
FRANCZEK

CONTACT

www.franczek.com

sla@franczek.com

jw@franczek.com

40 Answers to Your Phase 4 Questions



Practical FAQs on ISBE's Phase 4 School Reopening Guidance

Copyright © 2020, Franczek P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This publication of Franczek P.C. is intended for general informational purposes only and should not be construed as legal advice.

FRANCZEK

40 Answers to Your Phase 4 Questions: Practical FAQs on ISBE’s Phase 4 School Reopening Guidance

By [Shelli Anderson](#) and [Jackie Gharapour Wernz](#)

On June 23, 2020, the Illinois State Board of Education (“ISBE”) and the Illinois Department of Public Health (“IDPH”) released a [guidance document](#) addressing return to school during Phase 4 of the [Restore Illinois Plan](#) this fall. The a 63-page document, “Starting the 2020-2021 School Year: Part 3 – Transition Joint Guidance,” which we refer to as the “ISBE guidance,” includes numerous recommendations and mandates for schools while nonetheless recognizing that schools retain the ultimate discretion to choose whether to follow them.

As always, our goal at Franczek P.C. is to make these types of resources more accessible for school leaders. This frequently asked questions (FAQ) document synthesizes some of the most significant, new, practical questions and considerations for schools from the ISBE guidance. Of course, we cannot and do not include all information from the ISBE guidance in this document. For more information about any remaining questions you may have, visit our [COVID-19 Resource Center](#) or contact your [Franczek attorney](#).

About Franczek P.C.

Our firm has one of the largest teams of K-12 education lawyers in Illinois. We work with school districts, schools, and cooperatives of all sizes—ranging from hundreds to hundreds of thousands of students—in all areas of the State.

Our clients are some of the biggest as well as some of the smallest educational institutions in the state.

They can be found in urban, suburban, and rural areas. We pride ourselves on serving clients better than anyone else, and our remarkably high client retention rate suggests that we succeed in doing so.

Our attorneys are accessible, efficient, responsive, candid, and practical.

We form a unique partnership with the schools we serve, working with school and governing board members and administrators to find solutions to difficult problems and provide practical, clear, and comprehensive advice. Franczek’s unique position as a leader in all aspects of education, labor, and employment law allows us to offer unparalleled depth and experience at a consistent and competitive cost.

FRANCZEK

Contents

General Information.....	5
1. Does the ISBE guidance apply to all schools in Illinois?	5
2. Is compliance with the guidance mandatory?	5
3. Should we update our policies and procedures?	5
In-Person vs. Remote Learning	6
4. Is return to in-person instruction required during Phase 4?	6
5. Can schools still use Remote Learning Days?	6
6. Can schools use a combination of full and partial Remote Learning Days?	6
7. What if we can't provide in-person instruction to all students?	6
8. What about students with higher risk of severe illness?	7
9. What if there is a resurgence of the virus?	7
Face Coverings	7
10. Are face coverings required in all school buildings?	7
11. Can students/staff use face shields instead of traditional face coverings?	7
12. Are face coverings required during outdoor activities?	8
13. How can students eat lunch if required to wear a mask?	8
Spacing and Social Distancing	8
14. What are the limits on the number of people who can gather in one space during Phase 4?	8
15. What is a space for purposes of social distancing?	8
16. Can one space be divided up for use by multiple groups of 50 people?	8
17. Must classroom desks be 6 feet apart if individuals wear face coverings?	8
18. Is 6 feet of social distancing required in other places in the school building?	9
19. What social distancing is required on a school bus?	9
20. Are there other considerations with respect to the use of space that we should consider?	9
Health & Safety Protocols.....	9
21. How do we address the many health and safety protocols in the ISBE guidance?	9
School Day/School Year Issues	10
22. Does the requirement for five clock hours of instruction apply during Phase 4?	10
23. Can Remote and Blended Remote Learning Planning Days be used before the first day of student attendance?	10
24. Does the use of Remote and Blended Remote Learning Planning Days decrease the number of actual student attendance days?	11

FRANCZEK

25. Can we modify the length of the school year?	11
Symptom Screening and “Self-Certification”	11
26. Must the school conduct symptom screenings and temperature checks of everyone entering the school building or school buses?	11
27. Are there any circumstances in which a school should screen students or staff even if they have self-certified?.....	12
28. Can we ask students or staff members why they are absent from school?.....	12
Addressing Potential Outbreaks	12
29. Can schools exclude persons with COVID-19 symptoms?.....	12
30. Who must quarantine if a student or staff member tests positive for COVID-19 or is suspected of having COVID-19?	12
Meeting Student Needs.....	12
31. Should we take special steps for students changing schools or teachers between last year and the fall?.....	12
32. Are schools excused from completing statutory and regulatory curricular mandates and offerings?	13
33. How do we assess students’ skill levels for the 2020-2021 school year?	13
Attendance & Grading.....	13
34. Are we still limited in how we grade students?.....	13
35. What attendance standards are in place?.....	13
Labor & Employment Considerations.....	13
36. Are there any bargaining implications that we should consider?	13
37. Where should we focus our professional learning?	14
Communication Issues.....	14
38. Should we conduct surveys related to returning to school in 2020-2021?.....	14
39. Are there any new communication responsibilities related to returning to school?	14
Conclusion	15
40. Wait! What about [fill in the blank with your question we did not answer]?.....	15

General Information

1. Does the ISBE guidance apply to all schools in Illinois?

Yes. The guidance applies to all public and nonpublic schools in Illinois serving Pre-K through 12th grade students.

2. Is compliance with the guidance mandatory?

Portions of the guidance are clearly recommendations while others are written as mandates. For example, the guidance recommends that schools create a diverse “transition planning team” to plan return to in-person instruction, post signs and messages (provided by ISBE) about safety precautions in visible places, and broadcast regular announcements about reducing the spread of COVID-19. In contrast, examples of conduct the guidance says schools “must” undertake include requiring the wearing of face coverings at all times, with limited exceptions, inside school buildings even if individuals can maintain 6 feet of social distance and discontinuing practices or rewards that encourage perfect attendance or would otherwise discourage individuals from staying home when ill.

Despite the inclusion of many apparent mandates in the guidance, during a press conference on June 23, Governor JB Pritzker said ISBE would not enforce compliance with the guidance. He emphasized that every school has discretion to modify the guidance according to local circumstances.

Public entities such as schools are generally immune from liability when given discretion to implement public health policy, when adopting and enacting laws, and when supervising students. Nothing in the ISBE guidance impacts those protections or other potentially relevant provisions of the Illinois Tort Immunity Act.

Nonetheless, we recommend that schools take the recommendations and directives in the guidance seriously because they reflect the most current understanding of public health officials for how to protect students, staff, and other members of the school community when returning to in-person instruction. The flexibilities in the guidance are important, however, because it will simply not be possible for every school to comply with all of the guidance’s recommendations and mandates.

3. Should we update our policies and procedures?

ISBE guidance and other sources likely require policy and procedure changes. With the school year quickly approaching, schools should consider action by the Board of Education with follow up formal written policy changes. We recommend that you work with legal counsel to consider options for policy updates, including the potential that the Illinois Association of School Boards PRESS Policy Services will address required updates.

In-Person vs. Remote Learning

4. Is return to in-person instruction required during Phase 4?

No. However, ISBE strongly encourages “completely in-person instruction for all students in Phase 4.” ISBE notes that even if in-person instruction is provided, it does not mean a return to pre-pandemic operations. Appropriate social distancing, face coverings, enhanced sanitation measures, and other accommodations will be necessary to ensure the safety of students, staff, and their families. But the guidance repeatedly champions in-person instruction for the fall, suggesting that schools prioritize returning students to school over strict compliance with the guidance.

5. Can schools still use Remote Learning Days?

Yes. The Remote Learning Days with which we all became familiar [in March](#) are still in effect during Phase 4.

6. Can schools use a combination of full and partial Remote Learning Days?

Yes. The guidance recognizes a new type of day, “Blended Remote Learning Days,” also addressed in the recent education legislation, [Public Act 101-0643](#). During these days, schools may use “hybrid models of in-person and remote instruction.” Make sure both full days (Remote Learning Days) and less-than-full days (Blended Remote Learning Days) are outlined in your remote planning document. Flexibility is permitted based on local needs.

7. What if we can’t provide in-person instruction to all students?

If it is not feasible to comply with all public health requirements with all students returning to in-person instruction, ISBE recommends that schools develop a blended learning schedule that accommodates smaller groups of students in blocks of time to adhere to capacity requirements (50 people in a space) with adequate social distancing (6 feet). ISBE suggests that schools prioritize students with IEPs and Section 504 plans, English Learners, and students under the age of 13. Those students should be provided with in-person attendance daily if possible, including during Blended Remote Learning Days when other students may be required to learn at home. Priority should also be given to in-person instruction for subjects in which students are less able to engage independently at home, such as classes that require lab or hands on components.

8. What about students with higher risk of severe illness?

ISBE recommends that schools determine whether such students' needs can best be met during full-time remote learning. In order to make this determination, schools should provide time for nurses to meet with teachers and other staff members prior to the start of student attendance to review health concerns for medically high-risk students and to plan to provide prompt treatment to students if health-related concerns occur.

9. What if there is a resurgence of the virus?

Although the clear directive of the ISBE guidance is for schools to return to in-person instruction if at all feasible in the fall, the guidance also recognizes that plans may need to change if there is a resurgence of COVID-19 during the 2020-2021 school year. Schools should have a plan for a return to remote instruction if it becomes necessary.

Face Coverings

10. Are face coverings required in all school buildings?

Yes. The guidance repeatedly states that all individuals in school buildings **“must”** wear face coverings **“at all times”** and **“even when social distancing is maintained”** unless the person:

- is younger than 2 years of age,
- has trouble breathing, or
- is unconscious, incapacitated, or otherwise unable to remove the cover without assistance.

11. Can students/staff use face shields instead of traditional face coverings?

Yes. Based on the discretion given to schools and statements during the ISBE webinars on the new guidance, schools can consider using face shields when needed.

The guidance recognizes some situations in which face shields may be preferable to other face coverings. Per the guidance, teachers may use face shields in lieu of masks in situations where it is important that students see the teacher's mouth or face. For example, a foreign language or English Learner teacher may need to be visible to students when speaking to show how a teacher pronounces words. With respect to students whose behavior or capacities may limit their ability to tolerate wearing a face covering, the guidance explicitly says schools can consider the use of a face shield instead.

There does not appear to be an exception, however, for students who can tolerate neither a traditional face covering nor a face shield. Rather, the guidance suggests that schools can consider that inability in deciding whether to provide in-person instruction to such students. We

recommend that you work closely with your legal counsel when making any decisions to exclude students from in-person instruction based on this or other factors.

12. Are face coverings required during outdoor activities?

Not unless individuals are unable to maintain 6 feet of social distancing.

13. How can students eat lunch if required to wear a mask?

During the June 23 webinar, ISBE clarified that students can remove their masks to eat lunch but must be seated 6 feet apart. The guidance also suggests considering whether meals can be held outside. Given the significant logistical challenges this likely presents, many schools will likely consider returning to half day models of in-person instruction where lunch is not served.

Spacing and Social Distancing

14. What are the limits on the number of people who can gather in one space during Phase 4?

The Phase 4 guidelines provide that no more than 50 people can be in one space at a time.

15. What is a space for purposes of social distancing?

During the Governor's press conference, he recognized that what constitutes a "space" may be different for different schools and buildings. Examples of an indoor space include one classroom, one bus, and one multi-purpose room. When outside, groups of 50 people must be at least 30 feet apart.

16. Can one space be divided up for use by multiple groups of 50 people?

No. At this time, dividing up a room to allow for more than 50 people in a large room is not permitted. However, the guidance says larger spaces may be divided up to allow greater separation between 50 people in one space, such as a gymnasium to separate different classes and discourage interactions.

17. Must classroom desks be 6 feet apart if individuals wear face coverings?

No. During the June 23 webinar, ISBE stated that if students and staff are wearing face coverings, desks do not need to be spaced 6 feet apart.

18. Is 6 feet of social distancing required in other places in the school building?

According to ISBE, social distancing must be observed as much as possible. Areas where students generally line up and congregate should have students spaced 6 feet apart.

19. What social distancing is required on a school bus?

When asked this question during the June 23 webinar, ISBE indicated that 50 students may be on a school bus, that face coverings must be worn, and restated that social distancing is required only as much as practical. Given this answer, we do not believe that 6 feet of social distancing is required on school buses.

20. Are there other considerations with respect to the use of space that we should consider?

The guidance indicates that shared lockers are prohibited and lockers should not be used at all, if possible. ISBE recommends scheduling restroom breaks for students, promoting the use of reusable water bottles instead of drinking fountains, and limiting the number of persons and traffic patterns in hallways. ISBE also recommends that teachers, rather than students, move between classes.

Health & Safety Protocols

21. How do we address the many health and safety protocols in the ISBE guidance?

We suggest development of a health and safety checklist for your return to school plan to be sure the recommendations in the guidance are considered and included in the plan where appropriate. This will allow your school to take advantage of the extensive protections from liability provided by the Illinois Tort Immunity Act with respect to COVID-19 risks, as discussed in the response to Question #2 above. Our team is preparing a checklist for clients; contact your Franczek attorney for more information.

School Day/School Year Issues

22. Does the requirement for five clock hours of instruction apply during Phase 4?

Yes. Although recent legislation waived the minimum clock hour requirement during a public health disaster, it also allowed the ISBE State Superintendent to institute clock hour requirements. The guidance states that the State Superintendent has determined that the days of instruction during a public health emergency must still include at least five clock hours.

The key points from the guidance with respect to meeting the five clock hour requirements are:

- some combination of instruction and schoolwork for each student must occur each Remote and Blended Remote Learning Day,
- as much face-to-face or “synchronous” instruction as possible should occur,
- all learning activities can count toward the five-clock hour requirement, and
- schools have significant flexibility to determine how best to meet these requirements.

Examples of “learning activities” that can count toward the five-clock hour requirement include:

- in-person instruction,
- instruction through recorded video or synchronous video platforms,
- remote small group work via breakout room or conference call,
- independent/flexible student work time, and
- virtual/telephone teacher-student check-ins.

ISBE’s guidance is clear, that if using non-interactive platforms, students must have means to confer with a teacher and receive feedback before assignments are graded or assessments are administered.

The guidance states that ISBE will release updated Remote Learning Recommendations in the coming weeks to further support schools in planning for in-person and blended options. We will update you when the guidance is released.

23. Can Remote and Blended Remote Learning Planning Days be used before the first day of student attendance?

Yes. Schools may use up to five planning days for Remote and Blended Remote Learning Planning Days that will count as pupil attendance days. Considering the significant professional development recommended by ISBE related to remote learning, schools should consider use of at least some of these planning days before students resume school.

24. Does the use of Remote and Blended Remote Learning Planning Days decrease the number of actual student attendance days?

Yes. Schools that use the planning days that still want to provide the same number of actual student attendance days will need to consider a host of factors including collective bargaining issues.

25. Can we modify the length of the school year?

Yes. The guidance recommends consideration of a year-round school year, with the school year starting earlier to provide additional instruction to higher needs students and the 2021 summer break spread out in smaller increments throughout the school year. Note, however, that changes to the school year have significant bargaining implications.

Symptom Screening and “Self-Certification”

26. Must the school conduct symptom screenings and temperature checks of everyone entering the school building or school buses?

No. For the first time, ISBE recognizes the right of schools to rely on “self-certification” by individuals entering school buildings and school buses, rather than conducting a check on each person upon arrival. Individuals must self-certify that they do not have a temperature greater than 100.4 degrees Fahrenheit or symptoms of COVID-19, including fever, cough, shortness of breath or difficulty breathing, chills, fatigue, muscle and body aches, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea, vomiting, or diarrhea.

The guidance contains little direction as to how self-certification can or should be effectuated. While there is currently no requirement that schools verify self-certification, we recommend that schools obtain confirmation from parents, students, and staff that they will check for temperatures and symptoms every day. Consider using applications for daily check-ins or annual certification during the registration process to confirm that parents, students and staff will check for temperature and symptoms every day. We also recommend that all visitors to school buildings undergo temperature and symptom checks before entering a school building and be asked to confirm that they are symptom free and have not been exposed to someone who is positive for COVID-19 in the last 14 days.

If self-certification is not used, the guidance requires screening of individuals upon entry to school busses and buildings. Care should also be taken to address circumstances in which a student may not be able to self-certify, including based on parental or family circumstances and resources.

27. Are there any circumstances in which a school should screen students or staff even if they have self-certified?

We recommend that even if relying on self-certification, schools should conduct symptom and temperature checks for individuals who report or exhibit symptoms suggesting they might be sick. Schools may wish to do so on a random basis, as well.

28. Can we ask students or staff members why they are absent from school?

ISBE recommends monitoring of staff and student absenteeism and encourages reporting of specific symptoms, COVID-19 diagnosis, and COVID-19 exposure when reporting absences.

Addressing Potential Outbreaks

29. Can schools exclude persons with COVID-19 symptoms?

Yes. ISBE recommends posting signs in main entryways in multiple languages stating that persons with currently known COVID-19 symptoms may not enter the building, along with notices that face coverings must be worn and that engaging in any physical contact is prohibited in all school buildings.

30. Who must quarantine if a student or staff member tests positive for COVID-19 or is suspected of having COVID-19?

Based on IDPH guidance, anyone with “close contact” to the individual should isolate at home and monitor for symptoms for 14 days. “Close contact” means being within 6 feet of an individual for more than 15 minutes who has tested positive for COVID-19 or is suspected of having COVID-19. Practically, this requirement could mean that all students who have class or other close contact with a person who tests positive or is suspected of having COVID-19 would have to shift to remote learning for 14 days.

Meeting Student Needs

31. Should we take special steps for students changing schools or teachers between last year and the fall?

The guidance recognizes that schools may need to take steps to address the challenges that may face students who are changing classrooms or even schools between last year and the 2020-2021 school year. The guidance suggests that schools engage in collaborative vertical articulation sessions to address impacts for students transitioning from eighth grade to high school and from sixth grade to junior high or middle schools. The guidance also suggests that schools consider steps such as having students spend the first days of in-person instruction with the previous

year's teacher(s) and classmates, having small group closure activities, and having current teachers take students to meet new teachers as examples of ways to provide closure for all students.

32. Are schools excused from completing statutory and regulatory curricular mandates and offerings?

No. However, all curricular mandates may be administered via remote and blended remote learning.

33. How do we assess students' skill levels for the 2020-2021 school year?

Whether or not instruction occurs in-person, remotely, or with some mix of the two, schools will need to assess students' skill levels upon to return to school.

The guidance addresses several options for schools, including "quick checks" by teachers or more formal assessments of all students in each content area. The guidance makes clear that these assessments are not intended to replace existing general screening or assessment requirements.

Attendance & Grading

34. Are we still limited in how we grade students?

No. The guidance states that schools should return to traditional grading policies but retain the discretion to make modifications as necessary. Although ISBE recommends that schools consider student need and equity in grading, the guidance specifically notes that schools have the exclusive responsibility to develop and implement grading policies. Accordingly, the limitation that grading "do no harm" to students is removed for Phase 4.

35. What attendance standards are in place?

Daily attendance and engagement of students should be expected, whether students are participating in classes in-person or remotely. Daily contact should be made with all students. The guidance says schools must discontinue practices or rewards that encourage perfect attendance or would otherwise discourage individuals from staying home when ill.

Labor & Employment Considerations

36. Are there any bargaining implications that we should consider?

Public Act 101-0643 specifically says that it "does not add any new bargaining rights and does not remove any established bargaining rights." In English, that means that the law doesn't add any new responsibilities on schools to bargain just because of COVID-19. Schools, however, should

be prepared for requests to bargain based on changes to conditions of employment and mandatory bargaining responsibilities under existing law when making changes for the 2020-2021 school year. Contact our labor team to discuss our approach to addressing these types of requests.

37. Where should we focus our professional learning?

The guidance recommends a number of areas of focus for professional learning, including:

- preparing evidence based instructional methods and materials,
- providing training to attend to students' social-emotional needs,
- providing training on new health and safety protocols,
- identifying the successes and barriers related to remote learning,
- preparing assessments to determine current student skill level,
- sponsoring new teacher mentorship programs,
- using teacher leaders, and
- developing a regional and statewide network of instructional leaders.

Communication Issues

38. Should we conduct surveys related to returning to school in 2020-2021?

According to the guidance, surveys should be distributed to teachers and staff to determine their support needs, address concerns, and guide transition planning. It also recommends developing an intake form or [not for] an intake survey/needs assessment in each student's native language to assess social emotional needs, any changes that have taken place in recent months, and transportation concerns.

39. Are there any new communication responsibilities related to returning to school?

ISBE recommends a number of communication strategies, but they are not required. ISBE recommends that schools "over-communicate" with parents about returning to school, and we agree that such communication can avoid misunderstandings, ensure all stakeholders know their responsibilities, and, as a result, provide greater protection to students, staff, and the school. Schools should remember that all generally applicable requirements regarding communication with parents with disabilities or language limitations still apply.

ISBE also recommends that schools post signs and messages in highly visible areas that reinforce safety and protective measures. Copies of those materials can be downloaded on the [ISBE website](#).

Conclusion

40. Wait! What about [fill in the blank with your question we did not answer]?

We know that we have not answered all of your questions, or even addressed all of the issues contained in the ISBE guidance. We hope that you nonetheless find this summary useful. As always, if you would like more information or have additional questions, reach out to any member of the [Franczek team](#).