

Back to School: Novel Attendance Issues in 2020

Sep 22 2020

Practice Area: School Law

Prior to the COVID-19 pandemic, day-to-day school attendance problems typically involved unexcused student absences, excessive sick days, or other situations in which a student’s or employee’s physical absence from school disrupted student education in some way. For Wisconsin school districts that have adopted an education model involving in-person learning (and for those districts that will be phasing in face-to-face instruction), the biggest attendance concern for the 2020-2021 academic year is knowing when and under what circumstances students, teachers, and other school staff should not be permitted to physically attend school as a result of the quarantine or isolation requirements. This *Legal Update* provides a summary of the current federal and state quarantine and isolation recommendations for school districts to consider when it is made aware of a student or staff member’s possible exposure to or contraction of COVID-19.

The federal Centers for Disease Control (CDC) and the Wisconsin Department of Health Services (DHS) have both issued public health quarantine and self-isolation guidelines (recommendations) for individuals who have been diagnosed with COVID-19 or who may have been exposed to the virus. Additionally, the DHS has issued specific quarantine and isolation guidance for schools. The DHS’s school guidance identifies various scenarios in which the DHS recommends that a person with COVID-19 or who has possibly been exposed to the virus through close contact with someone who has COVID-19 should not physically attend school.

Close Contact Scenarios

According to the DHS, “close contact” occurs when a student or school staff member has been within 6 feet of a person with COVID-19 for at least a period of 15 minutes or more. Close contact also occurs when the person (1) has direct physical contact with someone with COVID-19 (*e.g.*, hug, kiss, handshake); (2) has contact with the respiratory secretions of someone with COVID-19 (*e.g.*, coughed/sneezed on, contact with dirty tissue, sharing a drinking glass, food or towels or other personal items); or (3) stayed overnight for at least one night in a household with someone who has COVID-19. When close contact has occurred, the DHS’s quarantine recommendations are as follows:

Close Contact Scenarios

Scenario	Quarantine Recommendations
Close contact with someone who has COVID-19 but no COVID-19 symptoms	Quarantine for 14 days from the date of the last contact before returning to school

Close contact with someone who has COVID-19 and COVID-19 symptoms develop	Quarantine for: <ul style="list-style-type: none"> • 14 days from the date of the last contact before returning to school; AND • At least 10 days since symptoms appeared, 24 hours without a fever and without using fever reducing medication, and improvement of other symptoms
Close contact with someone who has COVID-19 but tests negative within 14 days	Quarantine for 14 days from the date of the last contact before returning to school
Close contact with someone who has COVID-19 and tests positive within 14 days (assuming no symptoms)	Quarantine for: <ul style="list-style-type: none"> • 14 days from the date of the last contact before returning to school; AND • At least 10 days since test sample was collected
Close contact with someone who has COVID-19 and subsequent close contact within 14 days	Quarantine for 14 days from the date of the last contact before returning to school
Live with someone who has COVID-19 but can avoid close contact	Quarantine for 14 days from the date of the last contact before returning to school
Live with someone who has COVID-19 but cannot avoid close contact	Quarantine for 14 days from the date of the infected person's last day of isolation before returning to school

Positive Test and/or Symptomatic Scenarios (No Close Contact)

Scenario	Quarantine Recommendations
Not tested for COVID-19 but has COVID-19 symptoms	Self-isolate for: <ul style="list-style-type: none"> • 10 days since symptoms appeared; • 24 hours without a fever and without using fever reducing medication; AND • Improvement of other symptoms

Test positive for COVID-19 and have COVID-19 symptoms	Self-isolate for: <ul style="list-style-type: none"> • 10 days since symptoms appeared; • 24 hours without a fever and without using fever reducing medication; AND • Improvement of other symptoms
Test negative for COVID-19 but have COVID-19 symptoms	Must be fever free for 24 hours without the use of fever-reducing medications before returning to school
Test positive for COVID-19 but have no symptoms	Self-isolate for 10 days from the date of the positive test result
Test positive for COVID-19 and have no symptoms but develop symptoms after testing positive	Self-isolate for: <ul style="list-style-type: none"> • 10 days since symptoms appeared; • 24 hours without a fever and without using fever reducing medication; AND • Improvement of other symptoms

Source: *Guidelines for the Prevention, Investigation, and Control of COVID-19 Outbreaks in K-12 Schools in Wisconsin*, Wisconsin Department of Health Services – Division of Public Health, August 2020, P-02757.

* Note that these are guidelines issued by the CDC and the DHS as of the date of this publication and are not always consistent with each other. While the CDC and the DHS issue these recommendations, they both acknowledge that a health care provider will make the ultimate decision in each situation as each matter varies on a case by case basis. Therefore, in returning a student or employee to school, school districts are encouraged to consider the advice and input from their school-based health care providers as well as the student or employee’s health care provider (if available).

Are Wisconsin Educational Workers Considered Critical Infrastructure Workers?

Acknowledging the importance of balancing public health concerns and continuing operations of the nation’s essential functions, the CDC also issued interim guidance for “critical infrastructure workers” who potentially had exposure to COVID-19. In doing so, the CDC advised that critical infrastructure workers should be permitted to continue attending work following a potential exposure to COVID-19, provided they remain asymptomatic and follow additional precautions described in the guidance.

Just a few weeks prior to the start of the school year, on August 18, 2020, the federal Cybersecurity and Infrastructure Security Agency (CISA) issued an advisory memorandum identifying workers who conduct a wide range of operations and services which, according to CISA, are essential to the critical infrastructure of the nation. The list included most all educational workers who support preschool, K-12, college and university, and technical education, including teachers, teachers’ aides, and other school staff. The list is advisory in nature and the CISA stated that state, local, tribal, and territorial governments remain responsible for implementing their own responses in their communities.

Initially, the CISA Memo raised questions as to which set of quarantine and isolation guidelines Wisconsin educational institutions should follow—the CDC’s interim guidance for critical infrastructure workers or the DHS’s quarantine recommendations for school staff and students. If the former were to be applied, teachers and other educational workers possibly would be allowed to physically attend school without quarantining even if they had been in close contact with someone infected with COVID-19 depending upon the facts of the situation. The Wisconsin DHS addressed the CISA Memo in relation to educational workers shortly after it was issued, stating in relevant part:

DHS is still reviewing the updates from the Department of Homeland Security, but at this moment has not made any changes to our current quarantine and isolation protocols. This means that school administrators, teachers, and other staff should continue to follow the quarantine and isolation protocols in the school outbreak guidance released by DHS.

Source: <https://www.dhs.wisconsin.gov/covid-19/schools.htm>

Therefore, at least as of the date of this publication, public educational institutions in Wisconsin are advised to continue to apply the DHS’s quarantine and isolation recommendations, along with advice from individual health care providers in responding to students and educational workers who have COVID-19 or who may have been exposed to the virus, and address each situation on a case-by-case basis.

Conclusion

COVID-19 has created a myriad of attendance concerns for school districts, especially the varying guidance related to quarantining and self-isolation. School districts are wise to consider the guidance released by state and federal agencies, while coordinating efforts with local health officials and base decisions upon the advice of medical providers. The unique challenges presented by quarantine and self-isolation processes will continue to challenge school districts as to both staff and students.

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