

Protocols for Arizona School Districts Regarding Action Steps Upon Possible COVID-19 Exposure

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The purpose of this communication is to provide information on reporting requirements and best practices if an employee or member of a district's community has been diagnosed, exposed to, or has symptoms of COVID-19. Please contact us or your counsel if your District would like legal advice.

I. Goals

- a. Reduce transmission;
- b. Continue to serve the community;
- c. Maintain a healthy work environment; and
- d. Comply with reporting requirements.

II. Initial Considerations

- a. Promote a policy of disclosure of symptoms and encourage employees to stay home if they are sick;
- b. Practice appropriate industrial hygiene. See Section VII below.

III. Suspected COVID-19 Infection – Employee

Policy GBGCB grants the Superintendent the authority “to take reasonable and lawful measures to protect students and staff member from the transmission of communicable diseases.” A district may exclude an employee from working onsite if they have a communicable disease “if the staff member presents a direct threat to the health or safety of others in the school workplace.” Therefore, if a district is notified that an employee, volunteer, contractors, subcontractor or other onsite individual has been diagnosed, exposed to, or has symptoms of COVID-19, the District may:

1. **Send the individual home immediately to self-quarantine.**
2. **Investigate the matter by telephonically interviewing the individual.¹ Suggested interview questions:**
 - a. Have you been diagnosed with COVID-19?
 - b. Do you have symptoms of COVID-19 [Fever, chills, cough, shortness of breath, or sore throat]? If yes, for how long? [Limit questions to COVID-19 and not other health conditions.]
 - c. Have you been in close contact with an individual diagnosed, exposed to or who has symptoms of COVID-19?²
 - d. Who at the district have you had close contact with in the last two weeks?
 - e. What district sites have you been to within the past two weeks?
 - f. Have you had any physical contact with anyone else affiliated with the district (e.g., students, parents, etc.) in the last two weeks?
 - g. Have you had any physical contact with products that were distributed to district constituents (e.g., lunches, learning packets, etc.).
3. **Assess possible exposure**
 - a. Assess who may have had contact with the individual in the last two weeks; and
 - b. Assess which district sites may need to be sanitized or temporarily closed. See Section V below for more information.
4. **Determine who should receive notice of potential COVID-19 exposure.** See Section IV below for more information.
5. **Information collected. All information collected during the interview should be maintained in a separate employee medical file and not in the employees personnel file.**
6. **Payroll/leave considerations.** HB2910 allows a district to assign the individual telework. If the employee is unable to telework, they may qualify for paid emergency sick leave under the Families First Coronavirus Response Act (“FFCRA”). See Gust Rosenfeld’s FAQ on FFCRA for more information, available at <https://files.constantcontact.com/eab0f51a001/b2dbf530-1443-441b-ad5d-678606adf2ae.pdf>

IV. Suspected COVID-19 Infection – Student or Parent

1. **Attempt to communicate with the parent.** The district may call the parent to discuss possible exposure. If they are not reachable or decline to discuss the matter, cease all investigations and operate under the presumption that there is a possible COVID-19 exposure.
2. **Assess possible exposure.**
 - a. Assess who may have had contact with the individual or their family in the last two weeks; and

¹ An employee must not be discriminated against for having COVID-19 or refusing to answer questions regarding their possible exposure, diagnosis or symptoms of COVID-19. If the individual is unwilling or unable to participate in the interview, operate under the presumption that there is a possible COVID-19 exposure.

² The CDC defines “close contact” as “a person that has been within six feet of the infected employee for a prolonged period of time”).

- b. Assess which district sites may need to be sanitized or temporarily closed. See Section VI below for more information.
- 3. **Determine who should receive notice of potential COVID-19 exposure.** See Section V below for more information.

V. Reporting and Notification

The Americans with Disabilities Act (“ADA”), Family Educational Rights and Privacy Act (“FERPA”) and the Health Insurance Portability and Accountability Act (“HIPAA”) should be considered in any district disclosure of possible COVID-19 infection. In each instance, a district should maintain all information as a confidential medical record and should only disclose relevant non-identifying information to those individuals that the district is permitted to provide notice. The Arizona Attorney General’s office has issues recent guidance on this issue found at <https://www.azag.gov/sites/default/files/2020-03/I20-005.pdf>.

a. Mandatory Reporting

According to the Arizona Attorney General, a school district is not required to report a possible COVID-19 infection to health authorities under A.R.S. § 36-621.³ A district may report a case of COVID-19 to the appropriate board of health or the Arizona Department of Health. In doing so, the District should evaluate whether the disclosure falls under the emergency health and safety exception under FERPA; a link to an analysis of disclosure of student information during an emergency/disaster issued in June 2010 by the U.S. Department of Education is available at <https://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>.

b. Notifying Co-workers and the Public

If an employer receives notification that an employee, contractor, volunteer or other individual working on a district’s site has a confirmed COVID-19 infection, the Centers for Disease Control and Prevention (“CDC”) recommends that the employer “inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain the confidentiality of the affected individual as required by the Americans with Disabilities Act (ADA). The fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).”⁴ See also Policy GBGCB

Similarly, a district may notify its community that they may have been exposed to COVID-19 through their interactions with the district. The same procedure can apply for a contractor, volunteer, or other individual associated with a district. The district must maintain confidentiality at all times, and is prohibited from providing any information that would identify the affected individual. If the individual involved is a subcontractor or employed by another entity, the district should also inform their employer immediately.

³ See Arizona Attorney General Opinion, No. I20-005 (March 27, 2020), available at <https://www.azag.gov/sites/default/files/2020-03/I20-005.pdf>.

⁴ Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers*, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited April 1, 2020).

c. Notification if the Individual is a Student or Parent

A student's possible exposure to COVID-19 should be treated as a student record subject to FERPA. Specifically, the Arizona Attorney General suggests "given the current health emergency, [educational institutions] should apply the FERPA/HIPAA exceptions and disclose sufficient information related to positive COVID-19 cases so those potentially affected students, staff, visitors, etc. can self-monitor and potentially self-quarantine. At a minimum, [educational institutions] should disclose information identifying the [district sites] frequented by the infected student during the incubation period and/or while exhibiting symptoms . . . Further, warning other students, parents of students, school staff, and others about potential contact with an affected student is appropriate when, as here, those persons' knowledge is "necessary to protect the health or safety of the student or other individuals."⁵ See also Policy GBGCB.

Therefore, if a student has suspected COVID-19 exposure, it is appropriate to notify "appropriate parties" of possible exposure. **The media is not an "appropriate party."**⁶ The district may also provide notice to appropriate parties if a parent or other member of the student's household has a suspected COVID-19 exposure so they may self-monitor and self-quarantine.

Notifications must not disclose any personally identifiable information about the individual unless a FERPA exception applies.

d. Notification Basics

1. The notice must not contain personally identifying information;
2. The notice should only include non-identifying information that is relevant to allow those with potential exposure to self-monitor and self-quarantine;
3. Only provide the notice to "appropriate parties;"
4. District may inform appropriate health officials as long as it complies with applicable privacy laws;
5. The notification should include information about the district sites frequented by the individual during the incubation period and while exhibiting symptoms;
6. The notification should include information on what the district is doing in regards to industrial hygiene, including whether the site will be closed and for how long; and
7. The notification should encourage those individuals that may have been exposed to COVID-19 to self-monitor for symptoms and to self-quarantine if appropriate.

⁵ See Arizona Attorney General Opinion, No. I20-005 (March 27, 2020) (internal citations omitted), available at <https://www.azag.gov/sites/default/files/2020-03/I20-005.pdf>.

⁶ See U.S. Dept. of Educ., Privacy FAQ at 5 (Mar. 2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa%20and%20coronavirus%20frequently%20asked%20questions.pdf.

VI. Industrial Hygiene

Policy GBGCB grants the Superintendent the authority “to take reasonable and lawful measures to protect students and staff member from the transmission of communicable diseases.” This includes requiring appropriate industrial hygiene practices before and following possible COVID-19 exposure. OSHA developed specific guidance,⁷ which includes:

1. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment;
2. Promote frequent and thorough hand washing;
3. Provide soap and/or alcohol-based (at least 60%) hand sanitizer, tissues, disposable towels for workers to clean their work surfaces, and trash receptacles;
4. Require social distancing at worksites;
5. Assess whether personal protective equipment (“PPE”) is appropriate for individuals working onsite;
6. Encourage “respiratory etiquette” which includes covering coughs and sneezes;
7. Post mandatory reminders for workers to follow hygiene protocols;
8. Restrict the number of people entering a previously contaminated area;
9. Where appropriate, limit access to the worksite, or restrict access to only certain workplace areas;
10. Consider strategies to minimize face-to-face contact (e.g., drive through windows, staggered work shifts);
11. Discourage workers from using other workers’ phones, desks, offices, or other work tools and equipment;
12. Isolate individuals who have had close contact with an individual who has been diagnosed, exposed to, or has symptoms of COVID-19;
13. Temporarily close and sanitize a previously contaminated area; cleaning chemicals should include Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens which are expected to be effective against COVID-19.

Disclaimer: These materials have been provided for general information purposes only and are not intended as legal advice or a substitute for such advice.

⁷See OSHA’s Guidance on Preparing Workplaces for COVID-19, available at <https://www.osha.gov/Publications/OSHA3990.pdf>.