



Public Health and Schools Toolkit

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ASTHO LEGAL PREPAREDNESS SERIES PUBLIC HEALTH & SCHOOLS TOOLKIT

Public Health Authorities in Schools

Fact Sheet

Overview

Federal guidance on school closures during the 2009 H1N1 influenza pandemic demonstrated how important school closure is as a public health tool to interrupt the spread of contagious diseases.¹ Closing schools is just one type of social distancing practice outlined in state pandemic and other emergency response plans that public health officials may turn to during infectious disease outbreaks. The 2009 H1N1 schools guidance also illustrated the challenges of implementing such a practice broadly where rates of infection, legal authorities, and social and economic factors can vary greatly by state and community. It raised questions about the authority of public health officials to institute social distancing measures in schools. This fact sheet highlights the legal and policy issues that arise regarding public health officials' authorities in schools such as closures or requiring that students or staff who are ill or have been exposed stay at home. (For additional information about public health authorities, see the [ASTHO Emergency Authority & Immunity Toolkit](#).)

Public Health and Education Legal Authorities

The legal relationships and authorities between health agencies and schools, school districts, school boards, and state education agencies vary by state and even by locality. State laws differ as to which agency or agencies have the authority to initiate school closure and other public health measures in schools, the conditions under which the authority may be exercised, and the scope of authorities permitted.

Conditions of Authority

The authority of a public health official to institute public health measures in schools and the types of authorities permitted can depend on whether an emergency has been declared.

- **Existing Authorities Without an Emergency Declaration**-State officials generally have existing broad powers to address emergency situations by virtue of the statutory authorities granted to their position without having to formally declare a state of emergency. A state health officer's existing authorities generally include a broad grant of authority to, among other things, abate nuisances, investigate the causes of disease, and institute quarantine measures. The determination to declare or not to declare an emergency has implications for the legal authorities and operational resources available to respond to an event.
- **Emergency Authorities**-An emergency declaration allows certain governmental officials to temporarily suspend governmental operations and implement response activities to address the emergency circumstances. The authority to declare an emergency is determined by law and reserved for a chief executive officer (e.g., a governor) and key senior governmental officials (e.g., a state health officer, state education director). In some states, local officials may be able to declare local emergencies. While unique to each state, generally the governor (or other official) may declare an emergency by issuing an executive order or other declaration that outlines the conditions giving rise to the emergency, the effective date and duration of the declaration, and the agency leading the response. Gubernatorial and other declarations may require legislative approval within a given time period or upon seeking renewal of the declaration.

State emergency declarations activate emergency authorities designed to facilitate the response and recovery to the emergency event. A state emergency declaration triggers a number of authorities and actions by state and/or local governments, such as: (1) activation of state emergency response plans and mutual aid agreements; (2) activation of state incident command systems

and emergency operation centers; (3) deployment of personnel, equipment, supplies, and stockpiles; (4) activation of statutory immunities and liability protections for responders; and (5) suspension or waiver of rules, regulations, and administrative procedures. In some states, an emergency declaration authorizes the waiver of specified statutory requirements.

Agencies Authorized to Act

Depending on the state or locality, several agencies generally have exclusive or shared authority to institute various public health measures in schools. The agency authorized to act can change depending on whether or not an emergency has been declared. State or local public agencies are generally vested with broad authority to protect the public's health and to control communicable diseases. Depending on a state's laws, these authorities can be used to institute public health measures such as requiring sick persons to stay home or canceling school assemblies and activities without an emergency declaration. During emergencies, public health officials typically gain additional authorities, including the ability to close schools and enforce other social distancing measures. Some state public health laws may permit closure and quarantine absent an emergency declaration.

When it comes to express authority to close schools outside of declared emergencies, most commonly it is vested exclusively in state or local health agencies. However, in some states closure authority resides exclusively with state or local education authorities.² In a few states, closure is vested in both health and education authorities.² Once an emergency is declared, state emergency management agencies—as the agency in charge of state's emergency response to a declared emergency—may gain the exclusive authority to close schools.² In other states, state health or state education agencies have the authority to close schools in emergencies.²

Practice Notes

- Identify public health, education, and other authorities that can be used to institute public health measures in your state or locality. Which agency or agencies have the authorities?
- Identify if and how these authorities change if an emergency is declared. What new authorities are added? Does the agency with authority change?
- Understand the legal and operational mechanisms for working with education agencies at the state and local levels to institute public health measures in schools.

Scope of Authority

The types of legal authorities that, depending on the jurisdiction, could be used to initiate public health measures in schools include, but are not limited to:

- **Protect Public Health and Safety**—This is a broad grant of authority that generally rests with the health agency, board of health, or the chief public health official that can be exercised absent an emergency declaration.
- **Control and Prevent the Spread of Communicable Diseases**—This is another broad grant of existing authority to health agency officials that typically allows for disease surveillance, investigation, and control activities. Control activities may be specified, such as permitting the quarantine of persons and facilities.
- **Institute Quarantine and Isolation Measures**—All states have some form of authority to institute quarantine and isolation measures. These authorities may be limited to certain conditions (e.g., TB) or may be broadly defined and generally include due process and other rights for persons being controlled. Quarantine and isolation authorities may become more robust during a declared emergency or may contain modified due process provisions that delay, but do not deny, rights to notice and review of detainment orders.
- **Cancel School Activities and Institute School Closures**—Some states have laws that specifically grant the authority of health officials, education officials, or other officials to cancel school activities or close schools under specified circumstances.
- **Emergency Authorities**—State disaster and emergency laws provide the governor (or other specified officials) with additional authorities during declared emergencies. These emergency authorities may enhance already existing authorities by permitting the broader application of these authorities.

Implications of School Closures

Beyond questions about the legal authority to close schools, the H1N1 school closure policy also brought to the fore social and economic factors that must be considered when making closure decisions. First, schools play important roles in the delivery of other public health and social service programs such as school breakfast and lunch programs and after-school day care. Alternative mechanisms to provide these services to students and parents who rely on them must be identified if schools are closed for extended periods. Next, schools derive their funding, in part, based on formulas driven by attendance, student activity fees, and reimbursement for federal school breakfast and lunch programs. Prolonged school closures can potentially reduce schools' budgets. Finally, working parents must find alternative child care services for the period a school is closed or take

vacation or sick leave to be home with the child. For many working parents, these are not feasible options. While state and local health officials may have the exclusive (or shared) legal authority to close schools or otherwise enforce public health laws in the school setting, in practice, the use of these authorities has to be exercised and implemented in cooperation with school personnel and state or local education officials.

Sources

1. U.S. Dept. of Health and Human Services. "Statement by HHS Secretary Kathleen Sebelius and by Acting CDC Director Dr. Richard Besser Regarding the Change in CDC's School and Child Care Closure Guidance." May 5, 2009. Available at www.hhs.gov/news/press/2009pres/05/20090505a.html. Accessed May 30, 2013.
 2. Hodge J et al. Legal Preparedness for School Closures in Response to Pandemic Influenza and Other Emergencies. April 2008. Available at www.flu.gov/professional/school/schoolclosures.pdf. Accessed May 30, 2013.
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