

State Department of Education 2020- 2021 School Reopening Plan

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Issue

Provide an analysis of whether the new COVID-19-related requirements in the State Department of Education's (SDE) school [reopening plan](#) released by the governor and the education commissioner on June 29, 2020, are supported by state law or other legal authority.

The Office of Legislative Research is not authorized to issue legal opinions, and this response should not be considered one.

Summary

The 50-page reopening plan as released on June 29 calls for all public school districts to plan for all students to return full-time to school for the 2020-21 academic year. It presents numerous steps for local and regional boards of education to take before reopening schools and maintain through the school year. It requires each district to submit its reopening plan to SDE by July 24, 2020.

The plan identifies many items as "requirements" established by SDE, the Department of Public Health (DPH), or the governor's office that public school districts must comply with upon reopening. Other items are listed as "guidance" provided by SDE or another entity as a best practice, based upon experience or research, that will help enable a successful reopening.

Because the plan does not cite any law, order, or policy resolution as a source for its authority, we describe potential sources of authority. But it should be noted that, ultimately, only a court can decide whether the plan is supported by any particular legal authority.

To identify potential sources of legal authority behind the plan's requirements, we reviewed the laws giving the governor the power to declare public health and civil preparedness emergencies ([CGS §§ 19a-131a & 28-9](#)). We also looked for direct references in the plan to the following:

1. state or federal law,
2. state regulations,
3. State Board of Education-approved policy, and
4. the governor's executive orders.

Part of the civil preparedness emergency law appears to give the governor broad authority to protect children in schools during an emergency ([CGS § 28-9\(b\)\(5\)](#)). The school reopening plan could thus be construed as exercising this authority, as several of its requirements are specific to the state's pandemic response. Furthermore, we found that some of the plan's requirements are not necessarily new; rather, they reiterate measures already required under federal or state law. It is also possible that the governor could issue a future executive order requiring school districts to follow the plan. Lastly, we discuss how the expiration of the current declared state of emergency in September could impact the plan's requirements for public schools.

Please note that SDE considers the June reopening plan a roadmap with some flexibility for school districts and indicates in the plan's foreword that it may change over time based on health data trends and emerging practices to mitigate COVID-19's spread. To that end, SDE issued follow-up guidance in a (1) [July 17, 2020, "Frequently Asked Questions" document](#) and (2) [July 21, 2020 letter](#) to school superintendents that clarifies that each school district's July 24 submission to SDE must include three different return-to school-scenarios. Additionally, in a [July 27, 2020, news conference](#), the governor and education commissioner indicated that they intend to give districts discretion in whether to open schools for full-time in-person instruction.

The Reopening Plan

June 29 Plan

The June 29 plan's introduction includes the following as its first three guiding principles:

1. safeguarding students' and staff members' health and safety;
2. allowing all students the opportunity to return to school full-time in the fall; and

3. monitoring schools, students, and staff and potentially canceling classes in the future to appropriately contain COVID-19's spread.

Other principles address equity and access to education and proper supports for students who are emerging from an unprecedented period of school closures and uncertainty. The plan touches on a wide range of issues, including developing operation plans, establishing health practices and protocols such as health and attendance monitoring, and maintaining family and student engagement.

On the academic side, the plan includes (1) guidance on providing remote learning for students and families who choose not to return to in-school classes (to be done while in-person classes are also being held), (2) planning for complete remote learning if all in-person classes are cancelled, (3) planning for the end-of-year assessments, and (4) ongoing obligations toward English learners and students receiving special education services. Lastly, the document addresses school staffing considerations, including professional development focused on health protocols and symptoms of COVID-19 and social-emotional learning especially as it applies to students who have suffered trauma.

Subsequent Guidance Affecting the Plan

On July 17, SDE released a set of [frequently asked questions](#) about the June 29 plan. This document addresses a number of the plan's topics and requirements. On July 21, SDE released a [letter](#) to all school superintendents that clarified that each district's reopening plan must include three scenarios: (1) full return with in-person classes available for all students, (2) hybrid mix of in-person classes and remote learning, and (3) remote learning for all students. In a [July 27 news conference](#), the governor and education commissioner indicated that they intend to give districts discretion about whether to open schools for full-time in-person instruction.

Legal Authority

Plan Requirements Already in Existing Law

Some of the June 29 plan's requirements are already required under federal or state law. Examples of existing federal requirements include the National School Lunch Program (while not a mandatory program, almost all districts participate and thus must meet federal requirements); special education (under the federal Individuals with Disabilities Education Act); and English learner requirements. State law already requires (1) immunization of school children, with limited exceptions and (2) a minimum number of school days each year.

New Requirements

Other plan requirements are new and specifically related to the COVID-19 pandemic. These include requiring the following, among other things:

1. every district to submit a reopening plan with several mandatory parts (including a containment plan, a class cancellation and reopening plan, and a student engagement plan) to SDE by July 24, 2020;
2. every district to adopt a policy requiring students and staff members (with some exceptions) to wear facemasks while at school;
3. every district to be prepared to provide masks for every student and staff member who does not have one;
4. every school to comply with DPH guidance for cleaning and disinfecting schools during the COVID-19 pandemic; and
5. every district to train all staff before school starts on the symptoms of COVID-19, public health protocols, personal protective equipment, reporting illnesses, and social and emotional learning.

Although the plan does not cite any law, order, or policy resolution as a source for its authority, some individual provisions appear to be related to existing statutes or executive orders. For example, [Executive Order 7BB](#) generally requires any person in a public place to wear a mask and specifically excludes children in day care from this requirement, but it does not address public school children.

Emergency Powers Related to Schools Under CGS § 28-9

The governor declared civil preparedness and public health emergencies [on March 10, 2020](#), that remain in effect through September 9, 2020. An emergency declaration gives the governor significant powers and duties. Among other things, he must "take appropriate measures for protecting the health and safety of inmates of state institutions and children in schools" ([CGS § 28-9\(b\)\(5\)](#)).

The school reopening plan could thus be construed as exercising this authority, as many of its requirements are specific to the state's pandemic response. The law does not specify whether the governor must take certain legal action (e.g., executive orders) to protect children in schools, or whether he could issue less formal directives (e.g., the school reopening plan). We conducted a search of relevant case law and could not identify any court decisions that addressed the scope of this power.

Currently, the reopening plan is not accompanied by an executive order, but it is possible that the governor could issue one at a later date. Doing so would mirror the approach he used for reopening businesses. For both Phase 1 and Phase 2 of the business reopening plans, first the Department of Economic and Community Development issued reopening rules, then the governor later issued executive orders requiring businesses to follow the department's rules.

Looking Ahead: Expiration of State of Emergency

The emergency declarations expire on September 9, 2020, by which time the school year will be underway. The state law permitting the governor to declare a public health emergency also allows him to renew an emergency declaration, subject to approval by a committee of legislative leaders ([CGS § 19a-131a\(b\)](#)). Additionally, any order issued under the civil preparedness emergency law is valid for up to six months ([CGS § 28-9\(b\)\(1\)](#)).

Thus, to the extent the reopening plan is authorized by the governor's emergency powers, renewing the emergency declaration would continue that authority for the duration of the renewed declaration (i.e., potentially until March 2021).

Hyperlinks

Connecticut State Department of Education. "Adapt, Advance, Achieve: Connecticut's Plan to Learn and Grow Together." <https://portal.ct.gov/-/media/SDE/COVID-19/CTReopeningSchools.pdf>. June 29, 2020.

Connecticut State Department of Education. "Frequently Asked Questions Regarding Reopening K-12 Public Schools." <https://portal.ct.gov/-/media/SDE/Digest/2020-21/Reopening-FAQs.pdf>. July 17, 2020.

Connecticut State Department of Education. "Clarified Expectations for Connecticut School District Reopening Plans." <https://portal.ct.gov/-/media/SDE/Digest/2020-21/CSDE-Statement-on-Reopening-Plans-July-21-2020.pdf>. July 21, 2020.

CT-N. "Governor Lamont July 27th News Briefing on the State's Response Efforts to the COVID-19 and the Reopening of Connecticut." <https://ct-n.com/ctnplayer.asp?odID=17555>. July 28, 2020.

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