

New Health and Safety Guidance for the 2021-2022 School Year

On June 28, 2021, the New Jersey Department of Education (“NJDOE”) and the New Jersey Department of Health (“NJDOH”) issued a guidance document, entitled “The Road Forward: Health and Safety Guidance for the 2021-2022 School Year,”¹ which is designed to assist school districts as they plan to reopen for the upcoming school year, when all public schools will be required to provide full-time, in-person instruction. This guidance replaces the mandates set forth in Executive Order No. 175 and “The Road Back,” a manual issued by the NJDOE in June 2020 to assist schools with reopening for the 2020-2021 school year.

“The Road Forward” provides “recommendations” and “strategies” as opposed to mandatory standards, as the guidance is intended to reduce risks while prioritizing full-time, in-person learning. Schools are encouraged to implement as many of the recommendations as feasible at the local level, rather than viewing them as mandatory directives that must be fully satisfied in order to reopen for full-time in-person instruction. Therefore, even if a district cannot completely adhere each and every recommendation, the district still must reopen for full-day, in-person operations with all enrolled students and staff present. Districts will be obligated to make exceptions to the in-person attendance requirement for students whose health conditions make them more susceptible to or exacerbate the symptoms of COVID-19, insofar as they may be eligible for home instruction for a documented medical condition or under an Individualized Education Program or 504 plan.

A review of “The Road Forward” reveals that many of the strategies encouraged by the State are similar to those the NJDOE provided in preparation for the 2020-2021 school year, while other recommendations are dramatically different from the standards imposed upon public schools last year. The strategies and protocols recommended for school districts as outlined in “The Road Forward” include, but are not limited to, the following:

(1) Face Coverings

Absent any significant changes in the public health data, the current guidance provided in “The Road Forward” indicates that face coverings will not be mandatory in public schools, and instead, districts will be able to determine masking policies at the local level. The NJDOE has also publicly stated that districts may set their own masking policies at the local level for any 2021 Extended School Year and other summer programs. However, consistent with CDC guidance, passengers and drivers must wear masks on school buses operated by public and private school systems, subject to exemptions such as instances in which an individual cannot wear a mask for a documented medical reason. The CDC has directed that masks should be worn on buses even for vaccinated individuals.

¹ Available at <https://www.nj.gov/education/roadforward/docs/HealthAndSafetyGuidanceSY2122.pdf>

Despite that the current guidance reflects that mask wearing in public schools will not be required by the State for the 2021-2022 school year, the “The Road Forward” states that masks in schools are encouraged for any individuals who are not fully vaccinated unless a mask cannot be safely worn, and schools should provide information to staff and students on the proper use, removal, and washing of masks. Regardless of the extent to which a district requires face coverings to be worn in school buildings, schools may not prohibit students or staff members from wearing masks if they choose to do so.

Additionally, it is anticipated that the CDC will provide updated guidance on the advisability of masks in schools at some point before the beginning of the 2021-2022 school year. Depending on the status of the CDC guidance by the end of the Summer of 2021, the State may also update its recommendations for mask wearing in the school setting for the upcoming school year.

(2) Social Distancing

The NJDOE and NJDOH recommend that physical distance of three (3) feet should be maintained between students, to the extent practicable. However, any potential inability to enforce this physical distancing between students cannot serve as a basis for a district failing to provide and maintain regular in-person learning and school operations. As an example of possible means of encouraging physical distancing, the NJDOE advises that districts should consider facing desks in the same direction and avoiding group seating arrangements.

School districts should also arrange for distancing, to the extent practicable, between students in areas that often become crowded, such as hallways, auditoriums, and cafeterias and other group dining areas; when masks cannot be worn or may be removed, such as during outdoor activities; and/or during indoor activities when increased exhalation occurs, such as singing, shouting, band practice, sports, or exercise, even if masks are worn. Similarly, “The Road Forward” recommends that schools consider maintaining cohorts of students with dedicated staff members who stay together throughout the day, including recess, lunch, and extracurricular activities.

Consistent with these distancing recommendations, the NJDOE and NJDOH further recommend that districts provide students with adequate supplies to minimize sharing of materials, or limit use of such materials by one group of students at a time, and clean and disinfect routinely between use, while avoiding the use of shared items that cannot be cleaned and disinfected. “The Road Forward” also contains more detailed recommendations regarding protocols for cleaning, disinfection, and airflow within school facilities.

(3) Responding to COVID-19 Cases and Preventing Transmission

School districts are strongly encouraged to maintain and/or update as necessary their procedures to identify and respond to a student or staff member who develops an illness consistent with the symptoms of COVID-19, as well as their procedures on the circumstances that warranting quarantining from school, requiring testing for COVID-19,

contact tracing, and providing remote learning for students who must quarantine. Furthermore, districts should ensure that they stay in close communication with their local health departments to share information and resources on COVID-19 transmission, prevention, and control measures, and to adopt and implement procedures for notification and response to illness. As a general matter, districts are also encouraged to continue to engage in transparent and ongoing communication, as appropriate, with their employees, students, and communities regarding school operations and health and safety measures implemented to protect students and staff.

(4) Vaccinations

Although many students and staff will be fully vaccinated against COVID-19 prior to the start of the 2021-2022 school year, many students cannot yet be vaccinated due to the current unavailability of an approved vaccine for children of all ages, and some students and staff will be unable to or will decline to receive a vaccine. “The Road Forward” advises that school districts should actively promote vaccination for all eligible students and staff, develop a procedure to determine vaccination status of students and staff, and consider anyone whose status is undetermined to be not fully vaccinated. Additionally, districts should consider vaccine coverage among students and staff as an additional metric that may guide the need for locally determined measures, such as the implementation of physical distancing and mask policies in school, especially as vaccination eligibility is expected to expand over the next few months.

Conclusion

School districts should carefully review and consider the extent to which the State’s current guidance will be feasible in their schools and facilities. However, even if the guidelines cannot be fully implemented in every district, all districts must reopen in-person for the 2021-2022 school year, by providing full-day, full-time, in-person learning, instruction, and operations in all buildings and facilities, with all enrolled students and staff physically present on a regular basis, absent a documented medical exemption. Finally, districts should anticipate possible updates to the current guidance prior to the beginning of the school year, as additional recommendations from the CDC may become available.

The Busch Law Group will continue to provide legal updates on these and other significant issues related to COVID-19, as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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