



Transcript for Webinar - ACSI Legal Update on COVID-19 Issues for Schools

Notice: This is an automated transcript of the webinar “ACSI Legal Update on COVID-19 Issues for Schools”. This webinar was recorded on 3/25/20. This transcript is a draft and has not been reviewed and is subject to update and modification as needed.

UPDATE 3/31/20 – This transcript, still in draft format, has been edited to remove now dated information as new regulations and laws have been created and/or passed since its recording.

Philip Scott (22:34):

Thanks Tom and George. So I want to share just a, a number of the questions we've been getting on how schools are operating and impacts. And the first one is just the staffing question. You know, what, what do we do with our staff now that schools are closed and what flexibility do we have working with them? So we're in a starting point, we're just going to look at basic general employment at wellness for the foundational and mobile off that. Okay. I'm going to flip the order of what you see there on the screen. Non-Exempt employees. So your hourly staff essentially, if they aren't working, there's no requirement that they get paid. And so you have the freedom to modify their work schedules based on need. You have the freedom to rotate people in and out if you so desire to do that.

Philip Scott (23:24):

But essentially if they're hourly and they're not working, there's not a requirement that they get paid other than what Thomas just gone over. Exempt employees. Those are going to be your people who are salaried. Most are going to be your teachers and your administration. You may have a few others here and there, but that's, that's the pool we're talking about are exempt employees. You want to look at essentially state and federal guidance. Federal guidance is going to say if they've worked at least one day in a week and you really need to pay them for the whole week, except for things like sick leave or vacation that they may take. If you're going to then look at state any kind of state requirements that there might be. From there we shifted into contract. So many of you are going to be using contracts, especially for your teachers and other staff essentially take those general rules.

Philip Scott (24:19):

But then you're going to look at your contract to see what you're promising and, and how that contract is structured. How are we going to do pay? Alright. How has work expectation outlined and what does

that look like? And so that may modify those general rules we just went over for at well employment. Unlikely in some cases it will. And so you want to make sure that you're following that. And if you know things like forced majora clauses, other clauses that give you a little flexibility, which likely you may not have in your employment contract if you don't then you have to kind of, if you still want to modify what that looks like, you have to then go to some of these, a proactive defenses for noncompliance, right? Why, why did we not follow what we had written in our contract and just go over too quick?

Philip Scott (25:06):

It would be impossibility or in practicability. So in possibility the S the, the government has shut us down, right? Closed all K 12 schools. There's a defense there that would be illegal for us to open back up. I'm in practicability. If we have stopped school, and I don't mean online education, but if we have stopped school you know, we, we no longer have an income stream. We, we no longer are providing the services that we needed. And, and then what does that based on that it's based on an unforeseeable event that no one play him for, which is the current [inaudible] virus epidemic, a pandemic. And so those are some of the things you can kind of look at the [inaudible] potentially give you some wiggle room to say we're going to modify this a bit. And how we, how we work with you now and what that looks like.

Philip Scott (25:53):

So there's some, some issues, we hit some of these already, but do you have to pay staff if they aren't working? For hourly? The answer's no for exempt. And particularly those under a contract, it's a little, little fuzzier. As we've, we've talked about, there's a little more work to look through there, but it is possible. And can you rotate our furlough staff? The answer is generally yes. Right? Again, if you have a contract, you're going to want to, one can have that impact for lowing or even rotating. But if you need to, you can work through that process to say, do we have some defenses to modify this? And then can we lay off staff? It's the same there as well. But yes. Yes, you can. Particularly if, if there's not a contract at play if there is a contract to play, you want to look at the four, right?

Philip Scott (26:45):

What, what's a for cause reason we could modify this or lay you off or something along those lines. And then the last one, can we ask our staff to work longer in the summer? Probably yes. I mean if they're hourly then you're going to have to pay them for that additional hours that they work. If they're exempt, you may not necessarily need to, you know, again, look at your contract to see. You probably have some wiggle room in there is my thought as far as that goes in and how long you're asking them to stay. In particular if it's a shorter, you know, one or two additional weeks. If we're talking further into the summer, it might be something else. You needed to go back and revisit tuition concerns. Right now that we're doing education from home do parents still have to pay tuition or to the same extent that they wants to start with the K-12 realm?

Philip Scott (27:37):

Essentially it comes back to the, the promise of in the exchanges that were made in the enrollment agreement, right? Parents are promising to pay X number of dollars in tuition and in return they get a appropriate grade level education for their child. And so you want to look at what, what are those promises that are made in that? But essentially, just to boil it down, I'm going to say that yes, parents

still have an obligation to pay tuition. They are still getting at the end of the day, inappropriate grade level education. If their child is in sixth grade at the end of this year, they want to have a team to sixth grade education and then you can point back to things to prove that. So things like your grades, things like that. You usually have any cumulative folder. Standardized testing and assessments the level of knowledge attainment that the child has reached over the year.

Philip Scott (28:31):

So, you know, teachers are still working, they're still providing content and lessons and putting this together. Students are still required to turn stuff in. And so there's still that duty, the obligation to pay tuition early education a little more difficult. And I say that simply because there's a mix of what's being provided here. On one hand it is educational. On the other hand, there's also this element of childcare that's taking place. If the child care aspect has gone away, right, then it does beg the question, do we need to give a refund? Does it have to be a partial not, not a full refund? Our R D do the families need to continue to pay regardless? And really that's going to be a case by case basis. You need to go back and evaluate your program, the specifics of it, what are you really promising, what are you providing? And then what are those early ed educators providing to the families to do at home? Keep in mind though that at this level, Mmm. Parents are going to be doing a lot of the work with the child as well as, as you well know. So that's sort of the things you want to look at there. [inaudible]

Philip Scott (29:40):

What happens when [inaudible] sits your school? Well, stuff going, I'm going to say you need to follow the CDC. And this is the title of the document, the CDC interim guidance for administrators of U S K 12 schools and childcare programs. So this covers everything from Mmm, K up through 12th grade and it deals with things like closures, cleaning parameters, even talks about notices that you should work with families on. And so I'm going to say this is your standard, right? If something were to happen, do you want to be able to fall back and say, we follow the CDC guidance and that will be a fairly strong protection for you. So let's step one, follow the CDC guidance. Once you find out either a staff member or a family has coronavirus and what do we do next? The other aspect you need to work with your County or city health department and they're going to be leading the charge should be.

Philip Scott (30:37):

We've gotten some stories where that hasn't necessarily happened but they are tasked with running that at that local level and they're going to should be helping you. I identify who are families that should be contacted to say, Hey, you may have been exposed and what, what needs to happen next? And so that's a, that's another group you want to reach out to. And then finally, I do think you need to probably reach out to your families. Whether it's a staff member or another family in your school. Let the school know better that it comes from you. And then from a third party or the news outlet saying that we have someone sick in our, our school, you're going to lose some trust there. The key thing here is you do not tell them who is sick, right? You simply is, is it a teacher, is it a family?

Philip Scott (31:22):

Is it something along those lines that's protected information? Unless that family less than employee gives you specific written permission, I would not identify who they are. Instead you work with that family to identify who they've been in contact with over these last 14 days and then you reached out to

them individually on a one on one basis to say, Hey we sent out the notice. You know, someone here in the school has coronavirus they have been in contact with you within the last 14 days and we want to make you aware. Them knowing who it is doesn't really change what they need to do at this point. Right. There are protocols now, now they'd been exposed, they need to sell corn to for a period to see if they developed symptoms as well. And so that's kind of the steps I had taken in process for that. [inaudible]

Philip Scott (32:11):

Going back to the conversation, what do we do about childcare? So the state has shut down your K-12 program, but that leaves a gap, particularly with childcare. I will say a number, it's starting to adult now that a number of counties RNL actually referring to childcare as an essential service and some are even asking childcare providers open back up or to focus on serving first responders. And so you can potentially open up your childcare program or your ECE program in spite of your key told being closed. If you're going to do that, here are the five steps we think you should look at first, make sure that it's not been prohibited by an [inaudible], an executive order or the state or County health department further work with that County and state health department to figure out what standards they are putting in place and things they would expect that of you again, follow those same CDC guidelines.

Philip Scott (33:13):

The third one, this is going to be a bit of a shift, a practice. The social distancing, particularly what we're seeing is a lot of requirements that you have 10 students and the teacher or nine students in the teacher per physical classroom. So all right, that 10 person limit and work on work on that standard. Try to keep the consistency to the group there. So if someone's affected, it's only impacting those 10 not the whole program. I'm also considered curbside drop off and pickup. Again, a social distancing aspect. How do we our stagger your pickup and drop off so that everyone is there, congregated clustered at once. And then we would suggest that you consider a waiver or at least a basic notice to families. And then they sign and return it to you. Understanding the risk that they could be infected was Corona virus by continuing to use you're a services here and we do have a sample for that.

Philip Scott (34:06):

It'll be on the current of virus website. You are free to use that and modify that as you see fit. All right. The last thing I want to talk about been a lot of talk at least in the news about the department of education giving federal testing waivers, the States and essentially all the state has to do is ask for it. And so most, if not all the States are probably going to be exempt from testing this year. Some States have even gone further and, and, and done away with the grades for the year, frankly. And so I just want to cover some of the distinctions there that are a little more into the weeds and we need to, to tease these out. So the us department of education, they Wade testing standards, they waived that simply for primarily the public school test. Right. So what we have now in most States is a state curriculum designed by the state, which then also designs a state specific tests of that curriculum.

Philip Scott (35:06):

Most public schools are the only ones that are, are most of the people taking the test or just the public schools. Very few private schools are actually taking those tests. I know in a couple States that is a

different story based on athletics or other things, but for the most part, it's only public schools that are taking this tests. And that ties back to federal funding. That doesn't really have a huge impact on us as a movement. But what it does is it, it has sent out the idea that, okay, testing has been delayed, we should testing. I, I, that's not what's necessarily going on. That's, that's for the federal testing requirements. The testing that we do, the norm reference test that you're used to in Ohio, the Teranova, those type of things are, or Iowa rather and Teranova are going to be something different and that's where the state mandates come in, right?

Philip Scott (36:00):

So States are going to say, what are the seat hours, the instructional Mmm content that has to take place whether it's seat hours or instructional days that they're counting, that's going to be a state by state issue. The States are a little further behind on the feds on this. And so they haven't started canceling classes or these requirements yet or given waivers yet. So that's something we need to watch out for. Are the States going to do this? And if so, does that include the private schools? Right? and so you need to pay attention to your States. We will help for Rick can in these areas. I also need to be aware of some States don't count virtual education or virtual class time is seed hours. And so either the state it's going to have to modify that policy or they're going to have to give exemptions.

Philip Scott (36:50):

And so that this is going to be an ongoing issue that we're going to have to address, this movement. Some States have already come out and said, if this is a short time closure, two to four weeks, we're going to expect that the educational standards do not change and that you have to go into the summer to complete this. Now, I think that's probably a hard line that was drawn earlier on in this process. And as this pandemic continues to go through and expand the time that we're away from school, that hard line is probably going to change. But so far it hasn't. The last thing I would say is just don't cancel your

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