

Summary of March 20, 2020 Friday Recap

Thank you for joining us for our Friday Recap. Please know that we are amazed at all you are doing during this unprecedented time. We know it's stressful, and you may not have all the answers. None of us do, but we'll get through it together. Remember, during this time to do the following: 1) breath; 2) do the best you can with what you have; and 3) make decisions that are right by kids.

Below is a summary of the major topics that we covered. We look forward to collaborating with you in the weeks to come!

Contract Services:

- If a District is using a vendor, it should continue to pay them at the regular contract rate. For example, Districts continuing to use security personnel or bus drivers for work other than driving students, should be paid regular contract rates.
- If a District has a contract with a vendor that is not providing services, consider entering into a Memorandum of Understanding which would continue to pay them at a mutually agreed upon rate. According to all of the guidance available, the State Board will continue to reimburse for transportation and food services so those vendors should be paid.
- In relation to services that are local in nature, we believe those are local decisions that must be made by the Board of Education in consultation with the administration. For example, the decision to continue paying custodial staff even though services are not being used.

Employment:

- As funding continues, school districts should continue paying their employees even though schools are currently closed. Administration can continue to expect its employees to work, to the extent practicable under the current circumstances.
- Employee evaluations- there has been no explicit guidance from the State that evaluation timelines have been extended, however, we are hoping to have more guidance from the State on that front soon.
- Payment to substitute teachers
 - For long term substitute teachers that were working prior to school closure, there is a strong legal argument that they should continue to be paid.
 - For substitute teachers that were not guaranteed work, the District has a stronger position to cut off payment. However, Districts may be hesitant to do so because they want to keep a pool of substitute teachers after this pandemic is over.
 - For Districts that want to maintain their substitute teachers, it may be a good idea to create a "package deal" for all of them so that the relationship with the District is not strained.

Open Meetings Act:

- The State of Illinois issued an [Executive Order](#) on March 16, 2020 relaxing the requirements for board meetings. In addition, the Illinois Attorney General has issued [guidance](#) on compliance with the Open Meetings Act and the Freedom of Information Act.
- Many districts have begun cancelling meetings or moving forward with meetings with only essential items (bill payments, non-renewals, RIFs)
- Boards now have flexibility regarding the physical presence requirement, meaning all seven members can participate electronically.
- If a District would like to hold a board meeting, we suggest recording the meeting or streaming it live.
- The District should also ensure a means for people to submit comments. The District may have the same limits on public comments that it has at regular board meetings.

Freedom of Information Act:

- There have been no mandates from the State relaxing the FOIA requirements. The Illinois Attorney General Public Access Counselor issued guidance (mentioned above) regarding compliance with FOIA.
- We suggest using the District's power to extend any deadline by five days based the exception that response would unduly burden public body operations.
- The easiest solution to timely respond to requests is to contact the requestor and mutually agree to a deadline.
- In the end, if the District must make a decision whether to send someone in and risk their health versus respond to a FOIA, we recommend not responding to the FOIA. We will happily defend that decision in front of the Illinois Attorney General or a court of law.

Student Services:

- Instructional Expectations: ISBE has not provided a floor or ceiling for instructional expectations during the State-wide mandatory school closure. Governor Pritzker announced today that the closure will continue through at least April 7, with an anticipated return date of April 8. We strongly suggest districts work in collaboration with unions to create a sustainable model that will work for the long haul.
- E-learning was never meant to be a long term solution. Districts should start thinking about providing a sustainable content model. We know this is a stressful time and we encourage districts to do the very best you can with the systems you have in place. The goal right now is to calm the waters and provide your families with the best you have at this moment. We are also all in this together and encourage you to open source and share resources with each other.
- The Department of Education has announced it will be issuing broad testing waivers and this will likely be waived by the State. ISBE is also looking to waive some of the other accountability measures so that schools aren't negatively impacted by the mandatory closure.

Special Education:

- We believe districts fall into one of three categories and the approach to working with students receiving special education services will vary depending on the category:
 - Districts that are choosing not to do any learning right now do not have a FAPE obligation for students receiving special education services because they are not providing learning opportunities for any students.
 - Districts that are doing e-learning to provide students with opportunities for engagement but are not following a specific scope and sequence need to provide opportunities for students receiving special education services because they are providing opportunities for general education students. In this case, decisions about how to provide these opportunities should be individualized rather than a one size fits all approach. This is the category that most school would fall into at this time.
 - Districts that are continuing to follow a scope and sequence with a full day of instruction may need to provide students with IEPs with full minutes, in terms of both instruction and related services. There are not very many schools that would fall into this category at this time.
- When determining what FAPE may look like for students, decisions must be individualized. Case managers should be identifying students who will require services and prioritize. This does not mean that districts will provide the same level of service to students as when school is in session. FAPE can require something different as long as decisions are student-centered and determined on a case-by-case basis. We do not think it is necessary to amend IEPs at this time.
- Prioritizing services will be especially important for students who will be aging out of services over the next couple months. In these instances, districts should identify the most important supports the student needs and focus on providing those supports as students prepare to age out of services.
- As we've said before, during the mandatory school closure, districts need to do the best they can to the extent they can. There may be a possibility of needing to provide compensatory services in the end, but let's figure that out at the end rather than worrying about it now. We think in general parents will be accommodating and understanding. We also expect the State will provide more guidance for how to move forward and what type of baseline to provide.
- Related services may be provided through teletherapy. The U.S. Department of Health and Human Services released guidance that during this pandemic OCR will not investigate teletherapy that may violate HIPAA compliance as long as the application is private facing (i.e., Skype, Google Hangouts, etc.) rather than public facing (i.e., Facebook Live, TikTok, etc.). Although HIPAA does not apply to schools, this is good guidance for schools to follow.
- Parents do not need to be present for teletherapy, but you should provide parents with notice that therapy will be done through electronic means, explain privacy rights, and encourage parents to contact the provider with any questions or concerns.
- There are a lot of mandated timelines associated with special education. There is some discussion about the possibility of timelines being waived at the federal level, but so far

this has not happened. Our advice is that timelines that are on school days can wait until school is back in session. This includes evaluation timelines. However, timelines that are calendar or business days still apply and districts are responsible for meeting these timelines. District should still be monitoring mail and email to make sure timelines such as a request for due process are met.

- ISBE has provided guidance that school teams should still try to have IEP meetings. We recommend that for these two weeks, districts postpone meetings unless you need to hold them. However, districts should look for ways to hold meetings in the future or you will get too far behind if you continue to postpone meetings. Districts have some options for holding meetings:
 - Hold the annual review by phone. To document attendance you would follow the same process you normally would when someone participates by phone. You can document attendance in the notes and/or document that participants attended via phone on sign in sheet.
- There is currently not any flexibility in the timeline for evaluating students as they transition from Early Intervention. This must still be done by the child's third birthday and while there has been guidance to do the evaluation through electronic means, we know that this is typically done through play-based assessment, and electronic means may not be appropriate. To the extent appropriate, we encourage you to rely on existing information to be able to move forward.
- District may receive requests for reimbursement for private services during the mandatory school closure. Districts should provide the family with Prior Written Notice letters to respond to these requests.
- In general, it will be important for districts to document what they are doing at this time. This includes communication with families and services and supports provided to students. For instance, if a related service provider schedules a service for a specific time and the family indicates that time is not convenient, the provider would not need to rearrange the schedule. Rather, the provider should let the parent know that the child would not get any service that week and should document this conversation.
- Some parents may ask for a student to be retained due to the mandatory school closure. If this closure lasted until the end of the year, this would be approximately 45 school days. We view this as similar to a placement in an Interim Alternative Educational Setting (45-day placement), which is designed to be a short-term placement in an emergency. We can argue this is a temporary closure.
- Districts should address 504 plans similarly to IEPs, although the requirements are less stringent. Case managers should review 504 plans and determine the best way to accommodate students during the school closure.
- At this point, it may be too early to answer questions about Extended School Year (ESY), as we don't know how long the closures will last. Districts should continue to plan in rudimentary ways for ESY, but it remains to be seen what this will look like.
- Districts should continue to pay private therapeutic day schools and residential settings. ISBE should continue to provide reimbursements to districts.

Social Services:

- In addressing the needs of students without internet access, districts should figure out how to make materials accessible. We've seen districts do this in very creative ways. For instance, some districts have made packets and had bus drivers deliver them to bus stops, while other districts have put hotspots on busses, and put them in accessible areas for families. We've also seen districts try to find ways to get devices to students, and others have teachers call and check in on students or send letters to students who don't have internet. The goal is to try and close the equity gap and get educational materials out as best as you can. Remember, do the best you can with what you have!
- Schools are doing great work with respect to food services! We anticipate that this will continue to be an essential service and districts will continue to be able to provide food during the stay-at-home order. We also know there is a commodity issue, in that some schools are running out of food. We encourage districts to do what you can and document your efforts if you weren't able to meet USDA guidelines.