

WASB Legal and Legislative Video Update, February 17, 2021, 12 pm

WASB Staff Counsel will address the following topics:

- I. Important School Board Election Dates
- II. Statewide Executive Order Requiring Face Coverings
- III. Leave Accommodations
- IV. Vaccine Requirements for Students and Staff
- V. Teacher Contract Renewal and Nonrenewal Timelines
- VI. New CDC and US Department of Education Guidance on Reopening and Operating Schools

Here are a few notes and links relevant to those topics:

WASB LEGAL UPDATE

I. Important School Board Election Dates

February 16, 2021 – [Spring Primary Election](#)

On or About February 17, 2021 – [Receipt of Election Materials and Other Related Duties \(If a Primary Election Was Held\)](#)

On or About February 17 to 23, 2021 – [Canvass of Election Returns and Written Determination of Primary Results \(If a Primary Election Was Held\)](#)

The Elections Commission advises that appointed members of the board of canvassers should take and file an oath of office prior to undertaking any duties as an election official. The school district clerk or any notary may administer the oath and Form EL-154 may be used.

The board of canvassers shall prepare a written statement showing the numbers of votes cast for each person for each office and for and against each question and shall prepare a determination showing the names of the persons who have won nomination to the school board and the results of any school district referendum. Each statement and determination shall be attested by each of the canvassers, and the statement and determination shall be filed in the school district office. *Sections [7.53\(3\)\(a\)](#) and [120.06\(14\)](#).*

The board of canvassers must wait to begin its work until after the municipal clerk(s) have delivered the tally sheets, inspectors' statements, ballots, and applicable envelopes and materials to the school district clerk. The municipal clerks are generally required to deliver these materials no later than 4 p.m. on the day after the election. *Sections [7.51\(5\)\(b\)](#) and [7.53\(3\)\(a\)](#).*

The latest possible date and time that the canvass may commence is 9 a.m. on the Tuesday after the election. *Section [7.53\(3\)\(a\)](#).*

Once the canvassing of the election begins, it is to continue, without adjournment, until it is completed. However, as an exception to this rule, if the board of canvassers has met before 4 p.m. on the Monday after the election and thereafter receives amended statements, tally sheets, and lists from a municipal clerk for provisional ballots that are eligible to be counted under s. [6.97\(4\)](#), then the board of canvassers must reconvene no later than 9 a.m. on the Tuesday after the election and adjust the returns accordingly. *Sections [7.51\(5\)\(b\)](#) and [7.53\(3\)\(a\)](#).*

In all cases, the board of canvassers must complete the canvass and prepare its statements and determinations no later than 4 p.m. on the Tuesday after the election. [Section 7.53\(3\)\(a\)](#).

On or About February 17 to 26, 2021 – Recount Request May Be Filed (If a Primary Election Was Held)

Any candidate voted for at any election may request a recount. The petitioner shall file a verified petition or petitions accompanied by the fee prescribed by law, if any, with the school district clerk not earlier than the time of completion of the canvass and not later than 5 p.m. on the third business day following the last meeting day of the board of canvassers determining the election for that office. [Section 9.01\(1\)\(a\)](#).

On or About February 19 to 26, 2021 –

Drawing of Lots for Ballot Order Following any Primary Election
School District Clerk Certifies Nominations and Ballot Order to County Clerk(s) (If a Primary Was Held)

On or Before March 15, 2021 – Provide Municipal Clerk(s) with Ballots (If Required*)

On or About March 19, 2021 – Notify Non-Exempt Committees of Duty to File a Preelection Campaign Finance Report

The WASB 2021 Election Schedule and other school board election resources can be found here: [Elections Resources | Wisconsin Association of School Boards \(wasb.org\)](#)

II. Statewide Executive Order Requiring Face Coverings

On 2/4/21, the Assembly concurred in a joint resolution ([SJR3](#)) previously passed by the Senate, resulting in the termination of both Executive Order #104 and a companion Emergency Order regarding face coverings that had been issued by Governor Evers on January 19, 2021. However, after the Assembly action was announced, Governor Evers immediately signed [Executive Order #105](#) (2/4/21) and [Emergency Order #1](#) (2/4/21) establishing a statewide public health emergency and, once again, requiring face coverings in public places to protect public health and safety. The new orders are effective immediately. The Governor's February 4th orders reflect an ongoing power struggle between the Governor and Republicans in the state legislature over the Governor's authority to issue successive emergency declarations and emergency orders. Court challenges to previous orders are still pending.

III. Unpaid Leave Requests Once Paid Local Leave and FMLA has Expired.

Once an employee runs out of paid local leave and unpaid state and/or federal family and medical leave the district would need to check its policies and/or employee handbook to see if it addresses any unpaid medical leave options for an employee.

If the district provides a local unpaid leave option and the employee does or has made a request for an unpaid leave of absence, the district can consider it pursuant to the terms of the employee handbook or board policy. One aspect of the leave request that is crucial in determining if you have to give the employee an extended leave of absence and a contract for next year is the length of the leave of absence and how the length may impact any rights that the employee may have under the Americans with Disabilities Act (ADA) or Wisconsin Fair Employment Act (WFEA) if the employee has a health condition that is related to a disability.

Underneath the Americans with Disabilities Act, the Act forbids discrimination against a "qualified individual on the basis of disability." Id. § 12112(a). A "qualified individual" with a disability is a person who, "with or without reasonable accommodation, can perform the essential functions of the

employment position.” Id. § 12111(8). So defined, the term “reasonable accommodation” is expressly limited to those measures that will enable the employee to work.

The Equal Employment Opportunity Commission has held that “leave as a reasonable accommodation is consistent with this purpose [*the purpose of the ADA’s reasonable accommodation obligation is to require employers to change the way things are customarily done to enable employees with disabilities to work*] when it enables an employee to return to work following the period of leave.

<https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act>

In [Severson v. Heartland, 7th Circuit, September 20 2017](#) the court held that “*an employee who needs long-term medical leave cannot work and thus is not a “qualified individual” under the ADA.* *Byrne v. Avon Prods., Inc., 328 F.3d 379, 381 (7th Cir. 2003).* With support from the EEOC, Severson urges us to retreat from or curtail our decision in Byrne. We decline to do so. Byrne is sound and we reaffirm it: A multi-month leave of absence is beyond the scope of a reasonable accommodation under the ADA.”

As noted from the above, the EEOC and 7th Circuit have different views on the role of unpaid leaves of absence as a reasonable accommodation under the ADA. Based upon the 7th circuit court of appeals decision a district may be able to deny an employee’s application for leave since the employee cannot perform the essential functions of the position with or without an accommodation.

The only other issue that may arise underneath the decision to not extend or grant an unpaid leave is a potential accommodation request underneath the Wisconsin Fair Employment Act. The Fair Employment Act is less clear on the requirements, or lack thereof, regarding extending an unpaid leave as an accommodation to an employee with a disability.

IV. Vaccine Requirements for Students and Staff

The Food and Drug Administration has issued Emergency Use Authorizations (EUA) for two vaccines for COVID-19. The FDA has stated the following regarding EUAs:

How will vaccine recipients be informed about the benefits and risks of any vaccine that receives an EUA?

FDA must ensure that recipients of the vaccine under an EUA are informed, to the extent practicable given the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, that they have the option to accept or refuse the vaccine, and of any available alternatives to the product. Typically, this information is communicated in a patient “fact sheet.” The FDA posts these fact sheets on our website.

[Emergency Use Authorization for Vaccines Explained | FDA](#)

The EUA is an interim step in the approval process and the FDA expects vaccine manufacturers to continue clinical trials and pursue licensure (approval).

On December 16, 2020, the EEOC published updated guidance regarding vaccinations.

ADA and Vaccinations

1. For any COVID-19 vaccine that has been approved or authorized by the Food and Drug Administration (FDA), is the administration of a COVID-19 vaccine to an employee by an employer

(or by a third party with whom the employer contracts to administer a vaccine) a “medical examination” for purposes of the ADA? (12/16/20)

No. The vaccination itself is not a medical examination. As the Commission explained in [guidance on disability-related inquiries and medical examinations](#), a medical examination is “a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual’s physical or mental impairments or health.” Examples include “vision tests; blood, urine, and breath analyses; blood pressure screening and cholesterol testing; and diagnostic procedures, such as x-rays, CAT scans, and MRIs.” If a vaccine is administered to an employee by an employer for protection against contracting COVID-19, the employer is not seeking information about an individual’s impairments or current health status and, therefore, it is not a medical examination.

Although the administration of a vaccination is not a medical examination, pre-screening vaccination questions may implicate the ADA’s provision on disability-related inquiries, which are inquiries likely to elicit information about a disability. If the employer administers the vaccine, it must show that such pre-screening questions it asks employees are “job-related and consistent with business necessity.” [See Question 2.](#)

2. According to the CDC, health care providers should ask certain questions before administering a vaccine to ensure that there is no medical reason that would prevent the person from receiving the vaccination. If the employer requires an employee to receive the vaccination from the employer (or a third party with whom the employer contracts to administer a vaccine) and asks these screening questions, are these questions subject to the ADA standards for disability-related inquiries?

Yes. Pre-vaccination medical screening questions are likely to elicit information about a disability. This means that such questions, if asked by the employer or a contractor on the employer’s behalf, are “disability-related” under the ADA. Thus, if the employer requires an employee to receive the vaccination, administered by the employer, the employer must show that these disability-related screening inquiries are “job-related and consistent with business necessity.” To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others. [See Question K.5.](#) below for a discussion of direct threat.

By contrast, there are two circumstances in which disability-related screening questions can be asked without needing to satisfy the “job-related and consistent with business necessity” requirement. First, if an employer has offered a vaccination to employees on a voluntary basis (i.e. employees choose whether to be vaccinated), the ADA requires that the employee’s decision to answer pre-screening, disability-related questions also must be voluntary. [42 U.S.C. 12112\(d\)\(4\)\(B\)](#); [29 C.F.R. 1630.14\(d\)](#). If an employee chooses not to answer these questions, the employer may decline to administer the vaccine but may not retaliate against, intimidate, or threaten the employee for refusing to answer any questions. Second, if an employee receives an employer-required vaccination from a third party that does not have a contract with the employer, such as a pharmacy or other health care provider, the ADA “job-related and consistent with business necessity” restrictions on disability-related inquiries would not apply to the pre-vaccination medical screening questions.

The ADA requires employers to keep any employee medical information obtained in the course of the vaccination program [confidential](#).

3. Is asking or requiring an employee to show proof of receipt of a COVID-19 vaccination a disability-related inquiry? (12/16/20)

No. There are many reasons that may explain why an employee has not been vaccinated, which may or may not be disability-related. Simply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be “job-related and consistent with business necessity.” If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

ADA and Title VII Issues Regarding Mandatory Vaccinations

4. Where can employers learn more about Emergency Use Authorizations (EUA) of COVID-19 vaccines?

Some COVID-19 vaccines may only be available to the public for the foreseeable future under EUA granted by the FDA, which is different than approval under FDA vaccine licensure. The [FDA has an obligation](#) to:

[E]nsure that recipients of the vaccine under an EUA are informed, to the extent practicable under the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, that they have the option to accept or refuse the vaccine, and of any available alternatives to the product.

The FDA says that this information is typically conveyed in a patient fact sheet that is provided at the time of the vaccine administration and that it posts the fact sheets on its website. More information about EUA vaccines is available on the [FDA’s EUA page](#).

5. If an employer requires vaccinations when they are available, how should it respond to an employee who indicates that he or she is unable to receive a COVID-19 vaccination because of a disability?

The ADA allows an employer to have a [qualification standard](#) that includes “a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.” However, if a safety-based qualification standard, such as a vaccination requirement, screens out or tends to screen out an individual with a disability, the employer must show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” [29 C.F.R. 1630.2\(r\)](#). Employers should conduct an individualized assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. A conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus at the worksite. If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent [undue hardship](#)) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat.

If there is a direct threat that cannot be reduced to an acceptable level, the employer can exclude the employee from physically entering the workplace, but this does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities. For example, if an employer excludes an employee based on an inability to accommodate a request to be exempt from a vaccination requirement, the employee may be entitled to accommodations such as performing the current position remotely. This is the same step that employers take when physically excluding employees from a worksite due to a current COVID-19 diagnosis or symptoms; some workers may be entitled to telework or, if not, may be eligible to take leave under the Families First Coronavirus Response Act, under the FMLA, or under the employer's policies. See also [Section J, EEO rights relating to pregnancy](#).

Managers and supervisors responsible for communicating with employees about compliance with the employer's vaccination requirement should know how to recognize an accommodation request from an employee with a disability and know to whom the request should be referred for consideration. Employers and employees should engage in a flexible, interactive process to identify workplace accommodation options that do not constitute an undue hardship (significant difficulty or expense). This process should include determining whether it is necessary to obtain supporting documentation about the employee's disability and considering the possible options for accommodation given the nature of the workforce and the employee's position. The prevalence in the workplace of employees who already have received a COVID-19 vaccination and the amount of contact with others, whose vaccination status could be unknown, may impact the undue hardship consideration. In discussing accommodation requests, employers and employees also may find it helpful to consult the Job Accommodation Network (JAN) website as a resource for different types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

Employers may rely on CDC recommendations when deciding whether an effective accommodation that would not pose an undue hardship is available, but as explained further in [Question 7.](#), there may be situations where an accommodation is not possible. When an employer makes this decision, the facts about particular job duties and workplaces may be relevant. Employers also should consult applicable Occupational Safety and Health Administration standards and guidance. Employers can find OSHA COVID-specific resources at: www.osha.gov/SLTC/covid-19/.

Managers and supervisors are reminded that it is unlawful to disclose that an employee is receiving a reasonable accommodation or retaliate against an employee for [requesting an accommodation](#).

6. If an employer requires vaccinations when they are available, how should it respond to an employee who indicates that he or she is unable to receive a COVID-19 vaccination because of a sincerely held religious practice or belief?

Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act. Courts have defined "undue hardship" under [Title VII](#) as having more than a *de minimis* cost or burden on the employer. EEOC guidance explains that because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief. If, however, an employee requests a religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

7. What happens if an employer cannot exempt or provide a reasonable accommodation to an employee who cannot comply with a mandatory vaccine policy because of a disability or sincerely held religious practice or belief?

If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to [exclude](#) the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities.

Title II of the Genetic Information Nondiscrimination Act (GINA) and Vaccinations

8. Is Title II of GINA implicated when an employer administers a COVID-19 vaccine to employees or requires employees to provide proof that they have received a COVID-19 vaccination?

No. Administering a COVID-19 vaccination to employees or requiring employees to provide proof that they have received a COVID-19 vaccination does not implicate Title II of GINA because it does not involve the use of genetic information to make employment decisions, or the acquisition or disclosure of “genetic information” as defined by the statute. This includes vaccinations that use messenger RNA (mRNA) technology, which will be discussed more below. As noted in Question K.9. however, if administration of the vaccine requires pre-screening questions that ask about genetic information, the inquiries seeking genetic information, such as family members’ medical histories, may violate GINA.

Under Title II of GINA, employers may not (1) use genetic information to make decisions related to the terms, conditions, and privileges of employment, (2) acquire genetic information except in six narrow circumstances, or (3) disclose genetic information except in six narrow circumstances.

Certain COVID-19 vaccines use mRNA technology. This raises questions about genetics and, specifically, about whether such vaccines modify a recipient’s genetic makeup and, therefore, whether requiring an employee to get the vaccine as a condition of employment is an unlawful use of genetic information. The CDC has explained that the mRNA COVID-19 vaccines “do not interact with our DNA in any way” and “mRNA never enters the nucleus of the cell, which is where our DNA (genetic material) is kept.” (See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html> for a detailed discussion about how mRNA vaccines work). Thus, requiring employees to get the vaccine, whether it uses mRNA technology or not, does not violate GINA’s prohibitions on using, acquiring, or disclosing genetic information.

9. Does asking an employee the pre-vaccination screening questions before administering a COVID-19 vaccine implicate Title II of GINA?

Pre-vaccination medical screening questions are likely to elicit information about disability, as discussed in [Question 2.](#), and may elicit information about genetic information, such as questions regarding the immune systems of family members. It is not yet clear what screening checklists for contraindications will be provided with COVID-19 vaccinations.

GINA defines “genetic information” to mean:

- Information about an individual’s genetic tests;
- Information about the genetic tests of a family member;

- Information about the manifestation of disease or disorder in a family member (i.e., family medical history);
- Information about requests for, or receipt of, genetic services or the participation in clinical research that includes genetic services by an individual or a family member of the individual; and
- Genetic information about a fetus carried by an individual or family member or of an embryo legally held by an individual or family member using assisted reproductive technology.

29 C.F.R. § 1635.3(c). If the pre-vaccination questions do *not* include any questions about genetic information (including family medical history), then asking them does not implicate GINA. However, if the pre-vaccination questions *do* include questions about genetic information, then employers who want to ensure that employees have been vaccinated may want to request proof of vaccination instead of administering the vaccine themselves.

GINA does not prohibit an individual employee’s own health care provider from asking questions about genetic information, but it does prohibit an employer or a doctor working for the employer from asking questions about genetic information. If an employer requires employees to provide proof that they have received a COVID-19 vaccination from their own health care provider, the employer may want to warn the employee not to provide genetic information as part of the proof. As long as this warning is provided, any genetic information the employer receives in response to its request for proof of vaccination will be considered inadvertent and therefore not unlawful under GINA. *See* 29 CFR 1635.8(b)(1)(i) for model language that can be used for this warning.

<https://www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance-publication-3>

Summary

If the vaccine were not under an EUA and the employer required the vaccine(s) accommodations would need to be considered for disabilities, health conditions and religious objections. Due to that fact, it is most likely more practical as of today to encourage employees to get the vaccine rather than requiring them to take it since there is ambiguity as to whether the EUA impacts an employer’s ability to require an employee to get a vaccine. Mandating the vaccine opens up potential issues underneath the FDA’s authorization statement and other potential issues as delineated above in the FAQ.

If an employee does not take the vaccine, the employer may look at other accommodations to reduce risk – personal protective equipment use by the employee, telework options, enhanced physical distancing, etc. An employer may be able to offer some modest additional payment, gift card, etc. to an employee who takes the vaccine. A financial penalty for refusing to take the vaccine may create issues under the ADA and Wisconsin Fair Employment Act for an employee with a disability that cannot take the vaccine or Title VII and the WFEA for an employee with a religious objection.

Other COVID-19 Vaccine Information and Resources:

DPI: [Updates: Stimulus, Academic Testing, Vaccines | Wisconsin Department of Public Instruction](#)

DPI has not received specific guidance from DHS regarding vaccinations for school staff including school nurses and school healthcare personnel who are in tier 1a. DHS has provided recommendations to local public health departments for coordination of COVID-19 vaccination of 1a unaffiliated health care workers. It is suggested that school districts contact and work with local public health departments to obtain vaccinations for those listed in the [Wisconsin-specific recommendations](#) developed by the [SDMAC](#).

Students or youth age 16+ who are working in a job training/shadowing/apprenticeship program alongside Tier 1a school health personnel may also be included in Tier 1a per SDMAC recommendations. Note that [there is not yet an approved vaccine for youth under age 16](#). The Pfizer vaccine is the only vaccine option for youth age 16 and 17. Not every vaccination site will have the Pfizer vaccine available.

[COVID-19: Vaccine Frequently Asked Questions for Stakeholders | Wisconsin Department of Health Services](#)

Have teachers been given any kind of priority for vaccination?

The prioritization of various groups of essential workers in Wisconsin is not yet known. There are a number of considerations to take into account. The ACIP published their Phase 1B [recommendations\(link is external\)](#) on December 20, 2020, and used CISA guidance to define frontline essential workers as the subset of essential workers likely at highest risk for work-related exposure to SARS-CoV-2, the virus that causes COVID-19, because their work-related duties must be performed on-site and involve being in close proximity (<6 feet) to the public or to coworkers, and included those who work in the education sector (teachers and support staff members), amongst other groups. Please see the ACIP recommendation for the complete list. The SDMAC is considering this guidance as they continue the discussion about what groups or individuals to recommend for Phase 1B in Wisconsin.

V. Teacher Contract Renewal and Nonrenewal Timelines

[Wisconsin Legislature: Section 118.22](#)

(1) In this section:

(a) "Board" means a school board, technical college district board, board of control of a cooperative educational service agency or county children with disabilities education board, but does not include any board of school directors in a city of the 1st class.

(b) "Teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the technical college system board and whose legal employment requires such certificate, license, or classification status, but does not include part-time teachers or teachers employed by any board of school directors in a city of the 1st class.

(2) On or before May 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before May 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract for the ensuing school year on or before May 15, shall accept or reject in writing such contract not later than the following June 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew the teacher's contract.

The WASB Nonrenewal Bulletin

[The WASB Nonrenewal Bulletin](#)

Boardman Clark LLP prepared this publication for the WASB for annual dissemination to member school districts.

The complexity of the nonrenewal process is such that this publication should not be used as a substitute for legal counsel. The Nonrenewal Bulletin will, however, serve as a useful resource for district personnel and school attorneys seeking a synopsis of many legal considerations that generally guide the nonrenewal of a teacher's individual contract.

VI. New CDC and US Department of Education Guidance on Reopening and Operating Schools

On February 12, 2021, the CDC released new guidance for reopening and operating K-12 schools during the pandemic. The new guidance includes an [Overview](#) and an [Operational Strategy for Reopening Schools](#). More CDC guidance for schools and child care centers can be found [here](#).

Mitigation strategies to reduce transmission of SARS-CoV-2 in schools

Regardless of the level of community transmission, all schools should use and layer mitigation strategies. Schools providing in-person instruction should prioritize two mitigation strategies:

- Universal and correct use of masks should be required.
- Physical distancing (at least 6 feet) should be maximized to the greatest extent possible.

Phased mitigation and learning modes

At any level of community transmission, there are options for in-person instruction (either full or hybrid) for all schools by strictly using mitigation strategies.

- In-person learning for elementary schools is likely to have less risk of in-school transmission than for middle schools and high schools.
- Families of students who are at increased risk of severe illness or who live with people at high risk should be given the option of virtual instruction regardless of the mode of learning offered.
- In-person instruction should be prioritized over extracurricular activities including sports and school events, to minimize risk of transmission in schools and protect in-person learning.
- Schools are encouraged to use cohorting or podding of students to facilitate testing and contact tracing, and to minimize transmission across cohorts.
- Students, teachers, and staff who are at high risk of severe illness or who live with people at high risk should be provided virtual options.

Vaccination for teachers and staff, and in communities as soon as supply allows

Teachers and school staff hold jobs critical to the continued functioning of society and are at potential occupational risk of exposure to SARS-CoV-2. In order to support safe school reopening, state, territorial, local, and tribal (STLT) officials should consider giving high priority to teachers in early phases of vaccine distribution.

Access to vaccination should nevertheless not be considered a condition for reopening schools for in-person instruction. Even after teachers and staff are vaccinated, schools need to continue mitigation measures for the foreseeable future, including requiring masks in schools and physical distancing.

On February 12, 2021, The US Department of Education released the first volume of the [COVID-19 Handbook](#). The first volume supplements [CDC's Operational Strategy for K-12 Schools through Phased Mitigation](#). ED's handbook provides practical examples and roadmaps to provide educators and staff with the tools they need to implement CDC's recommended safe practices for in-person learning. Highlights include:

Masking Practices

The handbook provides applicable strategies to promote universal and correct use of masks in schools by utilizing signage and school announcements to remind students and staff how to use masks. The handbook guides educators through working with students with disabilities who cannot wear a mask or safely wear a mask, consistent with CDC guidelines.

Physical Distancing Practices

The ED handbook details a variety of practical ways that educators and schools can practice physical distancing to mitigate the spread of COVID-19, including:

- Grouping students into a pod that stays together all day with their core teacher (and any aide or student teacher who is present), including for lunch and recess.
- Using cafeterias and auditoriums for classes.
- Staggering the use of communal spaces and reconfiguring bell schedules to minimize foot traffic.
- For transportation to school, seating one student per row and assigning each bus rider to a designated seat that is the same every day.

Roadmap for Stakeholder Engagement

A successful school reopening strategy requires engaging the entire school community to promote actions that will lead to a safe learning environment for all educators, staff, and students. ED's handbook lays out a roadmap for who should be at the table and suggests ways that school leaders and educators can conduct individual outreach activities and use surveys and virtual town halls to engage the community in an effort to reopen schools.