



NJPSAFE

— LEGAL ONE —

Restart and Recovery Planning: Essential First Steps

July 2, 2020

Presenters

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DISCLAIMER

This presentation is intended as a summary of law only and is not meant as legal advice. Please consult your attorney to obtain legal advice.



Key Topics

- Reopening Guidance and Next Steps
- Special Education Update
- Racial Justice and Our Schools
- Other Legal Updates

The Road Back

- [Reopening Guidance Issued June 26, 2020](#)
- Every district must submit a reopening plan no less than 4 weeks prior to reopening
- Document includes **Anticipated Minimum Standards** and **Additional Considerations**
- Requires new policies and protocols
- Requires District-wide Restart Committee, school-level Pandemic Response Teams, suggests contact tracing liaisons

Duty of Care

- Greatest responsibility is ensuring student safety
- NJDOE reopening guidance plus related statutes, regulations establish the duty of care
- Legal issues will arise where there is a breach of the duty of care
- Need to establish all actions are reasonable and that effective and consistent enforcement of new protocols is a priority

Restart Committee

- District and school-level administrators
- BOE members
- Presidents/designees of local associations
- Content experts
- Educators
- Parents
- Students
- Reflect community diversity – those representing students with disabilities, ELL, and racial, ethnic, socioeconomic diversity

Key Considerations

- Recommend Needed Policy Revisions, Adoptions
- Ensure ongoing, clear communication with all stakeholders
- Adopt contingency plans for possible closure
- Collect input and feedback
 - Critical to gather input now from parents, students, staff in order to plan for foreseeable issues
- Make revisions as needed!

Guiding Considerations for Policies/Protocols

- Will this change encourage social distancing?
- Will this change discourage student cohort mixing like those that occur for lunch periods, recess or assemblies?
- Will this change encourage and improve hygiene practices?
- How will this impact the mental health and wellness of students, staff and the school community?
- *See page 47 of [The Road Back](#)*

Pandemic Response Teams

- Could be existing crisis response team
- Identify liaison to district-level
- Principal
- Teachers
- Child Study Team member
- School counselor or mental health expert
- School nurse
- School safety personnel
- School safety/climate team member
- Custodian
- Parents

Permissible Reopening Options

- Must meet 180 instructional days
 - Range of options for remote instruction, synchronous and asynchronous
- Could be Fully In-Person (unrealistic)
- Hybrid Approach
 - Daily
 - Weekly
 - Other
 - Could Prioritize Some Students For More In-Person Instruction
 - Could have other students still on complete remote instruction(e.g., parent fearful, won't allow to return)

Rethinking Instructional Time

- School day consists of not less than 4 hours for grades 1-12, not less than 2.5 hours for kindergarten
- “Hours of instructional time are not defined as a student’s time in front of a teacher or in front of a screen, but time engaged in standards-based learning under the guidance and direction of a teacher.” *See p.49 The Road Back.*
- Able to think creatively about meeting requirement, count guided activities occurring during evening hours for some students
- Consider use of educational services personnel, paraprofessionals, student teachers to assist with virtual instruction while teacher is working on in-person instruction with other portion of class. *See pp.57-58 The Road Back.*

Health and Safety Protocols

- Anticipating Minimum Standards – CDC Guidelines for Schools, including guidelines for cleaning/disinfecting, hygiene, face coverings, social distancing
- NJDOH Requirements
- Protecting and Supporting Students and Staff Members at Higher Risk
- Key to identify and provide reasonable accommodations for those at higher risk

Reasonable Accommodations for those At-Risk

- Age 65 or older
- Chronic lung disease or asthma
- Serious heart conditions
- Immunocompromised
- Severe obesity (BMI 40+)
- Diabetes
- Chronic kidney disease undergoing dialysis
- Liver disease
- Medically fragile students
- Students with complex disabilities
- Students who require a 504 plan
- Note that information is still being learned about children with Kawasaki-like disease linked to COVID-19

Factors in Choosing Option

- Capacity to meet health and safety standards
 - Access to PPE, hand sanitizer, partitions, etc.
 - Potential staffing shortages
 - Cleaning/sanitizing demands
 - Educational effectiveness
- Needs of at-risk students
- Striving for equity
- Needs of staff
 - Number of staff with risk factors
 - Range of reasonable accommodations

Gathering Data Now

- Survey staff, parents
- Identify those with underlying medical conditions
- Learn about student experiences during remote instruction and any potential issues to be aware of prior to reopening
- Use data to plan for students who may remain on virtual instruction, may need additional supports
- Use data to plan for staff who need reasonable accommodations or may decide to retire

Laying the Groundwork and Setting Expectations

- Send out information early and often on new health and safety protocols for students, staff, parents, other visitors
- Set expectations for lessening of opportunities for field trips, extra curriculars
- Consider revisions to code of student conduct
- Communicate about hybrid schedule, attendance rules, grading policies, and any areas of flexibility

Parent/Guardian Surveys

- Student experiences during remote instruction related to academic engagement, academic performance, emotional wellbeing, behavior, any potential COVID related losses
- Parental views regarding student returning to school or continuing with remote instruction
- Parental views regarding student transportation
- Parental willingness/ability to respond on daily basis to screening questionnaire

Training for all Stakeholders

- Hygiene protocols
 - Handwashing / sanitizing throughout day
- Cleaning and disinfecting protocols
 - Between classes, equipment touched in recess periods, after sharing of items within closed cohort, other commonly touched items
- Controlling flow of traffic in building
- Not coming to school with any symptoms

Consider Key Aspects of Day

- Transportation
- Arrival and Screening
- Traffic Flow within building
- Classrooms
- Recess/Physical Education
- Athletics and After School Functions
- Dismissal
- Note that we are in the process of finalizing sample checklists and summaries of mandates and recommendations in *The Road Back* to assist with key reopening considerations in these and other operational areas

Transportation

- Anticipated Minimum Standards – All students able to do so must wear a face covering if unable to maintain social distancing or put physical barriers between rows on bus
- CDC recommends social distancing of 6 feet or physical barriers between rows (54 student bus would go down to 11 students or 22 with barriers)
- If some students unable to wear face covering then provide accommodations (e.g., barrier for that student or social distancing for that student)
- Adopt best practicing for cleaning and disinfecting buses

Transportation Challenges

- How to address problem behavior at the bus stop
 - Notice in advance to parents and students
 - Communication between driver/bus aides and school administration
- Enforcing social distancing, hand sanitizing and enforcing wear of face masks where appropriate
 - Ideally have another staff member on bus
- If no screening at this point, potential exposure of other students and staff
- Meeting CDC standard requires significant expense
- Heightened standards for cleaning and sanitizing between bus routes
- Consider options to reduce total bus demand
 - offering payment in lieu of transportation
 - consider reducing/ending courtesy busing
 - Identifying parents who choose to transport their own child (summer survey)

Entering the School

- Anticipated Minimum Standards
 - Need to adopt screening policy for students and employees
 - Option to confirm with parent/guardian on daily basis that student is free of symptoms – could do so electronically but need seamless system so students don't fall through cracks and enter when parent did not respond on daily basis
 - Need to adopt procedures for symptomatic staff and students
 - While not explicit in guidance, should apply screening protocols to parents and other visitors

Monitoring Student Entry

- Student screening procedures will create backlog of students entering building
- Consider broader criteria for inclement weather given potential hazards of students while waiting to enter
- Consider staggering start time schedules to reduce backlog
- Need to have plan to monitor students while waiting in line to enter
 - Enforce wearing masks and social distancing by placing tape or other markers at 6-foot intervals
 - Ensure that lines do not create other safety hazards (e.g., going into street)
 - Increase number of permissible entrances while maintaining necessary security protocols

Potential COVID-19 Symptoms (if not otherwise explained)

- Fever of 100 degrees F or greater
- Cough
- Shortness of breath, difficulty breathing
- Chills
- Repeated shaking with chills
- Muscle Pain
- Headache
- Sore Throat
- New loss of taste or smell
- Fatigue
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

Additional Screening Questions

- District may want to consider going beyond required minimum standards and also ask about other risk factors
 - Returning from a state or country where CDC recommends self-quarantine period
 - Close contact with others who are COVID-19 positive or awaiting test results

Screening and Response Considerations

- Is your screening process credible?
 - Visual screening, with nothing else, will miss large numbers of students with symptoms
- Do you have capacity to deal with all those who show symptoms?
 - Need to identify potential “overflow” areas to safely keep symptomatic students, staff or visitors
- Be prepared for student remaining in school all day with symptoms

Contact Tracing

- School district must work with local department of health after learning of positive COVID-19 test for student, staff, visitor
- Need to develop a contact tracing policy in consultation with local department of health, school nurses and school physician
- School safety specialists have free access to Johns Hopkins 3-hour contact tracing course and receive credit towards required training

Contact Tracing Challenges

- Some local departments of health have limited capacity, may need to follow up with local DOH often
- School will need to share student schedule and contact info for those teachers and students
- District needs to provide local health department with list of those who student was in close contact with
 - Close contact is within 6 feet for 10 minutes or more
 - Need to determine relevant window of time to review
- School should also inquire if any staff are aware of other students or staff who may have been in close contact with the student in question (e.g., student confided he was dating another student)
- Failure to collect or share this information creates foreseeable risk of harm for other exposed individuals

Contact Tracing Challenges

- School likely to have role in informing staff, families and public – needs to be clearly delineated in policy, agreement with local DOH
- CDC cleaning protocols require that all areas of school where COVID-19 positive student or staff member traveled need to be shut off and cleaned, ideally after first waiting 24 hours
- In many cases, could require closing down entire school until cleaning/disinfecting completed

Permissible Disclosure to Protect Health and Safety

- FERPA permits disclosure of personally identifiable information in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- What constitutes an “emergency”?
 - Based on the “totality of the circumstances” is there “an articulable and significant threat to the health or safety of a student or other individuals”?
- School officials are given the benefit of the doubt!
 - “If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.” See 34 CFR 99.36.

FERPA and Emergency Disclosures

Is the school required to record disclosures of information provided to an outside party, even in connection with a disaster or other health or safety emergency?

- ... When making a disclosure under the health or safety emergency provision in FERPA, schools are specifically required to record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the school disclosed the information. 34 CFR § 99.32(a)(5). The record must be maintained with the education records of each student as long as the records are maintained. 34 CFR § 99.32(a)(2).
- This requirement enables parents and eligible students who do not provide consent for disclosure of education records to see the circumstances under which and the parties to whom their information was disclosed. 34 CFR § 99.32(d)(3)-(4)...

See Family Educational Rights and Privacy Act (FERPA) and the Disclosure of Student Information Related to Emergencies and Disasters (June 2010)

Classrooms

- Social distancing to maximum extent practicable
- Requires 113 net square feet per child, but based on spacing more likely to need 144 NSF
- If unable to socially distance, could do barriers between desks and/or have students all facing in one direction
- If no social distancing or physical barriers need to require face covering during class
- Limit sharing of items or clean between use

Classroom Challenges

- Require handwashing or use of hand sanitizer for 20 seconds whenever a student blows nose, coughs, sneezes
- Students likely to test new rules (turn around and face each other, not socially distance, purposely cough or blow nose, etc.)
- Younger students (5 or younger) need to be supervised if using hand sanitizer
- Significant, ongoing cleaning/sanitizing requirement

Meals

- Anticipated Minimum Standards
 - No family style, self serve, buffet
 - Consider pre-packaged bags or boxes
 - Consider lunch in classroom
 - No sharing of food
 - Need to stagger times if in cafeteria, allow time for cleaning between lunch periods (VERY early start to get in all lunch periods)
 - Social distancing
 - Encourage handwashing before and after meals

Hunger-Free Students Bill of Rights

- **P.L. 2020, c.29 (5/4/2020)** - "Hunger-Free Students' Bill of Rights Act"; requires certain school meal information be provided to students' parents; establishes protocols for identifying eligible students for meal programs; prohibits stigmatizing student with bill in arrears:
 - No requirement to not provide breakfast or lunch.
 - No wristband, hand stamp, separate table, alternative meal
 - No chores or other work
- Process when student owes for more than 5 meals
- School district liaison for the education of homeless children coordinates with school district personnel to ensure that a homeless student receives free school meals and is monitored according to the school district's policies.

Recess/Physical Education

- Anticipated Minimum Standards
 - Recess and physical education are required
 - Establish cohorts
 - Create boundaries between groups
 - Always wash hands immediately after outdoor activities
 - Stagger use of playground equipment, clean and disinfect between uses
 - Consider no access to locker rooms

Recess/Physical Education Challenges

- Monitoring to ensure students remain in separate cohorts
- Enforcing social distancing and wearing masks
- Cleaning/disinfecting any equipment used before next cohort
- Enforcing handwashing requirement without creating new issues related to students congregating in restrooms

Potential Flexibility

- Students may satisfy some graduation requirements through use of “Option 2” – See N.J.A.C. 6A:8-5.1(a)(2)
- Instruction is not defined as “a student’s time in front of a teacher or in front of a screen, but time engaged in standards-based learning under the guidance and direction of a teacher.” *See p.49 The Road Back.*
 - *Could complete physical education through guided virtual activities as part of hybrid approach*

Athletics

- NJSIAA Return to Play Phase I Guidelines released June 19
- Phase I covers July 13 – 26
- Establishes pre-conditions to be met
- COVID-19 Questionnaire to be completed 7 days prior to start of first workout session
- Medical clearance for those who were COVID-19 positive or with underlying medical conditions

Athletics Challenges

- Athletes who may be underconditioned
- Unfamiliar pre-screening protocols
- Limited workouts, no contact
- Face coverings except during high-intensity aerobic activity
- Requires athletes to stay in small (10) cohort
- No sharing of equipment
- No access to locker room area
- Extensive hygiene, cleaning requirements

Student Safety and Athletics

- **P.L. 2019, c. 292 (1/9/2020)** - Requires certain schools to establish emergency action plans for responding to serious or potentially life-threatening sports-related injuries. Bd. of Ed. of school district or CSA of non-public school, grades 6-12. Specific to site, developed in conjunction with local EMS personnel. Specific minimum components, reviewed, updated and rehearsed annually by individuals responsible for executing the plan. State Board regulations. 2020-2021 school year.
- **P.L. 2019, c. 293 (1/9/2020)** - Requires school districts which participate in Statewide interscholastic sports programs to adopt New Jersey State Interscholastic Athletic Association heat participation policy. Use of WetBulb Globe Temperature (WBGT) tool to measure the heat stress in direct sunlight at the practice or game site. 2020 – 2021

The Effects of COVID-19 On Communities of Color

- See CDC Information on [Disproportionate Impact of COVID-19 on Racial and Ethnic Minorities](#)
 - Ethnic minorities tend to live in dense urban areas that often have far from appropriate health care facilities.
 - Ethnic minorities tend to be multigenerational in one domicile. This does not allow for protection of elderly adults within the same domicile if there was a COVID-19 infection in the home.
 - Ethnic minorities experience higher levels of underlying health conditions and often have no access to appropriate health care.
 - More ethnic minorities were essential workers, with lower paying jobs, and an inability to receive paid sick leave if they or family members were infected with COVID-19.

Planning for Racial Justice

- Review Comprehensive Equity Plan, existing curriculum, discipline data, professional learning related to racial justice
- Engage with students, community on means to safely allow for student engagement
- Review MOA with law enforcement and determine need for new approaches in areas such as de-escalation, when and how to contact law enforcement, use SRO, etc.

Students with Disabilities

- NJDOE Guidance – June 12, 2020
- Two memoranda (Summer Learning and Graduation Age-out), as well Guidance on the Delivery of ESY to Students with Disabilities, and a Summer Learning Resource Guide were issued by the NJDOE
- These guidance documents address topics including:
 - ESY and Summer Programming Parameters
 - Health and safety issues
 - Initial Evaluations
 - Reevaluations
 - Graduation and Students turning age 21 during the 2019-2020 school year (**Compensatory or additional services**)
 - Use of IDEA and CARES funds
 - Social emotional learning
 - Other topics such as curriculum, attendance, professional learning, and family engagement)

Initial and Reevaluations

- NJDOE's June 12 guidance provides that initial evaluations may be conducted in-person beginning July 6, 2020, if the district is able to submit an attestation to the New Jersey Department of Health that it can meet all of the requirements in the ***New Jersey COVID-19 Youth Summer Camp Standards***, which are applicable to all summer programs operated by school districts (e.g. ESY, Summer Programs, Credit Recovery, Migrant Programs, 21st Century Community Learning Programs).
- The guidance specifically notes that, **even if ESY or summer programming cannot be provided in-person, initial and reevaluations can be conducted in-person if the standards can be met.**
- If possible, districts should, at a minimum, seek to meet the health and safety standards in order to conduct initial and reevaluations in person.

https://www.nj.gov/health/ceohs/documents/phss/Youth_Da_y_Camps_Standards_COVID-19.pdf

IEPs

- Developing IEPs for the fall and going forward.
 - Districts should consider writing IEPs that address different scenarios for educating students and providing services
 - Detail how instruction and related services will be provided, including frequency, location and duration in in-person and virtual settings
 - The need for additional services/supports for students with disabilities based on how schools are being operated, as well as new protocols, such as social distancing and the use of PPE should be addressed
 - Discipline issues should be addressed to the extent a student's disabilities may cause behaviors that will violate new protocols and procedures (e.g. refusal to wear a mask)

Supporting Our Staff

- Address the emotional well being of all staff
- Determining who may need reasonable accommodations including alternative assignments
- Providing extensive professional development on new protocols, not waiting for PD days
- Involving all stakeholders in determining specific staffing responsibilities
- Communicate early and closely with all bargaining units
- Work together with all stakeholders to ensure appropriate PPE
- Honoring rights related to personal, family leave
- Apply for all available funding – see FEMA resources in The Road Back

COVID-19 Legislative Update

- **P.L. 2020, c. 9 (3/20/2020)** During the COVID-19 Public Health Emergency and State of Emergency declared by the Governor an employer may not terminate or refuse to reinstate employees who request or take time off from work based on a written or electronically transmitted recommendation from a medical professional licensed in NJ that the employee has, **or is likely to have**, an infectious disease which may infect others at the employee's workplace.
- Violations – Complaint with the Commissioner of Labor and Workforce Development; initiate a court action. Penalty - Reinstatement, \$ 2,500 fine

COVID-19 Legislative Update

P.L. 2020, c. 17 (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.

COVID-19 Legislative Update

P.L. 2020, c.17 (3/25/2020)

- FLI benefits – SHC 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 - SHC 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.

COVID-19 Legislative Update

P.L. 2020, c.17 (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.

COVID-19 Legislative Update

- **P.L. 2020, c.23 (4/14/2020)** Expands the "Family Leave Act" ("FLA") to include leave from employment so that an employee may provide care to a family member made necessary 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. (COVID-19) (12 weeks of family leave in a 24-month period). Technical corrections to P.L.2020, c.17.

Legislative Update

- **P.L. 2019, c. 494 (1/21/2020)** - Prohibits online education services from using and disclosing certain information, engaging in targeted advertising, and requires deletion of certain information in certain circumstances. “Online education service” or “service” means an Internet website, online service, online computer application, or mobile application that is used primarily for K-12 school purposes and is designed and marketed for K-12 school purposes. Effective 180 days after enactment; July 19, 2020

Free Webinars

Pandemic Response Series – Archived

March 18	<u>Coronavirus and Our Schools</u>
March 30	<u>Defining Essential Personnel and Functions</u>
April 1	<u>Meeting the Needs of Special Education Students</u>
April 2	<u>Addressing HIB and Discrimination Claims</u>
April 6	<u>Addressing Student Mental Health and Counseling Needs</u>
April 8	<u>Addressing FERPA and Student Privacy Issues</u>
May 7	<u>Next Steps Now that Schools are Closed for Remainder of the School Year</u>
May 8	<u>Addressing the Needs of Homeless Students</u>
May 21	<u>Understanding How to Apply for and Use CARES Act Funding</u>
May 29	<u>Graduation and School Closing - Key Legal and Health Considerations</u>

For these events and more up-to-the-moment training information, please visit
[**New Online Learning Opportunities and In-Person Workshop Updates**](#)

Pandemic Response Institute: Planning for the 'New Normal'

July 8 & 9, 2020; 9 am - 3 pm



The global pandemic has caused a major upheaval in all aspects of society, including our public education system. Adapting to our new reality requires a fundamental reimagining of nearly all aspects of our current approach to education. This Institute will empower school leaders by providing the new protocols, practical tools and clear roadmap that are necessary to continue delivering high quality education in these unprecedented times.

Registrants may sign up for one day or both days. Each live training session will be supplemented with additional pre-recorded content that allows for a more in-depth review of specific content areas and strategies for how to move from prior practices to the 'new normal.'

Fee: \$150 per day or \$270 for both days

Day 1: Supporting and Protecting Our Students, July 8, 2020

- Health and Safety Protocols for Students
- Ensuring Equitable Access for All Students
- Addressing At-Risk and Specialized Student Populations

Day 2: Supporting and Protecting Our Staff, July 9, 2020

- Human Resource Protocols
- Observation & Evaluation
- Business Operations

LEGAL ONE

In-District Protocol Review Service

During the Coronavirus pandemic, school districts are being challenged like never-before to adapt their protocols "on the fly" to provide ongoing education and support services to students and to meet the complex human resource needs of staff. LEGAL ONE is here to support you as you navigate these difficult waters. Let us help you develop legally sound and effective protocols in a wide array of areas including:

- special education and Section 504;
- harassment, intimidation and bullying;
- affirmative action;
- human resource management;
- attendance and residency;
- addressing substance abuse;
- child abuse prevention;
- crisis response;
- progressive staff supervision; and
- other critical legal areas.



Our in-district services addressing these topics are available year-round, not just in response to the Coronavirus. At the same time, we recognize the unique challenges that the pandemic and resulting statewide closure have had on districts across the state, as we all work to overcome this unprecedented challenge.

Of course, we are available to provide the level of service you need, whether it's a one-hour consultation, daylong review or more in-depth tailored services. We also have a wide array of virtual learning opportunities, including our webinars, recently updated online courses and virtual workshops, using Zoom, GoToWebinar, Canvas, and other online services.

**For more information, or to schedule an in-district protocol review, contact
Ameena Terrell at aterrell@njpsa.org**

Future Restart and Recovery Planning Webinars

- Dates to be determined
 - Transportation, Student/Staff/Visitor Entry, Screening, Student Flow
 - Cleaning, Disinfecting, Hygiene Protocols
 - Contact Tracing, School Exposure, Intermittent Closure and Reopening
 - Required Policies and Procuring Resources

Conclusion

- Thank you for choosing professional development with LEGAL ONE!
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- If you have any questions about this presentation or suggestions for future seminars, please send an email to dnash@njpsa.org