

October 15, 2020

RECENT ADDITIONAL GUIDANCE DOCUMENTS FROM ED, ISBE, IDPH, AND IDHS

As the 2020-2021 school year is underway, the U.S. Department of Education (ED), the Illinois State Board of Education (ISBE), the Illinois Department of Public Health (IDPH), and the Illinois Department of Human Services (IDHS) continue to issue guidance documents concerning school districts' obligations in the midst of the COVID-19 pandemic.

IDPH Interim Guidance on Addressing COVID-19 in Pre-K-12 Schools and Day Care Programs

On October 14, 2020, IDPH issued [updated guidance](#) for pre-kindergarten and K-12 schools and day care programs to provide procedures when students or staff members are confirmed COVID-19 cases, possible COVID-19 cases, or are close contacts to confirmed COVID-19 cases. Generally, the interim guidance provides for notifications and communications between school personnel, parents/guardians, and the local health department about confirmed/probable cases and contact tracing. A few other notable requirements include:

- For Students/Staff Who are Close Contacts to a Confirmed COVID-19 Case: A student or staff member considered a close contact to a confirmed case should be quarantined at home for 14 calendar days, as long as they remain asymptomatic. In addition, any siblings, parents/guardians, or other household members deemed to be close contacts to a confirmed case should be quarantined at home for 14 calendar days.
- For Students/Staff Sick at School: If a student or staff member arrives to school with a COVID-19 symptom(s) or becomes sick at school:
 - The student or staff member should be immediately masked, if not already so, and sent to the designated separation.
 - If a fit-tested N95 respirator is not available for a nurse who is screening a symptomatic student, the next safest levels of respiratory protection include, in the following order: (1) a non-fit-tested N95 respirator, (2) a KN95 respirator on the FDA-approved list, or (3) a surgical mask.
 - Other household members in the school must be sent home until the school receives an alternative diagnosis or negative test result for the symptomatic student or staff member.

- Schools should report to the local health department the number of children excluded from school and the methods used to return them to school, as requested by the local health department.

IDPH Updated Exclusion Decision Tree

On October 13, 2020, IDPH published an updated version of its [COVID-19 Interim Exclusion Guidance, Decision Tree for Symptomatic Individuals in Pre-K, K-12 Schools and Day Care Programs](#). The updated exclusion decision tree clarifies that:

- For a symptomatic individual with a negative COVID-19 diagnostic test, specimens collected more than 48 hours prior to symptom onset are not counted for determining school exclusion. The individual may return to school once the school receives a negative real-time reverse transcriptase (RT-PCR) test result or a physician’s note indicating a negative RT-PCR test result.
- For a symptomatic individual with an alternate diagnosis, if testing is not performed due to the clinical judgment of the healthcare provider, a medical note documenting that there is no clinical suspicion for COVID-19 infection and indicating an alternative diagnosis with exclusion consistent with this diagnosis is needed to return to school.

ISBE Revised Statement on Excluding Students Without Required Health Exams/Immunizations

On October 13, 2020, ISBE issued revised guidance by e-mail on the health examinations and immunization documentation that parents must submit to schools by October 15 under Section 27-8.1 of the *Illinois School Code*. ISBE provided that the health examination and immunization requirements continue to be in effect, including that students must be excluded from school if such documentation is not provided by October 15th. However, ISBE changed its position related to excluding students from remote learning. ISBE indicated that for a student for whom the required health examination and immunization documentation has not been received by October 15, a school district or special education cooperative may provide the student with remote learning/e-learning so long as the instruction is solely by remote means and the student does not have a physical presence on school grounds at any time.

Also, ISBE advised if a student who is on remote learning because of the lack of required immunizations qualifies for free or reduced meals, a school may continue to provide the student with those meals in the manner that other students participating in remote learning receive meals.

ISBE/IDHS Joint Guidance on Transition from EI to EC Programming

On October 9, 2020, ISBE and the Illinois Department of Human Services (IDHS) published a document, [ISBE/IDHS Joint Guidance on Transition Policies and Procedures for Supporting Families and Young Children Transitioning Out of Early Intervention at Three Years of Age](#), reiterating school districts' obligations for transitioning children participating in IDEA Part C/Early Intervention (EI) services to IDEA Part B/Early Childhood (EC) services upon turning age 3. As previously indicated, the guidance states there is no flexibility from federal and State requirements, including that a school district must have an IEP (or IFSP) in effect for a child transitioning from EI to EC by the child's 3rd birthday.

Notably, the ISBE/IDHS guidance states that if a school district cannot support in-person or remote services and additional staffing is needed to ensure that special education and related services are provided to a child according to his/her IEP, a district may consider using IDEA Part B funds to contract with outside providers, including EI providers, to deliver the EC services. The guidance states in parenthesis "with parent consent" without any further reference. Also, the guidance provides that any EI provider contracted by a school district for EC services should have the appropriate licensure to teach children ages 3-5.

ED Revised Guidance on Calculating ESSER Proportionate Share Funds

On October 9, 2020, ED published revised guidance, [Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs](#), to address the calculation for determining the amount of proportionate share funds for equitable services to non-public school students and staff under the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) Elementary and Secondary School Emergency Relief ("ESSER") Fund.

ED had published initial guidance in April 2020, advisory letters in May and June 2020, and an interim final rule in July 2020 on the requirements for providing equitable services and calculating the funds for such services. In these publications, ED explained that the CARES Act requires a school district to provide equitable services to non-profit, non-public schools located within its boundaries and calculate the proportionate share of the ESSER funds to be used for such equitable services. ED stated that under the CARES Act the ESSER proportionate share funds calculation was not the same as the calculation provided in Title I of the *Elementary and Secondary Education Act of 1965* (ESEA). Rather, ED stated that the calculation was based on student enrollment. Many states, including Illinois, disagreed with the ED's interpretation of how to calculate the ESSER proportionate share funds under the CARES Act.

Following these ED publications, three courts have issued decisions rejecting ED's interpretation and held that the CARES Act requires a school district to calculate the ESSER proportionate share funds in the same manner as calculating Title I proportionate share funds (*i.e.*, the number of children from low-income families who attend private schools). As a result, ED has issued this revised guidance to align with the courts' decisions. The guidance provides that a school district must calculate the proportional share in accordance with Title I of the ESEA, and it may use the proportional share calculated for Title I purposes from either the 2019-2020 or 2020-2021 school year.

If you have any questions about the information in this bulletin, please contact one of our attorneys at 630.313.4750.

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