
Auditor's Summary

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

Report No. 20-11



On August 13, 2020, the Senate Special Committee on COVID-19 asked the Auditor to report on protocols currently employed by the Hawai'i State Department of Education (DOE) to address the coronavirus that causes the disease COVID-19. This report specifically discusses DOE's policies and procedures regarding when teachers, other school employees, and students are confirmed positive for COVID-19.

As we note throughout our report, we received no cooperation from DOE. The department did not provide any of the documents we requested, limiting our review to policies and procedures that are publicly available on DOE's website and elsewhere online. We had hoped to interview DOE to clarify how these plans have been implemented and followed, among other things. However, notwithstanding repeated requests, DOE declined to schedule meetings with us before the issuance of this report. As many of our questions echo those being asked by the public and public officials, it is unreasonable for DOE to refuse our requests about their safety and health guidelines. This is especially critical since teachers and some students have already returned to campus.

About this report

While DOE did not provide us with documents nor make staff available for interviews, the information we found on the department's website appears to include policies and procedures that guide DOE's response to positive COVID-19 cases involving school employees and students. We summarized

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the documents we were able to locate, primarily DOE's *Pandemic Contagious Virus Plan*, *Emergency Operations Plan*, *Return to Learn: School Reopening Plan*, *Health and Safety Handbook*, and *Principal Handbook*. We also summarized policies and procedures for communications, including disseminating information about positive COVID-19 cases. Without interviewing DOE staff, however, we were unable to determine if DOE is following these guidelines or if there are other policies and procedures that guide its actions.

Issues and questions

We have numerous questions about the policies and procedures outlined in the documents, some of which appear outdated and incomplete. We also found inconsistencies in the guidance. For example:

- DOE takes the position that the Department of Health is the lead agency for notifying people who are COVID-19 positive or who may have been exposed to a positive case. The Department of Health is responsible for notifying the school of positive cases involving school employees or students by letter to the principal and provides the principal with the start and end dates of the person's required isolation. We have no information to confirm the Department of Health is, in fact, notifying school principals.
- The *Return to Learn: School Reopening Plan, Health and Safety Handbook* is silent regarding notification by the Department of Health about school employees or students who are close contacts of a COVID-19 positive case. We assume the Department of Health obtains school-specific information from close contacts, including the school at which the person works or attends. However, we could not verify if the Department of Health notifies principals or others about school employees and students who may be infected because of their contact with someone who has tested positive. The department's policies and procedures are also silent as to actions the school takes when informed that its employee or student is a close contact of someone who is positive.
- The Department of Health is responsible for tracing and contacting the infected person's close contacts. The Hawai'i State Teachers Association (HSTA) told us that some principals have been conducting contact tracing themselves because the Department of Health is overwhelmed.
- Although DOE has communication policies and procedures in place to address COVID-19 cases, we question whether the department is following its own guidance. DOE generally has not provided information about COVID-19 cases on school campuses and the limited information that it does share has been inconsistent and incomplete. For instance, DOE had not been publicizing positive cases until pressed by HSTA. Then, citing privacy laws, DOE only provided information by large complex areas, prompting the teachers' union to begin identifying specific schools.
- The department's Communications Plan seems to delegate school-level communication decisions to the principals, including informing their respective school communities about positive cases. While we are aware, anecdotally, about some school principals 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.

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- DOE justifies its limited reporting of positive cases to avoid any potential Family Educational Rights and Privacy Act (FERPA) and/or Health Insurance Portability and Accountability Act (HIPAA) violations. 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. The U.S. Department of Health and Human Services and the U.S. Department of Education have issued guidance about the application of HIPAA and FERPA, respectively, that seems inconsistent with the department's position.
 - The Pandemic Contagious Virus Plan 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. 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. We are unaware of any school closures for cleaning and disinfecting.
 - The Pandemic Contagious Virus Plan is intended "to increase communication to our [DOE] staff and students in the event of an outbreak." It includes four response levels and corresponding department actions. However, it is unclear which response level individual schools are at, and consequently, unclear what actions the schools should take. In addition, portions of the document appear outdated, such as guidance on social distancing considerations and troubleshooting technology problems.
 - The Pandemic Contagious Virus Plan provides relatively detailed information about routine cleaning and sanitization of facilities and devices. While some procedures may seem reasonable on their face, such as training of school custodial staff through online video, webinar, and/or in-person training, 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 tabletops be cleaned multiple times throughout the day. The document, however, is silent as to who is responsible for the cleaning. During the August 20 Board of Education 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 Contagious Virus 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, certain portions of the Pandemic Contagious Virus Plan seem to be outdated.
 - The *Principal Handbook*, dated July 29, 2020, version 2, contains information and guidance about school operations in the current COVID-19 pandemic, yet does not contain information specific to a positive COVID-19 case on a school campus. This version includes outdated start dates for students, leaving us to question whether this handbook is current. We found that it also offers guidance that conflicts with guidelines from the Centers for Disease Control and Prevention and the Department of Health, such as allowing student desks to be 3-feet apart, only half the distance CDC recommends.

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.

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.

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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.