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REIMBURSEMENTS: NEW INFORMATION

TRANSPORTATION REIMBURSEMENTS: NEW INFORMATION

Since our April 1, 2020, Priority Briefing on this subject, the Illinois State Board of Education has issued this new informal guidance which indicated that ISBE will reimburse districts for transportation costs under the formula of Section 29-5 of the School Code:

74. Is ISBE reimbursing expenditures for school bus transportation during the mandatory suspension of in-person instruction if school buses are not running regular routes? (Updated 4/1/20)

Contractual Payments for Transportation are eligible for State Transportation Reimbursement in accordance with the Part 120 Administrative Code Rules provided that the costs paid by a school district are within an executed contractual agreement. The amount of payments made by a school district during the mandatory closure dates of March 17-30 as well as the Remote Learning Days that begin March 31 are subject to negotiation by the school district and transportation contractor. If negotiated and within the written agreement, all the paid expenditures will be allowable for State Transportation Reimbursement in accordance with the formula prescribed in Section 29-5 of the School Code.

In order to more fully understand ISBE's position on this matter, two of our partners engaged in a telephone conference on April 3 with ISBE's General Counsel and Chief Financial Officer. Per that conversation, we want to emphasize these aspects of ISBE's position:

- Districts which wish to obtain reimbursements for the period during mandatory school closure must amend current transportation contracts. Voluntary payments under old contracts which do not require payments during the cessation of services will not be reimbursed.

- Districts should specifically include such costs as distribution of food, distribution and pick-up of student assignments and work, use of vehicles to provide wi-fi and similar costs necessary to insure the continuity of education, including the provision of any direct or related service for the health and well-being of students, and all transportation costs incurred that are beyond transporting students. These are the types of service costs which only became reimbursable via the emergency rule issued on March 31, 2020.

In addition, however, we observe the following:

- Districts are under no legal obligation to amend their transportation contracts. However, as stated above, transportation contracts must be amended in order for districts to receive reimbursement for any payments Districts choose to make during the mandatory closure period.
- Districts are under no legal obligation to make payments to transportation carriers when no services are being provided unless the transportation contract provides otherwise.
- Given the uncertainty about the authority and scope for reimbursements for the mandatory school closure period, districts that choose to amend their transportation contracts and make payments to transportation carriers should consider including language both to include specific reference to those additional types of services being provided and to protect themselves in case reimbursements are ultimately denied.

If you have any questions or would like assistance in drafting the terms of the contract amendments, please do not hesitate to contact one of our attorneys.

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