

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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BOCES District Superintendents
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FROM: Shannon L. Tahoe, Interim Commissioner of Education
RE:

Key Actions Steps for School Districts

Ground yourself and your staff in the facts and stay up to date on the current status of COVID-19 in New York. The best source of information right now is the [New York State Department of Health \(DOH\) Novel Coronavirus webpage](#). You can also find information on the [New York State Education Department's \(NYSED's\) COVID-19 website](#), including [guidance on when school closures are required and cleaning and disinfection guidance for primary and secondary schools as well as reporting requirements for school closures](#). The site also includes a link to Centers for Disease Control (CDC) resources and information. Both the DOH and CDC websites are updated regularly.

Continue to engage in routine infection control procedures. It is important to emphasize—and teach, when necessary—good personal hygiene practices to prevent the spread of viruses. This includes appropriate handwashing, covering coughs, and staying home when sick. Also, standard cleaning and disinfecting procedures are typically adequate to slow the spread of respiratory illness.

Establish an open line of communication with your [Local Health Department \(LHD\)](#). LHDs protect the health of their communities from disease and harm before, during, and after emergencies. Now is the time to work together with your community to prepare for the possibility that “social distancing” measures will be taken by State and local government, such as the cancelation of public gatherings, and the closing of businesses, schools, and/or childcare programs. Schools with questions regarding student or staff exposure to COVID-19 should be directed to their local health department. Decisions about the need for exclusion and the length of the exclusion period for students and staff exposed to or with confirmed cases of COVID-19 will be made by local health departments according to [jointly issued guidance from New York State Department of Health and New York State Education](#). **As a reminder, while schools have the authority to exclude a student in the public schools who shows symptoms of any communicable or infectious disease reportable under the public health law that imposes a significant risk of infection of others in the school, schools DO NOT have the authority to exclude well or asymptomatic students and staff based on race, country of origin, religious affiliation or any of these perceived statuses.**

Routinely communicate with your school community. This includes communicating with your collective bargaining agents and contracted educational providers, about this evolving situation. Staff, students, and families should know where to go to find accurate, factual sources of information.

When preparing for a potential COVID-19 outbreak, school officials must not rely on assumptions or stereotypes related to race, color, or national origin in identifying students, families, or

- **Designing for Unique Needs of All Students.** Instructional design, course design and plans for support must be aligned with the skill level of age groups and abilities, including students with disabilities and English Language Learners, to the greatest extent possible. For example, those serving the elementary and middle-school levels might have to consider creating instructional materials for both students and parents, while high school students are likely more capable independent learners.
- **Supporting System Orientation/Preparation.** Orientation/preparation is necessary for faculty, staff, students, and parents on the use of continuity of learning systems to ensure true continuity and accessibility.
- **Ensuring Accessibility.** Not all students may have access to the Internet, phone lines, TV or radio at the same time, or at all, during a prolonged school closure or student absence. Therefore, it is important to offer a variety of methods of learning. Districts considering online learning will need to ensure that the means used complies with all applicable laws, including the Family Educational Rights and Privacy Act and Education L-myuca. 2(s)Tj

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student's home. Creating a contingency plan gives the student's service providers and the student's parents an opportunity to reach agreement as to what circumstances would trigger the use of the student's distance learning plan and the services that would be provided during the closure.

- Review how the closure impacts the delivery of special education and related services to students eligible for special education services. If a student does not receive services during a closure, the Committee on Special Education must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost.

Child Nutrition Services.

The Richard B. Russell National School Lunch Act authorizes the provision of meals to children who are not in school during unanticipated school closures through the Summer Food Service Program (SFSP) or the National School Lunch Program's Seamless Summer Option (SSO). Under normal circumstances, these meals must be offered in a congregate setting (7 CFR 225.6(e)(15)) and at non-school sites (7 CFR 225.6(d)(1)(iv)). However, during a public health emergency due to COVID-19, social distancing may be necessary to avoid spread of the virus. The USDA requires

extent permitted by federal law. Additionally, NYSED will ensure that no school or district is

Accountability Implications of COVID-19

NYSED will work to ensure that schools are not negatively impacted because of disruptions caused by the COVID-19 virus, to the extent authorized under Federal law. Section 8401 of the ESEA (20 U.S.C. § 7861) permits the Secretary to grant waivers of certain ESEA requirements and, thus, allows the Department to provide some flexibility to schools, districts, and states that may be necessary due to the impact of COVID-19 on the provision of educational services. In addition, Commissioner's Regulations contain a provision regarding extraordinary and temporary circumstances that is explicitly designed to address instances where circumstances beyond the control of schools, such as a pandemic situation, impact an accountability determination. The Department is actively reviewing current federal and state regulations pertaining to accountability determinations and requirements and is working to identify appropriate flexibilities and/or modifications based on the extent of the disruptions caused by the COVID-19 virus.

As detailed in the [March 12, 2020 Fact Sheet on Assessments and Accountability](#), USDOE will consider a targeted one-year waiver of the requirement to identify a school for comprehensive or targeted support and improvement if the reason for the identification was related to the school being closed for a significant portion of the school year. Additionally, USDOE has indicated that it will consider targeted one-year waivers for an impacted school to not factor the participation rate into its Academic Achievement indicator and to exclude the chronic absenteeism indicator from a State's accountability system. **The Department will apply for such waivers for schools impacted by the extraordinary circumstances associated with COVID-19 to the greatest extent permitted by federal law.**

In addition to the potential impact on accountability, NYSED is also working with the United States Department of Education to determine the flexibility that will be offered states to address fiscal requirements such as: maintenance of effort; the requirement to obligate funds in the current Federal fiscal year for providing equitable services to eligible private school students, teachers, and families; and the limitation on carrying over no more than 15 percent of Title I, Part A funds. As more information becomes available it will be shared with the field.

School Closure

NYSED must be able to monitor when schools are closing across the State during a crisis and when a school's emergency response plan is activated. Pursuant to Commissioner's Regulation 155.17(f), each superintendent of a school district, every board of cooperative educational services (BOCES) and county vocational education and extension board, the chancellor of the City School District of the City of New York, and each charter school leader shall notify the Commissioner immediately when the emergency plan or building-level school safety plan is activated and results in the closing of a school, including closure for an outbreak of COVID-19, and shall provide such information as the Commissioner may require. Additionally, pursuant to Education Law §215, the Commissioner may require duly verified reports from any school or institution under the educational supervision of the State and may require such information and in such form as Commissioner may prescribe.

Therefore, effective immediately, each public school district, charter school and BOCES must notify the Department immediately when the emergency plan or building-level school safety plan

is activated and results in the closing of a school using the **Report of School Closure** form. Similarly, when it is determined that it is safe to re-open the school(s) the CEO must inform the Department via the **Report of School Re-Opening**. Both reports are available in the SED Monitoring and Vendor Support System application in the NYSED Business Portal. [Notification Regarding Closure of a School Building](#) (Public Schools); [Notification Regarding Closure of a Nonpublic School](#).

Sharing of Student Information

Under the Family Educational Rights and Privacy Act (FERPA), personally identifiable information (PII) from a student's education records, including student health records, may be disclosed by educational agencies and institutions to appropriate parties in connection with a health or safety emergency, without the consent of the parent or eligible student, if knowledge of the information is necessary to protect the health or safety of the student or other individuals 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36. For more information and additional guidance, please refer to the [March 2020 U.S. Department of Education – Student Privacy Office's FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions \(FAQ's\)](#) issued March 12, 2020 and prior [U.S. Department of Health and Human Services and U.S. Department of Education Joint Guidance](#).

Under Education Law § 2-d, the use or disclosure of personally identifiable information for an administrative purpose authorized or required by law by a person acting exclusively in his or her capacity as an employee of an educational agency, New York state or any of its political subdivisions; any court; or the federal government, is permitted ([see](#) Education Law §2-d[7][d]). The PII disclosed must be limited to only that necessary to comply with the law's requirements. The Department recommends that the educational agency ensures that such requests for PII are in writing, the identity of the requester is reasonably verified, and a record of the request for PII and what PII is disclosed is retained by the educational agency.

In compliance with state law and regulation, educational agencies must take measures to protect students' personally identifiable information from unauthorized access when providing information to officials or when considering using digital (distance) learning platforms. Examples of such measures include de-identifying data to prevent the public disclosure of students personally identifiable information, and the use of encryption or an equivalent technical control that renders personally identifiable information unusable, unreadable or indecipherable to unauthorized persons when transmitted electronically.

180-Day Requirements

[Governor Executive Order No. 202.1](#), issued 3/13/2020 17-1 (ue)4gi ce,<j EMC8Td [(w i) (f)3 -Tj 0.002 T

