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To: District Superintendents of BOCES
Superintendents of Public School Districts
Principals of Public Schools
Charter School Leaders

From: Kathleen R. DeCataldo

Subject: Recent Amendments to Education Law §2801-a Regarding Pandemic Planning

On September 7, 2020, Governor Cuomo signed into law Chapter 168 of the Laws of 2020 that requires public employers, including public school districts, to **adopt a continuation of operations plan in the event that the governor declares a public health emergency involving communicable disease**. The legislation (S.8617-B/ A.10832) amends subdivision 2 of section [2801-a of New York Education Law](#) to require that District Safety Plans include protocols for responding to a declared public health emergency involving a communicable disease that are “substantially consistent” with the provisions of section 27-c of the Labor Law.

The effective date of the law is September 7, 2020, with operation plans required to be established and functional within 30 days of that date. However, the Governor’s Approval Memo indicates there will be a technical chapter amendment to this bill which will push out the date the plans are due to **April 1, 2021**. Note that there may be additional changes added to the language at that time.

For your information, a summary of the requirements is provided below. District officials may include any relevant content developed for the District Re-Opening Plan in the Public Health Emergency Continuation of Operations Plan. District officials should consult with their school attorney regarding the best strategy for amending the current board - approved District Safety Plan and adopting an amended plan that includes the additional required information.

As per section [27-c of the Labor Law](#), the operations plan must include, but is not limited to:

- a. A list and description of positions and titles considered essential in the event of a state-ordered reduction of in-person workforce, as well as a justification for such consideration for each position and title. Note that per [NYS Department of Health COVID-19 toolkit guidance](#), school staff are not essential workers. However, as you are developing the list of essential and non-essential staff functions, you should

anticipate how certain positions/titles may be necessary to assist in response to a pandemic or communicable disease outbreak. For example, if schools are directed to provide meals to students and families that are eligible to receive free and/or reduced lunch or to provide child care for children of first responders or health care workers, you may need to designate certain positions/titles as *essential for this purpose*.

- b. A specific description of protocols the employer will follow in order to enable all non-essential employees and contractors to telecommute including, but not limited to, facilitating or requesting the procurement, distribution, downloading and installation of any needed devices or technology, including software, data, office laptops or cell phones, and the transferring of office phone lines to work or personal cell phones as practicable or applicable.
- c. A description of how the employer will, to the extent possible, stagger work shifts of essential employees and contractors to reduce overcrowding on public transportation and at worksites.
- d. Protocols the employer will implement to procure personal protective equipment (PPE) for essential employees and contractors, based upon tasks and needs in a quantity sufficient to provide at least two pieces of each type of PPE to each essential employee and contractor during any given work shift over at least six months. A plan for storage of equipment and access to equipment must be included.
- e. Protocols in the event an employee or contractor is exposed to a known case of the disease, exhibits symptoms of the disease, or tests positive for the disease to prevent the spread or contraction in the workplace. The protocols shall not violate any existing federal, state, or local law, regarding sick leave or health information privacy, and must include:
 - o Detailed actions to immediately and thoroughly disinfect the work area, common area surface and shared equipment; and
 - o The employer policy on available leave in the event of the need of an employee to receive testing, treatment, isolation, or quarantine.
- f. Protocol for documenting precise hours and work locations, including off-site visits, for essential employees and contractors. The protocol shall be designed only to aid in tracking of the disease and to identify exposed employees and contractors to facilitate the provision of any benefits which may be available.
- g. Protocol for working with the employer's locality to identify sites for emergency housing for essential employees to further contain the spread of the communicable disease to the extent applicable to the needs of the workplace.

Once drafted, the plan must be presented to recognized or certified representatives of the employer's employees, who shall be granted an opportunity to review the plan and make recommendations. The [Governor's press release](#) states that "[p]lans must be submitted to unions and labor management committees within 150 days," presumably requiring that the plans be shared by **February 4, 2021**.

The employer must consider and respond to such recommendations in writing within a reasonable timeframe. A copy of the final version shall be published in a clear and conspicuous location, and in the employee handbook, and in a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making suggestions or recommendations regarding the content of the plan.

Definitions:

"Personal protective equipment" shall mean all equipment worn to minimize exposure to hazards, including gloves, masks, face shields, foot and eye protection, protective hearing devices, respirators, hard hats, and disposable gowns and aprons.

"Public employer" or **"employer"** shall mean the state of New York, a county, city, town, village or any other political subdivision or civil division of the state, a public authority, commission or public benefit corporation, or any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state, provided, however, that this subdivision shall not include any employer as defined in section twenty-eight hundred one-a of the education law.

"Contractor" shall mean an individual performing services as party to a contract awarded by the state of New York or any other public employer defined in paragraph b of this subdivision.

"Essential" shall refer to a designation made that a public employee or contractor is required to be physically present at a work site to perform his or her job.

"Non-essential" shall refer to a designation made that a public employee or contractor is not required to be physically present at a work site to perform his or her job.

"Communicable disease" shall mean an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual or via an animal, vector or the inanimate environment to a susceptible animal or human host.

"Retaliatory action" shall mean the discharge, suspension, demotion, penalization, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

If you have questions, please contact the Office of Student Support Services at StudentSupportServices@nysed.gov or (518) 486-6090.