



# Appendix 1

## Returning to the Classroom: FAQs for School Leaders on Policy & Legal Implications of the February 2021 Federal Guidance on Reopening Schools

Last year, as school leaders faced school building closures and shifted to online and hybrid models of instruction, NSBA issued its guide entitled, *Setting a New Course: A Legal Guide to Operating Schools in the Pandemic Era*, to help schools navigate salient issues surrounding the pandemic. Nearly one year later, this appendix to the publication is intended to build on that guide by helping school leaders understand the latest federal guidance from the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Education (ED).

On Feb. 12, 2021, less than one month into a new presidential administration, two federal agencies released guidance developed to assist schools in reopening safely during the COVID-19 pandemic:

- CDC’s [Operation Strategy for K-12 Schools through Phased Mitigation](#) (Strategy); and
- ED’s [COVID-19 Handbook Volume 1: Strategy for Safely Reopening Elementary and Secondary Schools](#) (Handbook).

CDC’s approach focuses on assisting school districts in reopening schools and helping them stay open “through the consistent use of mitigation strategies, especially the correct use of masks and physical distancing.” ED’s resource supplements with specific considerations for schools as their leaders implement CDC’s recommendations.

In some communities, public schools have been open for in-person instruction, at least partially, for several months. In others (albeit few), no schools have yet opened in-person. Regardless of where schools may be in the reopening process, school leaders are raising questions about the federal guidance documents and what the guidance means for school operation plans amid the pandemic. This appendix to our guide offers responses to those questions based on the new federal guidance to inform current operation plans and adjustments going forward. School leaders also are encouraged to confer with their state school board associations for information or requirements specific to their jurisdictions.

### 1. Are school districts legally required to follow the strategies outlined in these documents?

No. These resources provide guidance and recommendations, which school districts are not legally required to follow. ED states that “this volume does not have the force and effect of law and it is not

binding in any way (except where statutory or regulatory requirements are referred to).<sup>2</sup> CDC explains that it “presents recommendations based upon the best-available evidence at the time of release.”

## 2. What will happen if a school district decides not to follow the strategies outlined in these documents?

School districts are not legally required to follow the strategies outlined in the Strategy or Handbook because those publications do not have the force or effect of law. However, school districts need to be careful about ignoring the federal agencies’ recommendations. The agencies provide best practices developed by scientists and specialists on an urgent public concern: how to reopen schools safely

4. What are the specific mitigation strategies that CDC suggests schools use to reduce the transmission of the virus and safely return to in-person learning?

According to CDC, five key strategies are essential to the safe return to in-person teaching:

- Universal and correct use of masks.
- Physical distancing.
- Handwashing and respiratory etiquette.
- Cleaning and maintaining healthy facilities.
- Contact tracing in combination with isolation and quarantine.

CDC emphasizes that universal mask-wearing and physical distancing are the most important components of this strategy. It advises school districts to make certain that students and staff universally and correctly wear masks and that physical distancing is at least six feet. It provides specific detailed guidance on how to properly perform each of these essential strategies. (See CDC guidance documents linked in endnotes 7-11.)

5. j.12 k /GS0 gs /T1\_1 63091 Td (•)Tj /Span.pAul ( )e ct26 (ain 0 (t5dent)81 (amm7 ((s 70 (.])Aul (virus and

Low Transmission Blue	Moderate Transmission Yellow	Substantial Transmission Orange	High Transmission Red
All schools: Universal and correct use of masks is required; implementing other key mitigation strategies: handwashing and respiratory etiquette; cleaning and maintaining healthy facilities; contact tracing and diagnostic testing in combination with quarantine and isolation.			
K-12 schools open for full in-person instruction  Physical distancing of 6 feet or more to the greatest extent possible		Elementary schools in hybrid mode; physical distancing of 6 feet or more required  Middle and high schools in hybrid learning mode or reduced attendance (f 6 f)17 (ee)2.1 (t or mor)25 (e r)25.1 (equir)25 (	Middle and high schools  Middle and high schoolsElemvsi32 1u2.1onl(Elemein-per mor).1 (s)7r

CDC's phased mitigation approach emphasizes the following key recommendations:

- K-12 schools should be prioritized for reopening and remaining open for in-person instruction over

In administering testing programs, school districts should consider their limitations. These include the incidence of false-positives or false-negatives associated with a particular test. Accurate testing only reveals if the virus is currently present. A negative test does not mean the person will not acquire the virus later. Keep in mind, also, that these are medical exams that must be confidential, and the results need to be maintained in a separate medical file. Further, personal protective equipment (PPE) should

district staff should be considered a mitigation strategy to protect staff and students. It does not suggest that vaccinations be required before teachers or other staff can return to school.

**10. Does CDC address vaccination of students?**

No. The CDC's strategy document does not address the vaccination of students.

**11. Does CDC suggest that schools take health equity into account in developing policies and procedures for returning to in-person learning?**

Yes. CDC does urge schools to consider health equity as they develop and implement reopening plans. Because of systemic health and social inequities, CDC notes, many racial and ethnic minorities are disproportionately affected by COVID-19. This includes children. In the absence of in-person education, many low-income students are disadvantaged because they do not have access to the technology needed to do their classwork and because they are more likely to need services such as food programs, special education services, after-school programs and other resources typically accessed through in-person schooling. To assist in slowing the spread of the virus and promoting a healthy environment for all students, CDC encourages school districts to partner with public health officials to safely open schools to alleviate this inequity where possible.

**12. Is ED's Handbook consistent with the strategies outlined by CDC? If so, how does it assist schools in adopting CDC's recommended strategies?**

ED's Handbook is designed to complement CDC's Strategy resource by providing schools with guidance and workable examples to implement CDC's recommended practices for in-person learning. The guidance in Volume I of the Handbook addresses physical distancing, masking, and stakeholder engagement.

**13. How does ED recommend that school districts consider the specific needs of disabled students in developing their plans for reopening schools?**

ED emphasizes that school districts must consider the specific needs of disabled students in developing their plans for reopening schools. Public schools must provide a free appropriate public education (FAPE) as required by federal disability law both in-person and remote learning environments.

ED notes three areas of concern for students with disabilities that schools should consider.

Mask-wearing. Some students with disabilities cannot wear a mask safely due to their disability. (( hoy)4 ( d)31 ( s f)16r)-6Handbook



Physical distancing. ED points out that physical distancing at school may be difficult for some students with disability related needs, including children who are blind and require sighted guides, children who are deaf and blind who require tactile interpreting, and some children with significant disabilities who have intensive needs<sup>28</sup>. Federal disability law requires schools to provide certain services to students with disabilities and to take an individualized approach to providing services. ED reminds schools to act in ways that are consistent with a student's individualized education program (IEP) or plan developed under Section 504 of the Rehabilitation Act of 1973 (504 plan). School districts and administrators should collaborate to facilitate safe in-person learning for the greatest number of students with disabilities as much as is feasible, ED notes.

Transportation. Schools also should consider transportation matters for disabled students, ED points out. If a school system provides transportation for students with disabilities as part of their IEP or 504 plan, schools should consider the reservation of specific seats that would not be used for other students during the day. Alternatively, the student's IEP or 504 team could discuss arranging for separate transportation for those students who require transportation to receive FAPE.

ED is expected to release additional volumes of the Handbook

**14. Do ED and CDC ask school districts to consider unique challenges facing certain student populations as they develop plans for reopening schools? If so, what kind of steps might a district take to address equity issues in making the decision to reopen schools for in-school learning?**

Yes. ED notes that historically underserved communities face unique challenges during the pandemic, including students from low-income families, students of color, English learners, students with disabilities, American Indian and Alaska Native students, students in foster care, and students experiencing homelessness. CDC suggests that school districts consider offering in-person learning for students without reliable access to broadband or technology devices, students with disabilities, children in foster care, children experiencing homelessness, children who rely on food programs, and others for whom remote learning is particularly challenging.

Schools also should consider students who may be at high risk for contracting the virus or developing COVID-19, according to ED. The Handbook cites CDC's recommendation that "students who are at increased risk of severe illness (including those with special healthcare needs) or who

live with people at increased risk should be given the option of virtual instruction regardless of the mode of learning offered.”

**15. Does ED say school districts can partner with local health departments to provide testing to students and staff without violating federal privacy laws?**

Yes. According to ED, school districts can and should partner with local health departments if they are going to test staff or students for COVID-19. See the answer to question 8 for legal, ethical, and practical issues that school districts should consider if they plan to test students or staff.

**16. What do CDC and ED recommend that schools consider in determining whether to bring back sports and other extracurricular activities?**

According to CDC and ED, if schools conduct sports activities during the pandemic, they should do so with an eye toward reducing the risk of virus transmission to players, families, coaches, and communities. They urge schools to consider generally:

- ensure that staff and students are properly screened and monitored for COVID-19 symptoms

- Presence of nonessential visitors or volunteers during practices or games.
- Travel required outside of the local community.

CDC also recommends:

-

- Not holding indoor practices for outdoor sports, and, where feasible, holding practices outdoors for indoor sports.
- Limiting or avoiding team meetings or social activities or holding such activities virtually.
- Avoiding travel to and from areas with high levels of community transmission.

**17. If schools can only remain partially open, what should they consider in prioritizing in-person instruction?**

If schools can only remain partially open, they should first make certain that they are following the fundamental aspects of the CDC's mitigation strategy, which includes requiring the universal and correct wearing of masks, physical distancing, handwashing, clean facilities, contact tracing, and diagnostic testing.

In addition to following other elements of the mitigation strategy, the Handbook

- Assigning each bus rider to a designated seat.
- Using seat assignments that load the bus from the rear forward (and unload from the front backward) to help reduce student contact.
- If a school district provides transportation for students with disabilities as part of their IEP or 504 plan, including medically fragile children, it should consider the reservation of specific seats that would not be used for other students during the day and would be subject to special cleaning precautions. Alternatively, the student's IEP or 504 team could discuss arranging for separate

## ENDNOTES

<sup>1</sup> Centers for Disease Control, Operational Strategy for K-12 Schools through Phased Mitigation, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>. (“CDC Strategy”)

<sup>2</sup> United States Department of Education, COVID-19 Handbook Volume 1: Strategies for Safely Reopening Elementary and Secondary Schools, <https://www2.ed.gov/documents/coronavirus/reopening.pdf>. (“ED

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

<sup>22</sup> Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191; Family Educational Rights and Privacy Act 20 U.S.C § 1232g; 34 CFR Part 99.

<sup>23</sup> Centers for Disease Control, Health Equity: Promoting Fair Access to Health, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/index.html>.

<sup>24</sup> If a student typically works with a Direct Service Provider (DSP), school administrators should review the DSP guidance and ensure that DSPs who enter the school building are aware of and follow the school's reopening plan.

<sup>25</sup> 34 CFR § 300.101.

<sup>26</sup> ED Handbook.

<sup>27</sup> ED Handbook.

<sup>28</sup> ED Handbook.

<sup>29</sup> ED Handbook.

<sup>30</sup>



1680 Duke Street, 2<sup>nd</sup> Floor, Alexandria, Virginia 22314-3493  
[nsba.org](http://nsba.org)