

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*, 3-14-2006.

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/coronavirus/2019-ncov/cases-updates/summary.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. At the time of publication during the 2020 COVID-19 pandemic, it was not clear whether this Illinois resource's definition will be amended.

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 Closing ⁵

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

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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 2020 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 2020 COVID-19 pandemic, Illinois and other states were left with these remaining powers of government to respond to the crisis. In general, President Trump's administration set broad national policy, particularly with respect to international travel and the approval of treatments, and suggested guidance that States could follow regarding mitigation measures. The states' governors and local leaders made other 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 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.

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.*

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 2020 COVID-19 pandemic.

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 2020 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/Documents/ISBE-Guidance-to-School-Coronavirus.pdf. And see other 2020 COVID-19 guidance documents as follows:

Ill. Gov. Pritzker, ISBE, Ill. Association of School Admin., Ill. Principals' Assoc., Ill. Ed. Assoc., and Ill. Fed. of Teachers Joint Statement:

www.isbe.net/Documents/Joint-Statement-Updated%203-27-20.pdf.

IDPH-ISBE joint schools guidance:

www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/schools-guidance

IDPH-ISBE joint workplace health and safety guidance:

www.dph.illinois.gov/covid19/community-guidance/workplace-health-and-safety-guidance

Restore Illinois Plan:

www2.illinois.gov/dceo/Pages/RestoreILP3.aspx.

During the 2020 COVID-19 pandemic, several 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 2020 COVID-19 Executive Orders (EO) at: coronavirus.illinois.gov/s/resources-for-executive-orders. 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).

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

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.

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*

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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 2020 COVID-19 pandemic, see paragraph six of f/n 12, below.

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

¹⁰ While 5 ILCS 120/7(e)(1), amended 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 2020 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.

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

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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, and that 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, amended 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/BRLDs. RLD/BRLDs and *e-learning days/e-learning programs* are different. RLD/BRLDs 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. BRLDs 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 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 (addressing the statutory minimum state 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 2020 COVID-19 pandemic). Executive Order 2020-31 provided the following proclamations:

Section 8. The following provisions of the Illinois School Code, 105 ILCS 5/1-1 *et seq.*, requiring certain assessments and courses for twelfth grade students, are suspended:

- a. 105 ILCS 5/2-3.64a-5(c) (requirement to take State assessments),
- b. 105 ILCS 5/27-3 (requirement to pass a satisfactory examination on patriotism and the principles of representative government),
- c. 105 ILCS 5/27-6(a) (requirement to engage in a course of physical education for a minimum of 3 days per 5-day week), and
- d. 105 ILCS 5/27-12.1(a) (requirement to be taught consumer education).

Section 9. The provision of the Illinois School Code, 105 ILCS 5/10-22.43a, requiring the successful completion of a foreign language proficiency examination for students whose foreign language credit is met through an approved ethnic school program, is suspended.

Section 10. The provision of the Illinois School Code, 105 ILCS 5/27-6.5, requiring physical assessments, is suspended.

Section 11. The provision of the Illinois School Code, 105 ILCS 5/27-22(e), requiring the successful completion of certain courses as a prerequisite to receiving a high school diploma, is suspended for twelfth grade students who are unable to complete such coursework as a result of the suspension of in-person instruction due to COVID-19.

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 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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Section 12. The provision of the Illinois School Code, 105 ILCS 5/27-21, requiring eight grade students to demonstrate evidence of having a comprehensive knowledge of the history of the United States as a prerequisite to eight grade graduation, is suspended.

Section 13. Twelfth grade students shall not be denied credit for apprenticeships or vocational or technical education courses allowed to be substituted for graduation requirements under the Illinois School Code, 105 ILCS 5/27-22.05, due to the student's inability to complete those course substitutions as a result of the suspension of in-person instruction due to COVID-19.

Section 14. The Illinois State Board of Education shall file emergency rules as needed to effectuate the intent of this Executive Order, including to suspend any regulatory provision related to: (1) student graduation requirements; or (2) student teaching, supervised field experience, or internship requirements for professional educator licenses or endorsements.

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.

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.

Operational Services

Administrative Procedure – Grant Flexibility; Payment of Employee Salaries During a Pandemic ¹

The Superintendent may implement this procedure, after consultation with the Board², when it is determined it would be in the best interests of the District to utilize federal or State agency grant flexibilities that allow continued payment of employee salaries and benefits from grant funds during a pandemic. This procedure shall be implemented consistent with District practices required by Board policies 5:200, *Terms and Conditions of Employment and Dismissal*, and 5:270, *Employment At-Will, Compensation, and Assignment*.³

During a pandemic, federal and/or State agencies may take official action to temporarily allow the District (as a grant recipient) to continue to charge employee salaries and benefits to grant funds while the activities of a grant are closed in whole or in part because of a pandemic, when those payments are made consistent with the District's local practices⁴ for the payment of salaries and benefits to *similarly situated* employees paid from *other* funding sources (i.e., not tied to grant-funds) during a pandemic. The Districts will use this procedure to address the payment of salaries and benefits to grant-funded employees and similarly situated non-grant funded employees during a pandemic.⁵

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¹ Depending upon the specific terms of government orders and/or guidance issued during a pandemic, this procedure may be required if a district wishes to continue to charge employee salaries and benefits to a grant during an extended school closure. See f/n 3 below for further discussion. **Note:** Apart from this potential requirement tied to grant funding, there is no other federal or State law that requires a district to have a procedure that specifically addresses the payment of employee salaries during a pandemic.

² The Superintendent needs to document his or her consultation with the Board under this procedure. This procedure does not require formal board action; however, documentation could be accomplished through board meeting minutes if discussed at a meeting or through correspondence from the Superintendent to Board members. See policy 2:140, *Communications To and From the Board*, and 2:140-E, *Guidance for Board Member Communications, Including Email Use* for guidance regarding compliance with the Open Meetings Act as it pertains to board member communications outside of a public meeting.

³ See policies 5:200, *Terms and Conditions of Employment and Dismissal*, at f/n 7 and 5:270, *Employment At-Will, Compensation, and Assignment*, for information about general sources of board authority for the payment of professional and educational support personnel.

⁴ The memorandum issued by the federal Office of Management and Budget (OMB) referenced in f/n 5 below refers to grant recipients having a "policy," which is used in the generic sense and does not mean a formally adopted board policy. To avoid confusion regarding the federal government's use of the word "policy" in this context and the PRESS PRM's use of policy, this procedure uses the term "practices."

⁵ During the COVID-19 pandemic, the federal Office of Management and Budget (OMB) issued a memorandum on 3-19-20, that permitted federal agencies to allow grant recipients to continue to pay employee salaries and benefits from federal grant funds for a 90-day period, if such payments were made "consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources." See www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf. Specifically, the memorandum permitted relief from certain provisions of the federal uniform guidance for grants at 2 C.F.R. Part 200 that require grant expenditures to be directly tied to the activities of the grant. That relief was subsequently extended until 9-30-20. See www.whitehouse.gov/wp-content/uploads/2020/06/M-20-26.pdf. The Grant Accountability and Transparency Unit of the Illinois Governor's office, which administers the Grant Accountability and Transparency Act (GATA)(30 ILCS 708/), confirmed that the OMB flexibility memo also applied to State grants through GATA. See *Guidance for Short-Term Relief of 2 CFR 200*, at www2.illinois.gov/sites/GATA/Pages/default.aspx.

When school buildings are closed due to a pandemic, the Superintendent shall:

1. Consult with the Board to determine the extent to which continued payment of salaries and benefits will be made to the District's employees,⁶ 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 the following: ⁷
 - a. Laws, regulations, federal or State or local emergency declarations, executive orders, and agency directives; ⁸
 - b. Collective bargaining agreements and any bargaining obligations; and
 - c. The terms of any grant under which an employee is being paid.
2. When permitted by the terms of any grant or related regulatory flexibility, and in consultation with the Board, ensure that the District continues to charge to the respective grants payment of the salaries and benefits to grant-funded employees when payment of salary and benefits is also being made to similarly situated non-grant funded employees.
3. Consult with the Board Attorney for guidance on the continued payment of salaries and benefits for grant-funded employees and similarly situated non-grant funded employees and any related legal obligations, such as collective bargaining. ⁹

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Following the OMB memorandum, the U.S. Dept. of Education (DOE) issued its own guidance to grant recipients, stating that recipients could continue to pay employees with DOE grant funds when closed due to COVID-19, as long as the recipient paid "consistent with its policies and procedures, similarly situated employees whose compensation is paid with non-federal funds during an extended closure." See www2.ed.gov/documents/coronavirus/factsheet-fiscal-questions.pdf. Neither the OMB nor DOE define *similarly situated* in their guidance; consult the board attorney for advice on this issue. Other agencies administering grant flexibilities during a pandemic such as COVID-19 may issue their own guidance regarding whether a grant recipient's local employee payment practices during extraordinary circumstances must address all employees, only similarly situated employees, or other subsets of employees. This procedure includes the *similarly situated* standard because districts receive much of their federal funding through DOE. Consult the board attorney if the district wants to modify this procedure based on agency guidance from agencies other than DOE.

⁶ 105 ILCS 5/10-23.8 and 5/10-23.8a (superintendent and other administrators salary and benefits); 105 ILCS 5/10-20.7, 5/10-21.1, 5/24-1, and 5/24-8, amended by P.A. 101-443, beginning with the 2020-2021 school year, (teacher minimum salary); and 105 ILCS 5/10-22.34, 5/10-23.5 (educational support personnel); 29 U.S.C. §201 *et seq.* (payment of *exempt* employees as defined in the Fair Labor Standards Act (FLSA)); and 820 ILCS 115/3 (payment of non-exempt educational support personnel).

⁷ 105 ILCS 5/10-20.5 and 115 ILCS 5/1 *et seq.* See paragraph four of *f/n 1* in policy 4:180, *Pandemic Preparedness*.

⁸ The Fair Labor Standards Act (FLSA) (29 U.S.C. §201 *et seq.*) generally requires employers to pay *exempt employees* their full salary for any week in which the employee performs work, regardless of the number of days or hours worked in that week; however, the FLSA does not require employers to pay them for any workweek in which they perform no work. 29 C.F.R. §541.602. The FLSA has no such payment requirement for *non-exempt* employees who are generally paid on an hourly basis.

During the 2020 COVID-19 pandemic, the Governor and the Ill. State Board of Education (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 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 Joint Statement 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.

⁹ Staffing and payment of employees during a pandemic presents a number of complex and potentially fluid legal issues; regular consultation with the board attorney is critical under such circumstances to limit the district's liability.

4. Make recommendation(s) to the Board about the continued payment of grant-funded and similarly situated non-grant funded employees' salary and benefits during the emergency closure.
5. Regularly report to the Board regarding the payment of grant-funded and similarly situated non-grant funded employees and the work being performed by those employees during the period of the emergency closure.