

COVID-19 (Coronavirus), School Closures, and Related Issues

Updated 3/22/2020

*****Executive Order 2020-10 extended the deadline for school closure through at least April 7, 2020. Although the closure is extending, it is not clear that the same rules will apply as through March 30, 2020 (from Executive Order 2020-5) for Act of God relief. It is very possible that the same relief and rules for receiving that relief will change beyond March 30, 2020. Districts entering into contracts and/or Memoranda of Understanding should be very careful to consider the impact of a potential change to rules for reimbursement.*****

As we all work together to consider solutions for the issues caused by COVID-19 (Coronavirus), mandated school closures, and other possible scenarios, it is important to recognize that the problems, solutions, and legal ramifications may change quickly, and the answers to some important questions are still unknowable, as the rules continue to evolve.

Miller Tracy will continue to update our guidance on these issues located here:

<http://millertracy.com/content/school-response-pandemic-disease-such-coronavirus>

Also, ISBE will be continually updating its guidance on the issue located here:

<https://www.isbe.net/Pages/covid19.aspx>

And here:

<https://www.isbe.net/Documents/ISBE-Guidance-to-School-Coronavirus.pdf>

The federal Department of Education issued guidance on special education matters which can be found here:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

And here (new as of 3/21/20):

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https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

While these documents answer many of the questions we have received from school districts and special education cooperatives, there are several other questions that have been frequently raised. We advise schools to check back often - we will not issue guidance until we are confident such guidance is both helpful and accurate. Also, as you have questions, we are likely to update the answers here so that we can all benefit from the evolving conversation.

UPDATED Open Meetings Act Issues:

With Emergency Order 2020-07, Governor Pritzker temporarily suspended requirements for in-person meetings pursuant to the Illinois Open Meetings Act, writing, in relevant part:

Section 6. During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that “members of a public body must be physically present” is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended. Public bodies are encouraged to postpone consideration of public business where possible. When a meeting is necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to meetings to ensure members of the public may monitor the meeting, and to update their websites and social media feeds to keep the public fully apprised of any modifications to their meeting schedules or the format of their meetings due to COVID-19, as well their activities relating to COVID-19.

Shortly after the declaration, the Illinois Attorney General issued guidance requiring the meetings continue to be “open and convenient” to the public. The attorney general suggests a number of mechanisms to retain openness and convenience consistent with the intent of the Open Meetings Act and within the permission provided by the Executive Order:

- Hold your public meeting in a larger room than normal. For example, instead of a conference room, hold a meeting in an auditorium, a gymnasium, or other large space in order to facilitate social distancing.
- You may consider having a separate room for the public that is video or audio linked to the room where the public body is meeting. This arrangement can promote social distancing by utilizing large rooms while still allowing for open meetings.
- You may consider recording the entire meeting, open portions as well as any closed sessions. Post the open session recording on your public body’s website as soon after the meeting as is practical.
- Be sure to clearly mark a location of a meeting in the notice and posting required under OMA. It is encouraged to place additional signage in the area of a public meeting so the public is aware of where a meeting is being held, especially if meetings are being held in places where staffing is minimal and there may limited personnel to assist the public in locating a public meeting.

Illinois Attorney General, *Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic*, (March 16, 2020) (“OMA Guidance”). The Attorney General also noted that providing opportunities for public comment are required by the Open Meetings Act:

OMA requires public bodies to allow for public comment. The public may not be able to attend an open meeting because of compliance with quarantine or isolation orders or

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general efforts to remain at home during the pandemic. Public bodies are urged to provide remote access to members of the public and to update their websites and social media with the goal of openness and transparency during this time. Further, public bodies should consider taking public comment by email or written submission and reading those public comments at the public meeting. If members of the public attend meetings in-person, social distancing is essential as outlined above. In addition, during public comment periods, have commenters approach a microphone one at a time instead of gathering in close proximity.

Id.

O1. Can the board of education hold an emergency meeting?

Under the Open Meetings Act, boards can hold emergency meetings in certain circumstances. While the most recent ISBE guidance (3/14/2020) indicates that no requirements of the OMA have been waived as part of the Governor's emergency actions, the existing OMA does have a provision for an emergency meeting.

In deciding whether to conduct an "emergency meeting", this is likely the type of unprecedented situation where an emergency is likely to be found to exist. That being said, it is important that the discussion (and any action, if necessary) truly be related to an actual emergency and can't be handled either administratively or at a regular or special meeting. Also, please be careful not to tack on additional non-emergency discussion or action at an emergency meeting, if the board needs to meet on an emergency basis.

5 ILCS 120/2.02 provides (in relevant part) that "notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section." Therefore, in the event of the need to conduct an emergency meeting, notice and agenda must be posted and sent to the required new media as soon as you can, even if that is less than 48 hours.

O2. UPDATED: Can the board conduct a meeting by phone or video conference?

Under the OMA, a quorum must be physically present, and that requirement has not been waived or changed at this point. However, Governor Pritzker's Executive Order 2020-07 suspended that requirement during the term of the crisis.

Under the ordinary rule, So long as a quorum of the board is physically present, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

Under the exemption Executive Order 2020-07, the requirement for physical presence of a quorum of the Board to be physically present is suspended. Boards continue to be required to provide "open and convenient" access to their meetings, with opportunity for public comment and participation. Other

options to comply with the Order are to hold meetings in much larger open spaces such as a gym or cafeteria where chairs can be spread out by at least 6 feet, and/or allowing members of the Board and/or public to teleconference or videoconference into the meeting.

OMA continues to require that all meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public.

O3. UPDATED: If members of the board are meeting with the union to discuss how we are handling staff responsibilities during the closure, does the OMA apply?

Pursuant to Section 18 of the Illinois Educational Labor Relations Act, the provisions of the Open Meetings Act shall not apply to collective bargaining negotiations, including negotiating team strategy sessions, and grievance arbitrations conducted pursuant to this Act. Because these discussions with the union are related to mandatory subjects of bargaining (as discussed in more detail below), these may be considered bargaining meetings which are exempt from OMA. Schools should continue to observe social distancing rules pursuant to Executive Orders 2020-07 and 2020-10 of limiting physical participation in meetings as much as possible and distancing participants by 6 feet or more.

O4. How can an administrator seek direction from a Board member during the crisis?

A majority of the quorum of the Board constitutes a meeting pursuant to Section 1.02 the Open Meetings Act. School authorities may seek input from a single Board member, or, if no committee of the Board has authority on the issue, possibly two members of the Board. An administrator can always deliver information and updates to the Board. But a school should be cautious about using a single intermediary to “virtually” hold meetings and collect input.

Student Issues:

SI. Are we required to do eLearning or some sort of continuity of education for our students?

With the mandated closures March 17-30, 2020, ISBE has not created nor required an “official” e-Learning program, but has instead asked school districts to make their best effort at continuity of education:

You have full autonomy to provide continuous learning opportunities in the way that you are able, including through technology and free online resources. We encourage you to explore and implement what works best for your school community. *Ayala Letter, 3-13-2020.*

Although ISBE’s letter does not require e-Learning, provision of other opportunities for continuity of education is “encouraged.”

Due to the present ISBE guidance permitting learning without penalty to days, it is important that school districts are not required to follow the rules and statutory requirements for eLearning in 105 ILCS 5/10-20.56.

S2. *If we do eLearning, what are the legal requirements?*

First, “do your best.” Second, note the special education issues discussed below.

In addition, employee issues related to eLearning or other continuity of education discussed below.

Due to the present ISBE guidance permitting learning without penalty to days, it is important that school districts are not required to follow the rules and statutory requirements for eLearning in 105 ILCS 5/10-20.56.

S3. *Are we required to continue meal service?*

No, but ISBE is strongly encouraging it:

ISBE has already obtained the USDA waiver to provide meals during school closures, including to children under 5. Please make every effort to provide meals for all children who need them, no matter their resources and no matter what school they attend, in the way that works best for your community, such as grab-and-go or delivery. *Ayala Letter, 3-13-2020.*

S4. *If we decide to continue meal service, what are the requirements? Has anything in the latest order changed the rules?*

Nothing in Executive Order 2020-10, known colloquially as the “Stay-at-Home Order,” which also extended school closure through April 7, 2020, changes the rules for provision of meals to children. For employee concerns, see the information provided below. Otherwise, ISBE has advised the following:

ISBE has already obtained the USDA waiver to provide meals during school closures, including to children under 5. Please make every effort to provide meals for all children who need them, no matter their resources and no matter what school they attend, in the way that works best for your community, such as grab-and-go or delivery. Districts will need to complete a one page waiver that takes less than 10 minutes: www.isbe.net/Documents/ISBE-66-98.pdf. Please send to ISBE at CNP@isbe.net as soon as possible.

School districts that do not participate in the federally funded school lunch or breakfast programs do not need to submit the waiver and are encouraged to also provide meals to children who may need them. ISBE is working with community organizations such as the major food banks who are working with their networks to assist in areas where potential meals may be needed.

Participation Requirements

- Meals must meet the meal pattern requirements.

- Meals offered to children age 18 and below, or enrolled in school, are reimbursable. • There is NO reimbursement for meals offered to adults, although school may offer such meals for purchase.
- Daily counts are required by meal service type. Please make sure that you are collecting this data on a daily basis.
- Schools should consult local Department of Public Health for questions related to food safety requirements.

Implementation Guidance

- Ensure all the students' nutritional needs are addressed. This includes students with allergies and other food restrictions. Make sure to mark the food appropriately.
- Create multiple geographically located food distribution centers where necessary. Students are not allowed to eat inside the school.
- Ensure that all necessary personnel are stationed to maximize student and staff safety and that all distribution sites are supervised.
- Explore distribution strategies that will avoid large gatherings of people and make social distancing possible.
- Students can receive two meals a day (one breakfast, one lunch, or one snack in any combination). Both meals can be distributed at once either via pick-up, drive-up or delivery.
- Only parent/guardians/students themselves may pick up food. Children do not need to be accompanied by an adult to receive food.
- Allow ample and reasonable amount of time for meal pick-up for each meal service, recognizing that families may be experiencing challenges during this time.
- Use multiple modes of communication to inform students and families of available food service, including time, location, and method of distribution.
- Consider multiple methods of distribution, such as drive up; walk up; satellite locations, such as libraries, churches, park districts, and youth centers; home delivery via bus routes; and other options.

S5. ISBE guidance encourages an administrator to be present at all schools. What happens if students with no other place to go show up?

Schools should work with community resources both to advertise that schools are closed by order of the Governor, and to provide parents who need assistance with securing safe spaces for their children with information on available community resources. Schools should also be careful to assure staffing and supervision necessary that buildings and those present are safe. Schools should not resort to serving as daycare with minimal and insufficient supervision for children present.

Special Education Issues:

SE1. If schools are closed, whether or not using continuity of learning opportunities, do special education and related services required by a student's IEP have to be made up?

As it appears that the days of closure from March 17-30, 2020, are going to be approved as Act of God days (which mean those days are not required to be made up), then a direct make-up is not likely to be required (although specific ISBE guidance on this question would be appreciated). However, there are still FAPE issues that could arise. For example, the IEP team may have to consider extended school year (ESY) services if the length of the closure would cause progress to be significantly jeopardized and/or cause excessive regression.

Even though direct make-up is not likely to be required, the IEP team will still need to look at the student's overall progress and consider any additional needs related to FAPE. The Department of Education guidance linked above notes: "If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost."

SE2. UPDATED: If schools are closed, but the school district elects to use continuity of learning opportunities, how do we meet the IEP requirements for students with disabilities?

First and foremost, we should highlight the language from the Department of Education's guidance: "If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE."

So, if a school district decides to use some other means of continuity of education to continue to instruct all students during a closure, the district will need to make sure that an IEP student's educational needs are met to enable him/her to benefit from this instruction as well. School districts cannot simply provide general educational services virtually (or through other non-technology means like work packets) without considering the needs of students with disabilities. Both special education and general education staff must understand that the decision to continue providing educational services in some form of continuity of learning option will implicate special education obligations.

With the mandated closures March 17-30, 2020, ISBE has not created nor required an "official" e-Learning program, but has instead asked school districts to make their best effort at continuity of education:

You have full autonomy to provide continuous learning opportunities in the way that you are able, including through technology and free online resources. We encourage you to

explore and implement what works best for your school community. *Ayala Letter, 3-13-2020.*

The federal Department of Education and OSERS released a *Supplemental Fact Sheet* (available [here](#)) on March 21, 2020, which attempts to clarify the extent of the required modifications to continuity of learning opportunity for students with disabilities. The *Fact Sheet* indicates:

In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing

...

Finally, although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students. For example, if a teacher who has a blind student in her class is working from home and cannot distribute a document accessible to that student, she can distribute to the rest of the class an inaccessible document and, if appropriate for the student, read the document over the phone to the blind student or provide the blind student with an audio recording of a reading of the document aloud

Based upon the federal guidance in the *Fact Sheet*, it is important that IEP teams work with parents to determine the nature and extent of continuity of education programming on an individual basis. What appears to be missing from the *Fact Sheet* is the practical reality of that monumental task, and presumes that parents will be agreeable to the flexibility.

For a school district that does elect to use a formally-approved e-Learning plan (under the existing statute, 105 ILCS 5/10-20.56) for future closures, it is probably the IEP team (either through an IEP meeting or an IEP amendment) that would determine the nature and extent of services on formally-approved e-Learning days for IEP students.

Both the federal and Illinois guidance suggest that the plans for an IEP student on a formal e-Learning day should be determined by the IEP team. For most IEP students (who spend most of their typical school day in general education), their e-Learning plan likely is the same as their non-disabled classmates, with some additional considerations for special education and related services. For others, that is clearly a more complicated question.

There are obvious challenges with providing e-Learning to early childhood and early elementary students, as well as to students whose disability provides challenges to implementing e-Learning. This answer presumes, of course, that the school district has overcome the barriers to e-Learning access that may apply to all students (such as socio-economic or geographic barriers). Districts are actively working to find solutions to these problems.

SE3. UPDATED: If schools are closed (whether or not continuity of learning is in place), how do we meet required timelines for IEP annual reviews, evaluations, and other deadlines?

For the mandated closures March 17-30, 2020, ISBE noted that “to the extent practicable, districts should continue to meet any obligations relating to convening IEP meetings and complying with timelines for due process hearings and mediations. Schools may avail themselves of alternate means of meeting, including telephone or videoconference.”

The federal Department of Education and OSERS released a *Supplemental Fact Sheet* (available [here](#)) on March 21, 2020, which encourages working with parents on flexibility in scheduling:

As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate.

For annual review deadlines and other deadlines that are date-dependent (i.e. an annual review that must be completed by May 1), the school district must still make sure that the meetings are happening by the required deadline. The ISBE guidance indicates the same: “ISBE continues to expect that all districts will comply with requirements to timely convene IEP meetings for students. Schools may wish to avail themselves of the opportunity to ensure parent participation at meetings via alternate means, including telephone or videoconference, which are allowable under the Individuals with Disabilities Education Act.”

At any point that schools are open, school districts should continue to have IEP meetings as usual, taking into account the recommendations on hand-washing, not shaking hands, sitting further apart, and other

social distancing. It is prudent to inform parents of their option to participate by phone or video conference, and schools can encourage remote participation if the school finds it is necessary or if recommended by the health department.

For deadlines that are not date-dependent, such as an evaluation timeline (i.e. parent consented to an evaluation on February 20th, and the evaluation and EDC/IEP must be completed within 60 school days), the answer depends on whether school is open or closed. For school closures, the closure days would toll the 60 school days, so that the deadline would be pushed back accordingly.

SE4. What if some school districts in a cooperative are closed, but others remain open? How will students in cooperative programs be served?

Due to the statewide closure, this question may have less impact for the period from March 17-30, 2020, but may become relevant again if any or partial closures remain in place after March 30th.

The best solution to this would be for school districts within a cooperative to consider this issue when deciding to close, and help create consistency in programming for students.

Otherwise, each school district is going to have to take responsibility for its own students. If District A remains open, but a District A student attends a classroom in District B/Cooperative that is closed, then District A will be responsible for determining how to serve the student. Because it is unlikely that the student can be served by District A during that period without a change to the IEP, the most likely outcome will be that District A will have to provide compensatory services once the closure is over.

As noted in the Department of Education guidance:

If a public school for children with disabilities is closed solely because the children are at high risk of severe illness and death, the LEA must determine whether each dismissed child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

If a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

If the reverse is true (the home District is closed, but the service District/Cooperative is open), then the student may elect to continue to attend his or her program. The home district may have to consider transportation options in this situation.

SE5. When would the school district be required to provide homebound instruction, and how to we accomplish that if the student may have been exposed or contagious?

In a situation where the school district remains open, but a student is medically unable to attend school because of exposure to or diagnosis of coronavirus, then homebound instruction may be necessary. Remember that homebound eligibility is contingent upon receipt of the required medical certification.

The ISBE guidance notes: “E-learning days are meant to be used for schoolwide or districtwide events rather than for individual students. However, such a student might qualify for homebound instruction, completed strictly through telecommunications or the internet.”

Similarly, the Department of Education guidance notes:

It has long been the Department’s position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child’s placement and the contents of the child’s IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child with a disability is absent for an extended period of time because of a COVID-19 infection and the school remains open, then the IEP Team must determine whether the child is available for instruction and could benefit from homebound services such as online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent available. In so doing, school personnel should follow appropriate health guidelines to assess and address the risk of transmission in the provision of such services. The Department understands there may be exceptional circumstances that could affect how a particular service is provided.

UPDATED School Calendar Issues:

C1. Are we going to be required to use the remaining Emergency Days?

ISBE is expected to give additional guidance on this in coming days, but preliminary indications from ISBE appear not to require emergency day exhaustion, in favor of complete Act of God relief for all days for the period from March 17-30, 2020. We will await guidance for the extended closure beyond March 30.

C2. Are all of the days going to be approved as Act of God Days?

Yes, for the period from March 17-30, 2020, according to Dr. Ayala’s statement on March 13, 2020 and additional guidance issued on March 14, 2020, which said:

All days that a school is closed pursuant to the Governor's Executive Order 2020-05 will be counted Act of God Days. Emergency Days will not be used. At this time, these Act of God Days do not need to be made up at the end of the school year.

We continue to await further guidance for how that will be applied. We will also await further guidance for the extended closure beyond March 30.

C3. UPDATED: Will we have to make up anything for Act of God Days? Will the days after March 30, 2020 be counted as Act of God Days?

ISBE's longstanding guidance (as noted in the 2019-2020 School Calendar guidance document) has noted that Act of God Days count toward the required number of student attendance days in the Public School Calendar and are not required to be made up.

On March 21, 2020, ISBE cautioned that changes are coming after the initial order for closure expires (March 30) and the extension order takes over (through at least April 7). According to ISBE's release:

While some parameters may shift after March 30 from what has applied during the Act of God Days, two pillars absolutely will remain the same: all state funding will continue uninterrupted and no schools will experience negative consequences to the extent possible. ISBE contemplates that districts eventually will transition to Remote Instructional Days.

It is not yet clear what "Remote Instructional Days" means, because the term is not otherwise defined in statute or regulation at this time. Because the days are not defined, it is possible they will have other requirements attached to them in order for a school district to count the days for payment purposes, and therefore schools should be careful about making promises to staff without further information from ISBE.

C4. Will we have to cancel the scheduled Spring Break in April?

Not necessarily, but ISBE is encouraging it: "If your district's spring break is scheduled outside of this window, please consider moving your spring break to within this timeframe [between March 17 and March 30]." *Ayala Letter, 3-13-2020.*

Please also carefully consider the possible collective bargaining implications of changes to the school calendar.

UPDATED Employee Issues:

E1. UPDATED: Will teachers be paid?

All matters related to wages, benefits, and terms of conditions of employment are mandatory subjects of bargaining, so it is advisable to be in regular communication with your union about all decisions regarding employee's pay, duties, and other matters during the closure.

However, pay close attention to any existing CBA language or past practice on this issue. Districts have varying practices, and the right answer in your district may be different than your neighboring districts.

It also appears that there may be pressure from the State to carefully consider how this issue will be handled so as to not disadvantage employees.

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E2. UPDATED: Will non-certified staff be paid?

As noted above, all matters related to wages, benefits, and terms of conditions of employment are mandatory subjects of bargaining, so it is advisable to be in regular communication with your union about all decisions regarding employee's pay, duties, and other matters during the closure.

As you pay close attention to any existing CBA language or past practice on this issue, recognize that issues for hourly employees are different than salaried employees like teachers and administrators. Districts have varying practices, and the right answer in your district may be different than your neighboring districts.

It also appears that there may be pressure from the State to carefully consider how this issue will be handled so as to not disadvantage employees.

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therefore schools should be careful about making promises to staff without further information from ISBE.

E3. *UPDATED: Should anyone be reporting to work?*

ISBE has asked that, minimally, a skeleton staff be present in case of student need:

We are also asking that at least one administrator stay on-site during the regular hours of the school day in case children whose parents cannot be home or children experiencing homelessness need a safe place to go. Please exercise social distancing in all situations.
Ayala Letter, 3-13-2020.

Beyond that, we will need to have sufficient staff to handle meal prep and delivery (based on your district's local decisions on how it will handle that issue), continuity of education (based on your district's local decision on how it will handle that issue), and maintaining other legal requirements (i.e. FOIA, financial and payroll obligations, IEP meetings, and other requirements that must still be met during this closure).

Schools should be aware of and consider health and safety concerns for staff reporting to work, and should discuss and take extra precautions to address such concerns both for community who may be invited to the school and for staff who may be on site. Schools should be careful to consider the social distancing intentions of the closures, and be mindful of the safety concerns in subjecting employees and communities to gathering.

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E4. *Can we require teachers to come in and prepare continuity of educational services or other educational materials/packets?*

All matters related to wages, benefits, and terms of conditions of employment are mandatory subjects of bargaining, so it is advisable to be in regular communication with your union about all decisions regarding employee's pay, duties, and other matters during the closure. There appears nothing that prohibits an employer from compelling work so long as collective bargaining concerns are appropriately

addressed, but a school district should be careful to consider both the effects of such compulsion in light of neighboring schools' decisions and the way decisions will be bargained, if necessary.

Schools should be aware of and consider health and safety concerns for staff reporting to work, and should discuss and take extra precautions to address such concerns both for community who may be invited to the school and for staff who may be on site. Schools should be careful to consider the social distancing intentions of the closures, and be mindful of the safety concerns in subjecting employees and communities to gathering.

E5. Can we require food service or other personnel to work for nutrition purposes?

All matters related to wages, benefits, and terms of conditions of employment are mandatory subjects of bargaining, so it is advisable to be in regular communication with your union about all decisions regarding employee's pay, duties, and other matters during the closure. For personnel not in a bargaining unit, you can require them to work.

Schools should be aware of and consider health and safety concerns for staff reporting to work, and should discuss and take extra precautions to address such concerns both for community who may be invited to the school and for staff who may be on site. Schools should be careful to consider the social distancing intentions of the closures, and be mindful of the safety concerns in subjecting employees and communities to gathering.

E6. What if some people are required to report to work and others are not?

All matters related to wages, benefits, and terms of conditions of employment are mandatory subjects of bargaining, so it is advisable to be in regular communication with your union about all decisions regarding employee's pay, duties, and other matters during the closure.

E7. If an employee is on approved unpaid leave, does the employee get paid during the absence?

It depends. Has the school previously had a situation during which an Act of God day was granted (such as during a heavy snow and cold event) and an employee was on unpaid leave? Did the school pay for that time, or did it not pay for that time? Although unlikely that a collective bargaining agreement provision answers the question, it is also important to review the agreement carefully.

E8. What if a subcontractor lays off staff and refuses to supply labor for delivery of meals and other imperatives the school chooses to engage?

The only way to answer the question is by examining the contractual relationship between the parties. It is conceivable that a contractor could be in fundamental breach if it refuses to perform to the terms of the contract, but it is important to also examine the remedies available and whether the school's predicament changes the analysis. We have determined that many of these contracts differ significantly, even with the same contractor. It is highly advisable to consult legal counsel about the specific terms of your contractual relationship with these providers, and any agreement in the interim.

E9. What is the impact of the new Emergency Family Medical Leave Expansion Act on schools?

There are significant impacts on schools, and they are more complete addressed here:
<http://millertracy.com/sites/default/files/Guidance%20Document.pdf>