

Operational Services

Pandemic Preparedness; Management; and Recovery 1

The School Board recognizes that the District will play an essential role along with the local health department and emergency management agencies in protecting the public's health and safety during a pandemic.²

A pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect individuals and, because there is little to no pre-existing immunity against the new virus, it spreads sustainably.³

To prepare the School District community for a pandemic, the Superintendent or designee shall:⁴ (1) learn and understand how the roles that the federal, State, and local government function; (2) form a pandemic planning team consisting of appropriate District personnel and community members to

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¹ Certain subheads of this policy are required; specifically **Suspension of In-Person Instruction; Remote and/or Blended Remote Learning Day Plan(s)** (see f/n 12, below), and depending upon the specific terms of government orders and/or guidance issued during a pandemic, if a district wishes to continue to charge employee salaries and benefits to a grant during an extended school closure, **Payment of Employee Salaries During Emergency School Closures** (see f/n 11, below). Other subheads and text in this policy are optional. Its purpose is to establish board direction about pandemic preparedness, management, and recovery issues and inform the community about the board's role during a pandemic.

Boards are authorized to adopt a policy on pandemic preparedness even though State and federal law provide little guidance. On 3-11-20, the World Health Organization (WHO) characterized the COVID-19 outbreak as a pandemic. See www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020. Before the COVID-19 pandemic, most research and guidance around pandemics was specific to influenza, but the same principles for influenza pandemics were applied to the management of the COVID-19 pandemic. State law grants boards broad authority to formulate, adopt, and modify school board policies, at the board's sole discretion, subject only to mandatory collective bargaining agreements and State and federal law. 105 ILCS 5/10-20.5 and 115 ILCS 5/1 *et seq.* See 2:20, *Powers and Duties of the School Board; Indemnification*, and also 2:240, *Board Policy Development*.

Information similar to this policy's content may also be a part of a district's safety plans, which the superintendent uses to implement the board's direction in this policy.

See f/n 3, below for a definition of a pandemic. According to the Centers for Disease Control and Prevention (CDC) guidance, schools serve as an "amplification point" of flu epidemics. **School Superintendent's Insider**, April 2007. School officials should be preparing for the flu pandemic as a U.S. Health and Human Services Pandemic Influenza Plan estimates that about 30 percent of the general population would become ill in a pandemic. The agency estimates among school-aged children the figure would be higher, about 40 percent. Sources: **NSBA and School Board News**, 3-14-06.

² Multiple stakeholders at many levels and in many groups have important roles in effective pandemic preparedness, management, and recovery efforts. Stakeholders include federal departments and agencies, public health organizations, State and local health departments and laboratories, private health care organizations, influenza vaccine and antiviral manufacturers, and vaccine distributors and vaccinators. **Illinois Pandemic Influenza Preparedness and Response Plan**, Version 5.0, May 2014, *Concept of Operations 2.0*, page 36, at: www.idph.state.il.us/pandemic_flu/planning.htm.

³ This paragraph embodies the CDC's pandemic definition. See www.cdc.gov/flu/pandemic-resources/basics/index.html. The **Illinois Pandemic Influenza Preparedness and Response Plan**, Version 5.0, May 2014, also defines pandemic at page 9; however, that definition is specific to influenza. The new COVID-19 coronavirus is not an influenza virus yet was characterized as a pandemic by the World Health Organization.

Prior to the COVID-19 pandemic, literature discussed that during an influenza pandemic, a new influenza virus will cause thousands or even millions of people to contract the disease and, in turn, spread the illness to others because people have not been previously exposed to the new virus. See **School Guidance During an Influenza Pandemic**, December 2006; Ill. State Board of Education (ISBE) opening letter to School Officials dated November 2006 from Dr. Randy J. Dunn and Dr. Eric Whitaker, at: www.idph.state.il.us/pandemic_flu/school_guide/sppg_letter.pdf.

⁴ 105 ILCS 5/10-16.7. The school board directs, through policy, the superintendent in his or her charge of the district's administration.

identify priorities and oversee the development and implementation of a comprehensive pandemic school action plan; and (3) build awareness of the final plan among staff, students, and community.

Emergency School Closing⁵

In the case of a pandemic, the Governor may declare a disaster due to a public health emergency that may affect any decision for an emergency school closing. Decisions for an emergency school closing will be made by the Superintendent in consultation with and, if necessary, at the direction of the

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⁵ In times of emergency, the functions of different levels of State and federal government often become cloudy, and determining what governmental entity has powers to take a particular action can be confusing. The concept of federalism, or the coexistence of federal and state governments with their own local powers, was utilized during the response to the COVID-19 pandemic. Federalism is premised on the Constitutional limits of federal power. See U.S. Const. Art. I, Sec. 8 (limiting powers of Congress providing only those powers enumerated). Generally, during the COVID-19 pandemic, Illinois and other states were left with these remaining powers of government to respond to the crisis. The states' governors and local leaders made state-specific or locality-specific decisions based upon the local conditions in each community. Depending upon the federal administration in power at the time of a pandemic, the federal government may seek to play a greater or lesser role in the management of a pandemic.

Local health departments, emergency medical agencies, and the Regional Office of Education (or appropriate Intermediate Service Center) may direct a school to close during a pandemic. See **School Guidance During an Influenza Pandemic**, December 2006; ISBE opening letter to school officials dated November 2006 from Dr. Randy J. Dunn and Dr. Eric Whitaker. This letter is at: www.idph.state.il.us/pandemic_flu/school_guide/sppg_letter.pdf. Since the 2006 School Guidance During an Influenza Pandemic letter was written, several Illinois schools faced an H1N1 outbreak in 2009, and all Illinois schools faced the COVID-19 pandemic in 2020 and the years following.

The Ill. Dept. of Public Health (IDPH) is also authorized to order a place to be closed and made off-limits to the public to prevent the probable spread of a dangerously contagious or infectious disease. 20 ILCS 2305/2(b).

The Governor also has emergency powers upon his or her declaration of a disaster, which includes among other things public health emergencies. 20 ILCS 3305/4 and 3305/7. Upon such proclamation, the Governor has, and may exercise for a period not to exceed 30 days, several emergency powers. *Id.*

During the 2009 H1N1 outbreak, ISBE directed schools with a statement titled *Closing School in Response to H1N1* that outlined "the decision to close school must be made locally by the school district and in conjunction and support with the relevant local public health department. The impact of a pandemic may vary from region to region. Therefore, it is crucial that district administrators rely on the advice and recommendations of their local public health department." During the COVID-19 pandemic, the Governor and ISBE issued many directives and/or guidance, including reliance upon the advice and recommendations of local public health departments. See www.isbe.net/Pages/covid19.aspx. And see IDPH-ISBE joint schools guidance at: www.dph.illinois.gov/covid19/community-guidance/school-guidance.html.

During the COVID-19 pandemic, protests occurred and many lawsuits were filed challenging Ill. Gov. Pritzker's extensions of disaster declaration emergency power under IEMA, 20 ILCS 3305/7. See the COVID-19 disaster declarations and Executive Orders (EO) at: www.coronavirus.illinois.gov. Controversies existed across party and regional lines with all branches of government looking to balance the need to protect human life against the desire to preserve personal liberty. Gov. Pritzker's EOs faced unsettled challenges in both the courts of law and public opinion as a five-phased plan to re-open Illinois was also being introduced a/k/a *Restore Illinois Plan* (coronavirus.illinois.gov/s/restore-illinois-introduction). Certain EOs required schools to implement specific mitigations, including universal indoor masking, exclusion of close contacts, and vaccination/testing mandates for school personnel. The EOs and the implementing emergency rules adopted by ISBE and IDPH were the subject of frequent litigation, but as of the date of the publication of **PRESS** Issue 109, no Illinois court has issued a final decision addressing the Governor's authority to mandate such mitigations. See *Austin v. Bd. of Educ. of Cmty. Unit. Sch. Dist. 300 et al. v. Pritzker*, 2022 IL 128205 (Ill. 2022). Therefore, the scope of the Governor's authority over schools in a pandemic remains unsettled. Some school personnel objected to the vaccination/testing mandate under the Health Care Right of Conscience Act (HCRCA), 745 ILCS 70/. The General Assembly subsequently amended the HCRCA to clarify that it is not a violation of the HCRCA for public officials or employers to require services by health care personnel (such as testing) intended to prevent the transmission of COVID-19. 745 ILCS 70/13.5, added by P.A. 102-667. Following the HCRCA amendment, an Illinois appellate court denied plaintiff employees emergency relief from the vaccination/testing mandate for school personnel, finding that their claims under the HCRCA were unlikely to succeed. *Graham v. Pekin Fire Dept., et al.*, 2022 IL App (4th) 220270 (4th Dist. 2022).

Governor, Ill. Dept. of Public Health, District's local health department, emergency management agencies, and/or Regional Office of Education. ⁶

During an emergency school closing, the Board President and the Superintendent⁷ may, to the extent the emergency situation allows, examine existing Board policies pursuant to Policy 2:240, *Board Policy Development*, and recommend to the Board for consideration any needed amendments or suspensions to address mandates that the District may not be able to accomplish or implement due to a pandemic. ⁸

Board Meeting Procedure; No Physical Presence of Quorum and Participation by Audio or Video ⁹

A disaster declaration related to a public health emergency¹⁰ may affect the Board's ability to meet in person and generate a quorum of members who are physically present at the location of a meeting. Policy 2:220, *School Board Meeting Procedure*, governs Board meetings by video or audio conference without the physical presence of a quorum.

Payment of Employee Salaries During Emergency School Closures ¹¹

The Superintendent shall consult with the Board to determine the extent to which continued payment of salaries and benefits will be made to the District's employees, pursuant to Board policies 3:40, *Superintendent*, 3:50, *Administrative Personnel Other Than the Superintendent*, 5:35, *Compliance with the Fair Labor Standards Act*, 5:200, *Terms and Conditions of Employment and Dismissal*, and 5:270, *Employment At-Will, Compensation, and Assignment*, and consistent with: (1) applicable laws, regulations, federal or State or local emergency declarations, executive orders, and agency directives; (2) collective bargaining agreements and any bargaining obligations; and (3) the terms of any grant under which an employee is being paid.

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⁶ Use this alternative for districts in suburban Cook County: replace "Regional Office of Education" with "appropriate Intermediate Service Center."

⁷ For a board that prefers its policy committee to engage in this work, delete ~~Board President and the Superintendent~~ and insert: Board Policy Committee. See policies 2:150, *Committees* and 2:240, *Board Policy Development*. This sample policy uses the board president and superintendent as the default text because during a pandemic, it may be difficult for a board policy committee to meet pursuant emergency executive orders that are issued, etc.

⁸ For an example of some issues that these entailed during the COVID-19 pandemic, see paragraph six of f/n 12, below.

⁹ 5 ILCS 120/2.01 and 120/7(e), respectively amended and added by P.A. 101-640. See also 105 ILCS 5/10-6, 5/10-12, and 5/10-16.

¹⁰ While 5 ILCS 120/7(e)(1), added by P.A. 101-640, uses the phrase "related to public health concerns," the text "due to public health emergency" aligns with Ill. Emergency Act (IEMA), 20 ILCS 3305/4 and 7, the governing statute of disaster declarations. For ease of understanding and alignment with IEMA, this policy uses "public health emergency." For more discussion, see f/n 33 in sample policy 2:220, *School Board Meeting Procedure*.

¹¹ Required if a district wishes to continue to charge employee salaries and benefits to a grant during an extended school closure, depending upon the specific terms of government orders and/or guidance issued during a pandemic. 2 C.F.R. Part 200 (see www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf, extended until 9-30-20 by www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf) and 30 ILCS 708/. See sample procedure 4:180-AP3, *Grant Flexibility; Payment of Employee Salaries During a Pandemic*, and its footnotes.

During the COVID-19 pandemic, Gov. Pritzker and ISBE issued directives and/or guidance regarding payment of school district employees that may impact a board's decision regarding continued payment of employees during an extended closure. ISBE and the Governor suspended in-person learning and issued a Joint Statement (JS) with other school administrator and union groups, which purported to mandate that all school district employees on the district's payroll be paid as if districts were functioning normally and they were performing their normal work. See www.isbe.net/Documents/Joint-Statement-Updated%203-27-20.pdf. The JS cited no specific authority for the payment mandate. Additionally, changes to wages, hours, terms and conditions of employment, even when made during an extraordinary circumstance such as a pandemic, remain subject to collective bargaining obligations.

Suspension of In-Person Instruction; Remote and/or Blended Remote Learning Day Plan(s)

When the Governor declares a disaster due to a public health emergency pursuant to 20 ILCS 3305/7, and the State Superintendent of Education declares a requirement for the District to use *Remote Learning Days* or *Blended Remote Learning Days*, the Superintendent shall approve and present to the Board for adoption a Remote and/or Blended Remote Learning Day Plan¹² (Plan) that: ¹³

1. Recommends to the Board for consideration any suspensions or amendments to curriculum-related policies to reduce any Board-required graduation or other instructional requirements in

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¹² 105 ILCS 5/10-30(3), added by P.A. 101-643, requires the “[board] to adopt and the superintendent to approve” these plans upon the following statutory triggers: (1) the governor declaring a disaster pursuant to 20 ILCS 3305/, and (2) the state superintendent of education declaring a requirement for a school district, multiple school districts, a region, or the entire State. See sample administrative procedure 6:20-AP, *Remote and/or Blended Remote Learning Day Plan(s)* for the specifics of implementing Remote Learning Days (RLDs) and/or Blended Remote Learning Days (BLRDs).

Implementing a plan under this subhead contains items on which collective bargaining may be required. Any policy that impacts wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This subhead of the policy concerns an area in which the law is unsettled. See 105 ILCS 5/10-30(7), added by P.A. 101-643 (stating that it does not increase or diminish any collective bargaining rights under existing law). Aspects of the plan that impact the wages or other terms or conditions of employment will need to be bargained with the exclusive bargaining representative(s).

To avoid confusion, note that the triggers under the Open Meetings Act (OMA), 5 ILCS 120/7(e), added by P.A. 101-640, for when a school board may conduct its meetings by audio or video conference without the physical presence of a quorum are a bit more broad: (1) the “governor **or the director of IDPH** has issued a disaster declaration as defined in 20 ILCS 3305/, and (2) all or part of the jurisdiction of the [school board] is covered by the disaster area. This means that it is possible for the board to meet remotely under OMA if the director of IDPH declares a disaster, but the School Code requires the governor to be the one to declare the disaster under 20 ILCS 3305/ in order for the state superintendent of education to declare that a district implement RLD/BLRDs. RLD/BLRDs and *e-learning days/e-learning programs* are different. RLD/BLRDs are for use when the governor declares a disaster under 20 ILCS 3305/ and the state superintendent has declared a requirement for the district to use them to provide remote instruction to pre-kindergarten through grade 12 that count as pupil attendance days under 105 ILCS 5/10-19.05(j-5), amended by P.A. 101-643. 105 ILCS 5/10-30(1), added by P.A. 101-643. BLRDs allow districts to utilize “hybrid models of in-person and remote instruction. E-learning days are part of an e-learning program that require a board to, among other things, hold a public hearing and obtain approval by the Regional Office of Education (or Intermediate Service Center) to allow the district to provide instruction to students electronically while they are not physically present due to inclement weather and other unexpected events. 105 ILCS 5/10-20.56(b), amended by P.As. 101-12 and 101-643. School districts with e-learning programs may adapt them for use during RLDs and BLRDs (105 ILCS 5/10-20.56(a), amended by P.As. 101-12 and 101-643, and 5/10-30(2), added by P.A. 101-643.

If the board has adopted an e-learning program pursuant to 105 ILCS 5/10-20.56, added by P.A. 101-12, add the following text to number two after 105 ILCS 5/10-30:

2. by adapting into a Plan the District’s e-learning program implemented pursuant to 105 ILCS 5/10-20.56

See sample policies 6:20, *School Year Calendar and Day*, 6:300, *Graduation Requirements*, 6:310, *High School Credit for Non-District Experiences*; *Course Substitutions*; *Re-Entering Students*, and Executive Order 2020-31 (temporarily suspending certain State assessment and graduation requirements (not local requirements that exceed the State-identified minimums)) and allowing local school boards to amend policies to reduce any local graduation requirements adopted in excess of the minimum requirements specified in School Code that school districts were unable to complete during the 2019-20 school year due to the suspension of in-person instruction and/or the Stay-at-Home orders issued in response to the COVID-19 pandemic).

¹³ 105 ILCS 5/10-30(3), added by P.A. 101-643 states “the district shall adopt a remote and blended remote learning day plan approved by the district superintendent.” For ease of administration, to avoid confusion during implementation, and to align with the IASB Foundational Principles of Effective Governance (www.iasb.com/principles_popup.cfm), this policy assigns the duty to *adopt* the remote and blended remote learning day plan (plan) by “the district” to the board. In alignment with this policy, administrative procedure 6:20-AP, *Remote and/or Blended Remote Learning Day Plan(s)*, requires the superintendent to *approve* the plan and present it to the board for *adoption* prior to district-wide implementation and posting on the district’s website.

excess of minimum curricular requirements specified in School Code that the District may not be able to provide due to the pandemic; ¹⁴

2. Implements the requirements of 105 ILCS 5/10-30; and
3. Ensures a plan for periodic review of and/or amendments to the Plan when needed and/or required by statute, regulation, or State guidance.

LEGAL REF.: 105 ILCS 5/10-16.7, 5/10-20.5, 5/10-20.56, and 5/10-30.
5 ILCS 120/2.01 and 120/7(e), Open Meetings Act.
20 ILCS 2305/2(b), Ill. Dept. of Public Health Act (Part 1).
20 ILCS 3305/, Ill. Emergency Management Agency Act.
115 ILCS 5/, Ill. Educational Labor Relations Act.

CROSS REF.: 1:20 (District Organization, Operations, and Cooperative Agreements), 2:20 (Powers and Duties of the School Board; Indemnification), 2:220 (School Board Meeting Procedure), 2:240 (Board Policy Development), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 3:70 (Succession of Authority), 4:170 (Safety), 5:35 (Compliance with the Fair Labor Standards Act), 5:200 (Terms and Conditions of Employment and Dismissal), 5:270 (Employment At-Will, Compensation, and Assignment), 6:20 (School Year Calendar and Day), 6:60 (Curriculum Content), 6:300 (Graduation Requirements), 7:90 (Release During School Hours), 8:100 (Relations with Other Organizations and Agencies)

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¹⁴ 105 ILCS 5/10-30(8), added by P.A. 101-643, does not excuse districts from completing all statutory and regulatory curricular mandates and offerings.