



# **Ensuring a Safe Reopening: A Framework for Making Key Reopening Decisions**

**August 17, 2020**

# Presenters

- Pat Wright, NJPSA Executive Director
- Richard Bozza, NJASA Executive Director
- David Nash, Esq., LEGAL ONE Director
- Wayne Yankus, MD FAAP

# Unified Approach

- Educators unite in call for remote opening
  - See [NJPSA, NJASA, NJEA joint statement](#) on reopening
- Ensuring health and safety must be top priority
- Need clear, universal standards
- Need to learn from experience of others and recent challenges here in New Jersey

# Important Progress/More To Do

- Advocacy efforts have resulted in important progress
  - Now, districts that are unable to meet health and safety standards have option to open remotely
  - NJDOH has issued more detailed, substantive, health and safety standards
- More work to do
  - Sound local decision-making on ability to reopen
  - Need for additional funding, resources
  - Need for greater protection related to potential exposure and member rights, and potential liability

# 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.*



# Topics

- Unprecedented Times
- Reopening and the Duty of Care
- August 13 Executive Order and NJDOH Guidance
- Analyzing Potential Problem Areas
- Determining When to Offer In-Person Instruction
  - Comparing Current Required Standards with Existing Resources/Personnel
  - Identifying Potential Gaps
  - Determining Reasonable Timelines for Overcoming Gaps
  - Establishing Good Faith

# Uptick Among Young People

- Governor expresses concerns about uptick among young people due to parties
- Kids make up a growing share of NJ Coronavirus cases
- Children ages 10 and up spread the virus as well as adults

# Examples from Other States

- “Nearly 1,200 students and staff members in the district have already been ordered to quarantine. On Tuesday, one high school [closed its doors](#) until at least Aug. 31. A [second high school](#) followed on Wednesday.”  
<https://www.nytimes.com/2020/08/12/us/georgia-school-coronavirus.html>
- “Over 2,000 students, [teachers](#) and school staff members are quarantined in five states after 230 coronavirus cases were reported in their schools.”  
<https://www.onegreenplanet.org/human-interest/thousands-quarantined-after-schools-reopen/>
- “Mississippi state officials are reporting at least 22 separate instances of coronavirus outbreaks within schools across the state since reopening, the [Clarion-Ledger reports](#). Thomas Dobbs, the state health officer, confirmed during a press conference that 22 schools have reported cases of coronavirus, 19 of which are among students and 15 cases among staff, amounting to 34 cases.  
This follows reports of more than [100 students](#) sent home to quarantine from a southern Mississippi high school after a teacher began exhibiting symptoms associated with the coronavirus.”  
<https://thehill.com/changing-america/well-being/medical-advances/511892-mississippi-schools-see-new-coronavirus-cases-as>



# Key Reopening Considerations

- Duty of Care
- Foreseeable Harm/Risk
- Reasonable Mitigation
- Due Diligence
- Responsiveness

# Duty of Care

- “No greater obligation is placed on school officials than to protect the children in their charge from foreseeable dangers, whether those dangers arise from the careless acts or intentional transgressions of others.”
- Frugis v. Bracigliano, 177 N.J. 250 (2003)

# Duty of Care – Key Questions

- To whom is a duty of care owed?
  - Students, Staff, Parents, Others in School
- What is the level of care that is required?
  - Executive Order 175, The Road Back, NJDOH/CDC Standards
  - District Signing of NJDOE Attestation
- Who is responsible if the duty of care is breached?
  - Plenty of responsibility to go around!

# Foreseeable Harm/Risk

- All students and staff
  - COVID-19 Infection In School
  - Emotional Harm Due to Increased Fear/Anxiety
  - Refusal or inability to follow public health guidelines
- Students and staff at greater risk of infection
  - Inability to wear face covering
  - Increased exposure to others due to role
- Students and staff at greater risk of severe illness or death
- Students at greater risk of harm due to preexisting issues unrelated to COVID-19 (substance use, mental health, trauma, etc.)
- HIB linked to COVID-19
- Dual pandemic of racial injustice

# Duty of Care and Evolving Requirements

- June 26, 2020 – NJDOE Issues [The Road Back: Restart and Recovery Plan for Education](#)
- July 22, 2020 – [Updated CDC Cleaning and Disinfecting Guidance](#)
- July 24, 2020 – [NJDOE Memo Clarifying Expectations for Access to Remote Learning](#)
- July 24, 2020 – [Updated CDC Guidance for Schools](#)

# Evolving Requirements

- July 29, 2020 – [Health and Safety Critical Area of Operation #5](#)
- August 1, 2020 – [CDC Revises Standards](#)
- August 3, 2020 – [Health and Safety Critical Area of Operation #5 and Critical Area of Operation #3”](#)
- August 3, 2020 - Reopening Attestation
  - [Attestation for Reopening of Schools](#)
  - [Checklist](#) (PDF)
- August 7 – New [NJDOE FAQs](#), [ELL Guidance](#), [Meal Service Guidance](#)

# Evolving Requirements

- August 13 – Governor signs [Executive Order 175](#) which provides new options for school districts for remote instruction only if district unable to meet required health standards
- August 13 – NJ DOH Releases [COVID-19 Public Health Recommendations](#) for Local Health Departments for K-12 Schools

## **Executive Order No. 175 - August 13, 2020**

- School districts shall resume partial or full-time in-person instruction during the fall of school year 2020-2021.
- School districts shall submit a reopening plan to DOE at least 30 days before the first day of school. Previously submitted plans meet this requirement.
- Additionally, seven (7) days prior to the first day of school, the CSA must certify to DOE that the district has policies and procedures in place to meet the minimum health and safety standards.



## **Executive Order No. 175 - August 13, 2020**

- School districts and nonpublic schools which reopen for full or part-time in-person instruction must meet the health and safety standards delineated in the DOE's "Checklist for Re-Opening of School 2020-2021"
- School districts and nonpublic schools that are or become unable to satisfy the health and safety requirements for in-person instruction, may provide full-time remote instruction to all students pursuant to N.J.S.A. 18A:7F-9.

# Executive Order No. 175 - August 13, 2020

- School districts that determine that they cannot provide in-person instruction must submit documentation to the DOE, at a minimum one week prior to the school district's first day of school, that identifies:
  - The school building(s) or grade level(s) within the district that will provide full-time remote instruction;
  - The specific health and safety standard(s) that the school is unable to satisfy;
  - The school's anticipated efforts to satisfy the identified health and safety standard(s); and
  - A date by which the school anticipates the resumption of in-person instruction.

## **Executive Order No. 175 - August 13, 2020**

- The DOE, by way of executive county superintendents, shall request periodic updates from the CSA of a school district offering only remote instruction to demonstrate that the school district is actively engaged in good-faith efforts towards the resumption of in-person instruction.

# Key Elements of NJDOE Attestation

- The plan to reopen its schools for the 2020-2021 school year includes the health and safety and leadership and planning measures identified as “Anticipated Minimum Standards” (minimum standards) in the Department of Education’s [\*The Road Back, Restart and Recovery Plan for Education\*](#).
- The district/charter/Renaissance or APSSD ***will implement those minimum standards with fidelity*** and as outlined in the district’s reopening plan.
- Signing attestation represents legal commitment to meeting standards

# Attestation and Legal Liability

- Extremely difficult to enforce compliance with new protocols by all students, staff, parents, visitors
- Potential Claims
  - Workers Comp
  - ADA/LAD Claims for Failure to Accommodate
  - Failure to Implement IEP or 504 Plan
  - HIB
- Pending legislation to provide immunity for schools

# EO 175 Health/Safety Standards

- Social Distancing
- Face Coverings
- Cleaning/Sanitizing
- Hand washing
- Busing
- Health Screenings
- Music, choir protocols
- Plans for addressing those with symptoms
- Plans for addressing those who test positive
- Contact Tracing and working with local DOH
- Ventilation
- Recess and physical education protocols
- Athletics/Extracurriculars

# Potential Categories of Challenges

- Personnel (Shortages, Roles, PD, Supervision, Compliance)
- Students and Parents (Understand new rules, Learning new behaviors, Compliance)
- PPE (Adequate Supplies, Right Type, Cost)
- Other Equipment and Supplies (Barriers)
- Policies/Protocols (Adoption, PD, Monitoring)
- Building Condition/Capacity (Ventilation, Sufficiency of space for social distancing, space for isolation, safely screening)

# Lack of Personnel Issues

- Substantial Numbers of Staff with Legitimate Covid-19 Health Related Reasons to Require Virtual Workday
- Staff Retiring / Resigning Rather Than Returning to School
- Difficulty Finding Substitutes for In Person School Days
  - Administrators
  - Teachers
  - Nurses
  - Counselors
  - Paraprofessionals



# Examples

- Elizabeth, NJ - Does not have enough staff to conduct in-person school sessions - over 400 teachers “opt out”  
<https://www.cbsnews.com/video/in-person-learning-impossible-for-elizabeth-new-jersey-school-district-says/>  
<https://www.cbsnews.com/news/nj-schools-reopening-coronavirus-in-person-changes/>
- “Schools Face Shortage Of Nurses As Districts Consider Reopening”  
<https://www.npr.org/2020/07/25/895423256/schools-face-shortage-of-nurses-as-districts-consider-reopening>
- Low Pay and High Risk: Being a Substitute Teacher During COVID-19  
<https://www.edweek.org/ew/articles/2020/08/10/low-pay-and-high-risk-being-a.html>

# Cost / Difficulty Obtaining PPE Provisions

- **Lack of PPE Latest Problem for Delaware Valley Schools Attempting to Reopen**

“We have the [purchase orders] set, we’ve worked with our vendors, they’re ready for the orders. We’re just kind of waiting for our money to come through,” he said. “But by the same token, even if we were to have placed that order last week, according to the vendors we’re talking to, they’re telling us that there’s no guarantee that we’re going to get these items prior to the beginning of school.”

<https://delawarevalleyjournal.com/lack-of-ppe-latest-problem-for-delaware-valley-schools-attempting-to-reopen/>

- **“AASA, the School Superintendents Association, estimates school districts will collectively spend close to \$25 billion on PPE this fall. Costs for masks, nursing gowns, gloves and other PP vary widely for districts...”**

[https://blogs.edweek.org/edweek/District\\_Dossier/2020/07/heres\\_what\\_districts\\_ppe\\_shopp.html](https://blogs.edweek.org/edweek/District_Dossier/2020/07/heres_what_districts_ppe_shopp.html)

# How Much PPE???

See [NJDOE FAQs on Face Coverings](#) (Answer to Question 3) released on August 7<sup>th</sup>

- Schools should provide extra disposable face coverings for students who need them (e.g. students who forget or misplace their face coverings) and should provide face coverings for students that are experiencing financial hardship and are unable to afford them to the greatest extent possible.
- Districts should provide (in addition to normal supplies) any additional supplies/materials necessary for staff to do their jobs. For example, teaching staff, nursing staff, food service professionals, etc., should be provided with gloves, as necessary.
- As a resource, the Department's guidance also refers to the Massachusetts Department of Elementary and Secondary Education's [memo](#) regarding Guidance on Required Safety Supplies for Re-opening Schools, which provides additional information on the quantity and type of PPE materials for such staff members.

# Massachusetts Dept of Elementary and Secondary Education Guidelines

## Disposable Masks (per 100 individuals)

Group	Quantity per 100 per group	12-week Supply at 100% Attendance	12-week Supply at 50% Attendance	12-week Supply at 25% Attendance	Assumptions
Students	100 masks per week	1,200	600	300	1 disposable mask per week per student (to supplement the cloth masks provided by parent/guardian).
Teachers and other staff	500	6,000	3,000	1,500	5 disposable masks per week per teacher.
School nurses and health providers	1,000	12,000	6,000	3,000	10 disposable masks per week per school nurse.

# Massachusetts

## Staff In High-Intensity Contact with Students or Handling Waste Materials

Item	1-week Supply for 1 Staff	12-week Supply	Assumptions
Disposable Nitrile Gloves	10	120	10 pairs disposable nitrile gloves per week, per staff.
Disposable Gowns	10	120	10 disposable gowns per week, per staff.
Eye Protection	2	n/a	2 re-usable eye protection per staff total.
Face Shields	2	n/a	2 reusable face shields per staff total.
Waste Disposal Medium	1	n/a	1 unit per staff total.
N-95 Ventilating Masks* Note: N-95 masks are recommended <u>only</u> if staff will be in contact with a suspected COVID-19 positive case and/or performing aerosol-generating procedures	10	120	10 N-95 masks per week, per staff.

# Massachusetts Building Supplies

Item	1-week Supply for one building	12-week Supply at 100% Attendance	12-week Supply at 50% Attendance	Assumptions
Hand Sanitizer	1/3 gallon/classroom	4 gallons/classroom	2 gallons/classroom	1/3 gallon of hand sanitizer per classroom, per week at 100% attendance.
Disposable Nitrile Gloves	20	240	240	20 disposable nitrile gloves (pair) per week, per custodial staff member at 100% attendance.
Waste Disposal Medium	1	n/a	n/a	1 disposal medium per school building.

# Transportation Challenges

- Screening of bus drivers
  - Employee
  - Contracted driver
- 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 wearing of face masks where appropriate
  - Ideally have another staff member on bus
  - Posting signs on buses with clear direction
  - Reviewing video footage periodically
- If no screening at this point, potential exposure of other students and staff
- Heightened standards for cleaning and sanitizing between bus routes
- Ensuring health and safety protocols followed as students exit bus, wait to enter the building

# Adequate Supplies



- Support [healthy hygiene](#) behaviors by providing adequate supplies, including:
  - soap,
  - hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer),
  - paper towels, tissues, disinfectant wipes,
  - cloth face coverings (as feasible) and
  - no-touch/foot-pedal trash cans.



# Cleaning and Disinfection

- [Clean and disinfect](#) frequently touched surfaces (e.g., playground equipment, door handles, sink handles, drinking fountains) within the school and on school buses at least daily or between use as much as possible. Use of shared objects (e.g., gym or physical education equipment, art supplies, toys, games) should be limited when possible, or cleaned between use.
- If transport vehicles (e.g., buses) are used by the school, drivers should practice all safety actions and protocols as indicated for other staff (e.g., hand hygiene, cloth face coverings). To clean and disinfect school buses or other transport vehicles, see guidance for [bus transit operators](#).
- Develop a schedule for increased, routine cleaning and disinfection.
- Ensure [safe and correct use](#) and storage of [cleaning and disinfection productsexternal icon](#), including storing products securely away from children. Use products that meet [EPA disinfection criteriaexternal icon](#).
- Cleaning products should not be used near children, and staff should ensure that there is adequate ventilation when using these products to prevent children or themselves from inhaling toxic fumes.

# Ventilation

- Ensure ventilation systems operate properly and increase circulation of outdoor air as much as possible, for example by opening windows and doors.
- Do not open windows and doors if doing so poses a safety or health risk (e.g., risk of falling, triggering asthma symptoms) to children using the facility.
- Ensure that ventilation systems in your facility operate properly. For building heating, ventilation, and air conditioning (HVAC) systems that have been shut down or on setback, review new construction startup guidance provided in [ASHRAE Standard 180-2018, Standard Practice for the Inspection and Maintenance of Commercial Building HVAC Systems](#) .

# Water Systems

- To minimize the risk of [Legionnaire's disease](#) and other diseases associated with water, [take steps](#) to ensure that all water systems and features (e.g., sink faucets, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown.
- Drinking fountains should be cleaned and sanitized, but encourage staff and students to bring their own water to minimize use and touching of water fountains.
- Consider portable drinking stations

# Physical Barriers and Guides

- Install physical barriers, such as sneeze guards and partitions, particularly in areas where it is difficult for individuals to remain at least 6 feet apart (e.g., reception desks).
- Provide physical guides, such as tape on floors or sidewalks and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times (e.g. guides for creating “one way routes” in hallways).

# Communal Spaces

- Close communal use shared spaces such as dining halls and playgrounds with shared playground equipment if possible; otherwise, stagger use and clean and disinfect between use.
- Add physical barriers, such as plastic flexible screens, between bathroom sinks especially when they cannot be at least 6 feet apart.

# Services for Students with Disabilities

- The June 2020 NJDOE ***Restart and Recovery Plan for Education*** specifically provides for students with disabilities receiving priority for placement in in-district programs
  - Greatest need and least progress during the school closure
- **“To the greatest extent possible”** students with disabilities must be provided the special education and related services in their IEP. (USDE and NJDOE Guidance)
- Issues
  - Inability to wear facemasks or see others with masks- Need to determine accommodations
  - Teaching issues- Children with cognitive disabilities may have trouble learning, remembering, utilizing and generalizing these new behaviors and will require that these skills to be taught.

# Revised Code of Student Conduct

- Behaviors that at are now unacceptable
- Increased danger from previously minor issues
- Potential First Amendment/HIB Issues
- Greater emphasis on enforcement by all staff
- Significant dangers for students, staff, others if there are physical altercations or otherwise a need for physical restraint
- Unique behavioral challenges for students with disabilities

# Disciplinary Offenses During Implementation of Virtual and Hybrid Models

- School district should consider implementing policies that:
  - Allow IEP and Section 504 teams to modify code of conduct requirements for students with disabilities as needed based on their disabilities
  - Allow for students with disabilities to receive training/instruction in new procedures and protocols prior of the start of the school year, such as through summer programming or ESY programs
    - Other groups such, as ELLs and struggling learners could also receive training as appropriate
  - Staff training to provide awareness of potential compliance issues for students with disabilities, and methods for addressing them
    - Alternatives to discipline referrals should be stressed



# Truancy

- “Consider creative, **flexible solutions in attendance monitoring**. Based on parent work schedules, some students may be engaging in learning in the evening. While synchronous morning meetings may be effective for some populations, **provide opportunities for students to show attendance asynchronously**.” The Road Back: Restart and Recovery Plan for Education, p. 53.
- “Hours of instructional time are not defined as a student’s time spent 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**.” The Road Back: Restart and Recovery Plan for Education, p. 49.
  - Remote learners can complete independent work while students in classrooms receive instruction.
  - Synchronous and asynchronous instruction are both explicitly permitted, especially for older students. Id. At 50.

# New Jersey Drill Law – NJSA 18A:41-1

- 1 Fire Drill & 1 School Security Drill each month
  - **THIS IS STILL IN FULL FORCE!**
- Minimum of 2 each during the school year
  - (2) Active shooter
  - (2) Evacuation (non-fire)
  - (2) Bomb threat
  - (2) Lockdown

***A school security drill must be conducted within the first 15 days of the start of the school year.***

# School Security and Student Safety 2020-2021

**P.L. 2019, c. 33 (2/4/19) – Alyssa’s Law** – requires public school buildings to be equipped with panic alarm linked to local law enforcement. For use in school security emergency including, but not limited to, a non-fire evacuation, lockdown or active shooter situation. Silent alarm, no panic light. Paid for by school security bonds. Effective 9/1/19

# School Security and Student Safety 2020-2021

## **P.L. 2019, c. 33 (2/4/19) – Alyssa’s Law**

- In December 2019, the New Jersey Schools Development Authority (NJSDA) adopted regulations addressing Procedures for Compliance with Alyssa’s Law and, in collaboration with NJDOE, issued Preliminary Guidance on Alyssa’s Law Compliance and School Security Grants.
- NJDOE Guidance – Preliminary Guidelines, Updated 4/2020
  - [Alyssa’s Law Compliance and School Security Grants PRELIMINARY GUIDELINES](#)
- Release of Alyssa’s Law Compliance Application on NJDOE Homeroom - 4/15/2020 - **deadline extended to September 14, 2020**
  - [Release of Alyssa’s Law Compliance Application on NJDOE Homeroom](#)

# Evidence of Good Faith

- Supplies on back order
- Planning necessary professional development for staff, parents, students
- Documented efforts to identify and recruit staff to fill shortages
- Applying for funding through FEMA or other potential sources
- Adopting required policies/protocols
- ***KEY – Documenting in writing any gaps identified in ability to meet standards – principal to superintendent, superintendent to BOE, Supt/BOE to NJDOE***

# Free Webinars

## Restart and Recovery Series

July 2	<a href="#"><u>Essential First Steps</u></a>
July 21	<a href="#"><u>Addressing Leave Requests, Reasonable Accommodations and Staff Member Rights</u></a>
July 28	<a href="#"><u>Addressing Building, Grounds and Transportation</u></a>
Aug 4	<a href="#"><u>Working with Parents</u></a>
Aug 13	<a href="#"><u>Latest Guidance on Meal Service and Other Recent Emergency Management Developments</u></a>

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

# Free Webinars

## Pandemic Response Series

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

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

# Conclusion

- Thank you for choosing professional development with LEGAL ONE!
- Visit our website for more courses that can support your work at <http://www.njpsa.org/legalonenj/>
- If you have any questions about this presentation or suggestions for future seminars, please send an email to [legalone@njpsa.org](mailto:legalone@njpsa.org)