

COVID-19 FAQs AND WHAT YOU SHOULD KNOW ABOUT RETURNING TO SCHOOL AUGUST 2020

The ongoing response to COVID-19 continues to put school districts and individual educators in uncharted territory. The legal team at the Keystone Teachers Association has received numerous calls and emails from teachers and support staff about returning to work when schools reopen in the fall. Your concerns are real and valid. Please know at KEYTA that we want a safe and healthy environment for when you return to the classroom. To help with your concerns, we have compiled COVID-19 FAQs that address items such as paid sick leave under the Families First Coronavirus Response Act, screening, testing, work conditions, exposure, and travel.

Readers should be aware that, as described below, many decisions are made locally. In addition, the situation can change rapidly. The information provided here is the best available at this time and will be updated as circumstances warrant.

What changes could teachers and other district staff see when schools reopen for the 2020-21 school year?

We all hope social distancing and work-from-home rules and guidelines have effectively blunted the effects of COVID-19. All Pennsylvanians, including educators, are aware of the moves taken by our Governor to begin a gradual reopening of the state. Predictions as to what will happen as this process unfolds vary widely. Obviously, it is too early to tell now what conditions will be like in August when the 2020-21 school year is slated to begin for most educators.

There are initiatives and proposals floating around the state regarding potential changes to public education next year. Some involve changes to the school year and some changes to education models. Because of the incredible diversity that exists across the state, it is impossible to make generalizations about how districts will tackle this challenge. Again, because no one knows now what the public health situation will be in August, September, and beyond, it is impossible to make sound predictions. Teachers and other educators should know that any changes that do occur will be locally driven and will therefore take local community and staff interests into account.

KEYTA is actively monitoring these developments and will report on them as new information becomes available.

Can a teacher be reprimanded or fired for disagreeing with their district's plan to reopen next school year?

The answer to this question is complicated. Teachers and other school district employees have protections regarding expressing their opinion. The most important is the right to expression protected by the First Amendment to the U.S. Constitution. But First Amendment protections are not absolute and do not apply in every situation. The U.S. Supreme Court has ruled the First Amendment does not apply when a government employee (all public school employees are government employees) comments on a matter involving his/her own job duties. The First Amendment only applies to comments made as a citizen.

In addition, even where the First Amendment does apply, the U.S. Supreme Court has ruled that there is a "balancing test," where the employee's right to express his/her opinion is weighed against the disruption that results from that opinion. There has to be some actual disruption—mere unhappiness by some may not be enough. But, if the speech affected teachers' ability to effectively communicate with each other because of differing views, it is possible that serious negative consequences could result because of this balancing test. In addition, it is almost always best to express concerns professionally. Although the First Amendment might provide protections from termination or other serious employment consequences, educating students is a very team-oriented project, and the ill will that can result from extreme or offensive communications can make the workplace very unpleasant and actually hurt the education the students will receive.



The teachers in my district were notified that our job descriptions were being changed, and we were asked to acknowledge that we had received the new job description. Can my district change my job description?

The answer is a big maybe; it depends on what the change is. Many districts have revised their job descriptions to include the duties essential to distance teaching. In most cases, the changes have not been dramatic and have consisted of items related to the new normal of technology-based communication and education without physical contact.

If the change to a job description would be considered reasonable, then a district would be on solid legal footing to make the change. A change in the job description would be considered legally reasonable if it were something a teacher could expect to be required to do. So, developing curriculum, using technology such as Zoom to share lessons with students, and communicating with parents and students are all within the normal expectations of teaching—even if the balance is substantially different now.

Should teachers consider changes to curriculum or assignments when schools reopen?

Teachers, particularly teachers who employ objects that will be shared between students, such as goggles in a science lab or athletic equipment in P.E. class or athletics, need to consult with their administrators regarding making changes to their curriculum or activities. If a student expresses a concern regarding sharing equipment, etc., a teacher should look to the administration for guidance on how to proceed.

Are employees required to notify their district if they are feeling symptomatic or test positive for COVID-19?

There may not be a legal requirement, but there is certainly an ethical obligation to do so.

Can a teacher be held responsible if a student becomes ill with COVID-19?

It is important for teachers and other school employees to remember they are likely not the ones deciding what the requirements will be in their local district, but they should be aware of and follow any restrictions and reporting that are put in place.

Must a school district inform the staff if an individual tests positive for the coronavirus?

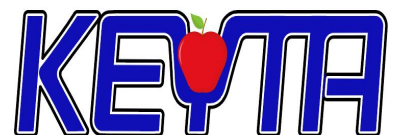
There is presently no specific legal requirement that staff be notified if an individual has tested positive for the coronavirus. There are also significant general restrictions on an employer or anyone with knowledge of an individual's medical or health information sharing that information with others, except reporting as necessary to a local health department.

What is a district required to do to disinfect or sanitize schools and vehicles, and what can a teacher or other staff member do on their own?

What a district is required to do depends to a great extent on whether the actions are preventive (prior to a confirmed exposure) or remedial (after a confirmed coronavirus exposure). What is required will depend on the district's emergency operation plan and any guidance from other entities, such as the local health department.

The Centers for Disease Control and Prevention (CDC) has also provided guidance to school districts on cleaning and disinfecting classrooms and vehicles, such as school buses.

Individual staff considering cleaning or sanitizing on their own should recognize that many factors need to be considered, such as possible sensitivities or allergies students or co-workers could have to cleaners, particularly those containing strong chemicals. A good rule of thumb would be to seek guidance from a supervisor or administrator before taking any steps regarding cleaning or sanitizing that would be out of the ordinary.



Can a district prohibit personal travel for students or staff?

A district is limited in prohibiting personal travel, but teachers and other staff should be aware that travel restrictions have and will continue to evolve as the economy reopens. Mandatory quarantines for visitors to some locations have already been in place, and these may be expanded or continued. Potential travelers need to be aware that restrictions may change rapidly, and travel to certain regions or contact with a known outbreak or an individual who has tested positive for COVID-19 may affect an individual's ability to return to work.

Can a district ask staff members whether they have traveled or where they have traveled to?

A district can make reasonable inquiries regarding travel if there is a legitimate basis for doing so. For example, a district could ask whether a teacher had traveled to an area where a quarantine was required. The inquiry should be limited to obtaining only the information necessary to determine the likelihood of exposure to a contagion like the coronavirus.

What should an educator do if they suspect a student may have the coronavirus?

It is likely individual districts will adopt local procedures prior to the return to the classroom. If a teacher or other staff member suspects a student is exhibiting symptoms consistent with exposure to the coronavirus, the individual should follow whatever protocol or procedure has been established locally. This will likely involve sending the student to the nurse's office and isolating the student, but the decision is a local one.

Teachers and other staff members should always be careful in their communications so as not to unnecessarily embarrass, stigmatize, or frighten a student suspected of being ill.

Can the district make a staff member stay home if they suspect the staff member is infected?

If a school district has a reasonable belief, based on objective evidence, that an employee poses a direct threat to the health and safety of others, a district can likely make the employee stay home. Again, to be reasonable, the belief must be based on actual evidence, not mere concern, even if it is in good faith. Evidence that an individual traveled to an area of quarantine or had actual contact with an infected individual or individuals could be the basis for a reasonable belief of a direct threat. This situation is evolving as health officials learn more about the transmission of the coronavirus.

It should be noted that a district can likely make any member of the staff stay at home regardless if they are a direct threat to health—as long as they are paid as if they are at work.

Can a staff member stay home if they are afraid of becoming infected?

Generally, a district is not required to allow a staff member to be absent simply due to that staff member's concern regarding an illness. However, if a staff member has a condition that would make an illness such as the coronavirus particularly dangerous, such as a person with a compromised respiratory system, the district would be obligated to consider an absence as a reasonable accommodation of a disability under the Americans with Disabilities Act.

Can a district require a teacher be tested for infection?

If a school district has a reasonable belief, based on objective evidence, that an employee poses a direct threat to the health and safety of others, a district can likely make the employee be tested. Again, to be reasonable, the belief must be based on actual evidence, not mere concern, even if it is in good faith. Evidence that an individual



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Does the Families First Coronavirus Response Act (FFCRA) apply to school employees?

Yes. The FFCRA is a new law to provide additional relief as a result of the COVID-19 pandemic. The FFCRA went into effect on April 1, 2020, and applies to all public-school employees, including teachers, administrators, and support staff. The FFCRA will apply to leave taken from April 1, 2020 through December 31, 2020. The FFCRA requires school districts to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

What kind of leave is provided by the FFCRA?

Generally, the FFCRA provides school employees with the following leave related to COVID-19:

- Emergency Paid Sick Leave - Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Caregiver Leave - Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- Expanded Family Medical Leave - Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

This is a new law and remains untested. For further guidance on the FFCRA, view the Department of Labor's website: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

If I am required to quarantine, can I use sick leave?

If an employee is required to be isolated, the employee's available sick leave may be used during the isolation and recovery period in addition to all available federal paid leave. An employee would also be covered under the FFCRA and the leave requirements outlined therein at least until December 31, 2020.

This COVID-19 FAQs sheet will be posted on the KEYTA website and updated as needed. However, members are encouraged to contact KEYTA directly at 717-763-1168 or info@keyta.org if you have any other specific questions or concerns regarding your duties, new school policies or working conditions.

