cancelling more than five days of school, those days will need to be made up unless ISBE approves those days as Act of God Days. It seems likely that a COVID-19 outbreak would meet the definition of an Act of God Day, which is a condition beyond the control of the district that poses a hazardous threat to the health and safety of students. We expect further advice and guidance from ISBE on this topic to be forthcoming.

10

If there is a school closure as a result of COVID-19, what responsibilities does a school have to provide educational continuity to students?

If a school has sufficient emergency days or Act of God Days, it is not required to provide educational continuity to students for missed days of school. If a school district does not have sufficient emergency days or Act of God Days, it may wish to explore whether home-based education, including e-learning, can allow days when students are at home to nonetheless serve as school days. Even if not required, a school district may wish to offer home-based education for students during a school closure to mitigate the risk of learning loss and potential related impacts on grades and test scores.

11

What home-based education options are available to Illinois schools in case of a school closure?

[Public Act 101-0012](#), effective July 1, 2019, allows a school district to count verified participation in an e-learning program toward its required 176 school days. Specifically, [105 ILCS 5/10-20.56](#) allows student instruction to be received electronically while students are not physically present in lieu of the school district's scheduled emergency days as required by the School Code. The e-learning program may utilize the Internet, telephones, texts, chat rooms, or other similar means of electronic communication for instruction and interaction between teachers and students that meet the needs of all learners.

To qualify as an authorized e-learning program, the program must meet a number of specific and detailed requirements. Notably, timing requirements for approval limits a school district that does not already have approval for an e-learning program in obtaining emergency approval. According to ISBE's [guidance](#), ISBE recognizes these limitations and is proposing legislative changes that would allow for expedited approval of e-learning programs by schools that did not have approval before a public health emergency. ISBE is also proposing legislative changes to allow school districts to use e-learning days beyond the current limit of five e-learning days per school year.

For schools that do not have an approved e-learning program in place but who nonetheless want to use some type of e-learning to mitigate the risk of learning loss in a prolonged school closure situation, there is nothing in the law preventing a school district from engaging students in an unapproved e-learning program. Indeed, ISBE recommends in its guidance that school districts work to ensure continuity of education even if e-learning is not possible. ISBE suggests the use of remote learning opportunities, take-home packets, and other such methods to keep students thinking about learning. ISBE states, however, that such work should not be counted for grades or used in any way to impact a student's academic standing. Schools using such unapproved learning methods likely also must seek, under current law, Act of God approval to avoid loss of state aid.

12 If days are missed with no e-learning options, will ISBE require all days to be made up?

As noted in the response to Question 9, the current law requires school calendars to build in five emergency days to allow for a total of 176 days of student attendance each school year. Additional days missed for an “Act of God” can be approved by ISBE. At this time, ISBE has not signaled any intention to change the standards applicable to the school calendar and days of instruction. Nor has ISBE stated publicly whether it would be likely to grant a request that days missed because of COVID-19 be treated as “Act of God” days. As mentioned above, the definition of an “Act of God” in the relevant statute is broad enough to cover a school closure for COVID-19.

13 What about students receiving special education, related services, or modifications because of a disability?

Schools must consider many specific issues when addressing the impact of COVID-19 on students with disabilities. A 2009 guidance document from the Department of Education (ED), [Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak](#), provides insights that are applicable in the case of COVID-19.

The ED guidance reminds schools that whether a student with a disability is infected and so must miss school, a student or group of students with disabilities are selectively dismissed because of an increased risk of serious complications from a virus, or an entire school or school district is closed, there are many circumstances in which students with special needs may not be in school during a pandemic like COVID-19. There are myriad procedural steps that must be followed before, during, and after such removals, and the steps depend on the specifics of each situation. Schools must ensure that services are provided to students with disabilities in the home environment where possible, and if a student is not able to receive needed services during a temporary emergency, steps may need to be taken after the emergency ends to make changes to a student’s plan or provide compensatory services.

One of the most important reminders in the ED guidance is that schools can hold IEP and Section 504 team meetings before a health emergency begins to plan for how to address a student’s need during an outbreak like COVID-19. IEP and 504 teams can, but are not required to, address issues like distance learning plans that could be triggered in a virus outbreak. Creating such a contingency plan can limit the disruption that an outbreak like COVID-19 can have on students with disabilities. Schools should watch for updated guidance from ED and/or ISBE addressing the impact of COVID-19 on students with disabilities.

14

If a private day school serving special education students closes due to COVID-19, what obligation does the enrolling school district have regarding its students placed there?

School districts must continue to provide special education and services to their students placed at outside public and private facilities as long as the school district's own schools remain open. Therefore, school districts should consider options for the continuation of special education services to students placed in these programs in order to be prepared to address such closures. We recommend that all school leaders review both ED's [2009 H1N1 guidance](#) and any revised guidance issued.

15

How will school closures impact spring testing?

ISBE stated in its [guidance](#) that it is working with ED to address school closures during the upcoming spring testing window. As the testing period grows nearer, schools should stay alert to updates regarding what, if any, changes will be authorized for spring tests.

16

Can schools face liability for canceling school trips—or for deciding not to do so?

As we reported in our [previous alerts](#), the CDC and other health officials are not recommending that schools cancel trips within the United States or to countries rated Level 2 or below. For this reason, many tour companies, airlines, hotels, and other travel companies are not currently providing refunds or fee-free cancellations for trips. ISBE has "[strongly urged](#)" all schools to re-evaluate planned or scheduled travel. Schools are understandably juggling many considerations when assessing how to handle trips involving groups of students in the near future.

Top of mind for many school districts is potential liability if a student were to fall ill during a school-related trip. Illinois has robust tort immunity protections for school districts, particularly when making discretionary policy determinations such as whether to allow a trip to proceed. Schools can take additional steps to limit potential risk, such as notifying parents and students of limitations on their authority with respect to non-school-sponsored trips; strengthening waiver language in releases parents sign; and involving parents and students in decisions about trips.

Employee Issues

17 For bargaining unit employees, are we required to negotiate our planned response to COVID-19?

Maybe, depending on the terms of the existing collective bargaining agreement. Such issues could include self-segregation and quarantine policies, work from home opportunities or mandates, time off conditions, modified job duties, and e-learning practices, to name a few. Because these changes may affect the terms and conditions of employment, these discussions should start now and be ongoing with the unions throughout this crisis.

18 Can we ask employees about their recent or planned travel?

Yes, schools may ask employees about recent or upcoming travel plans in order to identify employees who may be at risk of exposure. Such inquiries in themselves are not restricted “disability-related” inquiries under the ADA.

Schools should observe certain precautions however. First, schools should base any inquiries on current advice from public health officials. Second, schools should have a plan for what to do with this information. Third, such inquiries should be based upon travel – not an individual’s ethnicity, national origin, or citizenship.

19 Can we require employees who have recently traveled to areas considered at risk from COVID-19 to remain home from work for a period of time after their return?

The answer to this question is not clearly settled. As discussed above with respect to students, the CDC and IDPH have stated that individuals who have recently traveled to Level 3 areas should remain at home for 14 days after return. However, ISBE [guidance](#) states that schools should not exclude any individuals, including employees, based on where they have traveled. The legal basis for this guidance is not clear.

20

Can we ask employees if they have symptoms of COVID-19?

Yes. Schools can generally ask employees if they are experiencing symptoms of COVID-19, which according to the CDC include fever, cough, and shortness of breath.

21

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 or the flu?

Yes. Schools can and should direct employees who exhibit cold or flu-like symptoms to leave work and to remain at home until they have recovered and for any period following recovery recommended by public health officials. Be mindful of deducting sick days if the school, not the employee, makes the decision that the employee must stay home.

22

Can we take employees' temperatures to identify those who have fevers?

Schools should follow the recommendations of public health officials. Currently, we are not aware of any guidance suggesting that employers monitor employee body temperatures.

23

If school is open, can we limit the use of personal days based on fear of the virus alone?

Maybe. If school policy allows taking personal days for any reason, it may be difficult to limit an employee's reliance on that flexibility. We recommend that personal days be more narrowly defined, however, and if they are, schools may be able to limit the use of such days based on fear of the virus alone. On the other hand, mere fear of the virus would likely not justify use of a sick day by an employee.

24

In case of a school closure because of COVID-19, can we require staff to use accrued sick/ vacation/ personal/ PTO time?

It depends. The answer may vary based upon the type of leave at issue and the specific language of the relevant contract or leave policy.

25

In case of a school closure, do we have to pay employees?

For teachers, if the only days missed are emergency days schools should not dock pay. It is implicit in the school calendar that some days will be missed and made up as emergency days. For days missed beyond emergency days, consult the collective bargaining agreement and union leadership to determine an approach that meets the needs of employees, students, and the school district.

For non-teaching staff, schools should review any applicable collective bargaining agreement, contract, or employee handbook for terms related to minimum hours and scheduling, which may limit flexibility in compensation decisions. Other contract terms could also dictate how employees should be paid. As a practical matter, hourly employees are typically compensated for hours worked; however, in the event of an extended leave, schools should balance the possibility of losing quality staff with budget implications.

26

Are absences related to the COVID-19 outbreak covered by the Family and Medical Leave Act?

Although the Family and Medical Leave Act typically does not cover minor illnesses such as colds, the FMLA might apply if an employee or employee's family member is incapacitated by illness (that is, unable to work or go about their regular activities) for more than three calendar days and is receiving ongoing treatment from a healthcare provider. This period of incapacity may include time after an employee is feeling better but is nevertheless advised to stay home to avoid spreading the illness.

The regulations do not expressly address what happens when an employee or employee's family member is not actually sick but is nevertheless advised by healthcare professionals or public health officials to stay home from work or school due to a suspected exposure to the virus. In these cases, the FMLA may not apply, although specific details may matter.

27

Can we require an employee to be tested for COVID-19 before returning to work?

Not unless otherwise directed by public health officials. Whether and how an employee should be tested is a question for public health officials and the employee's physician. If an employee misses work due to illness or is identified as being at risk under current guidance, employers typically can require a physician's certification before the employee returns to work but generally cannot dictate what tests an employee receives to support such certification. Schools should also be mindful of restrictions regarding such certifications under the FMLA and any applicable collective bargaining agreement.

28

Do schools have to pay staff for additional days if ISBE does not count days of school closure as e-learning days?

Probably. The answer will likely depend on the specific language of the applicable collective bargaining agreement and how staff was paid during the closure, and may be different from one school district to another. We recommend that schools contact legal counsel for assistance with this and other bargaining issues.

29

Can we require some employees to report to work and allow others to stay home during a school closure?

Yes. To the extent employees can perform their job duties during a school closure, they can be required to report to work or to work from home. At the same time, those employees whose job duties depend on student attendance can be permitted to stay home. Whether such employees are paid during any period that they are not working is likely dependent on the terms of any applicable contract, and on negotiations with the union representing any bargaining unit employees.

30

Can we require employees who report to work to perform duties other than their regular job duties?

Maybe. If employees' work is dependent on student attendance, schools could offer, or perhaps require, employees to perform different job duties as an alternative to unpaid leave. For bargaining unit employees, terms of any such offer or requirement likely needs to be bargained with the union. This may include any requirement that teachers shift to e-learning or other alternatives to in-person instruction.

31

Must we allow an employee to work from home if they ask to do so? Can we require it?

As concerns about COVID-19 grow, some employees may ask to work from home to avoid potential exposure to the virus. If an employee makes such a request due to a medical condition that places them at higher risk for infection, an employer may be obligated to consider this request as a reasonable accommodation under the ADA or state law. Of course, remote work is not a viable option for many jobs in a school environment, particularly while school remains open. However, if an employee's job could be successfully performed from home, the school should carefully consider the employee's request in accordance with its process for reviewing accommodations under the ADA.

If a school makes the difficult decision to close, it may determine that some employees will be required to work remotely – for example, to administer e-learning programs, or to see to communications and administrative tasks during the closure. As with other alternative work assignments, schools may need to negotiate any remote work requirements with the union representing any bargaining unit employees. Where working from home is allowed or required, schools should establish expectations for employees' work and communications while they are working remotely. These may include specified working hours, expectations for responding to calls and email, and productivity goals. Schools should also ensure that employees have a way to accurately track their work hours. Schools should also be mindful that employees may be entitled to reimbursement for expenses incurred due to a mandatory work-from-home policy

32

Can we prorate stipends for extracurricular work?

Maybe. As most stipends are governed by a collective bargaining agreement, the answer to the question likely depends on the specific language of the agreement and past practice, which may be different from one school district to another. Another factor to consider is whether the work could be continued and fully performed once school resumes. Even if not addressed specifically in an agreement, the issue may be subject to bargaining with the union if members of the bargaining unit are implicated. For extracurricular coaches and sponsors who are not members of a bargaining unit, consider any applicable employment or contract or agreement.