

Summary of March 27 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 continuing to collaborate with you during these unprecedented times!

First, thank you for everything you are doing! None of us have all the answers about how to address the complexities of this pandemic and we need to give ourselves grace as we navigate this new normal together.

General Information:

- The standard that we encourage you to use as you make decisions is to do the next right thing with the resources you have.
- Act of God days end on March 30 and we don't know what happens on March 31st. There have been mixed messages about what will happen, and we anticipate having some guidelines from ISBE soon. We anticipate closures after March 30th will be treated as remote learning days and there will be some significant provisions from ISBE about what this will look like. Regardless of what comes out from ISBE, districts need to focus on creating a sustainable model for your district that does the best that you can for students with the resources you have.
- We know that students aren't getting the same education they would if they were in schools and that's the reality given the situation. We need to recognize that, be the calm in the storm, and do the best we can with what we have. We can't fix what is going on globally, but we can focus on the things that are in our own district.
- There are rumors about guidance coming from ISBE. There may have been a leaked copy that had not gone through legal review. Our sources indicate that the leaked document is not the final version of the guidance and ISBE is waiting on the governor's office before finalizing and issuing any guidance.
- Take care of mental health and emotional needs of everyone involved, including staff, students, and yourselves.
- Congress passed an 870-page stimulus bill today that is headed to the President for signature. We are continuing to analyze this legislation, but we have confirmed that there are no provisions relating to waiving FAPE for students with disabilities, an issue that some thought may happen with this legislation. Additionally, we know that 30 billion dollars was built in for states and schools. We will read up on this and be able to provide more guidance on next week's call. We do know this money can be used for e-learning.

Student Services:

- While we don't know if our buildings will open again this year, we encourage districts to plan like they will not reopen, and be happy if we learn that buildings will open again before the year is out.
- ISBE has not provided a floor or ceiling for instructional expectations during the State-wide mandatory school closure. Districts should focus on creating the best educational

opportunities they can to prevent academic regression and attempting to ensure that students can pick up where they left off in the fall.

- Districts should work with your unions and have teachers document what they are doing, including modifying lesson plans, communicating with families, etc. This will help if there is litigation in the future.
- There will be no state-wide assessments this year. Illinois has met the requirements of a waiver from the federal government and is just waiting for final approval. Additionally, there will be relaxed standards for ESSA accountability.

Special Education:

- We will be sending out a newsletter with more guidance regarding special education. This guidance may change based on any subsequent guidance issued by ISBE.
- The stimulus bill that just passed at the national level did not contain any FAPE relief, but, according to our sources, it is apparent that Congress and DOE are considering relief options.
- Our office was recently asked to give feedback to Congress through the National School Board Association. After discussing the relevant issues with clients, we told them that districts should be provided heightened protections against legal action and that any compensatory education should be funded by the federal or state government within the stimulus package. We also recommended that any procedural failings should not be the basis for an award of compensatory education. In addition, districts should be protected from paying attorneys fees for procedural and substantive violations during the pandemic.
- With respect to FAPE obligations, districts do not have a full-FAPE obligation from March 17-30, and we are waiting on guidance from ISBE regarding requirements for remote instruction starting March 31. Districts should align special education services with these general directives.
- We believe remote learning guidelines can include related services. School teams, through case managers, should take a look at each student and make individualized decisions based on student needs.
- While the district can set general parameters around instruction and related services, districts should then look at each kid individually. It's important to note that there is no expectation to give the same type of instruction or related services as when school is in session and no expectation for the same level of minutes. The analysis should focus on the priority for each student. For instance, it may be advisable to pick one or two goals and focus related services and instruction toward meeting those goals.
- Districts should develop a remote learning plan that outlines these services and notifies parents of what these services will look like. We have developed a one-page form that districts can use to communicate these services.
- If parents decline the remote learning plan, these minutes will not need to be offered in the summer or fall.
- We do not believe IEPs need to be amended to reflect the remote learning plan, as this is not a good use of your time right now and this is not a change in placement, but rather, a

pandemic emergency. This may be a recommendation of ISBE, and if that is the case we will work with you to figure out how to do this.

- If parents ask for reimbursement for private services during this pandemic, districts should utilize Prior Written Notice letters to respond to these requests.
- For students who are aging out of services in the next 5-6 months, districts should focus on remote learning opportunities for them. We know that many of the goals for students in transition services aren't easily done online, but districts should prioritize and focus on what can be done remotely so the student is as prepared as possible when he or she turns 22 and ages out of services. We imagine some families may request an extra year of services and these requests will be addressed on a case-by-case basis.
- Grade retention will also need to be looked at on a case-by-case basis, but, as a general rule we do not advocate for students to be retained. The period of time that students will be out of school is about 45-50 school days, which is a temporary period relative to the school year.

Contractual Services:

- We have received a lot of questions about payments for contractual services. When determining whether to continue paying vendors, you or legal counsel should review the master agreement for any "Force Majeure", "Act of God" or termination provisions that would relieve the District from paying its vendors.
- We are also aware that some companies have been asking districts to sign addendums to their agreements that are very one-sided. We have been asked a lot of questions about contracts with transportation companies. We have developed some considerations that can be used to determine whether to continue paying vendors and/or enter into addendums. These considerations can also easily apply to transportation contracts.:
 - Importance of the service to your operations and if the service will be there when school resumes.
 - If you continue to make payments, make sure the money given will go toward paying salaries of employees, and maintenance of equipment used for your district, and that anything left over goes toward overhead and not profit.
 - Vendors should ensure that the employees assigned to your district will not be reassigned to another district.
 - Addendums should contain a provision prohibiting vendors from double-dipping, meaning a vendors are receiving assistance from state or federal agencies while also being paid by the school district.
 - A termination clause both for convenience or cause.
- Remember, even though ISBE provides reimbursement for transportation services, this is typically prorated.
- Under the stimulus package, the education stabilization fund provision says that any district given money from the Act shall continue to pay employees and contracts to the greatest extent practicable during any closures or disruptions from COVID-19. This poses some questions such as what is the greatest extent practicable and to what extent are you required to pay? Can districts make reduced pay? Are districts still entitled to

terminate payment? We will work through these questions in the next few days and will provide guidance in the future.

Social Services:

- We continue to receive a lot of questions about food service and we have seen many ways in which districts are getting really creative. For instance, Danville 118 has piloted a program with McDonalds. Additionally, districts are working collaboratively with food banks.
- Food service is an essential service and should continue to be provided.

Employment and Labor:

- Timelines related to evaluations and RIFs have not been waived. If districts are not RIFing, this might not be high on your list of priorities at this time. Districts should work with unions to determine reasonable means to complete evaluations.
- If an evaluation of a staff member does not get completed, by law it defaults to a proficient rating.
- Many districts have questions about how to address situations where substitutes are filing for unemployment: It depends on how you've handled this in the past. Most districts likely contested this before COVID-19. Districts should follow their practice that was in place prior to the pandemic. If a district chooses to give leniency where you wouldn't have before, it is important to state that it is due to the pandemic and does not create precedent. Some districts have created a model to pay subs based on what they would have made during the pandemic (based on past work history). Other districts will say unemployment may be cheaper and choose to go this route. We recommend districts use a cost-benefit analysis and consider factors such as how many claims the district will likely get, whether it makes sense to pay all subs something, and how this will impact the ability to get subs in the future.
- We have had clients ask about how to address employees that don't want to work during this time. We recommend you follow your progressive discipline process, but try to work with the employee a little more than you normally do. Additionally, give the employee extra written notice that they need to come to work.
- We have also received questions about how to address staff members who are on FMLA during the two weeks of Act of God Days. For example, if a staff member is currently on maternity leave, we recommend you apply the same procedures you would for snow days. Additionally, as stated above, we don't want to create precedent due to a pandemic. It will be important to talk to the union and collaborate with them before making a decision. As an additional consideration, some staff members may want to come off of FMLA because they can teach from home and districts may want to consider this, but would also need to consider other factors such as what to do with the long-term sub.
- The Families First Coronavirus Response Act takes effect on April 1, 2020 and expires on Dec 31, 2020. It applies to public employers and allows for a total of 12 weeks of paid sick leave at $\frac{2}{3}$ of an employee's regular rate of pay (up to \$200 daily or \$12000 total) if the employee can't work or telework because of lack of childcare. The employee would



be eligible for the full rate of pay (up to \$511/day or \$5110 total) if the employee is unable to work or telework if the employee dealing with coronavirus (i.e., in hospital, quarantined, waiting for medical treatment). The Department of Labor has a [poster](#) with additional information.

Board Governance:

- Remember to continue to keep board members in the loop as you are making very fast decisions. It is recommended that you provide the board with weekly updates on all of the great things you are doing.
- Do the best you can and we will sort out procedural issues later.