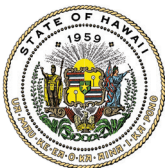

COVID-19 SPECIAL PROJECTS

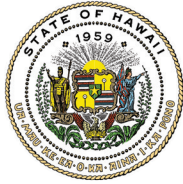
Report on the Hawai'i State Department of Education's Policies and Procedures for Handling Positive COVID-19 Test Results in Staff, Teachers, and Students

A Report to the Legislature
of the State of Hawai'i

Report No. 20-11
August 2020



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

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Auditor's Comment

Transparency and Accountability – Now More Than Ever

We recognize that the Hawai'i State Department of Education (DOE) had myriad responsibilities when it declined our requests for its COVID-19-related policies, plans, and protocols; however, it is precisely during times of crisis when the public needs and deserves clear, concise, and transparent communication from its government.

Superintendent Tardy With Response

On August 26, 2020, at 6:00 p.m., we received a letter from the Superintendent, purporting to respond to our earlier, multiple requests for information. By that time, our report was well into its production phase, and a summary of the report had been provided to the Senate COVID-19 Committee. We have attached the Department's overdue response, which we note, does not address several questions raised in our report. We have also included a brief response to the Department's letter. We do not believe the information contained in the letter changes or otherwise contradicts our report.

We are compelled to comment about the lack of cooperation we received from DOE. We recognize the department has many responsibilities and are aware of the timing of requests made for COVID-19 reports, however, the department's communication with legislators, school communities, and the public has been unclear at best, and often inconsistent. The result has been confusion and concern about, among other things, the department's plans to open schools for in-person student instruction.

The Senate COVID-19 Special Committee asked our office to help provide some needed clarity and transparency about the department's processes relating to COVID-19 positive employees and students, including policies and procedures for cleaning and disinfecting affected school facilities, contact tracing, and communicating

about positive cases to school employees, students, parents, and the public. It is important – more so during the current pandemic – that the department be transparent and accountable for its actions. The public, which includes teachers, students, and their families, is entitled to complete and timely information necessary to make decisions concerning health and safety.

Although the media has reported a number of COVID-19 positive cases in public schools, including during summer school, the department itself has offered little information about those cases, and even that has been delayed. The department has repeatedly claimed, as recently as the August 20, 2020, Board of Education meeting, that the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) prevent it from disclosing information about positive cases on its school campuses. However, the U.S. Department of Health and Human Services has issued guidance stating that HIPAA, generally, does not apply to elementary or secondary schools. Similarly, the U.S. Department of Education advised in March that FERPA does not prohibit disclosure of information about students who are COVID-19 positive in non-personally identifiable form. Furthermore, FERPA applies only to students; not to teachers, school administrators, support staff, or others who may be working at or visiting a school facility.

The department's continued insistence that FERPA and HIPAA prevent more timely and complete disclosure of information about positive cases highlights the importance of the Senate COVID-19 Special Committee's request. It is our job to assess the implementation of the department's programs and recommend improvements. But, in order to fully assess and offer additional recommendations to improve the department's processes, we need access to complete and timely information.

By letters dated August 13, August 14, and August 18, we asked the Superintendent for copies of the department's policies and procedures for handling COVID-19 cases in the schools, as well as contact information for department employees responsible for developing and implementing the department's response plans. Because of the urgency in providing the information to the Senate COVID-19 Special Committee, we stated our intent to meet, virtually, with those employees on August 18 or August 19. When we received no response from the Superintendent, we wrote to the Deputy Superintendent, who also did not reply.

With teachers and some students back on campuses last week, we assumed the information would be readily available and easily provided.

The department should have welcomed our assistance to help build confidence and trust with school communities and the public by demonstrating it was prepared with a plan to address positive cases. Yet, the Superintendent chose to ignore our requests until August 18, when she belatedly stated that our request was unreasonable, in part because she was scheduled to appear before the Senate COVID-19 Special Committee the next day and was preparing for the Board of Education meeting on August 20. We note the information that we requested is the same information that the Superintendent and her staff were asked about at both meetings and should have been easily provided. As of the issuance of this report, we still have not received any document from the Department of Education.

There is urgency in our reporting, which the department should understand. Teachers, students, and their families, as well as the public, must have confidence and trust the department will protect their health and safety to the best extent possible. It is counterproductive – and unreasonable – for the department to control and limit information that is not only important to the public, but essential for teachers and families to make informed decisions about returning to school campuses. These circumstances demand greater cooperation and transparency.

We hope the Hawai‘i State Department of Education will fully and timely cooperate with future requests for information.

Leslie H. Kondo
State Auditor



COVID-19 SPECIAL PROJECTS

Report on the Hawai'i State Department of Education's Policies and Procedures for Handling Positive COVID-19 Test Results in Staff, Teachers, and Students

Introduction

On August 13, 2020, the Senate Special Committee on COVID-19 asked the Auditor to report on current protocols employed by the Hawai'i State Department of Education (DOE or the department) to address the novel coronavirus that causes the disease COVID-19. In this report, we specifically discuss DOE's policies and procedures regarding department employees and students who are confirmed positive for COVID-19. We intended this report to provide clearer, consolidated, and current information about those policies and procedures relating to:

- Isolating and quarantining staff and students who are confirmed COVID-19 positive or who may have had contact with an infected person;
- Cleaning and disinfecting of school facilities;
- Contact tracing of positive cases involving school employees and students; and
- Communication about positive cases to school employees, students, parents, and the public.

DOE initially ignored and then declined multiple requests for information and meetings.

Because of the limited scope of this report and DOE's lack of cooperation, we were unable to determine whether the department's actions relating to actual COVID-19 positive cases were consistent with the policies and procedures posted on its website.

Amid recent reports of COVID-19 cases at DOE school campuses and questions about the timing and amount of information the department is providing, we felt the report would be particularly timely as teachers and some students have returned to campuses for the start of the current school year.

We asked DOE for its current policies and procedures and to meet with department personnel who are responsible for developing and implementing those policies and procedures. However, DOE initially ignored and then declined multiple requests for information and meetings. Despite the department's lack of cooperation, we were able to find certain information on DOE's website about the handling of positive COVID-19 cases on school campuses. We also received information from the Hawai'i State Teachers Association (HSTA). However, as we note herein, we are uncertain if the information posted on DOE's website and that which we received from HSTA is current.

The situation is fluid. As the science and guidance continue to evolve, we expect DOE's policies related to COVID-19 will respond and change accordingly. Even while researching and preparing our work on this report, DOE released an updated version of its Health and Safety Handbook and announced a revamped COVID-19 Response Team, and the Hawai'i Department of Health announced that it is forming an ad hoc committee to provide guidance to DOE on COVID-19 issues. However, the ad hoc committee's specific role currently remains vague and unclear.

In this report, we summarize available DOE policies and procedures that we were able to locate. We also include questions and issues raised through our review that we would have asked DOE personnel had we been able to speak with them. Because of the limited scope of this report and DOE's lack of cooperation, we were unable to determine whether the department's actions relating to actual COVID-19 positive cases were consistent with the policies and procedures posted on its website.

Background

Since schools closed for spring break in March 2020, the State has struggled with how to return students and staff safely back on campus amid the COVID-19 pandemic. Spring break was first extended by one week, then another. The Governor's initial stay-at-home order – effective March 25 to April 30 – further delayed the return to campus, forcing DOE to make an abrupt transition to remote learning.

On April 8, with Hawai'i's total confirmed COVID-19 cases numbering about 400, the Superintendent stated that there would be no in-person

classes until the State saw four consecutive weeks with no new infections. A week later, however, DOE announced it would finish the remainder of the year remotely. Sports seasons were left unfinished, proms were canceled, and traditional commencement exercises were replaced with virtual ceremonies and, in some cases, drive-through diploma pickup.

Public schools offered some in-person or blended instruction to about 8,000 students over the summer. On July 2, a day that Hawai‘i registered 20 new COVID-19 cases, DOE unveiled new safety protocols for the upcoming school year, intending to provide a mix of traditional in-school instruction and distance learning. HSTA opposed those reopening plans, citing safety concerns including, among other things, that the department’s plans had students’ desks placed 3 feet apart, half the distance recommended by the Centers for Disease Control and Prevention (CDC).

The 2020-21 school year was expected to start on August 4; however, by the end of July, the number of new daily cases had surged into triple digits, heightening the teachers’ union’s safety concerns and prompting the Board of Education (BOE) to delay the start of the academic year to August 17 to provide teachers two weeks of training on distance learning and safety measures. But on August 7, the Superintendent announced O‘ahu public schools would begin the school year online, and after concerns expressed by neighbor island teachers and families, the department announced that neighbor island schools would follow suit. The DOE’s three-phase plan included having some students physically return to campus during the first week of school to connect with teachers and prepare for distance learning.

The number of new COVID-19 infections on O‘ahu spiked in August, however, prompting HSTA to file a prohibited practice complaint with the Hawai‘i Labor Relations Board on August 13 in an effort to prevent DOE from requiring teachers to return to campus. In its filing, HSTA noted that COVID-19 cases had been confirmed in public schools over the summer, information that was not available to the general public. Schools reopened on August 17 nevertheless, with individual schools determining whether instruction would begin online or in-person. On August 21, DOE reported that 14 positive cases were confirmed during the week of August 15-21, including nine employees, four students, and one parent, bringing the cumulative total to 29 from June 26-August 21. Most schools will shift to total distance learning beginning August 24, DOE stated.

Since schools closed for spring break in March 2020, the State has struggled with how to return students and staff safely back on campus amid the COVID-19 pandemic.

DOE's policies and procedures regarding positive COVID-19 test results in employees and students

We do not know who is responsible for developing and updating the protocols contained in those documents; whether the department has implemented those policies and procedures; whether posted documents are the most current versions; or whether there are other relevant documents that we may not have identified.

As noted above, we asked the Superintendent for DOE's current policies and procedures relating to positive COVID-19 test results for students and staff, but received nothing from the department. We identified relevant policies and procedures posted on the department's website, press releases, and other public statements from DOE. However, we do not know who is responsible for developing and updating the protocols contained in those documents; whether the department has implemented those policies and procedures; whether posted documents are the most current versions; or whether there are other relevant documents that we may not have identified. We had expected to address those and other questions through the meetings we requested with department personnel. However, where we identified discrepancies in the documents or procedures that seem inconsistent with information the media has reported, we note and discuss those issues.

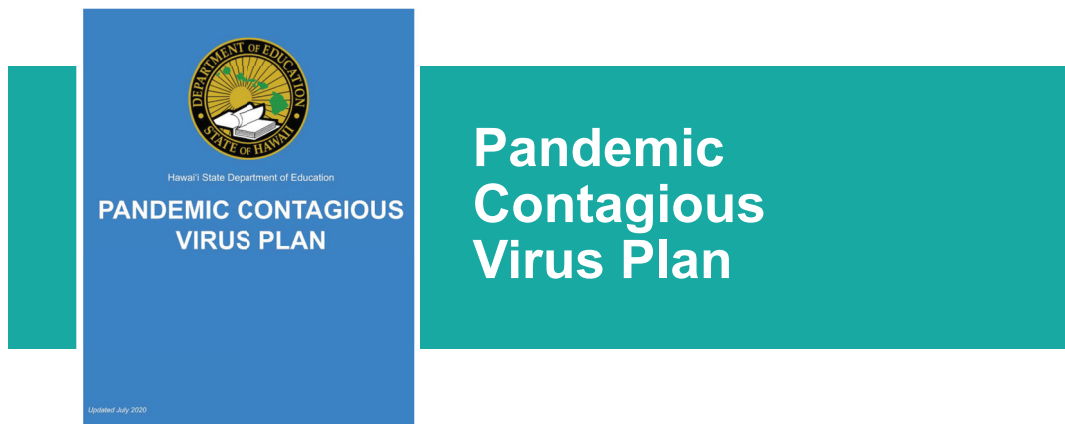
The primary documents we determined contain DOE's policies and procedures relating to the department's COVID-19 response are:

- (1) *Pandemic Contagious Virus Plan*, updated July 2020 (the Pandemic Plan);
- (2) *Return to Learn: School Reopening Plan, Health and Safety Handbook*, Version 4, dated August 19, 2020 (the Handbook); and
- (3) *Return to Learn: School Reopening Plan, Principal Handbook*, Version 2, dated July 29, 2020 (the Principal Handbook).



DOE Policies For Handling Positive COVID-19 Test Results

The Pandemic Plan and the Handbook we reviewed include procedures schools must follow when there is a positive COVID-19 case on their campuses. Principals are directed to the Handbook for guidance when a student or employee tests positive for COVID-19 or has been identified as a close contact or household member of someone who is COVID-19 positive. As we detail below, review of these policies yielded many unanswered questions and unresolved issues.



The Pandemic Plan appears to have been prepared by the department’s Office of Facilities and Operations, Safety, Security and Emergency Preparedness Branch, to prescribe DOE’s roles and responsibilities in State efforts coordinated by the Department of Health and the Hawai‘i Emergency Management Agency to address pandemic emergencies. The Pandemic Plan states that it “provides an overview of the emergency management systems used by [DOE] to coordinate both small and large scale pandemic contagious emergencies (e.g., coronavirus, dengue, influenza, severe acute respiratory syndrome, etc.) affecting the Department’s operations.” More specifically, according to the document,

[the Pandemic Plan] establishes a comprehensive framework for the coordination of support from [DOE]. When directed, the Department will take the appropriate actions to mobilize and deploy resources to prevent, plan, mitigate, respond, recover, and assist in life, safety, and property protection efforts in accordance with the [Hawai‘i Emergency Management Agency], [DOE’s Emergency Operations Plan], and [the Department of Health’s] Pandemic Flu Preparedness and Response Plan.

While the Pandemic Plan does not appear to be created to document DOE’s protocols specific to COVID-19, it has been updated to include certain information relating to COVID-19 and, by its terms, should be dictating the department’s response to the current pandemic caused by the novel coronavirus.¹ The Pandemic Plan specifically identifies its purpose: “to increase communication to our [DOE] staff and students in the event of an outbreak.” The Pandemic Plan, however, leaves implementation to each complex area in accordance with the complex

¹ “This plan may be implemented whenever pandemic emergency conditions exist, and immediate coordination is required by [DOE] for any of the following: Prevent or respond to pandemic threats to the safety of faculty and students.”

area's Continuity of Operations Plan.

The document contains information about the "Incident Command System" that is to be deployed in response to a pandemic emergency and includes four response levels and the corresponding department actions with respect to "Communication," "Health and Safety," "Facilities," "Operations," and "Curriculum and Instruction Programming" for each level. It also includes information about routine and emergency cleaning and disinfection of school facilities as well as the procedures principals are to take if someone at school is diagnosed with COVID-19.

Issues and Observations

It is unclear which response level is currently applicable for each school.

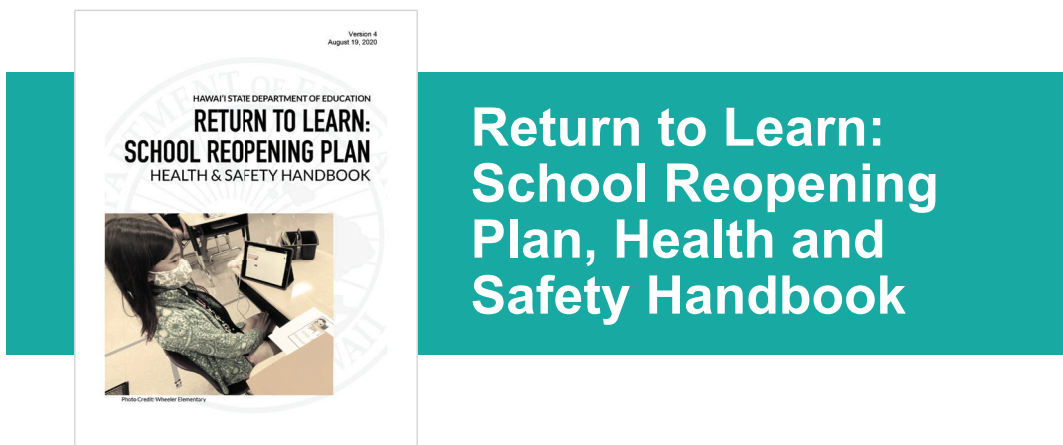
It is unclear which response level is currently applicable for each school. The goal of *Response Level 2: Targeted Social Distancing* is to prepare for the possibility of students, teachers, or other school personnel contracting COVID-19. DOE's goal for *Response Level 3: School or Neighborhood Social Distancing*, which is described as "[w]idespread sustained (ongoing) transmission," is to "[r]espond to case(s) at a school – sick student, family member or employee." Among other things, DOE's actions are to utilize school-based health providers to assist school administration and staff in responding to confirmed cases and potential outbreak, monitor children, parents and classmates; and identify siblings at other schools to alert school principals about the need to monitor students' health conditions. Another department action at Response Level 3 is to "communicate with the school community and public about known cases and next steps."

We note certain portions of the document appear outdated. For instance, in the operations section of Response Level 2, the department's social distancing considerations include "Keep individuals **3-6 feet ... apart** in shared spaces including the classroom, cafeteria, playground, library, computer lab and other small rooms" (emphasis added). The "HIDOE Technology Trouble-shooting or Preparation" section directs staff and students, who use their own personal devices and network connections, to contact their own network service provider for connectivity issues and their vendor's technical support for issues with their devices. However, it is our understanding that the department has contracted for tech support and currently directs students and their parents to its 'Ohana Help Desk for, among other things, connectivity-related issues and device support.

The Pandemic Plan provides relatively detailed information about routine cleaning and sanitization of facilities and devices. While the procedures may seem reasonable on their face, e.g., training of school custodial staff through online video, webinar, and/or in-person, we did not have the opportunity to review any of those materials. The

procedures also require that high-touch surfaces in classrooms such as chairs, desks, and table tops be cleaned multiple times throughout the day. The document does not specify who is responsible for the cleaning. During the August 20, 2020 BOE meeting, in response to similar questions, we understood DOE to say teachers are explicitly not responsible for cleaning classrooms under the current union contract.

We are unclear whether the department is using the Pandemic Plan. We have not seen media reports about an “Incident Command Center” within DOE nor an individual serving as the department’s incident commander. We also are unaware of information through news releases or other publications to “ethnic media,” as used in the Pandemic Plan. And, as noted above, certain portions of the Pandemic Plan seem to be outdated.



DOE published the Handbook to provide “guidelines to ensure the continuity of learning on healthy and safe campuses” and to supplement the Principal Handbook. The department states that “Creating and maintaining optimal learning environments for all students while minimizing the risk of spreading infectious diseases, including COVID-19 is our main objective.”

The Handbook provides general requirements intended to minimize the risk of catching and spreading COVID-19. For example, it requires department staff and contractors, visitors, and students to take their temperatures, check for signs of illness, and check for recent COVID-19 exposure every morning before arriving on campus; dictates that schools have hand washing or sanitizing stations at entrances, near or inside classrooms, and in all meeting areas, including offices, cafeterias, and libraries; and requires classrooms and other meeting spaces be configured to allow physical distancing of at least 6 feet, among other things.

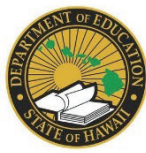
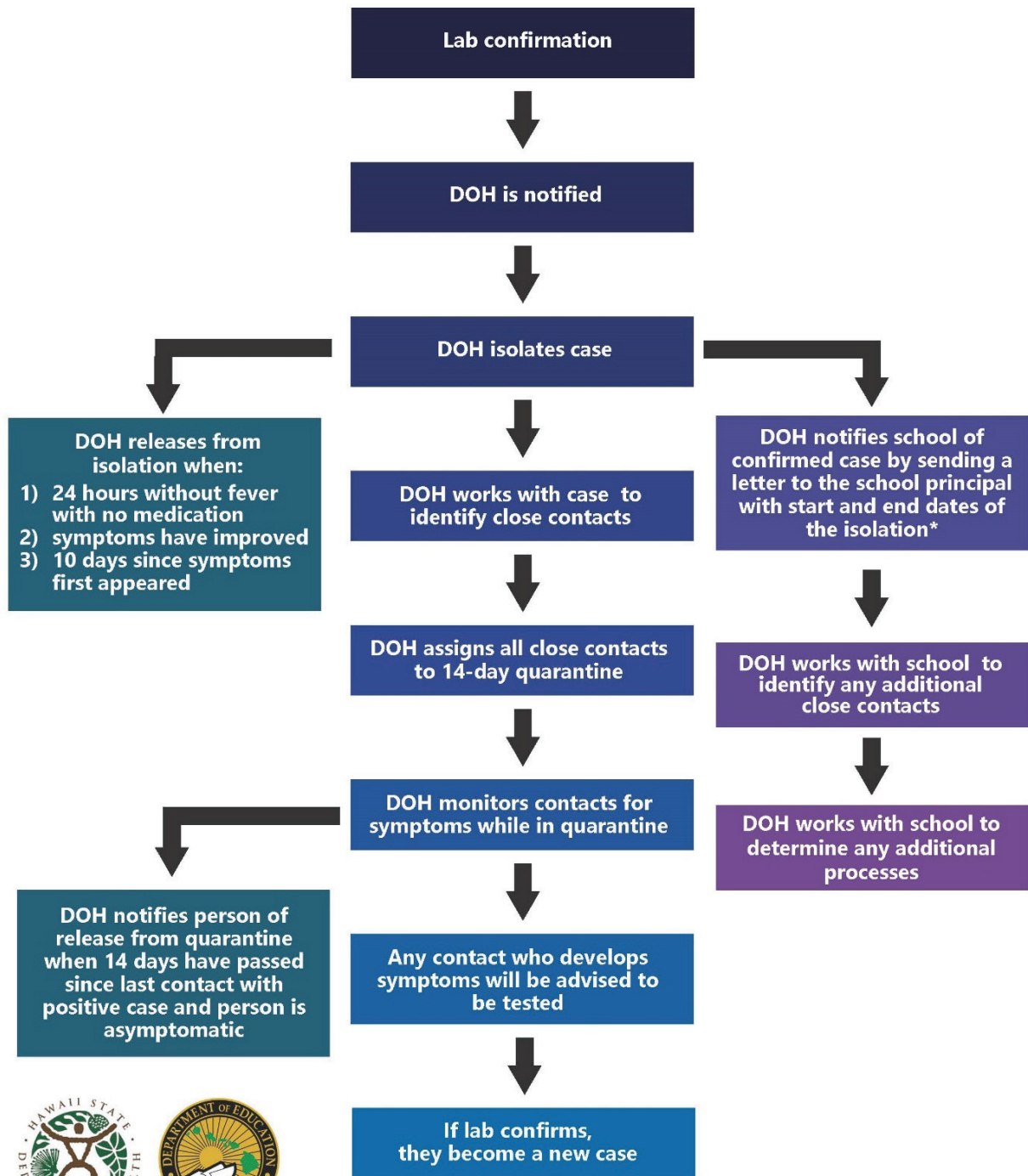
We were not able to determine whether the training and cleaning are being done in accordance with the requirements stated in the Handbook and Pandemic Plan.

The Handbook includes a section on the use of face masks, requiring face masks generally in classrooms, during campus transitions, in the cafeteria, and on school buses. The Handbook allows for the use of face shields in lieu of face masks by both teachers and students in circumstances “when facial features need to be seen.” It also provides guidance on classroom ventilation, directing that windows and doors be open when possible, even if the room has an air conditioner.

The Handbook contains provisions identical to those in the Pandemic Plan about training employees responsible for cleaning and sanitizing school facilities on the proper procedures, supplies, and frequency of cleaning through online video, webinar, and/or in-person as well as the cleaning throughout the day of high touch areas in classrooms such as chairs, desks, and table tops. As we noted above, we were not able to determine whether the training and cleaning are being done in accordance with the requirements stated in the Handbook and Pandemic Plan.

We note that we did not find any guidance about timing and deadlines for the processes described above nor any documented controls that would enable DOE to ensure the processes are followed. The Handbook’s “Positive Case in a School Procedural Flowchart” which we reproduce at right, starts with a lab confirmation of a COVID-19 positive test result. For reference, we also reproduce the Handbook’s “Close Contact in a School Procedural Flowchart.”

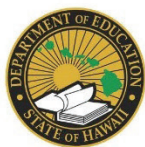
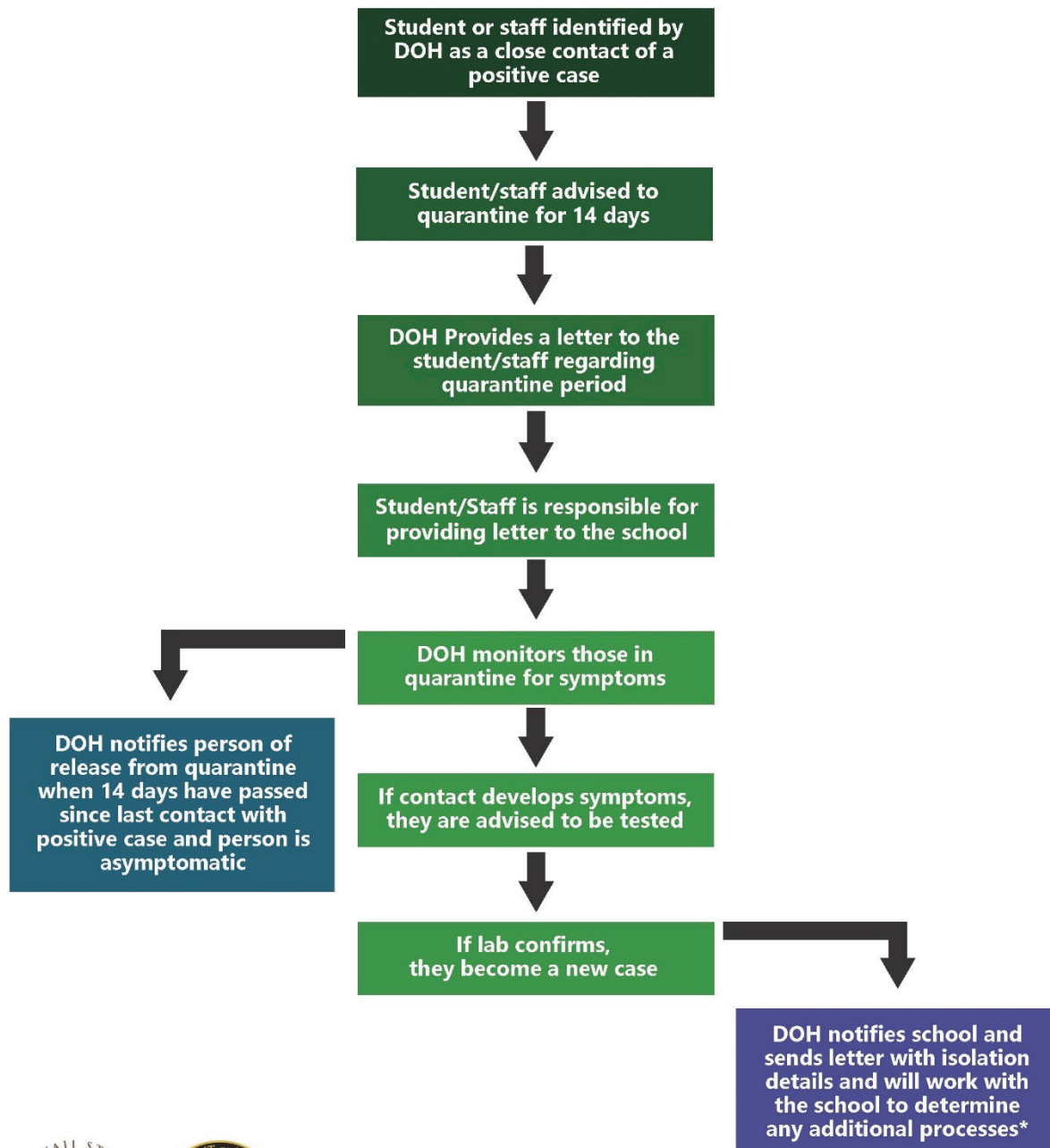
POSITIVE CASE IN A SCHOOL PROCEDURAL FLOWCHART



*Schools are only notified if DOH determines that the case may have had interactions at the school

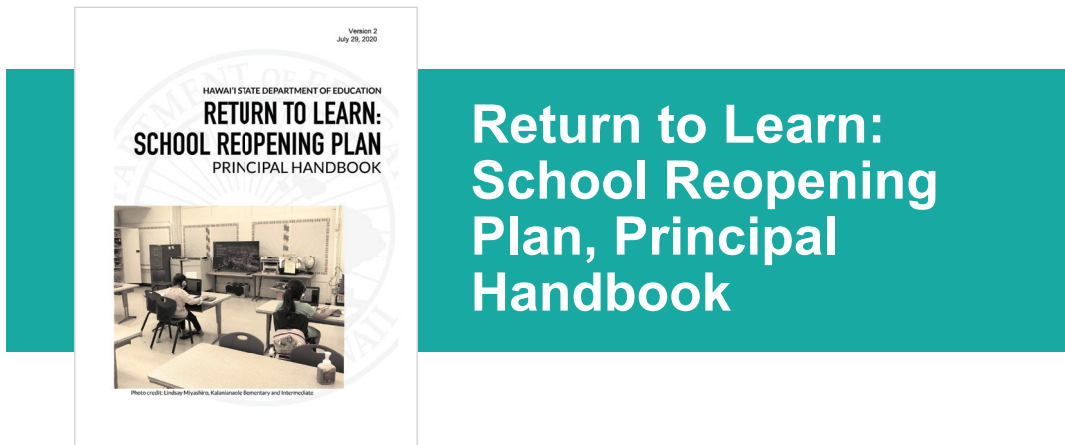
Source: Hawai'i State Department of Education, Return to Learn: School Reopening Plan Health & Safety Handbook, August 19, 2020.

CLOSE CONTACT IN A SCHOOL PROCEDURAL FLOWCHART



*Schools are only notified if DOH determines that the case may have had interactions at the school

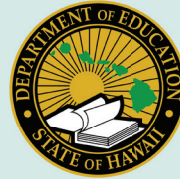
Source: Hawai'i State Department of Education, Return to Learn: School Reopening Plan Health & Safety Handbook, August 19, 2020.



The Principal Handbook serves as a complement to current BOE policies and DOE protocols, manuals, and procedures and is updated as conditions change throughout the current school year.

The Principal Handbook contains information and guidance about school operations in the current COVID-19 pandemic, such as operations during the first two weeks of school, enrollment count dates, learning assessment, student activities, and student discipline. The Principal Handbook does not contain information specific to a COVID-19 positive case on campus. Instead, principals are directed to the Handbook for guidance when a student or employee tests positive for COVID-19 or has been identified as a close contact or is a household member of someone who tests positive for the disease.

We reviewed Version 2 of the Principal Handbook and are uncertain whether it is the most current version. However, we noted a number of inconsistencies and outdated information. For instance, the targeted start date for teachers and students are July 29 and August 4, respectively. It is our understanding that teachers reported on July 29 and the start date for students was postponed. The Principal Handbook refers to providing face-to-face instruction “in compliance with CDC and DOH guidelines,” which we understand recommends maintaining physical distancing of 6 feet; yet, as noted in our earlier discussion of the Pandemic Plan, the department’s documented policy appears to allow desks and other distancing to be as little as 3 feet.



DOE policies and procedures versus the Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC) offers guidelines to administrators of K-12 schools and child care programs for planning, preparing, and responding to COVID-19. We compared CDC guidelines with DOE's policies and procedures. The CDC recommends the following if a COVID-19 case has been confirmed in a school facility – regardless of the level of community spread:

- Immediately notify and coordinate a course of action with local health officials.

DOE policies and procedures require a series of sequential internal notifications before notifying the Department of Health, including the (1) Complex Area Superintendent; (2) Deputy Superintendent; (3) Pandemic Core Team; (4) Assistant Superintendent; and (5) Department of Health who will then work directly with the school principal.

- Dismiss students and most staff from the building for 2 to 5 days. This initial short-term dismissal allows time for local health officials to gain a better understanding of the COVID-19 situation at the school by determining the extent of the impact and whether a longer closure will be required and the extent of the closure. The purpose of the CDC closure is to allow the local health officials to assess the risk and impact of the COVID-19 positive case.

DOE policies and procedures do not specify a timeline for the dismissal of staff and students and when notifications are sent to affected staff, students, and community.



Further Issues and Concerns - Investigation and Contact Tracing

DOE's position is that the Department of Health is the lead agency for notifying people who are COVID-19 positive or who may have been exposed. According to the Handbook, once DOE notifies the Department of Health that a student or employee has tested positive for COVID-19 or has been identified as a close contact or household member of someone who has tested positive for the disease, the Department of Health will investigate and determine which individuals will be directed to a 14-day home isolation or quarantine. The Department of Health notifies the school of the positive case by letter to the principal and provides the principal with the start and end dates of the person's required isolation. However, we have no information to confirm that the Department of Health is, in fact, notifying school principals about cases involving school employees and students.

The Handbook is silent about notification by the Department of Health regarding school employees or students who are close contacts of a COVID-19 positive case. While we assume the Department of Health obtains school-specific information from close contacts, including the school at which the person works or attends, we do not know if the Department of Health notifies principals or others about school employees and students who may be infected because of their close contact with someone who is positive. However, DOE employees are required to notify their supervisor if they test positive for COVID-19 or have been identified as a close contact of someone who has tested positive.

The Department of Health is also responsible for tracing and contacting the infected person's close contacts.² However, according to HSTA, principals are doing contact tracing themselves because the Department of Health is overwhelmed. HSTA has voiced its concerns, noting "Our principals are not contact tracers and have not been trained to be contact tracers."



What is Contact Tracing?

Contact tracing is a basic public health tool used throughout the world for tackling both minor and serious epidemiological incidents. In its simplest form, contact tracing is reaching out to the people who are infected, as well as contacting people they have had contact with, in an effort to isolate and suppress the disease. Contact tracers notify close contacts of the COVID-19 positive person of their potential exposure, referring them to testing resources, monitoring the contact for COVID-19 symptoms, and connecting them to resources to support self-quarantine.

² According to the flowchart, school employees and students are required to notify the school if they are identified as a close contact of someone who is COVID-19 positive.

At a press conference on August 11, 2020, the Superintendent said she requested the Department of Health provide a team of contact tracers devoted solely to the K-12 education system. At an informational briefing to the Senate Special Committee on COVID-19 on August 19, the Superintendent testified that despite her earlier request for contact tracers, none had been assigned by the Department of Health. At a BOE meeting on August 20, DOE announced that an internal “COVID-19 Response Team” will help link principals with the Department of Health to coordinate the school’s response.

In July 2020, the Department of Health Director said he had been asked by the Governor to form a task force to come up with “trigger points” to determine when a school should shut down. As of August 20, HSTA said no such update had been provided.

In July 2020, the Department of Health Director (Health Director) said he had been asked by the Governor to form a task force to come up with “trigger points” to determine when a school should shut down. As of August 20, HSTA said no such update had been provided. The Health Director, however, told us that he was establishing an informal group, which he called a “task force,” to work with DOE. However, he was unable to identify a complete list of potential members he had asked to serve on the task force and said it was still being formed.



DOE Policies on Communication and Outreach

According to DOE’s website, the department and its schools are charged with communicating to a wide range of attendees, including 22,000 full-time employees, 20,000 part-time employees, 180,000 students and their families, government officials, and community partners. According to the department, a diverse toolkit of communications channels is used to enhance engagement and ensure that the majority of its internal and external stakeholders can be reached during a crisis situation.

We found DOE has some policies and procedures regarding communication generally, and COVID-19 cases specifically. Given the recent reports about questions and frustration over the lack of clarity expressed by the media, employees, legislators, and parents, the execution of these policies is very much in question. The information below is from DOE’s Communications Plan which we accessed through the department’s website. We note that the Communications Plan seems to delegate school-level communication decisions to the principals.

School-level Communication

Schools are encouraged to create a communications timeline to share information and updates about the 2020-21 school year with key school community stakeholders including staff, parents, students,

area lawmakers, partners, and vendors. Schools should audit their communication channels to ensure they are working properly and that the appropriate staff have access and log-in information, verify that contacts are up to date, and determine whether additional channels are needed to communicate with internal and external community audiences.

School communications channels include SchoolMessenger and websites, the department’s Gmail account and approved education applications, and social media platforms.

Statewide Communication

The department continues to share statewide updates about the 2020-21 school year and COVID-19 impacts, including school and office closures, on its public website, intranet, and social media channels. Internal updates will also be electronically mailed to official k12.hi.us Google accounts as needed. Due to the large number of employees, students and families served by the department, important and urgent messages are communicated through traditional media including news stations, newspapers, and radio.

The statewide leadership team made up of key superintendents and directors meet twice a week for briefings and decision-making. Complex Area Superintendents are charged with communicating with their complex area team and school leaders.

Communications Branch

DOE’s Communications Branch is tasked with providing support during crisis situations, which includes media relations, school-level messaging such as letters to parents and staff, SchoolMessenger copy, and coordinating a communications response with DOE leadership. In the event of an emergency or crisis situation, schools should follow communication protocols in DOE’s Emergency Operations Plan.³ If media contacts a school, administrators are encouraged to work with the Communications Branch to ensure accurate and timely information is provided while also protecting student and employee privacy as required by law.

Despite having policies in place, until recently, the department generally has not provided information to the public about COVID-19 cases on school campuses.

³ Section 11.8.14 of the DOE Emergency Operations Plan (June 2019) includes a two-page summary of the actions to be taken by the department in the event of a pandemic. The DOE will take direction from the Governor, the Department of Health, and State and County civil defense agencies and provide requested community assistance. The DOE’s Communications Office will take the lead in keeping employees and the community apprised of the department’s conditions, services, and assistance.

Internal and External Communication - A Vital Part of Internal Controls

EFFECTIVE communication, both internal and external, is a critical part of an organization’s “internal controls” – the processes installed by management that provide reasonable assurance that objectives will be achieved. As noted by the United States Government Accountability Office in *Standards for Internal Control in the Federal Government*, widely known as the “Green Book,” “[e]ffective information and communication are vital for an entity to achieve its objectives. Entity management needs access to relevant and reliable communication related to internal as well as external events.”

Information and communication of quality information is used to support the internal control system, including access to relevant and reliable communication about internal as well as external events. The three principles associated with information and communication are that management should (1) use quality information to achieve the entity’s objectives; (2) internally communicate the necessary quality information to achieve the entity’s objectives; and (3) externally communicate the necessary quality information to achieve the entity’s objectives.

Information on positive cases has also been inconsistent and incomplete. In some cases, only teachers and staff were notified about a COVID-19 positive case on campus.

After criticism from the teachers' union for failing to publicize cases, DOE announced there had been 13 positive coronavirus cases at DOE schools or offices, including six positive cases from summer learning programs on O'ahu and Kaua'i as of August 11.⁴ According to DOE, of the 13 positive cases announced, 11 involved staff members and 2 involved students. However, the department did not identify the schools or offices associated with the positive cases, identifying them by complex area only.

While we are aware, anecdotally, about principals of some schools sending letters about positive cases to teachers and staff, we were unable to determine whether principals have notified students, families, and others who are part of the “impacted school community” about all of the positive cases on their respective school campuses.

On August 15, two days before students returned to school, the media reported that HSTA received reports that employees at seven O'ahu schools had been diagnosed with COVID-19. According to HSTA, the seven new cases were reported at the following schools: Fern Elementary, Holomua Elementary, Leihoku Elementary, Mililani High, Roosevelt High, Wahiawā Middle, and Waikele Elementary. HSTA stated these seven new outbreaks were in addition to the 13 cases previously reported on public school campuses dating back to June 26, 2020. However, according to DOE, for the week ending August 14, 2020, there were six positive cases including six employees at six schools.

On August 16, the day before some students returned to campus, DOE informed Hawai'i Public Radio that they have had a total of 15 cases between June 26 to August 14, including cases on six campuses since August 8. HSTA told us they have received anecdotal information about positive cases on campus every day since teachers returned to school in late July. While we are aware, anecdotally, about principals of some schools sending letters about positive cases to teachers and staff, we were unable to determine whether principals have notified students, families, and others who are part of the “impacted school community” about all of the positive cases on their respective school campuses.

According to DOE, notification for each of the positive cases was made to the “impacted school community” in a timely manner and the Department of Health is the lead agency for notifying people who may have been exposed. However, HSTA alleged that teachers were notified of the outbreaks, but the parents and greater public were not notified. HSTA further alleged that neither DOE nor the Department of Health are informing the public about positive cases.

DOE said they will respond accordingly if a case rises to a level requiring immediate, broader notification to the public. More

⁴ According to HSTA, they do not represent summer school teachers.

DOE's Handling of Positive Test Results Highlighted in Media Coverage

MEDIA COVERAGE of an August 11 Hawai'i State Teacher's Association (HSTA) press conference included reports that the union knew of nine DOE campuses that had at least one COVID-19 case since teachers returned to work at the end of July. HSTA had identified five of those campuses as of August 6: Campbell High, Moanalua High, Kapolei Middle, Moanalua Elementary, and Hilo Intermediate schools. According to HSTA, the union had to "step up" because DOE and the Department of Health failed to do so, alleging that DOE lacks transparency and the Department of Health is unprepared yet still fixated with returning students to school on August 17, 2020. However, DOE said HSTA was incorrect about the case at Moanalua Elementary and that the case at Hilo Intermediate involved a visitor to the school, not an employee or student, and is not included in

DOE's count of confirmed COVID-19 positive cases in schools.

According to HSTA, as of July 31, confirmed cases at 'Iliahi Elementary, Ka'ala Elementary, Leilehua High, and Wai'ala'e Public Charter School required teachers to self-quarantine. The actual number of positive cases at those schools is unknown; the union said DOE did not disclose the number of staff quarantined and the Department of Health did not reach out to impacted individuals for contact tracing. "Policymakers, parents and the public deserve to know important information so they can decide the vital question of whether our schools are safe for keiki to return on Monday," HSTA stated.

specifically, according to DOE, the department would provide broader notification to the public after working with the Department of Health "to determine whether there is some kind of spread or exposure that would trigger the need for some kind of community notification." And "[o]nce it [COVID-19] starts getting broader, and impacting several schools or a region or a cluster of possible cases," only then would DOE provide broader notification to the public regarding cases at schools. The department maintained that health privacy laws prohibit broader notification of individual positive coronavirus cases. But, a DOE email, quoted in an August 20 article on Honolulu Civil Beat, said "We would put out a broad notification about a school case if we are unable to quickly notify impacted individuals or are unsure of the infected person's contact with staff and students."

The article stated that in the previous week the department launched a new online "case count tracker" that shows confirmed cases by complex area, but not individual schools, which the department will update weekly. HSTA, which is tracking more than two dozen cases on its own, has criticized DOE for not providing timely information or specifying which schools are affected. The August 20 Civil Beat article quoted a DOE spokesperson, who explained that reporting by complex area "balances the public's right to know with the significant privacy interests" of the impacted person, including "protecting minors from being physically ostracized or psychologically harmed by being identified."

DOE COVID-19 Information and Updates

DOE's website includes a COVID-19 Information and Updates resource page which provides weekly updates to the public on confirmed COVID-19 cases in the DOE system. Cases currently being investigated are not included in the count. Case counts are reported weekly by *school complex area* (i.e., groups of adjacent high schools and their feeder elementary and middle schools). The Handbook recognizes a concern for violating privacy laws and to avoid any such violation, all notifications of a positive case will be done by the Department of Health, which was echoed by the DOE Superintendent at an informational briefing to the Senate COVID-19 Special Committee on August 19. However, according to HSTA, releasing more detailed information, such as the name of the school and date of notification, would narrow the field of concern for the general public.

According to DOE's case count tracker, there were 15 confirmed COVID-19 cases in the DOE system statewide from June 26 to August 14. An additional 14 cases were confirmed for the week of August 15 to August 21- the first week of school - raising the total case count to 29 confirmed COVID-19 positive cases in the state's public education system. We reproduce the information disclosed in DOE's two most recent case count tracker releases below:

DOE's case count tracker June 26–August 21: 29 confirmed COVID-19 cases



DOE's COVID-19 Weekly Information and Updates Resource Page



Hawaii State
Department
of Education

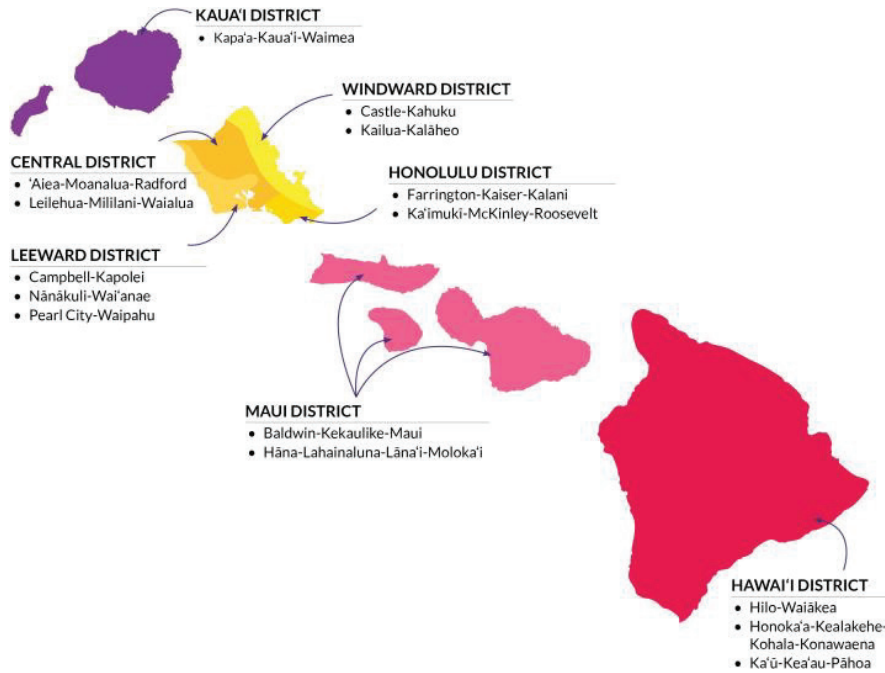
HIDOE COVID-19 Information and Updates

This resource page provides weekly updates to the public on confirmed COVID-19 cases in the HIDOE system.

Throughout the COVID-19 pandemic, the health and safety of our students, employees and school communities remains one of our highest priorities.

Along with internal guidelines, the Department's [Health & Safety Handbook](#) provides overall direction to schools and offices, including guidance on safety protocols, cleaning and sanitation procedures, and notification steps.

This resource page provides weekly updates to the public on *confirmed* COVID-19 cases in the HIDOE system. Case counts will be reported weekly by [complex area](#) (groups of adjacent high schools and their feeder elementary and middle schools), along with a running statewide total.



Source: Hawai'i State Department of Education

Cases for the week of August 8 - 14, 2020

Cases below have been confirmed. In some situations, cases are reported to the Department by an individual, pending documentation of the positive result. This does not stop HIDOE's response, and notification may go out to the school community out of an abundance of caution before the confirmation is received. Cases currently being investigated are not included in the count.

Positive cases for the week of Aug. 8-14 include six employees at six schools. All campuses were sanitized and notification went out to staff in all cases. In two of the recent cases, parent notification went out as well in anticipation of school visits from families to pick up materials.

Island	Complex Area	Case Count	HIDOE Response	
			Notification to impacted community	Cleaning and disinfection completed
O'ahu				
	Farrington-Kaiser-Kalani	0		
	Kaimukī-McKinley-Roosevelt	1	✓	✓
	'Aiea-Moanalua-Radford	1	✓	✓
	Leilehua-Mililani-Waialua	0		
	Campbell-Kapolei	2	✓	✓
	Pearl City-Waipahu	1	✓	✓
	Nānākuli-Wai'anae	0		
	Castle-Kahuku	1	✓	✓
	Kailua-Kalāheo	0		
Maui				
	Baldwin-Kekaulike-Maui	0		
	Hāna-Lahainaluna-Lāna'i-Moloka'i	0		
Kaua'i				
	Kapa'a-Kaua'i-Waimea	0		
Hawai'i				
	Hilo-Waiākea	0		
	Ka'u-Kea'au-Pahoā	0		
	Honoka'a-Kealakehe-Kohala-Kona Waena	0		

HIDOE cumulative statewide total to-date (June 26–Aug. 14, 2020): 15

Source: Hawai'i State Department of Education

Cases for the week of August 15 - 21, 2020

The Hawai'i State Department of Education (HIDOE) welcomed back students this week, starting the new school year off in modified formats that included online and in-person learning. Most schools statewide will shift to full distance learning beginning Monday, August 24.

Recognizing the importance of timely and relevant communication during a crisis, the Department is publicly reporting positive cases by complex area on its website. Public disclosure is done at this level in accordance with federal and state laws protecting student and staff privacy and medical information. Policy considerations are in place to protect the identity of individuals including protecting minors from being physically ostracized or psychologically harmed by being identified and minimizing disruptions at schools. Schools promptly notify affected individuals directly – staff, families and/or service providers – about positive (or in some cases potential positive) cases as appropriate.

HIDOE's case count should not be used to determine community spread or sources of an outbreak or cluster. To date, in all HIDOE cases, an infected individual came onto campus; the transmission did not occur on campus.

Case Summary

Confirmed positive cases for the week of August 15 – 21 include nine employees, four students and one parent, due to the level of interaction that occurred, for a **total of 14**. All campuses were sanitized and notification went out to staff in all cases. In all but one case, due to the timing of the case that occurred before students returned, parents received notification too.

In some situations, cases are reported to the Department by an individual, pending documentation of the positive result. This does not stop HIDOE's response, and notification may go out to the school community out of an abundance of caution before the confirmation is received. Cases currently being investigated are not included in the count and will be reported in the following weeks when the Department receives one of three official documentation options: lab results, doctor's note or DOH confirmation.

Before coming onto a HIDOE campus, staff, parents, and students should do a wellness check. If an individual is exhibiting any symptoms or if they have been directed to quarantine by DOH, they should not come onto campus.

Report on the Hawai'i State Department of Education's Policies and Procedures for Handling Positive COVID-19 Test Results in Staff, Teachers, and Students

Island	Complex Area	Case Count	HIDOE Response	
			Notification to impacted community	Cleaning and disinfection completed
O'ahu				
	Farrington-Kaiser-Kalani			
8/15	Employee	1	✓	✓
8/15	Students (same household)	2	✓	✓
8/17	Employee	1	✓	✓
8/20	Student	1	✓	✓
	Kaimukī-McKinley-Roosevelt			
	'Aiea-Moanalua-Radford			
8/17	Employee	1	✓	✓
8/17	Employee	1	✓	✓
	Leilehua-Mililani-Waiialua			
	Campbell-Kapolei			
8/15	Employee	1	✓	✓
8/17	Employee	1	✓	✓
	Pearl City-Waipahu			
8/18	Employee	1	✓	✓
8/18	Parent and student (same household)	2	✓	✓
	Nānākuli-Wai'anae			
8/13	Employee	1	✓	✓
	Castle-Kahuku			
	Kailua-Kalāheo			
8/15	Employee	1	✓	✓
Maui				
	Baldwin-Kekaulike-Maui	0		
	Hāna-Lahainaluna-Lāna'i-Moloka'i	0		
Kaua'i				
	Kapa'a-Kaua'i-Waimea	0		
Hawai'i				
	Hilo-Waiākea	0		
	Ka'u-Kea'au-Pahoa	0		
	Honoka'a-Kealakehe-Kohala-Kona Waena	0		
HIDOE cumulative statewide total to date (June 26 – August 21, 2020): 29				

Source: Hawai'i State Department of Education

In some situations, cases are reported to the department by an individual, pending documentation of the positive result. This does not stop DOE's response, and notification may go out to the school community out of an abundance of caution before the confirmation is received. Cases currently being investigated are not included in the count.

Notification Steps and Considerations

Communication to staff, students and families should not go out until the Department of Health has confirmed a positive case with the individual and/or school. The following steps should be taken when determining whether a DOE notification should be disseminated:

1. Principals should contact their Complex Area Superintendent immediately if they are notified of a positive COVID-19 case impacting their school.
2. The Complex Area Superintendent will notify the Deputy Superintendent and designated points of contact in the Office of Student Support Services, Office of Facilities and Operations and the Communications Branch.
3. In order to avoid any potential Family Educational Rights and Privacy Act (FERPA) and/or Health Insurance Portability and Accountability Act (HIPAA) violations, all notifications about positive COVID-19 cases to those who might be potentially impacted will be done by the Department of Health.

The Health Insurance Portability and Accountability Act Privacy Rule does not apply to elementary or secondary schools

ACCORDING TO the U.S. Department of Health and Human Services (HHS), the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, generally, does not apply to an elementary or secondary school because schools are not a HIPAA "covered entity," meaning they are not health plans, health care clearinghouses or those health care providers that transmit health information electronically in connection with certain administrative and financial transactions. While schools may employ school nurses, physicians, or psychologists, the school is not generally a HIPAA covered entity because the health care providers do not engage in any of the covered transactions, such as billing a health plan electronically.

Even if a school is a covered entity, i.e., it employs a health care provider that conducts one or more covered transactions electronically, those schools generally maintain health care information only in student health records, which are "educational records" under the Family Educational Rights and Privacy Act (FERPA). Because student health information in education records is protected under FERPA, HIPAA excludes such information from its coverage.

Source: *Does the HIPAA Privacy Rule apply to an elementary or secondary school?* <https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html>

4. DOE understands that schools may want to notify their staff and school communities out of an abundance of caution, which is why a notification template is available and has been approved by DOE's Risk Manager. The Communications Branch will provide the template and offer notification guidance, as needed. Schools are not legally obligated to send this out since the lead agency is the Department of Health.

Pandemic Contagious Virus Plan

Among the goals and purposes of the Pandemic Plan is development of a communications plan to ensure students, parents, and staff receive timely and accurate information regarding disease-prevention and infection control strategies.

Communication, both internal and external, is critical to maintain before, throughout, and in the aftermath of a pandemic to keep employees and the community apprised of DOE's conditions, services, and assistance. The Communications Branch will take the lead in this effort.

Exceptions to the Family Educational Rights and Privacy Act during a public health emergency

MEDIA COVERAGE In March 2020, the U.S. Department of Education's Student Privacy Office issued updated guidance about the Family Educational Rights and Privacy Act (FERPA) as it pertains to COVID-19. FERPA, which protects the privacy of student education records, applies to educational agencies and institutions that receive federal funding from U.S. Department of Education, including DOE. Under FERPA, public educational agencies and institutions are prohibited from disclosing personally identifiable information without consent from a parent or eligible student unless an exception to FERPA's general consent rules applies, i.e., the "health or safety emergency" exception.

According to the U.S. Department of Education guidance, the FERPA health or safety exception allows educational agencies and institutions to disclose student records to appropriate entities, such as public health officials, without consent if deemed necessary to protect the health and

safety of a student or other individuals. In addition, schools generally do not need consent to disclose non-personally identifiable information about a student's illness: "For example, if an educational agency or institution releases the fact that individuals are absent due to COVID-19 (but does not disclose their identities), this would generally not be considered personally identifiable to the absent students under FERPA as long as there are other individuals at the educational agency or institution who are absent for other reasons."

FERPA only applies to students and does not prohibit schools from informing parents and students that a specific teacher or school official has COVID-19.

Source: *FERPA & Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions*, March 2020. <https://studentprivacy.ed.gov/resources/ferpa-and-coronavirus-disease-2019-covid-19>

1. Public information

- Work closely with the Department of Health and other state and federal agencies to ensure the sharing of new information.
- Communicate updates related to schools to DOE administrators, and to the general public by news releases and department publications as needed.
- Conduct media briefings, as necessary.
- Post information on the DOE website, as needed.
A designated DOE information line may be set up.
- Consider relaying information via DOE's public access channel (Ōlelo on O'ahu; may differ on neighbor islands).

2. Other information for complexes, state offices, and key individuals

- Provide regular updates to key public health and education stakeholders as the contagious virus unfolds.
- Assist various offices with communications sent home to parents or shared with employees to avoid misinformation or misuse of terms (e.g., Frequently Asked Questions, classroom instruction, public access TV for home teaching, employee compensation, work schedule changes, school usage as an alternative emergency site, school schedule changes, student transportation changes, etc.). Provide template letters and SchoolMessenger messages as necessary for schools, state, and district offices.

3. Language

- Send official news releases to ethnic media.

The Pandemic Plan outlines the following steps to be taken in the event of a confirmed case of COVID-19 or similar type of disease at a school campus:

1. Initial notification

- The Principal or designee calls the Complex Area Superintendent with details of the potential contamination and, if appropriate, receives approval for closing the school. Details needed to determine whether to close a school include (1) when the employee or student noticed symptoms, took the test, and received confirmation of positive contagious disease results and (2) the extent to which the individual with a confirmed case of a contagious disease participated in school activities, interacted with others, and accessed school properties while sick.

- The Complex Area Superintendent notifies the Deputy Superintendent who sets up a group text to include the principal, Complex Area Superintendent, and the DOE Pandemic Core Team members. If the contagious disease case is a student, the Office of Student Support Services Assistant Superintendent and School Health Section Administrator are also included. If the contagious disease case is an employee, the Office of Talent Management Assistant Superintendent and Executive Assistant are included, as well.
- Upon notification and approval by the Complex Area Superintendent, the principal closes the school campus and sends all employees and students off campus.
- The principal obtains contact information for all employees and casual hires and the maps of the school with building/room numbers and designated workrooms.

2. Responsibilities for others

- If an employee is diagnosed with a contagious disease, the Office of Talent Management Assistant Superintendent must notify the Department of Health, which will assign an investigator to contact the employee and trace close contacts. Anyone in contact with the employee will need to self-quarantine for at least 14 days.
- If a student is diagnosed with a contagious disease, the Office of Student Support Services School Health Section Administrator must notify the Department of Health, which will assign an investigator to contact the student's parent/guardian and trace close contacts. Anyone in contact with the student will need to self-quarantine for at least 14 days.
- The Communications Branch will begin working with principal and Complex Area Superintendent on key messaging for staff, community, and media.
- The Office of Facilities and Operations will begin working with the principal or designee on the cleaning plan and schedule.

3. Notification of key leaders

- The Deputy Superintendent notifies the (1) Superintendent; (2) Senate Education Chair; (3) House Lower and Higher Education Chair; and (4) DOE Pandemic Core Team to schedule an emergency meeting.

The Centers for Disease Control and Prevention Consideration: Notify local health officials, staff, and families

ACCORDING TO the Centers for Disease Control and Prevention's (CDC) Considerations for Operating Schools During COVID-19, school administrators should notify local health officials, staff, and families immediately on any case of COVID-19 while maintaining confidentiality in accordance with the Americans with Disabilities Act (ADA) and the Family Education Rights and Privacy Act (FERPA).

The ADA, which protects applicants and employees from disability discrimination, is relevant to pandemic preparation in at least three major ways. First, the ADA regulates employers' disability-related inquiries and medical examinations for all applicants and employees, including those who do not have ADA disabilities. Second, the ADA prohibits covered employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat" (i.e., a significant risk of substantial harm even with reasonable accommodation). Third, the ADA requires reasonable accommodations for individuals with disabilities (absent undue hardship) during a pandemic.

FERPA is a Federal law that protects the privacy of student education records. (20 U.S.C. § 1232g; 34 C.F.R. Part 99) The law applies to all educational agencies and institutions that receive

funds under any program administered by the Secretary of Education. If an educational agency or institution learns that student(s) in attendance at the school are out sick due to COVID-19, it may disclose information about the student's illness under FERPA to other students and their parents in the school community without prior written parental or eligible student consent, but only if that information is in a non-personally identifiable form. Specifically, the educational agency or institution must make a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and considering other reasonably available information. See 34 C.F.R. § 99.31(b)(1).

HSTA reportedly learns of positive COVID-19 cases from its members/teachers and its own employees who have children attending public schools. The union provided us with copies of notifications to staff, students, and families of positive COVID-19 cases from principals at their respective schools. The earliest notification is dated August 1, 2020. The majority of the notifications appear to be addressed only to teachers and staff. DOE did not respond to our request for copies of all communications regarding positive COVID-19 cases from DOE. Thus, we have no way of determining whether staff, students, and families at all schools with positive cases were properly notified.

- The Superintendent notifies the (1) BOE Chair; and (2) Governor.
- The Communications Director will work with the school, complex area, or state office to notify employees, students, and their families.



Further Issues and Concerns - Communication

At a BOE meeting on August 20, four days after schools reopened, DOE announced that a “COVID-19 Response Team” would help the department decide what to do when someone at the school is confirmed or suspected to have the coronavirus, according to a Honolulu Civil Beat article.

The Handbook’s reopening guidance directs each school to designate a staff member (e.g., administrator or school health assistant) to serve as the point of contact responsible for responding to COVID-19 concerns and ensure that all staff, students, and families know who this person is and how to get in contact. The Handbook suggests each school also create a COVID-19 Response Team comprised of, at minimum, the principal, school health assistant, a teacher, and the head custodian to address concerns and questions.

At a BOE meeting on August 20, four days after schools reopened, DOE announced that a “COVID-19 Response Team” would help the department decide what to do when someone at the school is confirmed or suspected to have the coronavirus, according to a Honolulu Civil Beat article. Among other things, the team is expected to put principals in contact with the Department of Health to determine the appropriate action. It is unclear whether the response team announced at the BOE meeting is the same as the COVID-19 Response Team described in the Handbook.

Although both the Pandemic Plan and the Handbook include notification procedures, those procedures are vague and do not address public notification of the specific school that has the positive case; as of August 21, the department continues to identify cases by complex area rather than individual schools. According to the Handbook, before informing school personnel, students, and families of a positive case, the principal must first contact the Complex Area Superintendent, who then will notify the Deputy Superintendent and others.

The Handbook requires notification to the DOE employee or student who is positive to be conducted by the Department of Health, not DOE, “[i]n order to avoid any potential Family Educational Rights and Privacy Act (FERPA) and/or Health Insurance Portability and Accountability Act (HIPAA) violations.” However, we question whether FERPA or HIPAA apply to information about positive cases in a specific school, including whether the case involves a teacher, administrator, support staff, or student, which contains no personally identifiable information.



Further Issues and Concerns - Cleaning and Disinfecting of Schools and School Closures

According to the Handbook, when there is a confirmed case of COVID-19 on a school campus, the DOE Office of Facilities and Operations (OFO) will work with the director/supervisor on the cleaning plan and schedule. Under this process:

- All areas accessed by the individual are identified.
- Director/Supervisor and the Assistant Superintendent decide on what areas, rooms, and buildings to close.
- OFO will notify appropriate branches and staff and will work with the school to determine next steps and a schedule for cleaning.

The DOE Pandemic Core Team, which includes the Chief of Staff, the Deputy Superintendent, and the Assistant Superintendents of the Office of Facilities and Operations, the Office of Student Support Services, the Office of Talent Management, determines the dates the school campus will be cleaned and disinfected.

The Pandemic Plan, however, includes a four-page Cleaning and Disinfecting of Facilities Protocol Checklist that details procedures for the cleaning and disinfecting of facilities when a positive case is associated with a school. According to the Checklist, once a positive case has been identified, the campus is closed to all employees and students for 21 days. The procedures require a 7-day waiting period before beginning cleaning and disinfection, after which all personnel, with the exception of security and the cleaning staff, remain off campus. The campus is closed, and all personnel remain off campus for another 7 days after cleaning and disinfection is completed.

We question whether the department is following its cleaning and disinfection procedures. While the department has not identified specific schools, it has confirmed positive cases on a number of its school campuses. For instance, DOE's COVID-19 online case tracker reports 14 confirmed positive cases for the week ending August 21 and reports, simultaneously, that all campuses were sanitized. A 21-day closure could not have happened in the timeframe covered by this information.

According to the Checklist, once a positive case has been identified, the campus is closed to all employees and students for 21 days. The procedures require a 7-day waiting period before beginning cleaning and disinfection, after which all personnel, with the exception of security and the cleaning staff, remain off campus.

Conclusion and Recommendations

We found that the Hawai'i State Department of Education (DOE) has in place some plans and handbooks that purport to include policies and procedures specific to department employees and students who test positive for the novel coronavirus that causes the disease COVID-19. These policies and procedures that we were able to locate are primarily found within DOE's *Pandemic Contagious Virus Plan*, *Emergency Operations Plan*, *Return to Learn: School Reopening Plan*, *Health and Safety Handbook*, and *Principal Handbook on Reopening Schools*. DOE also has some policies regarding communication and dissemination of information of positive COVID-19 test results. However, DOE did not respond to our requests for copies of the department's current policies and procedures, and we were not able to interview DOE staff. Unfortunately, we cannot be certain whether DOE is using the policies and procedures we located, whether they are current, or whether there are other policies and procedures guiding its actions regarding positive COVID-19 cases.

The policies we reviewed are often inconsistent, appear outdated, and at times incomplete. It is questionable at best as to how effectively even these policies have been carried out to date. We were not able to "test" whether the department's policies and procedures are being uniformly applied or followed. Certainly, media reports and our meeting with the teachers' union reveal many concerns relating to the execution of these policies and suggest that the department's policies are not always followed.

The timing of communication to co-workers, teachers, and the public appears to be of particular concern. Disclosing the summer school cases apparently well after-the-fact, disclosing cases by a large complex area instead of by individual school, and lack of timely notification about updated policies have all been noted in media reports and in our discussions with the teachers' union. DOE's communication has been delayed, inconsistent, and with limited specificity. We question the department's reference to FERPA and HIPAA in justifying limiting the information about positive cases, when guidance issued by the federal agencies that oversee those laws specific to COVID-19 seems to reflect neither FERPA nor HIPAA prohibit public dissemination of non-personally identifiable information.

DOE does rely on the Department of Health for guidance on many issues. For example, DOE has apparently asked for a dedicated team of contact tracers, as well as for clarity on "triggers" for the partial or complete closure of schools. However, this is not an excuse for any real or perceived failure to adequately keep parents, staff, students, BOE, and the public informed. The department is responsible for keeping school communities safe and informed.

During our work on this report, the Department of Health announced that it was in the process of creating an ad hoc committee comprised of its own personnel, medical experts, and others, in order to improve guidance to DOE on developing COVID-19 policies. During an interview on August 18, the Health Director named some of the ad hoc committee members, but noted the group was still in the formative stages, with members still to be named and no meetings scheduled. The idea sounds like a decent one in theory, but the idea of an ad hoc committee is an admission that the process needs serious improvement. This improvement needs to come immediately, not wait until after formation, meetings, and recommendations made by an ad hoc committee.

Recommendations

1. DOE must update its policies and procedures, as needed, to be consistent with current State and County policies, including the Governor's proclamations and amendments thereto and the orders issued by the county mayors. While we recognize the situation continues to evolve and is fluid, if the Pandemic Plan and the handbooks are intended to be DOE's policies and procedures relating to the current COVID-19 situation, those documents need to be continually and immediately updated as the State of Hawai'i, the various counties, and the department's policies and procedures change. We noted a number of policies and procedures that appear to be inconsistent with the department's actual approach to positive cases on its school campuses.
2. DOE must obtain legal guidance from the Department of the Attorney General about the application of HIPAA, FERPA, and other privacy laws to reporting of COVID-19 confirmed positive cases on school campuses. Specifically, the Department of Attorney General should advise as to whether, among other things:
 - (1) HIPAA bars the department from disclosing that an unnamed DOE employee has tested positive at a specific public school;
 - (2) HIPAA bars the department from disclosing that an unnamed student has tested positive at a specific public school;
 - (3) HIPAA bars the department from disclosing that an unnamed individual who was on a specific public school campus has tested positive;
 - (4) FERPA bars the department from disclosing that an unnamed DOE employee has tested positive at a specific public school;
 - (5) FERPA bars the department from disclosing that an unnamed student has tested positive at a specific public school; and
 - (6) FERPA bars the department from disclosing that an unnamed individual who was on a specific public school campus has tested positive.

While we recognize the situation continues to evolve and is fluid, if the Pandemic Plan and the handbooks are intended to be DOE's policies and procedures relating to the current COVID-19 situation, those documents need to be continually and immediately updated as the State of Hawai'i, the various counties, and the department's policies and procedures change.

To the extent HIPAA, FERPA, and other laws do not prohibit DOE from reporting information about positive cases, the department should do so no later than 24 hours after it is informed of a positive case. That disclosure should state, among other things:

- (1) the date of the positive test result;
- (2) whether the positive case is a teacher, an administrator, support staff, or a student;
- (3) the specific school where the department employee works or the student attends;
- (4) the times the infected person was on the school campus in the two days immediately prior to positive test results; and
- (5) the dates and times the infected person was on campus after the positive test results.

Information should include details about the cleaning and disinfecting of affected spaces, including the closure of school campuses or school facilities.

3. DOE should report, separately, the number of school personnel and students who are self-isolating and self-quarantining by school and update those numbers within 24 hours of changes to the number of school personnel and students who are directed to self-isolate and self-quarantine.
4. DOE must provide complete and timely information to the public about changes to its policies and procedures relating to the department's COVID-19 response, generally, and not limited to DOE's protocols for when there is a positive case on a school campus. For instance, the department must provide the criteria or other considerations it is using to formulate decisions regarding, for instance, when students will be allowed to return to school campuses for in-person instruction.

Office of the Auditor's Comments to the Hawai'i State Department of Education Letter Received on August 27, 2020

WE RECEIVED A LETTER from the Hawai'i State Department of Education (DOE or the department) on August 27, 2020,¹ belatedly responding to our numerous letters to the department for information about its policies and procedures relating to a positive COVID-19 case on a school campus. A copy of the department's letter is attached in its entirety. While DOE provided "points of contact" for the different areas about which we intended to report, the department did not provide any of the documents we had requested, i.e., its policies and procedures for when school employees and/or students are COVID-19 positive. However, we do note that some of the processes broadly described in the department's letter seem to be inconsistent with those contained in the public-facing documents we were able to access through DOE's website.

We had finished the report, including our independent review process, before we received the department's letter. We did not contact the department personnel identified in the letter as points of contact. The department's response is simply too late. We had written multiple letters to the Superintendent, asking for the department's cooperation in our review of DOE's COVID-19 policies and procedures and explaining the urgency in our request. Before sending this letter, the department ignored our request to provide us with information or the names of DOE personnel for us to contact. DOE was aware that the Senate COVID-19 Special Committee had asked us to expedite our report because teachers and some students had already returned to school campuses. We also had informed the department that we intended to issue the report before the end of this week. Clearly, the department was aware when it sent the letter that because of our deadline, we would not be able to speak with any of their points of contact and would not be able to consider the other information in the letter.

¹ The department's letter was emailed to the office's general email account at 6:00 p.m. on August 26, 2020. It was not retrieved until the office opened on August 27. We had previously provided DOE with the email addresses and telephone numbers of the project manager and the staff auditor in charge of the project and had asked the department to direct all communication to them.

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

**STATE OF HAWAII
DEPARTMENT OF EDUCATION**

P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

August 26, 2020

Mr. Leslie H. Kondo, State Auditor
Office of the Auditor
Kekuanaoa Building
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Kondo,

In response to the letters dated August 14, 2020 and August 18, 2020 requesting the Hawaii State Department of Education's (HIDOE) to provide you with the names and contact information for HIDOE personnel who are responsible for COVID-19-related policies and procedures, we are providing you with information to address the following topics:

1. Quarantine and/or isolation of employees and/or students who are COVID-19 positive;
2. Quarantine and/or isolation of employees and/or students who may have had contact with infected employees and/or students;
3. Access to/closure of the school and/or the affected facility;
4. Cleaning and disinfecting of the affected facility;
5. Contact tracing; and
6. Communication to school employees, students, parents, and the public.

Following each response, you will find the name and contact information of the points of contact within the HIDOE who can provide further information upon request.

1. ***Quarantine and/or isolation of employees and/or students who are COVID-19 positive.***
2. ***Quarantine and/or isolation of employees and/or students who may have had contact with infected employees and/or students.***

When an employee or student tests positive for COVID-19, the following steps are taken by the HIDOE COVID Response Team and impacted leadership team that oversees the school or office (e.g., Assistant Superintendent/Complex Area Superintendent and Principal):

- HIDOE will ask the employee, parent/guardian of a student, or company of a contracted service provider for documentation confirming the diagnosis (e.g., lab results or a note from a health care provider) or ask for documentation of the isolation period from the Hawaii State Department of Health (DOH).

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

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- If DOH did not reach out to HIDOE regarding the case, HIDOE will contact DOH as soon as possible to report the positive case and request follow up.
- DOH will determine how long the school employee or student must stay home in isolation.
- The individual who tested positive for COVID-19 will not be allowed on campus or to physically interact with students and staff until the isolation period has ended.
- DOH will communicate with HIDOE regarding start and end dates of the isolation period of the employee or student who tested positive for COVID-19. In cases with contracted service providers, this will be communicated with the company. The infected individual or parent/guardian will also receive a letter from DOH notifying them once they have completed their isolation.
 - If well enough to work during isolation, a school employee will be offered the option to telework when possible or may be eligible to use the Families First Coronavirus Response Act which includes a leave provision based on the Emergency Paid Sick Leave Act, during the isolation period.
 - If well enough to participate in instructional activities during isolation, a student will be provided with coursework through distance learning and other modalities.

When an employee or student comes into contact with someone who has tested positive with COVID-19, HIDOE advises the employee/student to self-isolate and contact their healthcare provider.

See DOH's [Home Isolation and Quarantine Guidance](#) and [Interim Return to Work/School Guidance](#) for additional information.

Points of contact:

- ❑ Cynthia Covell, Assistant Superintendent, Office of Talent Management
(808) 441-8300
- ❑ Jennifer Ryan, Interim Administrator, Office of Student Support Services - School Health Section
(808) 305-9804

- 3. Access to/closure of the school and/or the affected facility.**
- 4. Cleaning and disinfecting of the affected facility.**

When there is a confirmed COVID-19 case involving a HIDOE school or office, the Assistant Superintendent for the Office of Facilities and Operations works with the impacted leadership team (e.g., Assistant Superintendent/Complex Area Superintendent and Principal) to determine the appropriate cleaning and disinfection response.

All areas accessed by the individual are identified and the impacted leadership team determines which areas, rooms and buildings to close prior to disinfecting. The Office of Facilities and Operations will work with the school to determine next steps and a schedule for cleaning. Hawaii Impact Pressure Wash, Sanitizing and Disinfecting (HI Impact) has been secured by the HIDOE to clean and sanitize HIDOE schools and offices in the event of a positive case. Below is information from HI Impact on the three-step process they use.

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methods have trouble reaching. The fogging device shoots out a light mist that provides an initial cleaning application to all areas within a room to wipe out the majority of viruses and bacteria present.

2. High Concentration Direct Spray: The second step of the process is to spray and wipe down high-touch surface areas such as door handles, desks and sinks with high-concentration solution. This ensures that the high-touch areas that have potential virus load are neutralized.
3. Electrostatic Spraying: Electrostatic spraying is a method of applying disinfectant that involves applying an electric charge to a liquid in order to get it to fully cover a surface. By adding a positive charge to the solution being applied on a negatively charged surface, the disinfectant will be attracted to the surface and allow for a full, even coat on the surface. HI Impact uses the electrostatic sprayer as the final step in the three-step process to disinfect all surfaces that are touched by students and teachers.

Electrostatic spraying provides 360-degree, touchless disinfection and reaches up to three times more surfaces in the same amount of time it would take with today's buckets, rags, wipes, or other infection control tools. This final step serves as a stop-gap to hit all areas of a room to include low-touch surfaces that could have been missed in the first two steps.

Once this process is completed, the impacted areas are immediately cleared for use and turned back over to the school or office. Out of an abundance of caution, the Office of Facilities and Operations has been advising a wait time of at least two hours to allow disinfected surfaces to dry before resuming use of the area.

As of August 21, 2020, there were a total of 29 cases reported during this time. Of the HIDEO schools and offices that reported confirmed positive cases, 23 sites received professional cleaning services for impacted areas. The other six cases were either sanitized by custodial staff or the impact to the campus was minimal due to the limited area the infected individual occupied. Out of an abundance of caution, five additional campuses were cleaned pending documentation of the positive diagnosis.

As guidance and best practices from national and state agencies shift in response to new information, HIDEO will update all guidance documents to reflect this.

Point of contact:

- ❑ Randall Tanaka, Assistant Superintendent, Office of Facilities and Operations
(808) 784-5000

5. Contact tracing.

DOH is the lead agency for all contact tracing efforts. HIDEO works with DOH to provide early assistance in the contact-tracing process. When notified that an employee or student has tested positive for COVID-19, HIDEO will use its best effort to obtain contact information for all employees, contracted service providers, casual hires, and students who may have come into close contact with the infected individual to share with DOH to assist with their investigative process. Anyone who may have come into close contact with an infected individual will be

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directed to self-quarantine at home until direction is received by the DOH or until 14 days have passed since the exposure to the infected individual.

Close contact is defined as anyone who was within six feet of an infected person for at least 15 minutes or had direct contact with an infected person's secretions (e.g., coughed directly into face of contact) starting with two days before onset of symptoms — or if asymptomatic, two days prior to positive test specimen collection — until the last day that the infected person is at school.

DOH will conduct an investigation of all positive COVID-19 cases, and they will determine which individuals will be directed to home isolation or quarantine and for how long.

- If well enough to work during isolation, the employee will be offered the option to telework when possible or may be eligible to use the Families First Coronavirus Response Act, which includes a leave provision based on the Emergency Paid Sick Leave Act, during the isolation period.
- If well enough to participate in instructional activities during quarantine, a student will be provided with coursework through distance learning and other modalities.

See DOH's [Home Isolation and Quarantine Guidance](#) and [Interim Return to Work/School Guidance](#) for additional information.

Point of contact:

- ☐ Jennifer Ryan, Interim Administrator, Office of Student Support Services - School Health Section
(808) 305-9804

6. *Communication to school employees, students, parents, and the public.*

In all HIDOE cases, notifications have gone out and will continue to go out to employees on campus and families of students, if applicable. In cases where students were not on campus, only staff are notified. This goes above and beyond any type of close contact notification DOH is doing by casting a wider net of awareness to keep school communities safe.

When this pandemic first hit Hawaii, DOH was designated as the lead agency for public notification of COVID-19 cases. HIDOE proposed a policy of distributing more information than provided in the DOH reports. After seeking counsel from HIDOE's Risk Manager, language was approved that was used for most of the cases. DOH recently advised HIDOE that agencies and businesses can publicly report what they want without violating federal and state privacy laws, so HIDOE started to adjust its messaging to include more detail.

In many incidents, HIDOE is providing notifications to staff and/or parents when there is an initial report of a possible case, and before a diagnosis has been confirmed via lab results, a doctor's note, or through DOH. This communication specifies that it is a potential case awaiting documentation of a positive diagnosis. Under the current process, everyone who has any possibility of being impacted receives notification.

HIDOE's COVID-19 Response Team will work with the impacted leadership team that oversees the school or office on messaging to the school community. A letter template is provided and guidance is discussed with the response team and impacted leadership team on the

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recommended distribution (staff, parents/guardians of students, and service providers who were on campus at the same time as the individual).

The Board of Education is provided a confidential daily update from Superintendent Christina Kishimoto on confirmed cases by school level.

The Department is additionally reporting case data publicly on its [website](#). Reporting school-level data would not help the public determine community spread or sources of an outbreak or cluster. This type of data and communication is led by DOH.

Points of contact:

- Phyllis Unebasami, Deputy Superintendent
(808) 784-6161
- Lindsay Chambers, COVID Response Team support
(808) 784-6207

Thank you for your time and patience.

Sincerely,



Dr. Christina M. Kishimoto
Superintendent

CMK:lc

- c: The Honorable Ronald D. Kouchi, Senate President
The Honorable Donovan M. Dela Cruz, Chair, Senate Special Committee on COVID-19
The Honorable Jarrett Keohokalole, Member, Senate Special Committee on COVID-19
The Honorable Michelle Kidani, Member, Senate Special Committee on COVID-19
The Honorable Donna Mercado Kim, Member, Senate Special Committee on COVID-19
The Honorable Sharon Moriwaki, Member, Senate Special Committee on COVID-19
The Honorable Kurt Fevella, Member, Senate Special Committee on COVID-19
The Honorable Catherine Payne, Chairperson, Board of Education
The Honorable Kenneth Uemura, Vice Chairperson, Board of Education
The Honorable Shanty Asher, Member, Board of Education
The Honorable Kaimana Barcarse, Member, Board of Education
The Honorable Margaret Cox, Member, Board of Education
The Honorable Lynn Fallin, Member, Board of Education
The Honorable Christine "Kili" Namau'u, Member, Board of Education
The Honorable Dwight Takeno, Member, Board of Education
The Honorable Bruce Voss, Member, Board of Education
The Honorable Bruce Anderson, Ph.D., Director, Department of Health
Denise Yoshida, Internal Audit, Department of Education