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TO: State Affiliate Executive Directors, UniServ Managers, and General Counsels

FROM: NEA Office of General Counsel

DATE: October 21, 2020

RE: Model Letters to School/District Regarding Health and Safety Issues: 1) Failure to Quarantine; 2) Failures of Mask-wearing and Social Distancing; and 3) Not Properly Cleaning/Sanitizing

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As you know, NEA maintains a [School and Campus COVID-19 Reporting Site](#), which allows individuals to 1) report COVID-19 outbreaks in schools; and 2) submit reports about health and safety concerns on a confidential basis. NEA reviews the reports received through this site to spot trends and develop litigation and advocacy strategies. As common health and safety issues arise, we are developing model letters, school board resolutions, and other template documents that can be customized by state and local affiliates.

The three (3) attached template letters address some of the most common health and safety issues described in the incoming reports received by NEA. This memorandum contains information about the template letters and tips for customizing them based on the specific problems encountered in a particular school or district, as well as the applicable state or local mandates or guidelines. State affiliates and locals can customize these letters to notify school administrators and officials of the following health and safety concerns:

- 1) Failure to implement and enforce quarantine protocols;
- 2) Failure to enforce mask requirements and/or social distancing; and
- 3) Failure to properly clean/disinfect.

## FAILURE TO QUARANTINE

This template is designed to provide an outline, with references to generally applicable federal standards and guidance on the issue of quarantine, that can be customized to describe the specific facts and relevant laws and policies in a particular school or district. In customizing this letter, there are some important points to keep in mind:

- 1) In addition to the public health guidance from the Centers for Disease Control and Prevention (CDC), which is cited and hyperlinked to in the model letter, be sure to review school and district policies and check with local or state legal counsel about whether there are any state or local mandates or guidelines related to quarantine. In addition, if there is a quarantine provision in your school reopening plan, a collective bargaining agreement, or a separate memorandum of understanding, be sure to include that as well.
- 2) Provide as much detail as you can about the problem **without identifying any individual(s) who has had COVID-19 symptoms or a positive test**. You can state generally that a staff member or student tested positive, but you should not include the name or any information that could be used to personally identify someone. Even if the person's identity has been openly discussed within the school, you should not include any identifying information about them in your letter. In the course of an investigation, there may be school officials that have a need to know this information if they do not already have it, at which point, it is advisable to consult with legal counsel about any concerns related to disclosing confidential health information.
- 3) For purposes of determining who should quarantine, [a "close contact" of a person infected with COVID-19 is defined by the CDC](#) as "[s]omeone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated." The CDC further illustrates that this 15-minute time period is cumulative over a 24-hour period, meaning for example, 3 periods of 5 minutes each in a day. In addition, the CDC advises of its position at this time that even those who were wearing a cloth face covering (as well as members of the general public wearing an N95 mask without proper training in using respiratory PPE) during their interactions with an infected person would be considered a "close contact" for these purposes.
- 4) Some schools may be trying to use rapid testing in lieu of requiring quarantining. This is not consistent with CDC recommendations. In its [Interim Considerations for Testing for K-12 School Administrators and Public Health Officials](#), the CDC states that "[a]ll persons who are identified as close contacts need to quarantine for 14 days, even if screening test results are negative, because they can still develop COVID-19 for up to 14 days after being exposed." In general, the CDC recommends that individuals who have been in close contact with someone with COVID-19 should be tested, but is clear that testing is not a substitute for self-quarantine: "[Even if you have had a negative test, you should still self-isolate for 14 days.](#)" With regard to rapid antigen tests, in particular, the CDC states that it "[does not recommend using antigen tests to make decisions about discontinuing isolation.](#)" See also, <https://www.health.harvard.edu/diseases-and->

[conditions/if-youve-been-exposed-to-the-coronavirus](#). There is suggested language in the template letter that can be used to object to the use of testing as a substitute for complying with the CDC-recommended quarantine period.

- 5) If you have already alerted school administrators about concerns related to the failure to quarantine, be sure to include this information in your letter.
- 6) In its [Indicators for Dynamic School Decision-Making](#) guidance, the CDC provides a color-coded guide for evaluating the risk of COVID-19 transmission in schools. If your geographic area is experiencing positivity rates over 5%, which is the threshold level recommended by the World Health Organization (WHO) for considering safe school reopening, and especially if your area falls into the “higher risk” or “highest risk” CDC categories (50+ new cases per 100,000 people and/or 8%+ positivity-rate within the last 14 day-period), you should emphasize that it is all the more crucial that the school adopt essential mitigation strategies.

## **FAILURE TO ENFORCE MASK REQUIREMENTS AND/OR SOCIAL DISTANCING**

This template letter is designed to provide an outline, with references to generally applicable federal standards and guidance on the issues of mask-wearing and/or social distancing. These two issues are included in the same letter because many of the incoming reports we have received with concerns about one of these issues also includes the other issue. This letter should be customized to describe the specific facts and relevant laws and policies in a particular school or district. In customizing this letter, there are some important points to keep in mind:

- 1) In addition to the public health guidance from the Centers for Disease Control and Prevention (CDC), which is cited and hyperlinked to in the model letter, be sure to review school and district policies and check with local or state legal counsel about whether there are any state or local mandates or guidelines related to mask-wearing and/or social distancing. In addition, if there are applicable provisions in your school reopening plan, a collective bargaining agreement, or a separate memorandum of understanding, be sure to include that as well.
- 2) Provide as much detail as you can about the problem(s). For example, with respect to mask-wearing, describe the locations where masks are not being consistently used, as well as how far apart people are during these interactions. Concerns about distancing should likewise be described with as many specific examples and details as possible, including locations where students and staff are closer than 6 feet, how long these interactions last for, and whether individuals are wearing masks.
- 3) If you have already alerted school administrators about concerns related to mask-wearing and/or social distancing, be sure to include this information in your letter.
- 4) With respect to mask-wearing, the [CDC includes in some of its guidance](#) a discussion about potential challenges schools may face if parents, caregivers, and guardians do not agree with mask requirements. If this is an issue in your community, it may be helpful to include this CDC guidance and to emphasize the recommendation that schools inform families of the CDC recommendations on masks. This same guidance also includes a chart that distinguishes between situations in which mask use is recommended and when masks “may be considered.”
- 5) In its [Indicators for Dynamic School Decision-Making](#) guidance, the CDC provides a color-coded guide for evaluating the risk of COVID-19 transmission in schools, which includes new case and positivity-rate data. If your geographic area is experiencing positivity rates over 5%, which is the threshold level recommended by the World Health Organization (WHO) for considering safe school reopening, and especially if your area falls into the “higher risk” or “highest risk” CDC categories (50+ new cases per 100,000 people and/or 8%+ positivity-rate within the last 14 day-period), you should emphasize that it is all the more crucial that the school adopt essential mitigation strategies.

## **FAILURE TO PROPERLY CLEAN/DISINFECT**

This template letter is designed to provide an outline, with references to generally applicable federal standards and guidance on cleaning and disinfecting. This letter should be customized to describe the specific facts and relevant laws and policies in a particular school or district. In customizing this letter, there are some important points to keep in mind:

- 1) In addition to the public health guidance from the Centers for Disease Control and Prevention (CDC), which is cited and hyperlinked to in the model letter, be sure to review school and district policies and check with local or state legal counsel about whether there are any state or local mandates or guidelines related to cleaning and disinfecting. In addition, if there is an applicable provision in your school reopening plan, a collective bargaining agreement, or a separate memorandum of understanding, be sure to include that as well.
- 2) Provide as much detail as you can about the problem(s). Potential issues with cleaning and disinfection can include, among others, failure to adequately and frequently clean high-touch surfaces; failure to properly close and disinfect areas used by a COVID-infected individual; improper use or storage of cleaning chemicals; and insufficient training and PPE for staff who are cleaning.
- 3) If you have already alerted school administrators about concerns related to cleaning and disinfecting, be sure to include this information in your letter.
- 4) In its [Indicators for Dynamic School Decision-Making](#) guidance, the CDC provides a color-coded guide for evaluating the risk of COVID-19 transmission in schools, which includes new case and positivity-rate data. If your geographic area is experiencing positivity rates over 5%, which is the threshold level recommended by the World Health Organization (WHO) for considering safe school reopening, and especially if your area falls into the “higher risk” or “highest risk” CDC categories (50+ new cases per 100,000 people and/or 8%+ positivity-rate within the last 14 day-period), you should emphasize that it is all the more crucial that the school adopt essential mitigation strategies.

## **ADDITIONAL RESOURCES**

As we continue to develop advocacy strategies around common health and safety concerns, please notify Alice O’Brien at [aobrien@nea.org](mailto:aobrien@nea.org) if there are particular issues on which guidance and tools such as template letters would be helpful.

Specific questions about the template letters can be directed to Keira McNett at [kmcnett@nea.org](mailto:kmcnett@nea.org) or Lubna Alam at [lalam@nea.org](mailto:lalam@nea.org).