

Returning to School and Campus During the COVID- 19 Pandemic: Interpreting Current State Guidance

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Recent Executive Orders

- On August 21, 2020, Governor Pritzker issued Executive Order 2020-52 which reissues the previous COVID-19 EOs through September 19, 2020.
- On August 21, 2020, Governor Pritzker issued the most recent COVID-19 related Disaster Proclamation.

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ICCB Guidance

September 8, 2020 ICCB Guidance

- Guidance for reporting positive cases on College Website.
- The Governor's Office and IDPH encourages colleges to display the number of positive COVID-19 cases on their websites.
- Include both students and employees. Can combine or report separately.
- Update Weekly. Include numbers for the week and cumulative.
- Report only those who have actually been on campus.

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Employment Issues



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Employment Issues with Health Concerns and Fear of Returning to Campus

- Employee Resistance to Returning to Campus
- Employee Accommodation Requests and Considerations
- Employee Leave of Absence Requests
- Employee Compliance with COVID-19 Protocols

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Employment Issues with Health Concerns and Fear of Returning to Campus

- Is a general fear of COVID-19 contagion a basis for refusing to return to work?
 - No, it is not. However, there are a number of factors that employers should consider.

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Employment Issues with Health Concerns and Fear of Returning to Campus

- Employees who are resistant to returning to work for health reasons may be entitled to a leave of absence and/or ADA accommodations.
- Employers should communicate with any employee requesting not to return to campus to determine the basis for the request and what, if any, medical documentation may be requested from the employee.

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Employment Issues with Health Concerns and Fear of Returning to Campus

- Families First Coronavirus Response Act Leave
 - Emergency Paid Sick Leave
 - Emergency Family and Medical Leave Expansion
- Employer-Provided Leave
- Possible FMLA Rights

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Safety Measures

- COVID-19 Return to Work Scenarios

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Safety Measures

- Individuals who had close contact with someone who tested positive for COVID-19 or someone who is suspected of having COVID-19
 - *May return after 14-day quarantine period from the date of last contact with the individual.*

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Safety Measures

- Individuals who test positive for COVID-19 or are suspected of having COVID-19 **AND** had symptoms.
 - *Symptom-based strategy.* May return after: (1) at least 10 days have passed since symptom onset; and (2) at least 24 hours since resolution of fever (without medicine) and improvement of respiratory symptoms.
 - *Test-based strategy.* May return after: (1) Fever free (without medicine); (2) improvement in respiratory symptoms; and (3) two negative COVID-19 tests in a row, with testing done at least 24 hours apart.

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Safety Measures

- Individuals who test positive for COVID-19 but have **NO** symptoms.
 - Time-based strategy. May return after at least 10 days have passed since date of first positive COVID-19 test.
 - Test-based strategy. May return after two negative COVID-19 tests in a row, with testing done at least 24 hours apart.

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Safety Measures

- An individual exhibits one or more symptoms of COVID-19 but is not suspected of having COVID-19.
- *Example: A teacher experiences allergies every September, including a cough and runny nose. She experiences the same symptoms this September.*
- *May be possible to return in fewer than 10 days after onset of symptoms and 24 hours fever free.*

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Employee Face Coverings at Work

- ICCB and IBHE guidance refers Colleges to the IDPH and CDC rules on face coverings
- Colleges may require employees to wear masks at all times while in common areas or in the presence of others
- Employees who cannot wear face coverings for health or religious reasons may be entitled to accommodations

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Student-
Related Issues



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Instruction During Phase 4

- K-12 Education
 - Local discretion to utilize in-person instruction, remote learning, or a hybrid of the two strategies.
 - Clock hour requirements apply.
 - Remote instructional option must be provided to a student upon parent request.
 - Districts that offer in-person learning should have a plan to change to all or partial remote learning in the event of COVID-19 cases or outbreaks during the school year.
 - Current issues:
 - Parent requests to “opt out” of certain remote activities?

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Instruction During Phase 4

- Higher Education
 - Local discretion to utilize in-person instructional delivery, alternative instructional delivery methods, or a hybrid model.
 - To the extent an institution elects to resume in-person instruction, the institution should consider reasonable and appropriate accommodations for students who are medically unable to return to campus or who are at a higher risk according to the CDC.
 - Current issues:
 - Use of waivers or acknowledgment of risk forms for in-person clinical experiences?
 - Use of waivers for athletic participation?

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Health and Safety Considerations

- Social distancing measures
 - Smaller class sizes
 - Spacing considerations, particularly for labs and other spaces where specialized furniture/equipment are fixed
 - Adjustments to academic schedules
 - Limitations on building and/or classroom access
 - Limitations on student transitions between classrooms

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Health and Safety Considerations

- Face coverings
 - Exemptions for students with medical or disability-related needs
 - Documentation from healthcare provider is required.
 - Face coverings may be temporarily removed at school only in specific, limited circumstances (i.e. when eating/drinking, when outdoors and physical distancing of at least 6 feet can be maintained).

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Response to Positive or Suspected Cases

- A student with one or more COVID-19 symptoms should be immediately isolated from the school community.
- IDPH recommends evaluation and testing for all persons experiencing COVID-19 symptoms.
- Student should remain home until he/she fulfills the applicable requirements for returning.
- If a student is sent home with suspected COVID-19 symptoms, all of the student's siblings/household members should also be sent home for quarantine until all requirements for returning are fulfilled (these will vary).

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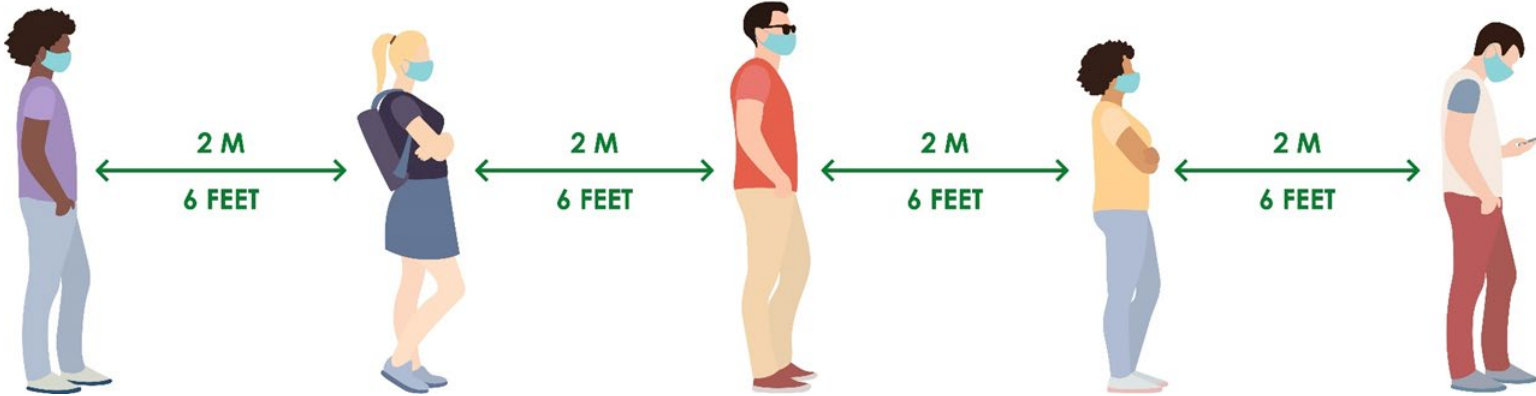
Response to Positive or Suspected Cases

- Notification procedures for:
 - (1) Immediate notification to local health department
 - (2) Notification to students (or parents/guardians) of COVID-19 positive case in classroom
 - (3) Notification to student (or parent/guardian) of “close contact” with COVID-19 positive individual
 - Quarantine is required.
- FERPA/ISSRA and confidentiality issues
 - “School official” exception
 - Health and safety emergency exception

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Facilities,
Operations and
Risk
Management
Considerations

Social Distance



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Access to Facilities: Risks and Challenges

Risks and Challenges of Third-Parties on Campus:

- Lack of control/supervision (or at least more people to control/supervise)
- Different interpretation of IDPH/CDC guidelines
- Potential liability

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Limiting Third-Party Use and Access to College Facilities

Considerations for Granting Use of or Access to College Facilities:

- Is the proposed use in the college's interest? Is there any financial impact?
- Is there an existing contractual right to use the facilities?
- What is the risk of exposure?
- Can the frequency, duration, and scope of the proposed or existing use be limited to reduce exposure?
- Are there contractual protections in place to protect the college?



Balancing Competing Interests: Trends and Tradeoffs

| Action Item | Risks | Benefits |
|--|---|--|
| Proceeding with campus construction projects. | Many additional third-party personnel on campus. Less control over contractor's COVID-protocols. Potential for positive case and an outbreak. | Utilize abnormally-low on-campus traffic to accelerate capital infrastructure projects. Reports of good competitive bid prices based on trends in construction industry. |
| Offering off-campus clinical programs to students. | Student or faculty contracts COVID as a result of participation. Possible claim. | Providing an attractive curriculum, boosting enrollment, accelerating students along career path. |
| Allowing facilities use by outside groups. | Properly staffing and monitoring event for compliance with health requirements. Possible COVID-contraction claim. | Supporting community through a difficult time. Providing opportunities to students. Drawing positive attention to campus. |

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Facilities and Operations Considerations

- Symptom and Close-Contact Screenings
 - Automated, Self-Certification, and Signage
- Procurement of Face Coverings, PPE, Hand Sanitizer and Cleaning Supplies
- Social Distancing Measures
- Cleaning and Disinfection
 - Facilities and Equipment
- Enhance Ventilation and HVAC Operations

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Contractual Protection: Mitigate and Shift Risks

- Termination / Suspension
- Insurance
- Indemnification
- Compliance with IDPH/CDC Guidance
- Control of Invitees and Enforcement
- Assumption of Risk

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Contagion Waivers: The Basics

1. The college identifies an abnormal risk arising from a specific activity (for example, a clinical program where nursing students are in close contact with COVID patients).
2. The college conditions participation in the clinical program on the student's execution of a waiver / assumption of risk agreement.
3. Generally, the parties have "freedom of contract," and the waiver or assumption of risk is an exculpatory agreement that will be enforced in court.
4. But, where the exculpatory agreement is contrary to public policy, it may not be enforceable. For example, the college cannot relieve itself of its statutory obligations (including the obligation to "admit all students qualified to complete any one of [its] programs...." 110 ILCS 805/3-17.)

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Liability Insurance and COVID-19: What To Know

- Generally, under a CGL insuring agreement, the policy is triggered when there is *bodily injury* and/or *property damage* caused by an *occurrence*.
- However, we then look to numerous exclusions to determine if there is coverage. The Communicable Disease Exclusion provides that the policy does not cover bodily injury or property damage arising out of the actual or alleged transmission of a communicable disease.
- Relevant questions:
 1. Does the policy exclude communicable disease?
 2. Will coverage change in the next policy period?
 3. Can we extend coverage with an endorsement or a separate policy? At what cost?

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Tort Immunity and Communicable Disease: Basic Considerations

Basic Discretionary Immunity

Section 2-201: a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

Section 1-109: A local public entity (i.e. the college) is not liable for an injury resulting from an act or omission of its employee where the employee is not liable (under 2-201).

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Tort Immunity and Communicable Disease: Basic Considerations

Discretionary Immunity – Communicable Disease

Section 6-104:

(a) Neither a local public entity nor a public employee is liable for an injury resulting from the policy decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community *if* such decision was the result of the exercise of discretion vested in the local public entity or the public employee, whether or not such discretion was abused.

(b) Neither a local public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

Questions?



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