

# **ISBE Emergency Rule on Transportation Reimbursement Highlights Limitations**

On March 31, 2020, the Illinois State Board of Education issued an emergency rule on transportation expenses. That new rule, 23 Ill Admin. Code 120.30(e), is expressly limited to allowing State reimbursement for transportation services other than the transporting of students, such as food distribution:

*“Due to the outbreak of the Coronavirus Disease 2019 (COVID-19), beginning on March 17, 2020, and through the end of the 2019-2020 school year, to ensure the continuity of education, including the provision of any direct or related service for the health and well-being of all public school students in pre-kindergarten through grade 12, all transportation costs incurred that are beyond transporting students, such as costs related to the distribution of food, distribution and pick-up of student*



*assignments and work, and use of vehicles to provide wi-fi and other similar costs, shall be allowable and reimbursed by the formula under Section 29-5 of the School Code.”*

Note that, on March 17, 2020, the State Superintendent’s “Dear Colleagues” letter stated this about transportation expense reimburse during the school closure period:

*“One question we received many times today was regarding reimbursement for school bus transportation during the closure, when school buses may not be running regular routes. The answer is that:*

*ISBE will base transportation reimbursement on expenditures. All allowable transportation expenditures incurred during the closure will be claimable for Transportation Reimbursement. School districts should work with their bus contractors to make payments to ensure that all personnel, including bus monitors and bus drivers, can continue to be paid during the closure. If*

*school districts choose to negotiate and execute a contract amendment with their bus contractors to make payments during the closure to ensure transportation personnel will be paid in full, those expenditures will be reimbursed for state Transportation Reimbursement. Consultation with the district's legal representation is advised."*

Many reasonably interpreted this earlier statement to mean that payments to transportation service providers would still be reimbursable from the State even for the closure period when no student transportation services are being provided. However, it now appears that the State will not be doing that.

The emergency rule does not modify the reimbursement structure to permit reimbursement for services not performed. Further, absent an amendment to the School Code and additional rule change, ISBE does not have the legal authority to make reimbursement payments in such a manner.



It should also be considered the State transportation grants are subject to limitations due to limited State appropriations.

At this point, school districts would be well-advised to assume that funding for any payments to transportation vendors for services not actually rendered due to the mandatory school closures will have to come exclusively from local revenues. While statutory revisions for ISBE funding authority or financial assistance from the federal government through the CARES Act or otherwise is certainly possible, none of that can be certain right now.

If you have any questions, please do not hesitate to contact one of our attorneys. We will provide updated and additional guidance as it becomes available.