Contact your Senators and ask them to support The HEROES Act. You can take action by going to educatingthroughcrisis.org
To get more info and guidance, go to https://educatingthroughcrisis.org/your-rights/.

Facebook provides resources to connect with each other - https://www.facebook.com/groups/NEANavigatesCOVID19/
Agenda

• Health and Safety First
• Accommodation & Leave Rights
• Workers' Compensation & Waivers
• Bargaining & Advocating for Safe Schools
Health & Safety First – NEA's Position

The absolute preconditions to reopening are:

• A scientific consensus that the virus has been sufficiently contained and that the local health infrastructure can effectively address current and future outbreaks; and

• A plan to continue to contain the virus that includes robust COVID-19 testing, effective contact tracing, and case isolation within the school community and in coordination with broader community and state efforts.
Those Criteria are Not Currently Met

In states marked with shades of orange, new cases are increasing.

In states marked with shades of green, cases are decreasing.

As of July 16, 2020, none of the 44 orange-shaded states have had a downward trajectory of new cases over the prior two weeks.

(Source: Johns Hopkins University Coronavirus Resource Center)
CDC's three-phase reopening approach is based on whether states are improving in these six categories:

1. The number newly diagnosed COVID-19 cases
2. The number of hospital visits with “COVID-like illness”
3. The number of hospital visits with “influenza-like illness”
4. The percentage of positive COVID-19 tests
5. The capacity of hospitals to treat patients without crisis care
6. The robustness of diagnostic testing programs

Forty-four states currently fail the threshold CDC criteria

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EU Countries Reopened Only After Transmission Was Down

(Sources: daily case charts from Worldometers; annotations compiled from international news sources)
On the Other Hand . . .

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On May 5, Israel began a gradual reopening focused on the lowest grades. On May 17, against the advice of public health officials, the government abandoned the gradual reopening plan and fully opened all schools at all grade levels. Within two weeks more than 200 students and staff contracted the virus. A massive second wave of infections followed. Public health officials have pointed to the decision to reopen schools fully as fueling that second wave.

(Sources: daily case chart from Worldometers; annotations compiled from reporting by The Wall Street Journal, The Daily Beast, and National Public Radio)
Once Threshold Conditions Exist, Schools Must Follow CDC Guidelines to Limit Risk

Three overriding considerations:

• Protect students and staff who are at higher risk for severe illness by providing options such as telework and distance learning.

• Put basic protections in place to prevent spread of COVID-19 (distancing, deterrence, disinfection, detection)

• Make sure students and staff can stay home if they are sick and that they are encouraged to do so.

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Distance

Deterrence

Disinfection

Detection

- **Physical distance** – 6 feet between people -> hybrid schedules may be necessary given school density
- **Deterrence**
  - Healthy hygiene practices
  - Masks
  - Ventilation
  - Eliminating Shared Supplies and Equipment
- **Disinfection** of Schools, Buses & Equipment
- **Detection**
  - Screening on Entry/at Home
  - Isolating Sick Students and Staff until they can Safely Get Home
  - Closing as Needed to Contain Outbreak in School or Community

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Ensure that student and staff groupings are as static as possible.

Space seats/desks at least 6 feet apart.

Cancel field trips, inter-group events, and extracurricular activities.

Restrict nonessential visitors, volunteers, and activities.

Close communal spaces such as dining halls and playgrounds if possible; otherwise stagger use and disinfect in between use.

Stagger arrival and drop-off times or locations.

Create distance between students on school buses where possible.

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CDC Deterrence Recommendations

- Hand-washing, proper cough and sneeze etiquette for students and staff
- Require face coverings for all staff and encourage for all students
- Adequate supplies (e.g., soap, hand sanitizer with at least 60 percent alcohol, paper towels, tissues, and no-touch trash cans)
- Ensure ventilation systems operate properly and bring in as much outdoor air as possible; open windows

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CDC Disinfection Recommendations

CLEAN AND DISINFECT FREQUENTLY TOUCHED SURFACES IN THE SCHOOL AND ON SCHOOL BUSES AT LEAST DAILY; CLEAN ANY SHARED OBJECTS (E.G., TOYS, GAMES, ART SUPPLIES) BETWEEN USES.

ENSURE SAFE AND CORRECT APPLICATION OF DISINFECTANTS AND KEEP PRODUCTS AWAY FROM CHILDREN.

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Encourage both students and staff to stay home if they are sick and encourage parents to keep sick children home.
## CDC Recommendations on Caring for Those With COVID-19 Symptoms

<table>
<thead>
<tr>
<th>Isolate</th>
<th>Ensure</th>
<th>Notify</th>
<th>Close off</th>
<th>Advise</th>
<th>Inform</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isolate anyone with COVID-like symptoms.</td>
<td>Ensure safe transport home or to a healthcare facility.</td>
<td>Notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality as per federal and state laws.</td>
<td>Close off areas used by a sick person, wait 24 hours, then clean and disinfect before use.</td>
<td>Advise sick staff members and children not to return until they meet CDC criteria to discontinue home isolation.</td>
<td>Inform those who have had close contact with a person diagnosed with COVID-19 to stay home and self-monitor for symptoms.</td>
</tr>
</tbody>
</table>

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• When state and local health departments advise closures based on increased community transmission.

• If a person diagnosed with COVID-19 in the school is determined to pose a risk to the community, consider closing for a short time (1–2 days) for cleaning and disinfection.
A research study by Mathematica for the PA Department of Education predicted that without safety precautions like distancing and hybrid schedules, the average school in PA would have five infections within 5 days of opening. If all precautions put in place, the length the school would stay open could be increased 10 to 15 times (depending on their extent).

Key takeaway -> schools without protections are likely to have to close MUCH sooner than schools with protections.
The American Academy of Pediatrics Supports Reopening only When Safe

“Returning to school is important for the healthy development and well-being of children, but we must pursue re-opening in a way that is safe for all students, teachers and staff. Science should drive decision-making on safely reopening schools. Public health agencies must make recommendations based on evidence, not politics. We should leave it to health experts to tell us when the time is best to open up school buildings and listen to educators and administrators to shape how we do it.”

July 10, 2020 Joint Statement by AAP, NEA, AFT, AASA

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The National Academies of Sciences, Engineering, & Medicine
Support Reopening Only When Safe

• All students and staff should wear face masks, with surgical masks provided to all staff
• Provide hand washing stations or hand sanitizer for all people who enter school buildings, minimize contact with shared surfaces, and increase regular surface cleaning
• Limit large gatherings of students and overcrowding at school entrances, possibly by staggering arrival times
• Reorganize classrooms to enable physical distancing, such as by limiting class sizes or moving instruction to larger spaces.
• Prioritize cleaning, ventilation, and air filtration
• Create a culture of health and safety in every school, and enforce virus mitigation guidelines using positive approaches rather than by disciplining students

SIGNIFICANT NEW FEDERAL FUNDING NECESSARY TO PROVIDE NECESSARY PRECAUTIONS – Report estimates costs of $1.8 million for a school district with eight school buildings and around 3,200 students.

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Some States Have Established Health and Safety Requirements for Schools through Executive Orders

Michigan's Governor has ordered requirements and recommendations for schools that are tied to the state’s overall reopening plan:

- Schools must remain closed in phases 1-3 of the reopening plan with remote instruction “strongly recommended.”
- In phase 4, schools may reopen but must implement safety protocols, including:
  - mandatory face covering for staff as well as for all students in school buses hallways, and common areas and for students in grades 6-12 when in classrooms
  - hygiene measures
  - protocols for screening students and staff for symptoms
  - quick responses to positive diagnoses in the school community, including contact tracing
State Workplace Safety Laws

- Almost ¾ of the states have workplace safety laws that apply to public sector employers.
- Of those, 26 are “OSHA Plan” states and 6 adopt at least some federal OSHA rules.
- OSHA is the federal workplace safety law that applies to private sector workplaces and creates:
  - an enforceable, but not well defined, “general duty” to provide work and workplaces free from recognized hazards
  - specific workplace safety standards developed by agency regulations
  - an administrative inspection and enforcement scheme

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In the Face of Federal Inaction, States are Adopting their Own COVID-19 Workplace Safety Standards

- On July 15th, Virginia became the first state to adopt an enforceable workplace safety standard addressing COVID-19.
- Public schools and higher education institutions that have submitted plans to the VA Dep't of ED that are aligned with CDC reopening school guidance and operate in compliance with those plans satisfy the standard.
- All other workplaces: must implement the following:
  - social distancing measures
  - face coverings for employees in customer-facing positions and when social distancing is not possible
  - frequent access to hand washing or hand sanitizer
  - regular cleaning of high-contact surfaces
  - notice to employees within 24 hours if a coworker tests positive for the virus
- Oregon’s Occupational Safety and Health Administration will adopt an emergency COVID-19 standard by September 1.
“OSHA Plan” States

These states have US Department of Labor-approved workplace safety laws and regulations that are at least as protective as federal OSHA and apply to public-sector employers.
States That Follow Federal OSHA

These states have workplace safety laws that cover public sector employers and follow federal OSHA regulations, at least in part, but have not been approved by the DOL.

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States With General Workplace Safety Laws

These states have laws that apply to public sector employers and establish a general duty to provide a safe workplace; some have more detailed regulations as well.

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States With No Workplace Safety Laws

These states have no workplace safety laws that apply to the public sector – but do have common-law tort remedies.

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State Public Sector Bargaining Laws & Tenure Laws Provide Critical Protections

- 34 states plus D.C. protect K-12 educators' rights to bargain over mandatory terms and conditions of employment (like health and safety issues) and over the impact of changes in non-mandatory subjects.
- 48 states protect tenured teachers from discharge without just cause, which provides whistleblower protection for tenured teachers.

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Questions?
Educator Rights to Accommodations & Leave
Educators May Need Accommodations or Leave Because of...

- A medical condition that increases risk of serious illness or death from COVID-19
- Living with an individual who is at high risk
- Older age
- Pregnancy
- Childcare responsibilities

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You Have Rights!

- Federal Law
  - Americans with Disabilities Act (ADA)
  - Pregnancy Discrimination Act
  - Age Discrimination in Employment Act (ADEA)
  - Family and Medical Leave Act (FMLA)
  - Families First Coronavirus Response Act (FFCRA)
  - Workers’ Compensation

- State and Local Laws
- Collective Bargaining Agreements and MOUs
- School District Policies

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I have a health condition...

Do I qualify for an accommodation under the ADA?

- Is your condition a disability?

- **Disability** = Physical or mental impairment that *substantially limits* one or more major life activities
- “Disability” is interpreted broadly
  - Impairments do not have to be permanent – may be transitory (lasting less than 6 months) and minor
  - Major life activities include e.g., performing manual tasks, breathing, learning, writing, sitting, sleeping; also, the operation of major bodily function, such as immune system, normal cell growth, circulatory, respiratory, cardiovascular

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People of Any Age with Underlying Medical Conditions

Summary of Recent Changes

Revisions were made on June 25, 2020 to reflect available data as of May 29, 2020. We are learning more about COVID-19 every day, and as new information becomes available, CDC will update the information below.

People of any age with certain underlying medical conditions are at increased risk for severe illness from COVID-19:

- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 or higher)
- Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Sickle cell disease
- Type 2 diabetes mellitus

Children who are medically complex, who have neurologic, genetic, metabolic conditions, or who have congenital heart disease are at higher risk for severe illness from COVID-19 than other children.
COVID-19 is a new disease. Currently there are limited data and information about the impact of underlying medical conditions and whether they increase the risk for severe illness from COVID-19. Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19:

- Asthma (moderate-to-severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Smoking
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

Want to see the evidence behind these lists?

The list of underlying conditions is meant to inform clinicians to help them provide the best care possible for patients, and to inform individuals as to what their level of risk may be so they can make individual decisions about illness prevention. We are learning more about COVID-19 every day. This list is a living document that may be updated at any time, subject to potentially rapid change as the science evolves.

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Mental Health Conditions May Also Qualify as a Disability

- Disability = Physical or mental impairment that substantially limits one or more major life activities
  - Examples
    - Post-traumatic stress disorder
    - Obsessive compulsive disorder
    - Anxiety disorder
  - If you have a diagnosed mental health impairment, you may be able to seek an ADA accommodation

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What rights do I have to a job modification?

• ADA requires
  – That employers provide reasonable accommodations to qualified individuals with disabilities
  – Unless doing so would pose an *undue hardship*

• A *reasonable accommodation* is...
  ➢ A modification or adjustment to a job or work environment
    ➢ that will enable an employee with a disability
      ✓ to continue to perform the essential functions of her/his job and
      ✓ enjoy equal benefits and privileges of employment
Thinking About Accommodations

Possibilities may include:

- Additional PPE
- Additional cleaning of surfaces
- Changes in classroom environment or school building
- Transfer to a position with less contact with others
- Remote work
- Temporary leave
How do I request an accommodation?

- Check with your local association or state affiliate

- Under the ADA
  - Accommodations can be requested upon hiring or at any point during employment when a need arises
  - No “magic words” are required
  - Requests don’t have to be in writing...but it’s a good idea to make a written record

- Employer surveys may violate the ADA – Employees should not be required to disclose their health conditions unless they are requesting an accommodation

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What medical documentation do I need?

• ADA does not require that you provide documentation of your medical condition when requesting an accommodation

• But employers can ask for medical information *that is relevant to making a determination* about whether you have a qualifying disability

• Talking to your medical provider can help you figure out possible accommodations options

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Essential Functions

Types of Exposure

Ways to Reduce Risk

Medical Condition

**Considerations for Doctor’s Notes**

- Include statement of medical condition and advisability of reasonable accommodation based on the condition
- Be specific about limitations and possible accommodations that will allow patient to continue to perform the essential functions of the job
- Consider whether there are multiple alternative possible accommodations
What does the employer have to provide?

- Employers must consider requests for accommodations and engage in an interactive process to try to find a suitable reasonable accommodation.
  - *Interactive Process:* EEOC recommends that employers and employees work together to identify possible accommodations
    - Employers are not required to provide the requested accommodation and may offer alternatives
    - Temporary accommodations may be appropriate during a pandemic

- **But** accommodations don’t have to be provided if they would impose an undue hardship on the employer.
What if my employer denies my request?

• If an employer denies a requested accommodation, ask why it was denied and try to cure any problem, if possible
  ➢ “Undue hardship” – Ask for details; discuss alternatives
  ➢ Insufficient information about medical condition or requested accommodations – Provide information; go back to medical provider
  ➢ Propose alternative accommodations

• Report it to your local!

• Be aware of statutes of limitations for filing complaints with EEOC/state agencies

• Object to and report any retaliation for requesting an accommodation

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I am worried that my age puts me at high risk.

- CDC advises that the risk of severe illness increases with age, noting that 8 out of 10 deaths from COVID have been of people 65+
- Older age alone is not a disability
- Age Discrimination in Employment Act (ADEA)
  - Does not require accommodations for older people,
  - But it also doesn’t prevent employers from accommodating older workers
- Consider whether there may also be an underlying health condition that is a basis for an ADA claim
I am pregnant.

- Pregnancy itself is not a disability, but many pregnancy-related medical conditions are considered disabilities under ADA.
- Pregnancy Discrimination Act – Requires that employees affected by pregnancy, childbirth, and related medical conditions be treated the same as others who have similar limitations.
- More than half of all states have pregnancy accommodations laws.
- Talk to your medical provider!
I live with someone who is high risk.

- **ADA Protections?**
  - Unfortunately, the ADA does not require accommodations to protect family members with disabilities
    - ADA only prohibits disparate treatment or harassment because you have a disabled family member

- **Family & Medical Leave Act (FMLA)?**
  - Job protected leave for an employee’s own medical and family caregiving needs, including caring for a spouse, child or parent who has a *serious health condition*
  - Must have 12 months/1,250 hours of employment

- **Families First Coronavirus Response Act?**
  - Emergency Paid Sick Leave: if individual is under quarantine
  - Emergency FMLA Expansion: if caring for son or daughter, for childcare closures

- **Other types of leave?**

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I have childcare responsibilities.

- Emergency FMLA Expansion Act (part of FFCRA)
  - Temporary federal paid family leave – a temporary new category of leave under the FMLA, which terminates December 31, 2020
  - For the limited purpose of caring for a son or daughter whose school or daycare is closed due to the coronavirus pandemic
  - Total amount of leave is 12 weeks
  - Up to 10 weeks is paid at 2/3 your regular rate of pay (capped at $200/day)
  - Intermittent leave may be available

- Other childcare leave?

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What are my options for leave if I can’t be accommodated?

• **Emergency Paid Sick Leave**
  – Federal law – Families First Coronavirus Response Act
    • Covers nearly all public sector employers!
    • Expires December 31, 2020
  – Available if you are unable to work or telework for certain COVID-related reasons, including
    • You are under self-quarantine on the advice of a healthcare provider; or
    • You are caring for someone who is under self-quarantine on the advice of a medical provider; or
    • You are caring for your child because their school or daycare is closed
  – Total amount is 80 hours of paid leave
  – Can be used prior to any other existing paid leave benefits!

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Other Options for Leave

- **FMLA**
  - Up to 12 weeks of unpaid, job protected leave
  - For a *serious health condition* that prevents you from performing the essential functions of your job
  - Must have 12 months/1,250 hours of employment

- Other leave under CBA, MOU, or District policy?

- State or employer disability leave?

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What if I am exposed to coronavirus while working?

What are my options for taking leave?

- Emergency Paid Sick Leave (Under FFCRA)
  - Available if you are unable to work or telework for certain COVID-related reasons, including
    - If you are subject to a federal, state, or local quarantine or isolation order; or
    - You have been advised by a healthcare provider to self-quarantine; or
    - You are experiencing coronavirus symptoms and are seeking a diagnosis

- FMLA leave
  - Up to 12 weeks of unpaid, job protected leave if you have a serious health condition that prevents you from working

- Other leave under CBA, MOU, or District policy?

- State or employer disability leave?

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What if I get ill from COVID because of work?

Will Workers’ Compensation cover my medical bills and leave?

- State workers’ compensation programs are where workers are ordinarily expected to look when they are injured or become ill because of workplace injuries or illness.

- State law governs, and state laws are evolving quickly on COVID exposures and presumptions.

  - Check with your local!

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General Guidance on Workers' Compensation Claims

- Notify your local if you contract COVID at work
- Causation may be contested when it comes to COVID
  - Document in as much detail as possible
    - Any of your previous COVID test results
    - Your contacts during the period of possible infection
    - Possible sources of workplace exposure e.g., other cases; proximity to others
    - Information about onset of symptoms and any other relevant medical records

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Liability waivers

A small number of school districts have tried to require educators to sign liability waivers.

- Releasing school district from liability to an educator contracting COVID at work
- Releasing school district from liability to an educator's family members who contract COVID

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Liability waivers

- Some schools have posted notices at school events
  - Warning of COVID risks
  - Asserting that attendees assume those risks for purposes of liability
Liability waivers

For employees, waivers are almost certainly ineffective and improper:

- Cannot waive workers compensation rights, which would likely supply the only recovery for educators who contracts COVID at work
- Cannot waive the kinds of claims that aren't covered by workers compensation (intentional or reckless harm)
- Cannot waive the rights of family members or other third parties
- Cannot waive state workplace safety protections

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For employees, waivers are almost certainly ineffective and improper (continued):

- Cannot require disabled educators to waive rights to accommodations under disability-discrimination laws
- Cannot deprive tenured teachers of contract rights
- Cannot make unilateral changes to bargaining unit working conditions
Liability waivers

For public notified of COVID risks by school's posting of a notice:

- Legal recourse would be a tort claim (e.g., negligence), where schools may have immunity under state law
- Schools can't use disclaimer-of-liability notices against students, who are usually minors and are legally obligated to attend school
- Schools might limit liability to adult members of the public, assuming they saw the notice and accepted the risk
Liability waivers

Because most waivers are not likely to be effective, employer-side lawyers are recommending against them:

- Employees may not return to work
- Could create bad publicity

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If your school tries to impose a waiver:

- Immediately notify your local association and Uniserv director
- Do not sign without consulting with your local association
- Work with your local association to publicize the school's acknowledgement that it cannot ensure a safe workplace or learning environment
Questions?
• States covered by collective bargaining laws generally address salary, benefits, and working conditions
• Bargaining health and safety falls under working conditions
• Example of strong general language:
  “The Employer has the responsibility to provide a healthy workplace for all employees. Employees shall not be required to work in unsafe or hazardous conditions or be required to perform tasks that could endanger their health or well-being.”
Tackling health and safety issues
Two potential ways to address them: collective bargaining and/or health and safety committees

- Determine how to maintain social distancing, including buildings and school facilities
- Ensure that staff and students have hygiene products and personal protective equipment (PPE)
- Develop procedures for disinfecting and sanitizing facilities
- Ensure proper ventilation
- Develop contingency plans if a student or staff member contracts COVID-19
- Create special protocols for students, staff, families, and guardians who are at higher risk from COVID-19
- Develop contingency plans if in-person instruction must cease (completely or partially)
- Incorporate racial and social justice equity considerations into policies and actions
- Provide mental health supports for students and staff

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Establish or repurpose an existing committee
Include all educators
Include in the collective bargaining contract or MOU permanently, not just for COVID-19
Monitor the health and safety conditions of the workplace

• Review inspection, injury and other reports and confirm corrective measures are being completed

• Address the return to in-person instruction and/or future closures, as well as ongoing health and safety issues (CDC guidelines, state health authorities, NEA recommendations)

• Develop a communications plan to ensure the entire school community will be informed on an ongoing basis
Labor-management health and safety committees (continued)

- Local-level committees
  - Each school, campus, or other work site should have its own committee to monitor ongoing developments/varying circumstances
- Community and student engagement
  - Consider involving student, family, and community stakeholders
  - Provide helpful and knowledgeable input to your demands for a safe and healthy environment

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Whistleblower protections

- Bargain or advocate for whistleblower protections at the state and local level to guarantee that education employees are protected against retaliation or reprisals for reporting or raising concerns about workplace safety with respect to COVID-19.

- State and local worker safety statutes or ordinances might provide such protections. Consulting with your association counsel is recommended.

Engage the Community around the Common Goal of Safe Schools

- Bargaining for the Common Good (BCG) links community stakeholders with educators to demand change.
  - Expand the scope of bargaining beyond wages and benefits, in bargaining and non-bargaining states
  - Leverage the power of educators, parents, and students to demand the resources necessary for an equitable and safe return to in-person instruction
  - Address longstanding equity and health and safety issues
  - Build long-term relationships between unions and community members. The campaign doesn’t end once the union settles its contract.

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Bargaining for the Common Good

Examples:

- Involve parents and families, students, community members, in planning and decision-making related to the return to in-person instruction and decisions about how to keep schools safely open and, if necessary, close them again.
- Gather and use input from students and families about their experiences during initial school closures, intentionally seeking detail related to how racial and economic disparities affected education.
- Demand equitable access to the technology students need for hybrid and distance learning.
- Work with the food-service staff and parents to determine the best and safest way of implementing ongoing nutrition and food-distribution to students.

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Examples (continued)

• Seek additional school nurses, social workers, counselors, occupational, speech, and physical therapists, and other specialized instructional support personnel (SISPs) to support increased student needs

• Seek to eliminate or limit foreclosures, eviction proceedings, and actions against homes with school aged children

• Given the strict regulations that students will face in this environment, institute restorative justice practices rather than punitive disciplinary methods
Bargaining for the Common Good

For more information on BCG go to nea.org/BCG

Further resources are on our partner’s site at bargainingforthecommongood.org

www.educatingthroughcrisis.org
Questions?
To get more info and guidance, go to https://educatingthroughcrisis.org/your-rights/

Facebook provides resources to connect with each other - https://www.facebook.com/groups/NEANavigatesCOVID19/
Contact your Senators and ask them to support The HEROES Act. You can take action by going to educatingthroughcrisis.org