



Coronavirus Resource Guide Updates

January 20, 2021

For more information on the Coronavirus and related issues for schools, visit: www.doe.in.gov; www.cdc.gov; www.in.gov/isdh; www.ed.gov/coronavirus.

This update is written to direct you to appropriate updated resources and services related to the novel coronavirus. It should not be used to replace local, state, or federal guidelines. All references have been provided in-line and in a resource section at the end of the update to help you continue your research. All information has been adapted from state and federal agencies and other quality resources to support and specify the role of the school board during this pandemic.

Updates from the State of Indiana

Governor of Indiana

Executive Orders

The Governor extended the county-based measures and restrictions originally established in Executive Order 20-50. In a new order, Executive Order 21-01, the Governor stated that all counties must continue to adhere to the directives of Executive Order 20-50 through January 31, 2021. For schools this means that face coverings are still required and restrictions on attendance at co-curricular and extra-curricular activities continue based on the color of the county.

The new executive order may be found at <https://www.in.gov/gov/governor-holcomb/newsroom/executive-orders/>.

As a reminder, the face covering requirements are:

- (1) All students in grades 3-12 and all faculty, staff, vendors, contractors, volunteers, and visitors must wear a face covering or face shield while physically present in any building, facility, or grounds unless an individual meets one of the exemptions listed in the order.
- (2) All students regardless of age or grade, and anyone else on a school bus, must wear a face covering or face shield while on the bus or any other school-sponsored mode of transportation unless an individual meets one of the exemptions listed in the order.

Exceptions to the requirements above include:

- (1) Individuals do not have to wear a face covering or face shield while eating or drinking.
- (2) Faculty and staff, when present in a room, office, or place, do not have to wear a face covering or face shield as long as six feet of social distance can be maintained.
- (3) If, in a classroom setting, all students and instructors can maintain six feet of social distance, a face covering or face shield is not required. Alternatively, if all students are positioned to face in the same direction and all students can maintain at least three feet of social distance, then students do not have to wear a face covering or face shield. Teachers must wear a face covering or face shield unless they can maintain six feet of social distance from students.

- (4) Students do not have to wear face coverings or face shields during recess as long as social distancing can be maintained.
- (5) Students, teachers, coaches, trainers, volunteers, and other personnel participating in extracurricular and co-curricular activities do not have to wear a face covering or face shield while engaged in strenuous physical activity.

The restrictions on attendance at K-12 extracurricular and co-curricular activities are:

- (1) For counties designated as blue, yellow, and orange, overall attendance may not exceed 25% of capacity of the event location with the approval of the local county health department.
- (2) For counties designated as red, attendance must be limited to participants, support personnel, parents/guardians, siblings, and other minor children of a parent/guardian of students. All non-competing and non-performing participants, support personnel, and attendees are required to wear face coverings or face shields at all times. Additional measures should be taken to ensure all nonfamily/household groups are and remain socially distanced.

On December 31, 2020, the Governor renewed the declaration of a public health emergency for the 10th time. In Executive Order 20-52, the Governor declared it was necessary to extend the public health emergency for another 30 days due to the significant increase in the spread of COVID-19 in the State. The renewal of the public health emergency took effect on December 31, 2020, and will expire on January 30, 2021, unless renewed further. As we have stated before, the modifications to the Open Door Law that allow school boards to meet remotely (or to have individual board members participate remotely) remain in effect as long as the public health emergency exists. Thus, for the remainder of January, school boards have the discretion to conduct remote or in-person school board meetings. Members of the board who elect to participate in a meeting virtually may be counted as present and may vote.

Indiana State Department of Health

County Guidelines by Color

The latest COVID-19 county guidelines by color may be found at <https://www.in.gov/gov/files/Jan-4-through-Jan-24-Coronavirus-Response-Requirements.pdf>.

Vaccines

The Indiana State Department of Health has posted information on the distribution of COVID-19 vaccines. This information may be found at <https://www.coronavirus.in.gov/vaccine/index.htm>. This website is being updated with information on who is eligible for vaccines at least weekly. The vaccination dashboard may be found on this webpage along with other information and resources related to the vaccines. Vaccinations are now available for persons 70 years old or older, health care workers, and first responders. Although no timeline has been announced the next group eligible are person who are 65 years of age or older.

A website is available to make appointments for vaccinations. The website address is ourshot.in.gov.

Updates from the Federal Government

Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA)

The U.S. Congress approved a \$900 billion pandemic emergency response bill that was signed into law on December 27, 2020. The CRRSA provides an additional \$54.3 billion for the Elementary and Secondary School Emergency Relief Fund (ESSER II Fund).

The U.S. Department of Education has posted a factsheet comparing the primary differences between the Elementary and Secondary School Emergency Relief (ESSER) Fund under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the ESSER II Fund under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA). The factsheet may be found at

https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf.

Information on the allocation of the federal monies may be found at https://oese.ed.gov/files/2021/01/Final_ESSERII_Methodology_Table_1.5.21.pdf.

Additionally, a summary of the education provisions of the Act has been prepared by **Foresight** Law + Policy, in Washington, D.C. The summary was shared by the National School Boards Association with state school board associations. ISBA has been given permission by both organizations to share the summary with its members. The summary may be found on our

coronavirus webpage at <https://www.isba-ind.org/coronavirus-resources.html>.

FFCRA Paid Leaves

The newest federal coronavirus relief legislation did not continue the Expanded Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) established in the Family First Coronavirus Relief Act (FCCRA) passed in March of 2020. Therefore, those mandatory leave provisions expired on December 31, 2020. However, the relief legislation gives employers the discretion to allow employees to carryover any unused days under the FFCRA and permits private employers who allow their employees to maintain these days to continue to receive the tax credits associated with providing the leaves through March 31, 2021. The United States Department of Labor has added questions at the end of its FAQ on the EPSLA and the EFMLEA addressing the continuation of these leaves by employers. The FAQ may be found at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

While public employers, like school corporations, were required to provide their employees the leaves established in the FFCRA, they were never entitled to the tax credits allowed to private employers. Thus, this incentive to allow employees to use any remaining FFCRA days is not available to school corporations. However, school boards may still elect to credit their employees with these days.

If a school board determines to continue to provide either one or both leaves to its employees or decides to create any other type of COVID-leave for its employees, specific actions must be taken by the school board. A decision to continue providing leave days may be made retroactive to January 1, 2021 and may expire on any date agreed to by the parties, whether that is March 31, 2021 or the end of the current school year.

For teachers covered by a collective bargaining agreement

Because the leave is a paid leave, the school board will need to bargain the terms of the continuation of the leaves with the teachers' exclusive representative. Since the period for formal bargaining has ended, the continuation of the leaves will need to be bargained through a Memorandum of Understanding (MOU), as established by the rules of the Indiana Education Employment Relations Board (IEERB). The board and the exclusive representative are required to bargain and agree to the terms of the MOU, ratify the MOU, and file the ratified MOU with the IEERB within 10

days of the MOU's ratification. The ratified MOU will need to be signed by the board president and board secretary and representatives of the exclusive representative of the teachers before it is filed with IEERB.

For employees who are not members of a bargaining unit

To continue the leaves (either or both) for these employees, the board needs to pass a resolution that the leave(s) will continue to be provided. If any exceptions to the requirements and provisions of the former Acts are made, the exceptions will need to be stated in the resolution. A provision addressing whether the continuation will be retroactive to a certain date needs to be included in the resolution as well. A sample resolution on the continuation of only the EPSLA is in the Appendix at the end of this update, as this appears to be the option being considered by several school boards. A resolution is suggested if the continuation of the leaves is temporary. A school board may choose to provide leaves similar to the EPSLA and the EFMLEA permanently for future epidemics, pandemics, or public health emergencies by adopting a policy setting out the provisions, qualifications, and requirements for such a leave.

Mandatory Vaccinations for Employees

With the vaccines for COVID-19 becoming more widely available in the next few months, ISBA has been asked whether school boards can require their employees to be vaccinated against the coronavirus. Federal discrimination laws must be considered, specifically the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA), and exemptions may need to be considered when an employer makes such a requirement. Generally speaking, these laws do not prohibit school boards from requiring employees to get vaccinated for COVID-19 or any other virus, but there are some parameters to be followed when the employer is going through the vaccination process in order to not violate the ADA and GINA. The Equal Employment Opportunity Commission (EEOC) has provided an updated FAQ on employment topics related to COVID-19. The EEOC guidance may be found at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#J>. Section K of this document addresses the vaccination requirement questions. While the guidance states that an employer can require employees to be vaccinated, ISBA would caution school boards to carefully consider any such requirement and advise board members to consult with local counsel before making any decision. Additionally, any vaccination requirement applicable to teachers would have to be discussed with the exclusive representative (pursuant to IC 20-29-6-7(9)) before a final decision is made.

Finally, board members may want to consider the fact that an Indiana legislator, Senator Dennis Kruse, has introduced a bill prohibiting employers, as a condition of employment, from requiring an employee or prospective employee to receive any immunization if the immunization is medically contraindicated for the employee or receiving the immunization is against the employee's religious beliefs or conscience. The bill allows for civil action against an employer for a violation of the law. The bill is Senate Bill 74. The text of the bill and additional information on it may be found at <http://iga.in.gov/legislative/2021/bills/senate/74>.

More general employment discrimination issues are addressed in the following guidance: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>.

Online Resources for School Boards

Indiana State Department of Health

- COVID-19 dashboard and map, including data on school COVID-19 counts (updated Mondays at 12:00 p.m.)
<https://www.coronavirus.in.gov/2393.htm>

Centers for Disease Control and Prevention

- "Guidance for K-12 School Administrators on the Use of Masks in Schools" (updated December 14, 2020)
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/cloth-face-cover.html>
- "Screening K-12 Students for Symptoms of COVID-19: Limitations and Considerations" (updated December 14, 2020)
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/symptom-screening.html>
- "Interim Considerations for Testing for K-12 School Administrators and Public Health Officials" (updated December 4, 2020)
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-testing.html>
- "Information for School Nurses and Other Healthcare Personnel (HCP) Working in Schools and Child Care Settings" (updated December 3, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/school-nurses-hcp.html>

- “Operating Schools During COVID-19: CDC’s Considerations” (updated October 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>
- “Strategies for Protecting K-12 School Staff from COVID-19” (updated October 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-staff.html>
- “Indicators for Dynamic School Decision-Making” (updated September 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/indicators.html>
- Teachers, administrators, and other school employees are defined as essential workers by the Advisory Committee for Immunization Practice. See page 10. (updated August 2020) https://www.cisa.gov/sites/default/files/publications/Version_4.0_CIS_A_Guidance_on_Essential_Critical_Infrastructure_Workers_FINAL%20AUG%202018v3.pdf.
- “Cleaning, Disinfection, and Hand Hygiene in Schools – a Toolkit for School Administrators” (updated November 19, 2020): <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/clean-disinfect-hygiene.html>
- “Interim Guidance for Case Investigation and Contact Tracing in K-12 Schools” (updated November 18, 2020): <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/contact-tracing.html>

U.S. Department of Education

- “COVID-19 Information and Resources for Schools, Students, and Families” <https://www.ed.gov/coronavirus>
- Guidance and resources on serving children with disabilities during the COVID-19 pandemic <https://sites.ed.gov/idea/topic-areas/#COVID-19>
- Waivers and Flexibility <https://www.ed.gov/coronavirus/waivers-and-flexibility>
- Program Information: FAQs and Responses <https://www.ed.gov/coronavirus/program-information>
- US Dept. of Ed., Q&A on educating students with special needs during the pandemic: <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>.

The Office for Civil Rights webinar on eLearning and Remote Learning: https://www.youtube.com/watch?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=&v=DCMLk4cES6A.

National School Boards Association

- COVID-19 School Design Guidelines (updated August 2020) <https://www.nsba.org/Resources/coronavirus>

- Setting a New Course: A Legal Guide to Operating Schools in the Pandemic Era (updated July 2020) <https://www.nsba.org/-/media/NSBA/File/legal-setting-a-new-course-operationg-schools-in-the-pandemic-era-guide-july-2020.pdf>
- Concerns and Challenges to Providing Meaningful IDEA-related Services During COVID-19 (updated July 2020) <https://www.nsba.org/-/media/Files/nsba-aasa-aesa-IDEA-white-paper-july-14-20.pdf>
- Preparing for Widespread Illness In Your School Community A Legal Guide for School Leaders (updated March 2020)
- <https://www.nsba.org/-/media/NSBA/File/legal-school-safety-addendum-coronavirus-march-3-2020.pdf?la=en&hash=1D72FA91F23169E07855464FC5D1434148FE3F78>

APPENDIX

**RESOLUTION ON CONTINUATION OF THE EXPANDED PAID SICK LEAVE ACT (EPSLA) BY THE _____
BOARD OF SCHOOL TRUSTEES**

WHEREAS, the Expanded Paid Leave Act (EPSLA), which provided paid leave to employees who were unable to work or telework due to COVID-19-related issues expired on December 31, 2020.

WHEREAS, legislation passed by the United States Congress and signed by President Trump on December 27, 2020, allows employers to continue providing the EPSLA leave to their employees through March 31, 2021.

WHEREAS, this legislation allows employers to continue providing the EPSLA leave to their employees through March 31, 2021, school boards have the discretion to continue to provide the benefits of the EPSLA to its employees beyond March 31, 2021.

WHEREAS, the number of positive cases for COVID-19 continues to increase in the areas surrounding and within the school corporation, the need for employees to have paid leave available as required by the EPSLA continues beyond December 31, 2020. The Board concludes that continuing the leave benefits provided by the EPSLA to employees serves the legitimate purposes of maintaining morale and providing a safe work environment for all employees and students.

NOW THEREFORE BE IT RESOLVED that the Board shall continue to provide the paid leave for its employees as provided in the EPSLA and its regulations retroactively from January 1, 2021, until *[end date of continuation]*. All provisions of the EPSLA and its regulations in effect as of December 31, 2020, shall continue to be followed and provided including the qualifications, restrictions, and reasons for the leave and its payment of wages provisions with the following exceptions:

[List here the exceptions to the provisions of the EPSLA and its regulations the Board has determined.]

PASSED AND ADOPTED this ____ day of _____, 2021.

Board President

Board Secretary