

Summary of Nov. 6 Friday Recap

Thank you for joining us for our Friday Recap. Below is a summary of the major topics that we covered. We look forward to recapping the week with you every Friday!

General Information:

- We are thankful for every single day of education that our students have received. Educators have done so much to provide students with an education during these difficult times and we appreciate it.
- Political updates: we need to be patient and have grace.
- The progressive tax in Illinois did not pass. This may result in pension reform or significant budget cuts. It will likely get politically rocky. The veto session is coming up.

Upcoming Dates:

- Election Day: passed but election not over
- Nov. 10: Korean War Veterans' Day
- Nov. 11: Veterans' Day, legal school holiday
- Nov. 15: Illinois School Board Members Day
- Nov. 15: Projected expenses to ISBE and number of children who received or were exempted from health immunizations to ISBE

Update on basketball in Illinois:

- Upheaval right now.
- IHSA is still at odds with the governor. Less than 34 schools have made the decision to play, while 29% have opted out and 62% are undecided.
- General information floating around: insurance companies are saying districts will not have coverage for COVID related claims. Some are also saying there is increased risk and liability if they play.
- Each district needs to make an individualized decision. Liability is one of the considerations. Tort immunities have an exception built in for willful and wanton conduct.
 - On the surface: there is a common sense argument that playing basketball in a pandemic despite health department recommendations may be willful and wanton. However, it is more complex to determine willful and wanton. It should depend on the facts of the case. It will likely go to trial and you would have to explain to the court why you did what you did and why it is not willful and wanton.
 - Need to demonstrate your decision-making process.
 - Go through your risk analysis: community expectations; COVID conditions in your state, region, county, district, schools; COVID conditions of opponent; mitigation efforts (masks, social distancing, cleaning practices); legal issues; impact on core educational services; impact on staff; cost; logistics; what is the message you are sending to your students and community about following the rules for the greater good.

- Enforcement: how will the governor enforce the no basketball rule? He hasn't really said but there are a couple of levers: ISBE recognition, and IDPH has significant authority to shut down unsafe situations.

Litigation:

- Insurance: COVID will be excluded. On the flip side, there are still basketball adjacent claims that could be covered (student accident, premises liability, travel coverage). Discuss this with your insurance carrier. Also anticipate and account for the risk profile and ability to get insurance in the future (or increase rates).
- Tort immunity for claims concerning the spread of disease. There is an "if" in this immunity. This is absolute if the decisions are matters of discretion. The decision to return to in-person instruction is discretionary. Decisions about basketball include decisions from ISBE and IDPH that weigh against the district. It would be difficult to establish that the decision to play basketball is discretionary.
 - If there are claims that COVID is spread during basketball, there is likely no insurance or tort immunity coverage.
- Where do we stand with the governor's executive orders? The collection of lawsuits in Springfield were dismissed. This means the question about the governor's authority was dismissed. This means the complaint didn't have enough content to move forward, but doesn't have anything to do with the substance or merit of the claims. The plaintiffs are allowed to redraft pleadings.

Supreme Court:

- Amy Coney Barrett and the impact on school law:
 - Will be conservative in the sense of being reluctant to exercise judicial power. This is helpful in defending employment claims. Her decisions are generally favorable to employers.
 - Disability law: subject to rational basis review, employee could not use a hog as a service animal
 - Harassment in workplace: said that a single use of a slur could constitute harassment
 - Special education: students can petition to enroll in a district where they are not residents in Wisconsin, but not in the case of students receiving special education services. She said there was a rational basis for this.
- Not much on the Supreme Court docket related to education

Employment and Labor:

- Things to get done to close out the current year and start the next year
- ADA and FMLA questions:
 - Obesity and age are not disabling conditions.
 - Doctor note that says an employer would be better off at home is not sufficient.
 - We have lots of trainings on these topics
- Mandatory sexual harassment training for every employee in the state. Must be completed by Dec. 31, 2020 and then it must be provided annually. Many districts are doing this already. This is not Title IX training.

- Illinois minimum wage was raised in Jan 2020, and again in July 2020. It will also go up again in January 2021. This is from below \$9.00 to \$11.00. Increases up until 2025 to get us above \$15.00. This will have an impact on bargaining.
- Reduction in Force: Sequence of honorable dismissal list. This is a reduction in the overall force. Controlled by PERA and SB7, collective bargaining agreements, etc. ESPs can be rified at any time on a rolling 30-day notice. Teachers can only be RIFd one time per year (45 days before the end of year). ESP RIFs based on seniority. Distribute the dismissal list by Feb. 1, 2021 (ESP) and 45-days before the end of year for certified staff members.
 - Teachers have a probationary period in which they can be non-renewed.
 - Sequence of honorable dismissal based on groupings and then seniority.
 - Rules about certified and ESP staff are similar but slightly different.

IDPH updates:

- FAQ document was revised this week to define an outbreak as 5 or more positive cases within a 14-calendar period within the same space. This has been adjusted from 2.
- Illinois is on a steep uptick of COVID numbers.

Other Topics:

- We have been receiving lots of questions about what to do with people who are choosing to travel over the holiday and if they are required to quarantine when they return. Right now, only Chicago is requiring quarantine but districts have discretion. Will need to bargain for staff members. Some districts are looking at staying remote for two weeks after winter break to make sure people have time to quarantine after travel. We will talk more about this next week.
- There are many rumors about what will happen next with COVID. People are concerned that the Governor will move us back to Phase 3 or 2. We don't think this is imminent, and if it is, the Governor may continue to leave the decision about whether schools are open up to schools because we aren't seeing a lot of spread in schools.

Sara discussed and opened the call with. . .

- Deep breaths.
- An overview of the political landscape.

Mohammed discussed upcoming dates. . .

- Nov. 10: Korean War Veterans' Day.
- Nov. 11: Veterans' Day.
- Nov. 15: Illinois School Board Members' Day.
- Nov. 15: Last day to submit to ISBE actual expenses from last year and projected expenses for the current year, as well as student immunization and health data.

Kevin discussed basketball and risk analysis . . .

- Each district must make an individualized decision about playing basketball.
- Districts should consider a variety of factors as part of a risk analysis.

Rob discussed litigation and court updates. . .

- Talk to your insurance carriers prior to making a decision about playing basketball.
- While a consolidation of lawsuits challenging the authority of the Governor's Executive Orders was dismissed, plaintiffs have been given an opportunity to redraft pleadings so we will need to stay tuned to see how this plays out.
- A review of previous decisions made by Amy Coney Barrett outlines how her appointment to the Court may impact education law decisions.

Shane discussed employment and labor. . .

- Under state law, all employers, including school districts, must provide mandatory sexual harassment training by Dec. 31, 2020.
- Minimum wage will increase again in January 2021.
- Be aware of upcoming deadlines for creating honorable dismissal lists and complying with Reduction in Force requirements.
- Check out our website and KB YouTube channel for webinars on a variety of topics, including employee leaves and accommodation requests.

Stephanie discussed holiday travel and COVID-19 . . .

- Districts should develop a plan and work with the union to address holiday travel and quarantine requirements after the holidays.

Darcy discussed. . .

- The IDPH updated the definition of an outbreak to move from two to five positive cases within a space during a 14-day period.