



NJPSAFE A

LEGAL ONE —

Pandemic Response: Defining Essential Personnel & Functions

March 30, 2020

Presenters

- **Patricia Wright**, NJPSA Executive Director
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Disclaimer

This presentation is intended as a summary of law only, and is not meant as legal advice.



Free Webinars

- Pandemic Response Series (FREE)
 - April 1 [Pandemic Response: Meeting the Needs of Special Education Students](#) **2 pm - 3:15 pm**
 - April 2 [Pandemic Response: Addressing HIB and Discrimination Claims](#) **2 pm - 3:15 pm**
 - April 6 [LEGAL ONE and New Jersey School Counselors Association- Pandemic Response: Addressing Student Mental Health and Counseling Needs](#) **3 pm - 4:15 pm**

Free Zoom Workshops

- [Culturally Responsive Practices in an Online Learning Environment: Part 1](#)
Apr. 7, 2020; 10 am - noon
Presenter: Robin Harden Daniels, Ed.D., FEA Consultant
- [Self Care for Leaders in a Time of Crisis](#)
Apr. 9, 2020; 10 am - noon
Presenter: Robin Harden Daniels, Ed.D., FEA Consultant
- [Culturally Responsive Practices in an Online Learning Environment: Part 2](#)
Apr. 14, 2020; 10 am - noon
Presenter: Robin Harden Daniels, Ed.D., FEA Consultant
- [The Connected Action Roadmap: A Systemic Process for Strengthening Teaching, Leading, and Learning](#)
Apr. 17, 2020; 9 am - 1 pm
Presenters: Emil Carafa, Coordinator of Professional Learning, FEA; Donna McInerney, Ed.D., CEO of FEA

Purpose of Today's Webinar

- Ensure the health and safety of all staff, parents, students and others during this crisis
- Address fundamental misunderstandings and provide clear guidance on what constitutes essential functions that must be performed onsite
- Provide direction for responding to any directives that may endanger staff, parents, students or others

Key Topics

- Where We Are Today
- Scope of Governor Murphy's Executive Order 107
- Responding to violations of E.O. 107
- Functions that require physical presence at school site and safety protocols
- Remote functions
- Recent legislation and employee rights/benefits

Governor Murphy on Closure of Schools

- In announcing on March 16, 2020, the closure of all public and private schools Governor Murphy said the following:
- *“In order to slow the spread of COVID-19, we must take aggressive and direct social distancing action to curtail non-essential activities in the state. Our paramount priority is to ‘flatten the curve’ of new cases, so we do not overwhelm our health care system and overload our health care professionals who are on the frontlines of the response. My Administration continues to work closely with our communities, stakeholders, union representatives, and business leaders to ensure that we all do our part to win the fight against the novel coronavirus and emerge stronger than ever.”*

Commissioner Repollet on Closure

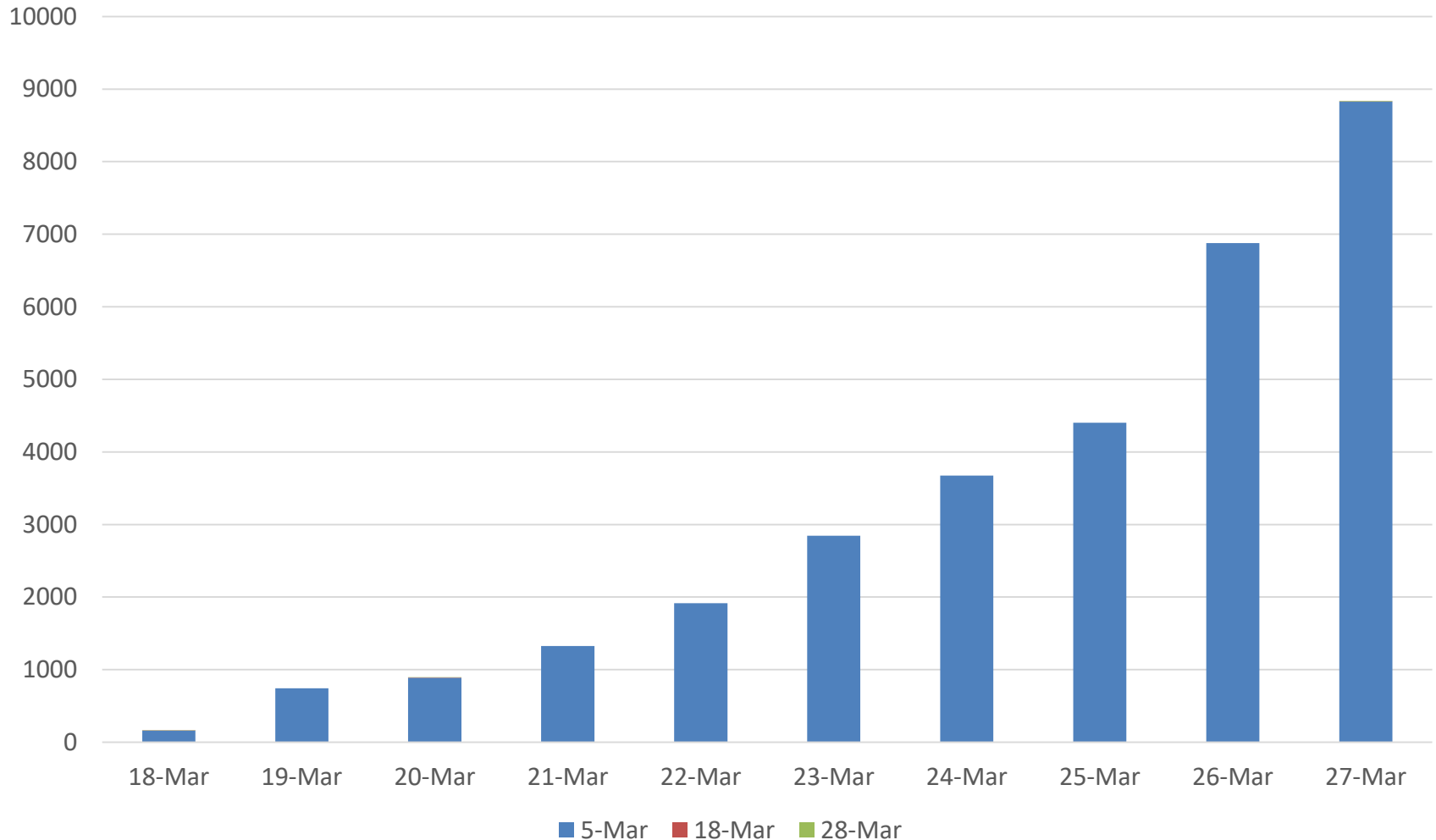
- Following the Governor’s announcement, Commissioner of Education Repollet gave the following statement:
- *“These are extraordinary times, and educators throughout the state have been taking extraordinary measures to create plans for high-quality home instruction, ensure food security for children who depend on free and reduced lunch, and provide services for all special needs students...”*
- *“We understand this is an unprecedented situation, and we are asking institutions to be **extra vigilant in protecting the health and safety of their students, faculty, staff and the entire campus community...**”*

Where We Are

- March 5 – 1st NJ COVID-19 case
- March 9 – 5 cases - Governor Declares State of Emergency
- March 18 – 162 cases - All NJ Schools Closed
- Exponential Rise in Cases Since Then

Confirmed NJ Cases of COVID-19

[nj.com](https://www.nj.com) analysis of NJDOH data



Direct Impact on NJ Schools

- [Which New Jersey Schools Have Connections with Coronavirus Cases?](#)
- As of March 26, more than 30 school districts have reported staff members who have either contracted COVID-19 or been exposed through parents, students or community members at school functions
- [A Timeline of Events in NJ](#)

Responding to Positive Test in School Community

See [NJ Department of Health guidance](#) and [U.S. Department of Education guidance on FERPA](#)

Duty to warn where there is imminent danger to health and safety of others

Generally need to maintain confidentiality of student and staff member

How COV-19 Spreads

The virus is thought to spread mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes. It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.

See [CDC Fact Sheet](#)

COVID-19 on Surfaces

- A recent study by the CDC, National Institutes of Health, UCLA and Princeton University provides information regarding this issue - <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>
- According to NIH - “The virus that causes coronavirus disease 2019 (COVID-19) is stable for several hours to days in aerosols and on surfaces.
- Length of time virus is detectable:
 - in aerosols for up to three hours,
 - up to four hours on copper,
 - up to 24 hours on cardboard and
 - up to two to three days on plastic and stainless steel.

Executive Order No. 107

1. COVID-19 is extremely contagious. The number of confirmed cases continue to increase exponentially in New Jersey and across the nation and health experts agree that the number of actual cases far exceeds the number of confirmed cases.

2. The State of Emergency Order requires appropriate measures to mitigate the spread of the virus which means not only that people should stand 6 feet apart when together, but even more significantly, it means that if you can work remotely – do so.

Executive Order No. 107

3. The Order calls for flexibility in work rules and requires all employers to fully require compliance with appropriate safety measures while ensuring the delivery of essential services. This includes having all nonessential personnel work remotely so as to limit any risk of exposure to the fewest number of people.

4. The Emergency Order calls for the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Health Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

District COVID-19 Plans

The NJDOE recently notified all school districts that their COVID-19 response plans must explicitly address essential personnel (role—function/work stream— justification). Each district plan should now clearly indicate those specific functions that cannot be performed remotely and the personnel that are needed.

Those plans should now clearly identify:

- the specific functions that require personnel to be present,
- the minimal number of personnel necessary to perform those functions and
- the measures being taken, in accordance with relevant CDC, NJ Department of Health and other relevant government agency guidelines to ensure the safety and well-being of all staff who are required to report to a worksite.

Key Considerations

1. Allow administrative staff to work remotely from their homes except for those personnel who are needed to be at their worksites to provide essential or critical services.
2. Define the essential functions that require presence onsite and why such functions cannot be performed remotely. Any function that can be performed remotely must be performed remotely.
3. Allow administrative or other personnel deemed to be at high risk of contracting the Coronavirus due to age and/or underlying medical conditions to be provided the reasonable accommodation of being able to work remotely without charge to sick days, personal days or vacation days.

Key Considerations (cont'd)

4. Administrators or other staff who have symptoms of the Coronavirus, including coughs, fever or shortness of breath should (1) seek immediate medical assistance by calling their physician and (2) must self-quarantine for at least 14 days.

5. Chief school administrators need to report any personnel within the district who are symptomatic of the Coronavirus to all other personnel who the infected employee may have been in contact with, so that such personnel can take necessary precautionary measures.

6. Chief school administrators need to report to appropriate school and health officials any personnel employed by the district who tests positive for the Coronavirus, and are to work in coordination with health officials to provide appropriate information to parents, students or others who may have been in contact with the infected employee.

Key Considerations (cont'd)

7. Parents and students need to be advised that in any case where there is reason to believe that a student or member of the student's household has been exposed to Coronavirus, that the parent is to immediately advise the school so that appropriate measures may be taken to ensure the continuation of nutrition services and other essential services for the student without having any potential exposure of school personnel or others that could result if those parents continued to physically come to school sites to access nutrition services.

Functions that Should be Done Remotely

- **Conducting administrative team meetings**
- Responding to inquiries from parents, students, vendors or other stakeholders regarding district functions
- Developing or submitting required reports
- Tasks that are appropriately performed by law enforcement personnel such as crowd or traffic control during food distribution

Limiting School Staff Onsite to Minimal Number Necessary

Examples of where a minimal number of school personnel may need to report to a worksite include:

- Critical building maintenance (such as boiler maintenance)
- Limited school grounds maintenance
- School cleaning on a limited schedule (as needed to address the limited usage of schools)
- Responding to technology issues such as server maintenance that require the physical presence of technology maintenance workers in order to continue essential remote services
- Occasional need to retrieve physical files of students or staff in order to address emergent issues, where there is no access to electronic files and the issues in question require immediate attention

Key Safety Considerations

When Onsite

- Ensure that appropriate protocols to reduce the potential danger of virus transmission, including:
 - Limiting instances of contact or near contact (within 6 feet) (e.g., food distribution should be conducted through controlled vehicle drive up or other methodologies that ensure that school employees never need to come within 6 feet of parents or students who are picking up the food)
 - Ensuring that all staff who are required to report to the worksite have received appropriate training on relevant protocols from the CDC, NJ Department of Health and other appropriate government agencies in order to reduce the risk of exposure.
 - See [CDC Guidance for Cleaning and Disinfecting Schools and Other Community Facilities](#)
 - See [CDC Detailed Disinfection Guidance](#) on home cleaning and disinfecting

NJDOE Observations Regarding Food Distribution

- Placing all meals on one table risks contamination of bags
- Distributing food indoors risks building contamination.
- Bringing visitors into building negates social distancing.
- Requiring signatures for meals causes delays.
- Requiring signatures for meals may cause shared pens, etc.
- In most districts excessive meals have been prepared.
 - So far, low turn-out in many districts is creating food waste.
 - Should the situation extend, more resources may be required later.

NJDOE County Resource Sheet

- Includes [county by county information](#) on:
 - Office of Emergency Management Contact Person
 - Food Service Companies and Summer Food Service Program Providers
 - [FDA Guidance on Food Products](#)
 - [CDC Guidance on Food Safety](#)
 - Social emotional learning resources

Violations of Executive Order No. 107

- Executive Order 107 provides that no school district or other government agency shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way *interfere* with or *impede* the achievement of the purposes of this Order.
- You can report a possible violation of [Executive Order No. 107](#) using this online form: <https://covid19.nj.gov/violation>
- [AG Warns Violators Could Face Criminal Charges](#)
- NJPSA Members should contact NJPSA's Legal Department at njpsa@njpsa.org

Recent Legislative Action

- H.R. 6201 – Families First Coronavirus Response Act
 - Emergency Paid Sick Leave Act
 - Emergency FMLA Expansion Act
 - Covers all School Districts and other government entities regardless of size, for private-sector employers covers those with less than 500 employees
 - By April 2, 2020 employer must implement new policies
 - See [article](#) by Ballard Spahr LLP

P.L 2020, c.9 – Time Off From Work

3/20/2020

- During the COVID-19 Executive Order 103 Public Health Emergency and State of Emergency, an employer may not terminate or otherwise penalize an employee if the employee requests or takes time off from work based on the written or electronically transmitted recommendation of a medical professional licensed in New Jersey that the employee take that time off for a specified period of time because the employee has, or is likely to have, an infectious disease, as defined in which may infect others at the employee's workplace.

P.L 2020, c.9 – Time Off From Work

3/20/2020

- Employer shall not, following the time off from work recommended by the medical professional, refuse to reinstate the employee to employment in the position held when the leave commenced with no reduction in seniority, status, employment benefits, pay or other terms and conditions of employment.

P.L 2020, c.9 – Time Off From Work

3/20/2020

- Violations - Written complaint with the Commissioner of Labor and Workforce Development or initiate an action in a court of competent jurisdiction, to seek reinstatement to employment.
- Employer is found by a preponderance of the evidence to be in violation, the court or the Commissioner shall order the reinstatement the employee to the position previously held with no reduction in seniority, status, employment benefits, pay, and other terms and conditions of employment and fine the employer \$2,500 for each violation.

P.L 2020, c.17 – Family Leave and Disability 3/25/2020

Expands the scope of the State's temporary disability insurance (TDI) and family leave insurance (FLI) laws.

During a state of emergency declared by the Governor, or, as found to be needed by the Commissioner of Health or other public health authority, a **"serious health condition"** includes an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

P.L 2020, c.17 – Family Leave and Disability 3/25/2020

- FLI benefits, prompts the issuance by a public health authority of a determination that the presence in the community of the worker's family member in need of care by the worker, would jeopardize the health of others; or
- FLI or TDI benefits, results in the recommendation of a healthcare provider or public health authority that a worker, or a family member of the worker in need of care by the worker, voluntarily undergo self-isolation or self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that worker or family member would jeopardize the health of others.

P.L 2020, c.17 – Family Leave and Disability 3/25/2020

- Eliminates the current one-week waiting period for disability benefits in epidemic-related cases.
- Modifies the Family Leave Act, so that the rights to reinstatement to employment provided to workers by that act are applied to epidemic-related cases.
- Modifies P.L.2018, c.10 (C.34:11D-1) so that the earned sick leave provided by that law is provided in all of the epidemic-related cases.

Other Statutory Employee Rights

- [NJ Expands Paid Family Leave Benefits](#)
 - [Governor's Press Release](#)
- See [NJ DOL Coronavirus Info](#)
 - [NJDOL Scenarios](#)
- **Earned Sick Leave is the law in New Jersey.**
 - As of October 2018, employers of all sizes [must provide full-time, part-time, and temporary employees with up to 40 hours of earned sick leave per year](#) so they can care for themselves or a loved one.

Mandate to Provide Meals During COVID-19 School Closure

- P.L. 2020, c.6
 - Signed on March 20th
- Must provide meals for all students eligible for free and reduced lunch and breakfast
- Must identify one or more distribution sites that are walkable and easily accessible
- Must collaborate with county and municipal government officials to identify sites

Distribution Locations

- District schools
- May include – faith-based locations, community centers (e.g., YMCAs)
- Where there is high density housing, district shall make every effort to identify a site in that housing area
- Note – must be walkable and easily accessible for targeted students/families

Identify Gaps and Deliver Meals

- District must identify students for whom designated sites are not walkable and easily accessible
 - For those students district must distribute to student's residence OR to student's bus stop along established bus route and ensure student or parent/guardian is present at bus stop
 - May include up to 3 total days worth of food per delivery

Delivery Methods

- District owned buses OR
- District may contract for meal delivery and
 - Contracts shall not be subject to the public bidding requirements
- Regional cooperation – District shall cooperate, as feasible, with other schools and municipalities to promote efficiencies and cost savings

Meal Voucher Option

- If district is unable to provide school meals in manner that meets all required conditions then:
 - The district shall establish a food voucher system for eligible students
 - Vouchers will allow students to access nutritious food at food retail stores
 - Criteria shall be established by Commissioner of Education in consultation with Commissioner of Human Services
 - State shall bear any costs not reimbursed by the federal government
 - State shall maximize waiver flexibilities provided by federal government

USDA Waiver

- March 11, USDA granted NJ a waiver related to districts participating in Summer Food Service Program (SFSP) and Seamless Summer Option (SSO)
- Waiver allows meals in non-congregate settings during COVID-19 closures
- Meals eligible for federal reimbursement
- NJDOE directed all districts with at least one eligible school to apply for inclusion
- Questions may be directed to NJ Dept. of Agriculture, Division of Food Nutrition at 609-984-0692

Recent \$2 Trillion Legislation

- **How much of the \$2 trillion stimulus package will fund education?**
- The package sets aside \$13.5 billion in dedicated funding for K-12 education through a stabilization fund. That funding could be used for a broad range of educational purposes, including serving special populations like English-language learners and students with disabilities, continuing remote educational programs during long-term closures, and mental-health support for students. The plan also includes \$3 billion for governors to use at their discretion to assist K-12 and higher education as they deal with the fallout from the virus.

For the Latest Information

NJPSA/FEA Coronavirus Guidance and Links: <http://njpsa.org/10820-2/>

NJDOE website link for information:

<https://www.state.nj.us/education/topics/index.shtml>

U.S. Department of Education link: <https://www.ed.gov/coronavirus>

CDC link for schools: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>

NJ Department of Health for

schools: https://www.nj.gov/health/cd/topics/covid2019_schoolbusiness.shtml

Conclusion

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All are held **3:30 pm – 4:30pm** and cost **\$40** each, or **[\\$330 for all 11](#)** (*archived as well as live access*)

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1	August 26, 2019	HIB and the Changing Legal Landscape
2	September 17, 2019	Understanding Social Media Boundaries for Students and Staff
3	October 8, 2019	Student Investigations 101 - Getting to the Truth
4	November 19, 2019	Implicit Bias, Disproportionality, Discipline and the Law
5	December 17, 2019	Education and Law Enforcement Working Together
6	January 14, 2020	Hot Issues in School Law
7	February 11, 2020	Developing Support Plans for At-Risk Students
8	March 10, 2020	Bringing It All Together: A Systemic Approach to Student Safety
9	April 14, 2020	Human Resources: New Requirements, Best Practices and the Law
10	May 19, 2020	You Can't Make This \$#!&! Up! School Law Horror Stories and Lessons to be Learned
11	June 9, 2020	Legal Issues in Student Health

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1	October 10, 2019	What's New In School Law? (Fall 2019 Update)
2	November 13, 2019	What's New in HIB Law?
3	December 19, 2019	School Attorney Ethics 101
4	January 16, 2020	What's New in Tenure and Seniority Law?
5	February 12, 2020	What's New in School Employment Law?
6	May 20, 2020	What's New in Student Safety and Student Rights?