

Reopening Your School Campus: The New Normal Will Be Anything but Normal

Linda Johnson, Esquire, Co-chair of the Education Law Group
of McLane Middleton Professional Association¹

May 4, 2020

It's a question on everyone's mind. When can we reopen our school campus and how do we do so in a manner that keeps our students, employees, and greater school community safe and healthy?

Public health experts are saying that ideally the "when" should be after there are reliable antibody testing and a vaccine; that until there is a vaccine, the virus will remain a threat. Despite the efforts to accelerate the development of such testing and a vaccine, it is possible, more likely probable, that the current stay-at-home restrictions will be relaxed and schools will be faced with the difficult decisions involved in reopening their campuses before a vaccine is developed or widely available which, is predicted to be sometime in 2021. There are many who feel that the reopening of schools should be a national priority, both for the healthy support and growth of the students. Geography and demographics could also influence which schools open and when. Schools in locations with a low incidence of confirmed cases or that see the downward trajectory of COVID-19 symptoms and cases over a 14-day period may be able to open while other schools in high-incidence locations may be delayed in reopening. All schools choosing to reopen must weigh the risks in doing so and take steps to mitigate those risks. These steps include:

- (1) following the directives of federal, state, and local government;
- (2) following the guidance provided by public health experts such as the U.S. Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO), as well as state and local health officials;

¹ With thanks to David Wolowitz for contributing his article on "Key Steps for Mitigating the Risk of Lawsuits by Parents When Initially Reopening Independent Schools," which appears as Section IV: Standard of Care, Return to School Forms and Documentation in this article.

- (3) following the guidance of the U.S. Equal Employment Opportunity Commission (EEOC), U.S. Department of Labor (DOL), and its Occupational Safety and Health Administration (OSHA) to ensure compliance with laws that may be implicated by the steps taken by the school in reopening such as antidiscrimination, workplace safety, and wage and hour laws;
- (4) developing a Return to School form to be signed by students and employees acknowledging essentially that no school can guarantee a virus-free campus; and
- (5) developing an overall plan of the return to campus practices and new policies the school is adopting to promote necessary social distancing measures and ensure the overall safety of members of the school community to the fullest extent possible.

I. Federal, State, and Local Directives and Considering Their Recommendations

All schools should follow federal, state, or local directives such as the emergency orders issued by governors in each state that have, for instance, declared certain businesses as essential versus nonessential and issued stay-at-home recommendations. These orders and guidance documents have changed over time as the COVID-19 pandemic has evolved. School officials should regularly monitor the federal, state, or local instructions on maintaining workplace safety.

A. Federal Opening up America Again Guidelines

On April 16, 2020, federal guidelines on “Opening up America Again” were released. These guidelines are not directives to the states but rather recommendations for phased opening that states may tailor as appropriate to their state. It will ultimately be up to government officials in each state, region, or local community to guide their states and localities through the phases at a pace that is right for that state, city, town, or region. Regardless of a school’s location, these federal guidelines contain helpful steps to consider as schools begin to plan for reopening their campuses. In addition, many states have already started to relax their strict stay-at-home orders and are beginning to allow businesses to open in a phased approach. Schools should look to their state orders first and consider what, if any, of the federal guidelines not already addressed by the state orders would also be feasible and appropriate to adopt.

Initial Gating Criteria

The Opening up America Again guidelines provide for initial gating criteria, which should be satisfied before implementing the phased openings. The gating criteria require a downward trajectory of COVID-19 symptoms and cases within a 14-day period.

Once the gating criteria are met, the guidelines suggest three phases for normalizing daily life for individual and businesses. The guidance provides “guidelines for all phases.” For example, employers must develop and implement appropriate policies and procedures consistent with federal, state, and local regulations and guidance regarding matters such as:

- Social distancing
- Use of disinfectant
- Protective equipment
- Temperature checks
- Testing, isolating, and contact tracing
- Travel
- Sanitation

The guidelines for all phases suggest that employers monitor workforce for indicative symptoms of COVID-19; not allow symptomatic people to physically return to work until cleared by a medical provider; and develop and implement policies and procedures for workforce contact tracing following an employee COVID-positive test. For each phase there are also recommendations for individuals and for employers. There are also particular recommendations for vulnerable individuals who are defined as: (1) elderly individuals or (2) individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.

1. Phase One of Opening up America Again Guidelines

Phase one can begin in states or regions once the above gating criteria are met. The recommendations in phase one for individuals are:

- All vulnerable individuals should continue to shelter in place. Members of households with vulnerable residents should be aware that by returning to work or other

environments where distancing is not practical, they could carry the virus back home. Precautions should be taken to isolate from vulnerable residents.

- All individuals, when in public (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others. Social settings of more than 10 people, where appropriate distancing may not be practical, should be avoided unless precautionary measures are observed.
- Avoid socializing in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing (e.g., receptions, trade shows).
- Minimize nonessential travel and adhere to CDC guidelines regarding isolation following travel.

The recommendations in phase one for employers are:

- Continue to encourage telework whenever possible and feasible with business operations.
- If possible, return to work in phases.
- Close common areas where personnel are likely to congregate and interact or enforce strict social-distancing protocols.
- Minimize nonessential travel and adhere to CDC guidelines regarding isolation following travel.
- Strongly consider special accommodations for personnel who are members of a vulnerable population.

Each phase also addresses particular types of employers with some guidelines such as about whether to open and continuing social distancing. Of relevance to schools are some of these specific types of employers such as daycare, camps, gyms, and sporting venues. The recommendations for these specific employers in phase one are:

- Schools and organized youth activities (e.g., daycare, camp) that are currently closed should remain closed.
- Large venues (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under strict physical-distancing protocols.

- Gyms can open if they adhere to strict physical-distancing and sanitation protocols.

2. Phase Two of Opening up America Again Guidelines

Phase two kicks in when states and regions show no evidence of a rebound and they satisfy the gating criteria a second time of having a downward trajectory of COVID-19 symptoms and cases within a 14-day period.

The phase two recommendations provide for a relaxation from some of the guidelines for phase one such as only allowing social settings of no more than 50 as opposed to social settings of no more than 10 people in phase one. The phase two recommendations for individuals are:

- All vulnerable individuals should continue to shelter in place. Members of households with vulnerable residents should be aware that by returning to work or other environments where distancing is not practical, they could carry the virus back home. Precautions should be taken to isolate from vulnerable residents.
- All individuals, when in public (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others. Social settings of more than 50 people, where appropriate distancing may not be practical, should be avoided unless precautionary measures are observed.
- Nonessential travel can resume.

The phase two recommendations for employers are:

- Continue to encourage telework whenever possible and feasible with business operations.
- Close common areas where personnel are likely to congregate and interact or enforce moderate social-distancing protocols.
- Strongly consider special accommodations for personnel who are members of a vulnerable population.

Phase two also addresses some specific types of employers. The guidelines for phase two state that if a school or camp has been closed, it can now reopen. Other relevant employer categories for school operations are:

- Schools and organized youth activities (e.g., daycare, camp) can reopen.
- Large venues (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under moderate physical-distancing protocols.
- Gyms can remain open if they adhere to strict physical-distancing and sanitation protocols.

3. Phase Three of Opening up America Again Guidelines

Phase three of the Opening up America Again Guidelines takes effect when states and regions show no evidence of a rebound and they satisfy the gating criteria yet a third time. Once again, there is a further relaxation of the strict social-distancing guidelines. The phase three recommendations for individuals are:

- Vulnerable individuals can resume public interactions, but should practice physical distancing, minimizing exposure to social settings where distancing may not be practical, unless precautionary measures are observed.
- Low-risk populations should consider minimizing time spent in crowded environments.

The phase three guidelines for employers are to resume unrestricted staffing of worksites.

As to specific types of employers, the phase three guidelines are:

- Large venues (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under limited physical-distancing protocols.
- Gyms can remain open if they adhere to standard sanitation protocols.

4. Post Phase Three of the Opening up America Again Guidelines

Once schools and employers move into unrestricted staffing of workplace locations and a relaxation of strict social-distancing recommendations, there are likely protocols that will continue in place that the school did not have in place previously. Some of those considerations include whether:

- there are certain jobs that continue to be performed remotely;

- some classes should continue to be offered remotely;
- handshakes and hugs should be discouraged;
- the enhanced cleaning and sanitizing procedures should be continued;
- masks should be worn, when, and by whom;
- staggered opening, work schedules, class schedules, and meal schedules should continue;
- precautions relating to transporting students should remain in place.

Overall, schools should consider any of the measures they have adopted in response to this COVID-19 virus and determine if it makes sense to continue them. In 2020, we are responding to COVID-19. In 2003, it was SARS (Severe Acute Respiratory Syndrome) and in 2009, it was H1N1. In some future year, perhaps not too far in the future, it will be another virus. No one wants to go through the crippling experience brought on by COVID-19. Schools should do all they can to learn from this experience and keep in place safety prevention protocols and expectations of behavior that can assist in that goal.

It should be noted that while these Opening up America Again guidelines provide a helpful roadmap for states to consider, they have not been without controversy. Some of the criticism stems from the lack of detail provided in the guidelines. In response, White House officials are finalizing expanded guidelines to allow the phased reopening of some specific businesses such as childcare programs, schools and day camps, communities of faith, employers with vulnerable workers, restaurants and bars, and mass transit administrators². This new guidance drafted by the [U.S. Centers for Disease Control and Prevention](https://www.cdc.gov/media/releases/2020/s110520-guidance-reopening.html), is considerably more detailed. The [17-page guidance](#) lists recommendations for each of these six settings. It states that all decisions should be made locally in collaboration with local health officials. An accompanying set of documents provides one-page checklists to help state and local health officials make decisions. The CDC guidelines as they relate to schools will be addressed in the following section.

² <https://www.msn.com/en-us/news/us/white-house-is-reviewing-expanded-guidance-on-reopening-society/ar-BB13gqqt>; <https://www.washingtonpost.com/context/white-house-is-reviewing-detailed-guidance-for-gradual-reopening/f263df1b-f48c-4ede-affa-76803d94ff2f/>

II. CDC, OSHA, and Other Public Health Authorities' Safety Recommendations

The CDC has an abundance of guidance documents about health and safety related to school operations and about the COVID-19 pandemic. The CDC guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19). It updates the guidance as needed and as additional information becomes available. It is incumbent on all schools to ensure that they periodically and regularly checks the [CDC website](#) for updated information. You may also view CDC guidance particular to [K-12 schools](#) and find a good overview of [recommended guidelines for businesses](#) overall.

The following will address some of the CDC guidance related to schools. At the end of the article there is also a listing of other CDC resources that may be relevant to schools. In addition, the CDC as well as government authorities often provide guidance to particular industries. Schools might wish to review those guidance documents related to industries such as restaurants, faith-based organizations, and childcare centers as there may be relevant aspects of those guidance documents that could apply to school operations.

A. Masks

A common question at this time is whether schools should require employees, students, and even visitors to wear masks. At the moment, the answer is yes. More and more states are urging³, and some even requiring, citizens to wear masks when out in public to slow the spread of the coronavirus. Most state officials are asking the public not to wear surgical masks or N95 respirators and to reserve those types of masks for health-care workers and first responders. Instead, it is suggested that individuals wear their own cloth coverings such as bandanas, scarves, or homemade cloth masks. The masks should cover both the mouth and nose. The CDC also recommends wearing cloth face coverings. The CDC points out that studies have shown that a significant portion of individuals with coronavirus lack symptoms and that even those who eventually develop symptoms can transmit the virus to others even before showing symptoms. Schools should review [CDC recommendations](#) on cloth face coverings and

³ See e.g. <https://www.dhhs.nh.gov/dphs/cdcs/covid19/covid-mask-guidance.pdf>

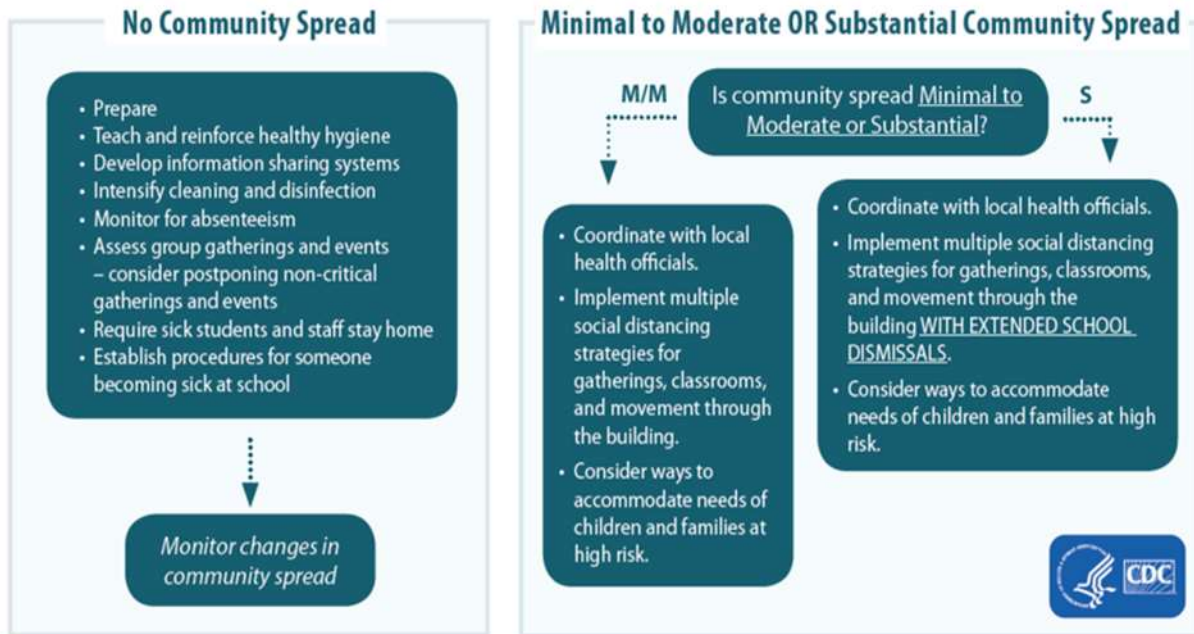
consider how to provide or assist employees and students in obtaining face coverings for those on campus.

B. CDC Guidance for K-12 Schools

Find CDC guidance particular to [K-12 schools](#). It sets forth recommended guidelines to plan, prepare, and respond to COVID-19. Throughout its guidance documents, the CDC recommends that school decisions about implementing school-based strategies be made locally in collaboration with local health officials who can help determine the level of transmission in the community. Schools should collaborate, share information, and review plans with the local health officials to help protect the whole school community as well as ones with special health needs. School plans should be designed to complement other community mitigation strategies to protect high-risk populations and the health-care system, and minimize disruption to teaching and learning and protect students and staff from any social stigma and discrimination. The school's plans should build on its everyday practices such as hand hygiene, monitoring absenteeism, and communicating regularly. And the school's plan should include strategies for before, during, and after a possible outbreak.

The CDC guidance for schools is organized into three categories based on the level of community transmission: 1) when there is no community transmission (preparedness phase), 2) when there is minimal to moderate community transmission, and 3) when there is substantial community transmission. Guidance is also provided for when a confirmed case has entered a school, regardless of the level of community transmission. The following chart depicts the CDC's recommended approach for schools to take depending on the level of community transmission. Find details regarding each set of recommended strategies on the [CDC website](#).





On April 30, 2020, following the release of the Opening up America Again Guidelines, media stories⁴ reported that the White House would soon be releasing some expanded recommendations for particular industries that included schools. The recommendations are intended to be put into place as part of the phased opening set forth in the Opening up America Again Guidelines and in collaboration with local health officials and other state and local authorities including a consideration of the capacities of the local public health and health-care systems, among other relevant factors. While they have yet to be officially released, *The Washington Post* obtained an advance copy. Schools should monitor to review the recommendations once they have been finalized and released. In the meantime, the draft recommendations provide some helpful guidelines for schools to consider as they begin to develop their own reopening plans⁵. The draft expanded reopening guidelines are:

Promote healthy hygiene practices (Phases 1-3).

- Teach and reinforce [washing hands](#) and covering coughs and sneezes among children and staff.

⁴ <https://www.msn.com/en-us/news/us/white-house-is-reviewing-expanded-guidance-on-reopening-society/ar-BB13gqqt>; <https://www.washingtonpost.com/context/white-house-is-reviewing-detailed-guidance-for-gradual-reopening/f263df1b-f48c-4ede-affa-76803d94ff2f/>

⁵ See also: Information about level of transmission is available in [CDC’s framework for mitigation](#)

- Teach and reinforce use of [cloth face coverings](#) among all staff. Face coverings are most essential in times when physical distancing is not possible. Staff should be frequently reminded not to touch the face covering and to [wash their hands](#) frequently. Information should be provided to all staff on [proper use, removal, and washing of cloth face coverings](#).
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), tissues, and no-touch trash cans.
- Post signs on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).

Intensify cleaning, disinfection, and ventilation (Phases 1-3).

- [Clean and disinfect](#) frequently touched surfaces within the school and on school buses at least daily (for example, playground equipment, door handles, sink handles, drinking fountains) and shared objects (for example, toys, games, art supplies) between uses.
- To clean and disinfect school buses, see guidance for [bus transit operators](#).
- Ensure [safe and correct application](#) of disinfectants and keep products away from children.
- Ensure ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods. Do not open windows and doors if they pose a safety or health risk (e.g., allowing pollens in or exacerbating asthma symptoms) to children using the facility.
- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing (Phase 1 and 2).

- Ensure that student and staff groupings are as static as possible by having the same group of children stay with the same staff (all day for young children and as much as possible for older children).
- Restrict mixing between groups.

- Cancel all field trips, intergroup events, and extracurricular activities (phase 1).
- Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (phase 2; Note: restricting attendance from those in phase 1 areas).
- Restrict nonessential visitors, volunteers, and activities involving other groups at the same time.
- Space seating/desks to at least six feet apart.
- Close communal-use spaces such as dining halls and playgrounds if possible; otherwise stagger use and disinfect in between use.
- If a cafeteria or group dining room is typically used, serve meals in classrooms instead. Serve individually plated meals and hold activities in separate classrooms. Stagger arrival and drop-off times or locations, or put in place other protocols to limit direct contact with parents as much as possible.
- Create social distance between children on school buses where possible.

Social Distancing Phase 3

- Consider keeping classes together to include the same group of children each day and consider keeping the same childcare providers with the same group each day.
- Allow minimal mixing between groups. Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (phase 1 or 2 areas).
- Continue to space out seating and bedding (head-to-toe positioning) to six feet apart, if possible.
- Consider keeping communal use spaces closed, such as game rooms or dining halls, if possible; if this is not possible, stagger use and disinfect in between uses.
- Consider continuing to plate each child's meal to limit the use of shared serving utensils.
- Consider limiting nonessential visitors, volunteers, and activities involving other groups. Restrict attendance of those from higher transmission areas (phase 1 or 2 areas).
- Consider staggering arrival and drop-off times or locations, or put in place other protocols to limit direct contact with parents as much as possible. Continue to stagger arrival and drop-off times and plan to continue limiting direct contact with parents as much as possible

Limit sharing (Phases 1-3).

- Keep each child's belongings separated from others' and in individually labeled containers, cubbies, or areas.
- Ensure adequate supplies to minimize sharing of high-touch materials to the extent possible (art supplies, equipment, etc. assigned to a single camper) or limit use of supplies and equipment by one group of children at a time and clean and disinfect between use.
- If food is offered at any event, have prepackaged boxes or bags for each attendee instead of a buffet or family-style meal. Avoid sharing foods and utensils.
- Avoid sharing electronic devices, toys, books, and other games or learning aids.

Train all staff (Phases 1-3).

- Train all teachers and staff in the above safety actions. Consider conducting the training virtually or, if in person, ensure that social distancing is maintained.

Monitoring and Preparing

Check for [signs and symptoms](#) (Phases 1-3).

- Implement screenings safely, respectfully, and in accordance with any applicable privacy laws or regulations. Confidentiality should be maintained.
- School administrators may use examples of screening methods in the CDC's supplemental [Guidance for Child Care Programs that Remain Open](#) as a guide for screening children and the CDC's [General Business FAQs](#) for screening staff.
- Encourage staff to stay home if they are sick and encourage parents to keep sick children home.
- Encourage staff or children who are sick to stay at home.

Plan for when a staff member, child, or visitor becomes sick (Phases 1-3).

- Work with school administrators, nurses, and other health-care providers to identify an isolation room or area to separate anyone who exhibits COVID-19-like symptoms. School nurses and other health-care providers should use [Standard and Transmission-Based Precautions](#) when caring for sick people. See [What Healthcare Personnel Should Know About Caring for Patients with Confirmed or Possible COVID-19 Infection](#).
- Establish procedures for safely transporting anyone sick home or to a health-care facility.
- Notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#).
- Close off areas used by a sick person and do not use before cleaning and disinfection. Wait 24 hours before you [clean and disinfect](#). If it is not possible to wait 24 hours, wait as long as possible. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.
- Advise sick staff members not to return until they have met CDC [criteria to discontinue home isolation](#).
- Inform those exposed to a person with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance](#) if symptoms develop. Provide options for virtual learning.

Maintain healthy operations (Phases 1-3).

- Implement flexible sick leave policies and practices, if feasible.
- Monitor absenteeism and have a roster of trained back-up staff.
- Monitor health clinic traffic. School nurses and other health-care providers play an important role in monitoring health clinic traffic and the types of illnesses and symptoms among students.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Employees should know who this person is and how to contact them.
- Create a communication system for staff and families for self-reporting of [symptoms and notification of exposures and closures](#).

Closing (Phases 1-3)

- Check [State](#) and [local](#) health department notices daily about transmission in the area and adjust operations accordingly.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, programs may consider closing for a short time (1-2 days) for cleaning and disinfection.

C. CDC Mitigation Measures

The CDC also provides guidance to schools on potential mitigation activities that can be implemented to help prevent or slow the transmission of the virus. These mitigation measures include:

1. Know where to find local information on COVID-19 and local trends on COVID-19 cases.
2. Know the signs and symptoms of COVID-19 and what to do if students and staff become symptomatic at school.
3. Review and update emergency operation plans (including implementation of social-distancing measures, distance learning if feasible) or develop a plan if one is not available.
4. Evaluate whether there are students or staff who are at increased risk of severe illness and develop plans for them to continue to work or receive educational services if there are moderate levels of COVID-19 transmission or impact.
5. Parents of children at increased risk for severe illness should discuss with their health-care provider whether those students should stay home in case of school or community spread.
6. Staff at increased risk for severe illness should have a plan to stay home if there are school-based cases or community spread.

7. Encourage staff and students to stay home when sick and notify school administrators of illness (schools should provide nonpunitive sick leave options to allow staff to stay home when ill).
8. Encourage personal protective measures among staff/students (e.g., stay home when sick, handwashing, respiratory etiquette).
9. Clean and disinfect frequently touched surfaces daily.
10. Ensure hand hygiene supplies are readily available in buildings.
11. Consider distance or e-learning in some settings.
12. Consider regular health checks (e.g., temperature and respiratory symptom screening) of students, staff, and visitors when entering building(s) (if feasible).
13. Short-term dismissals for school and extracurricular activities as needed (e.g., if cases in staff/students) for cleaning and contact tracing.
14. Students at increased risk of severe illness should consider implementing individual plans for distance learning, e-learning.
15. Broader and/or longer-term school dismissals, either as a preventive measure or because of staff and/or student absenteeism.
16. Cancellation of school-associated congregations, particularly those with participation of high-risk individuals.
17. Review, update, or develop workplace plans to include liberal leave and telework policies.
18. Consider 7-day leave policies for people with COVID-19 symptoms.
19. Consider alternate team approaches for work schedules.
20. Encourage personal protective measures among staff (e.g., stay home when sick, handwashing, respiratory etiquette).

21. Encourage staff to telework (when feasible), particularly individuals at increased risk of severe illness.
22. Implement social-distancing measures: (a) increasing physical space between workers at the worksite; (b) staggering work schedules; (c) decreasing social contacts in the workplace (e.g., limit in-person meetings, meeting for lunch in a break room, etc.); (d) limit large work-related gatherings (e.g., staff meetings, after-work functions); (e) limit the number of people at each gathering; and (f) limit or do not allow nonessential work travel.
23. Ensure flexible leave policies for staff who need to stay home due to school/childcare dismissals.

D. Cleaning and Disinfecting

A common question from schools is what they need to do to properly clean and disinfect both as part of reopening the school campus and on a regular ongoing basis. The CDC has a guidance document entitled [Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes](#). See also a similar post on the [U.S. Environmental Protection Agency \(EPA\) website](#). The CDC also has a helpful guidance document on [How to Clean and Disinfect Schools to Help Slow the Spread of Flu](#). Schools should review both documents. This latter document explains that the basic guidelines for routine school cleaning include:

1. Knowing the difference between cleaning, disinfecting, and sanitizing;
2. Cleaning and disinfecting surfaces and objects that are touched often;
3. Doing routine cleaning and disinfecting;
4. Cleaning and disinfecting correctly;
5. Using products safely; and
6. Handling waste properly.

Schools should evaluate their school to determine what kinds of surfaces and materials need to be cleaned. Most surfaces and objects will just need normal routine cleaning, however, frequently touched

surfaces and objects like light switches and doorknobs will need to be cleaned and then disinfected to further reduce the risk of germs on surfaces and objects. The steps in disinfecting includes:

- First, clean the surface or object with soap and water.
- Then, disinfect using an EPA-approved disinfectant.
- If an EPA-approved disinfectant is unavailable, you can use 1/3 cup of bleach added to one gallon of water, or 70% alcohol solutions to disinfect. Do not mix bleach or other cleaning and disinfection products together. This can cause fumes that may be very dangerous to breathe. Keep all disinfectants out of the reach of children.

Find additional information at CDC's website on [Cleaning and Disinfecting Your Facility](#).

The CDC reports that the virus that causes COVID-19 can be killed if you use the right products. EPA has compiled a [list of disinfectant products](#) that can be used against COVID-19, including ready-to-use sprays, concentrates, and wipes. Each product has been shown to be effective against viruses that are harder to kill than viruses like the one that causes COVID-19. It is important to use the right products and to ensure those who will be using them know how to do so safely and effectively.

It is also important to ensure that staff charged with carrying out cleaning and disinfecting are protected. These employees are at increased risk of being exposed to the virus and to any toxic effects of the cleaning chemicals, so they should wear appropriate PPE for cleaning and disinfecting. Schools should visit the Occupational Safety and Health Administration (OSHA) website for information on concerns related to cleaning staff. See [Protecting Workers Who Use Cleaning Chemicals](#). OSHA Publication 3512, (2012). See also [OSHA COVID-19 Control and Prevention](#).

E. Posters

CDC has workplace posters with messages for staff about [staying home when sick](#) and how to [avoid spreading germs at work](#). Schools should strategically place these posters throughout the school.

III. EEOC Compliance Issues in Reopening Your Campus

In addition to following CDC recommendations and OSHA requirements regarding workplace safety, schools should regularly monitor the guidance for employers from the U.S. Equal Employment

Opportunity Commission (EEOC). The EEOC has provided a publication [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.

On Thursday, April 23, the EEOC updated its COVID-19 guidance for employers to include a provision explaining that employers may test employees for the COVID-19 virus without running afoul of the Americans with Disabilities Act (ADA). The ADA requires that any mandatory medical testing of employees be job related. The updated EEOC Guidance states: “Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others.” Thus, employers are now permitted to test employees for COVID-19 before they enter the employer’s premises. See [What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus](#).

Among the most frequently asked questions covered by the EEOC COVID-19 guidance document are the following:

1. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic? (3/17/20)

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

2. When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as examples, or may it ask about any symptoms identified by public health authorities as associated with COVID-19? (4/9/20)

As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask employees to determine whether they would pose a

direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

3. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic? (3/17/20)

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state and local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

4. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19? (3/17/20)

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

5. When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty? (3/17/20)

Yes. Such inquiries are permitted under the ADA either because they would not be disability related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health-care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an email to certify that an individual does not have the pandemic virus.

6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? (4/23/20)

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat to the health of others](#). Therefore an employer may

choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration (FDA) about what may or may not be considered safe and accurate testing, as well as guidance from the CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection-control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

7. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information? (4/9/20)

The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that they have the disease or suspect they have the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

8. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results? (4/9/20)

Yes. The employer needs to maintain the confidentiality of this information.

9. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19? (4/9/20)

Yes.

IV. Standard of Care, Return to School Forms, and Documentation

[Note: This section IV written by attorney David Wolowitz.]

Initially, when deciding to reopen schools in the pre-vaccine phase, administrators and trustees should recognize that no strategies can guarantee that a school will not be sued or that it will prevail in court. Therefore, schools should consult with their insurance brokers to determine, in advance of opening, what insurance protection they have.

There are steps that independent schools can take to mitigate the risk of suits by families in the event of a student contracting the virus at school. At the outset of devising legal risk mitigation strategies, it is helpful for schools to understand the distinction between the legal standard of care and educational best practices. For a lawsuit by a parent against a school to prevail, the parent must prove that the school was negligent by breaching a duty it owed their child. So, for example, if a student contracts the virus at school and is severely harmed, the child's parent might sue claiming that the school negligently breached its duty to keep their child safe. A school will only be liable if the court or a jury later determines that it violated the applicable standard of care. The exact definition of the standard of care varies depending on state law, but essentially it is the degree of prudence that a reasonable person in similar circumstances would exercise. One way to think of the standard of care is that it is the base, or the minimum, that a school is reasonably expected to do under the circumstances to fulfill its legal duty to protect its students. By comparison, educational "best practices" are what commentators and subject-matter experts recommend for protecting students. Some recommended best practices may eventually become the standard of care if adopted by enough similarly situated schools, but the duty of care for schools does not obligate them to meet so-called "best practices."

An important initial question for schools seeking to reopen will be how to determine the standard of care for safely reopening during the pre-vaccine phase. Determining the current standard of care for a particular duty is challenging because, ultimately, whether a school negligently violated a duty will be determined by a jury years after the event occurred. By the time a jury looks back on events to make its decision, it may be influenced by future events and information that did not exist when the harm to the student occurred. Consequently, when schools engage in risk management, it is always advisable for them to try to determine the current standard of care and then seek to exceed it. Keep in mind that the law does not require schools to provide absolute protection from injury or harm. So long as a school is

found to have met the standard of care, it will not be liable even if a student was injured or harmed at school. Mistakes happen; schools are not held to the standard of perfection.

The clear starting point for determining the standard of care for reopening schools will be to comply with applicable federal, state, and local guidelines relating to the reopening of businesses. While there will likely be guidelines and regulations specific to public schools, there may not be separate guidelines for opening nonpublic schools. Independent schools should carefully evaluate what is required of public schools and be sure to comply with the requirements, except for those that are clearly inapplicable.

Schools that do more to protect students than is required by official guidelines will have a greater likelihood of successfully defending themselves against any future claims. For example, schools should also consider following recommendations published by independent school associations. If possible, schools would significantly benefit from hiring expert public health consultants to provide specific guidance. If schools cannot afford to do this individually, they should consider doing this through their associations or other groups. Of course, if schools do consult with experts, it is important that they follow their guidance.

Implementing strategies designed to meet and exceed the standard of care, without more, will not be sufficient to mitigate the risk of successful legal action against a school. To prevail in future lawsuits, schools will need to prove not only that they had policies and protocols that met or exceeded the prevailing standard of care at the time but also that they appropriately trained faculty, staff, and students and that they implemented the policies and protocols as written. It is therefore crucial that schools immediately create effective record-keeping systems to assure that, in the event of a future lawsuit, they can point to documentation that demonstrates that: they had appropriate policies and protocols; they provided adequate training on compliance; and they followed their policies and protocols.

In short, risk mitigation for reopening schools prior to a vaccine being available begins with a focus on the standard of care for protecting the health of students as a reasonably prudent person would under the circumstances. First, schools must try to determine the base standard of care and then, to the extent possible, create policies and protocols that exceed it. Second, schools must train all members of the school community on how to follow the new policies and protocols and hold everyone accountable for following them. Third, schools must keep sufficient records to be able to document their policies and

protocols, their training, and their compliance. Schools that do all of this will be well-positioned in the event of a lawsuit.

Schools can provide an additional layer of protection through their communications with the school community. In advance of opening, schools will need to clearly communicate to their school community the risk of returning to school before there is a vaccine and the steps the school is taking to address this risk. The challenge is how to do so without having the effect of discouraging families from sending their children back to school. Many schools already require releases from parents when their children engage in activities that have a particular risk. These types of releases, such as for sports or trips, spell out the particular risks, including worst-case scenarios. In the environment of the current pandemic, such standard releases may not be appropriate or adequate. Injuries from sports or trips are far less likely to occur, and more within a school's ability to prevent, than the possibility of a student contracting a highly contagious virus in a school setting before there is a vaccine. And, even though the illness caused by the virus is reported to be less severe in children than adults, it can be fatal. For these reasons, I recommend something more substantial and comprehensive, and less off-putting, than a standard release.

An alternative to consider (with the input of your legal counsel), is a Return to School Agreement. Such an agreement would be part of a larger, comprehensive communications plan relating to reopening a school. Schools will be sending multiple communications to families with details about reopening. Some of these communications will likely refer parents to federal, state, and local websites that provide in-depth, current information about returning to work and to school. These and other authoritative sources will discuss the risks related to returning to social interaction, even with careful precautions. Schools will, of course, inform parents of everything they will be doing to protect the students. These communications will become the foundation for the Return to School Agreement. One essential element to the effectiveness of a release is informed consent. By the time parents are asked to sign a Return to School Agreement, they should have been well educated in both the protocols that will be in place in the school and the risks of returning to school. Importantly, no parent should be surprised to learn that no one can guarantee a virus-free environment and that, until there is a vaccine, it is likely that in many schools and workplaces, some people will inevitably become infected and ill.

While these strategies will not prevent all possible lawsuits by parents who claim their child contracted the virus at school, they should reduce the number of such lawsuits by substantially reducing their likelihood of success. Juries will look favorably on schools that implemented and carried out policies and

protocols equal to or greater than official guidelines. And courts will be more likely to uphold releases when it is clear that parents were given the time and resources to fully understand and accept the risks of returning their child to school before a vaccine is available.

V. Developing Your Plan to Reopen

It's hard to imagine a school campus where hugs are not allowed; where students cannot gather, huddled together or locked arm in arm in common areas, cafeterias, and auditoriums; or where all-school meetings and a full chapel cannot take place. At least for now, school leaders must accept the reality that we are living through the uncharted waters caused by the world-altering COVID-19 pandemic; a highly contagious virus that spreads quickly, has claimed the lives of thousands around the world, and for which there is currently no readily available vaccine. Should a school choose to open before the vaccine is available, it will need to change how it has operated in the past including adopting new policies and practices to better ensure the safety and health of its students, faculty, staff, and greater school community. **The new normal will be anything but normal.**

The above overview of legal responsibilities, safety mandates, recommendations, and standard of care provides the backdrop for schools to develop their plans to reopen. Now is the time for difficult decisions to be made. Questions like:

- Will we reopen our campuses in the fall, or remain distant learning – or both?
- If we do open, will we have staggered return to campus and staggered start of classes?
- How do we alter our cafeteria operations? Do we provide box meals that we deliver to students and employees?
- How do we alter our facilities and classrooms to provide for social distancing?
- Do we alter all-school meetings to take place via videoconferencing?
- What kind of screening do we do for employees, students, and visitors?
- Do we require everyone to wear masks?
- What new policies and procedures must we implement before we come back to campus?
- Do we move to one-person dorm rooms?
- What about the employee or student who is simply afraid to return to campus?

- Can we provide distance learning to international students who can't or don't want to return to campus?
- What about athletics?
- What happens when someone gets sick or worse yet, tests positive for COVID-19?
- Can we hold in-person parent meetings or, for that matter, any large school gatherings?
- Can we acquire enough PPE (personal protective equipment)?
- Are our health services personnel and facilities adequate to meet the needs of managing COVID-19 on our campus?
- What are the capacities of our local health organizations?
- What ongoing communications do we need to make to our school community?

These and many more questions need to be asked and answered. It is a time for leadership to be on full display. To lead your school communities through this time of uncertainty and anxiety. To communicate honestly and compassionately about what the school is doing to help keep students, faculty, and staff as safe as possible but not to make promises or guarantees that cannot be kept. To be creative and flexible for what lies ahead. To ask yourselves, how can we do it differently and still stay true to our mission and values? To stay abreast of the ongoing changes in government orders and health authority recommendations, and adapt as needed. Like all risk management and mitigation measures, it is not a checkoff box but rather an ongoing process of strategic planning, action, accountability, and assessment. Social distancing may in many ways keep us apart, but moving through this together, you may find that you have never have been closer.

Important Note

The information provided in this article is NOT LEGAL ADVICE. For specific matters, schools should seek specific legal advice as to the application of the laws, regulations or guidelines to their school or situation. Also, as stated at the outset, schools should monitor the ongoing changes being made in laws, regulations, guidance documents, and recommendations.

About the Authors

[Linda Johnson](#) is a director with McLane Middleton, Professional Association where she serves as co-chair of the firm’s Education Law Group, chair of the firm’s Diversity and Inclusion Committee, and a member of the Management Committee. Linda is vice chair of the New Hampshire Women’s Foundation and a member of the St. Anselm’s Center for Ethics in Business and Governance. She has over 30 years of experience litigating cases in state and federal agencies and courts, and in representing the interests of management and independent schools in all aspects of employment and independent school law. She focuses her practice on understanding and serving the needs of K-12 independent schools, and serves as outside legal counsel to many of the country’s top independent day and boarding schools. She is nationally recognized as an authority on student and campus safety issues, risk management, boundary awareness, crisis response, employment law, and independent school law issues. Linda is AV rated by Martindale Hubbell, which is the highest rating for legal ethics and services. She is listed in Woodward's *Best Lawyers in America* for both employment and education law, in *New England SuperLawyers*, and in *Chambers USA America's Leading Lawyers in Business*. Linda was named “Lawyer of the Year” by Best Lawyers for Education 2018. In 2019, she was selected by *New Hampshire Business Review* as part of the “New Hampshire 200” of the Granite State’s Most Influential Business Leaders. Linda can be reached at linda.johnson@mclane.com or (603) 628-1267.

David Wolowitz is a director at McLane Middleton and co-chair of the firm’s Education Law Group. He advises independent schools nationwide and internationally on all aspects of risk avoidance and crisis management. The focus of David’s practice is the reinforcing of healthy school cultures that promote child safeguarding. David consults with schools on both prevention of and response to all types of educator misconduct. David is able to offer clients advice based on his years of substantial and varied experience in key legal areas that impact schools, including employment, mental health, contract, criminal, fiduciary, and tort law. He is a pioneer in applying behavioral risk management concepts to promote healthy school cultures

* * * * *

Other helpful CDC and OSHA resources

- Information about COVID-19 available through state and local health departments
- General CDC fact sheets to help staff and students’ families understand COVID-19 and the steps they can take to protect themselves:
- [What you need to know about coronavirus disease 2019 \(COVID-19\)](#) [pdf]

- [What to do if you are sick with coronavirus disease 2019 \(COVID-19\)](#)
- [Stop the spread of germs – help prevent the spread of respiratory viruses like COVID-19](#) [pdf]
- CDC Information on [COVID-19 and children](#)
- CDC information for staff, students, and their families who have recently traveled back to the United States from areas where CDC has identified community spread of coronavirus:
- A list of countries where community spread of COVID-19 is occurring can be found on the CDC webpage: [Coronavirus Disease 2019 Information for Travel](#)
- Traveling within the US guidance (https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html?deliveryName=USCDC_2067-DM25771);
- CDC offers guidance for those returning from international travel (<https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html>);
- Visiting playgrounds and playing sports/activities guidance (https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/visitors.html?deliveryName=USCDC_2067-DM25771);
- guidance (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>) for childcare centers that remain open;
- The CDC issued guidance on Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>);
- CDC Issues Domestic Travel Advisory for New York, New Jersey, and Connecticut (March 28) (https://www.cdc.gov/media/releases/2020/s038-travel-advisory.html?deliveryName=USCDC_2067-DM23953)
- CDC issues new/updated guidance: [Children and Coronavirus: Tips to Keep Children Healthy While School Is Out](#) (March 28) (https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children.html?deliveryName=USCDC_2067-DM23953)
- On March 31, the CDC updated its additional [Guidance for School Settings](#) (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>) to include an updated version of Considerations for School

Closures (<https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf>).

- Review the CDC's School Decision Tree (<https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf>) and other charts and analysis, along with updated guidance for pre-K through 12th grade schools (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>)
- OSHA Guidance on Preparing Workplaces for COVID-19 outlines steps employers can take to protect their workforce from occupational exposure to the coronavirus.
- OSHA interim enforcement guidance on reusing disposable N95 filtering face piece respirators that have been decontaminated
- **Video:** OSHA guidance on discouraging workers from sharing tools, workspaces, and equipment
- **Video:** Tips for creating a workplace that supports workers' mental health