

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

The footnotes should be removed before the material is used.

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/n7 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 4 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. 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.