

Back to School: Reopening Considerations for U.S. Colleges and Universities

by Yvonne W. Chan

Colleges and universities around the U.S. are grappling with whether, when, and how to reopen their campuses in the fall. Some schools have announced plans to reopen in some fashion, while others have announced that classes will remain virtual at least for the fall semester. All of these decisions, however, are subject to change and uncertainty, given the ever-changing landscape and state and local guidance.

This client alert highlights some of the legal, practical, and policy considerations for colleges and universities as they prepare to reopen. The focus of this piece is on student-related issues; please consult the Goodwin [Employment](#) team and the [resources](#) they have prepared for advice on re-entry issues for employees.

1. MAKE A PLAN

A reopening plan is critical for any school that is planning to reopen its campus in any fashion. In Massachusetts, the Higher Education Working Group has [recommended](#) that every institution prepare a comprehensive reopening plan that includes symptom monitoring, social distancing, isolation/quarantine as needed, and contact tracing.

Regardless of whether your jurisdiction requires the submission of a reopening plan, the plan should be clear and documented. Among other things, a well-documented plan can form part of your institution's defense to any negligence claims that may arise in the future.

An effective plan is also one that can be followed. A failure to follow your institution's reopening plan could be used in future litigation as evidence of negligence; at the very least, a plan that is not followed might not provide an effective defense to any negligence claims. Thus, it is best to avoid creating a reopening plan that is too complicated to follow, or one that sets unreasonable standards that cannot be met. Similarly, a reopening plan should not be overly rigid, and should allow flexibility to adapt as circumstances change (as they certainly will).

In creating a reopening plan, review and monitor the public health guidance from federal, state, and local authorities, as well as what other institutions are doing. The Centers for Disease Control and Prevention (CDC) provides up-to-date information and guidance, as do other agencies and entities.

Among other things, a reopening plan should address the following:

- **Requirements for re-entry on campus.** Many schools are requiring that students be tested before or upon returning to campus. In addition, consider whether to impose additional requirements, such as asking students to report any symptoms, or whether any household member has been diagnosed with or suspected to have contracted COVID-19.
- **Logistics for returning to campus.** The single "move-in day," with students and parents pulling up to dormitories and crowding into elevators with suitcases and boxes, is a thing of the past. Many institutions are looking at a staggered or phased return (e.g., different groups of students returning at different times). Procedures will also be needed to ensure social distancing and other safe practices during students' return.

- **Rules for the new normal.** Every plan should include rules for social distancing and other measures to prevent and contain the spread of COVID-19. It may be necessary to limit enrollment in classes, or utilize larger spaces, in order to ensure distance between students. Depending on the physical layout of your campus, you may want to impose requirements for entry into certain buildings (e.g., it may be appropriate to allow students into a building only if they have a class there, rather than allowing them to “cut through” one building on their way to another). Special attention should be paid to common areas or other heavily populated spaces, such as dining halls and dormitories.
- **Testing and monitoring.** Once students are back on campus, institutions will want to ensure that any infections are identified as soon as possible. Among the questions to consider: Will your institution require regular testing? Will you institute temperature checks before entering campus facilities? Will you require students to self-report symptoms (or report the absence of symptoms on a regular basis)? What will you do if a student refuses to comply with these requirements?
- **Protocol for responding to positive tests.** A reopening plan should include a protocol for an immediate response to a positive test. This includes quarantining the infected individual(s) and their close contacts (e.g., roommates), and implementing contact tracing to identify other potentially infected individuals.

2. CONSIDER STUDENTS WHO CANNOT RETURN

Return to campus should be on a voluntary basis. There will be students who cannot return (e.g., international students who are unable to travel from their home countries) and students who choose not to return, whether for health or other reasons. Efforts should be made to keep these students engaged, whether it is by allowing them to continue their coursework remotely (if your institution is offering virtual classes as an option), or by asking faculty advisors and others to check in with the students on a regular basis.

3. COMMUNICATION IS KEY

Whatever your institution decides to do about the upcoming academic year, it is important to keep your community informed, whether through press releases, letters, website postings, emails, or town halls or community meetings. Even once a decision is made and announced, you will want to keep your community apprised of any changes. However, communications can create the potential for liability, and so there are a few guiding principles to consider when crafting the communications for your institution.

- **Be clear about the risks.** This is not the time for sugarcoating. Even if your institution has decided to reopen, that is a difficult decision that you will have made after having considered all of the risks involved. Be clear about those risks. Students and others who are returning to campus need to know that the decision to reopen does not necessarily mean that campus will be safe, and there is a risk that anyone could contract COVID-19 on campus, no matter what precautions are taken.
- **Make no promises.** Similarly, do not make any promises as to what your institution can do (e.g., do not promise students that you will keep them safe). Until there is a vaccine (and maybe even after one is available), no one can promise that there is no risk of transmission. Students and their families will want to be reassured, but your institution cannot make representations about what will happen, nor can you promise that the students will be safe from infection. Not only would such promises provide a false sense of security, they can form the basis of future claims as students may argue that they relied upon the school's representations of safety in such a way that created a duty on the part of the school to protect its students.
- **Everything is subject to change.** In all of your communications, it is important to emphasize that nothing is set in stone. We live in rapidly changing times that require rapidly changing responses to adapt. Procedures that are appropriate now may no longer be appropriate in the fall, or as the academic year progresses. For example, your institution may need to change the limits on classroom or dormitory capacity

or the rules for access to certain facilities; or you may decide that you need to close down certain parts of the campus entirely, particularly if your jurisdiction issues new restrictions. It is important that your community recognize the possibility for change (and that you are not making any promises about what will happen in the future).

Communication should continue even after students have returned to campus. Even if there is strong initial compliance, students may grow weary of following restrictive rules that limit their contact with other individuals, particularly after having been away from campus for many months. It is therefore advisable to have regular communications about the importance of following social distancing rules, especially if you can do so in new and different ways in order to keep the community engaged (e.g., video messages, changing signage).

4. BE READY TO ENFORCE THE RULES

Enforcement of your institution's social distancing protocols is important not only to containing the spread of COVID-19, but also in minimizing risk to your institution. Enforcement does not require sanctions for every breach, but it is important that the school does not "look the other way" if there are indications of repeated violations. For instance, if there are spaces where students appear to be violating social distancing protocols (e.g., dining halls or other common areas), it may be appropriate to install more signage at those locations, place additional restrictions on their use, or close them down altogether.

Also, keep in mind that there are members of your community who may be unable to follow your protocols and procedures for a number of reasons. For instance, some individuals may not be able to wear a mask for health-related reasons. Reasonable accommodations may be needed in such cases.

5. THIS IS A TEAM EFFORT

The success of your reopening plan requires the cooperation of everyone involved. Many schools are asking students to sign agreements to comply with the social distancing protocols and other procedures being implemented; some of these documents also include an acknowledgment of the risks involved in returning to campus. Not only do these documents provide potential support for a defense in the event of a future lawsuit, they also create a sense of shared responsibility. Such agreements may also be useful in enforcing social distancing protocols. For example, if a student's housing agreement contains an agreement to abide by social distancing rules, a student's refusal to follow those rules may be grounds for asking the student to leave the dormitory.

Every school is different, and there is no one-size-fits-all approach. Please contact [Yvonne W. Chan](#) or other members of Goodwin's [Higher Education](#) group to discuss what might be right for your institution.

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Please visit Goodwin's [Coronavirus Knowledge Center](#), where lawyers from across Goodwin are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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