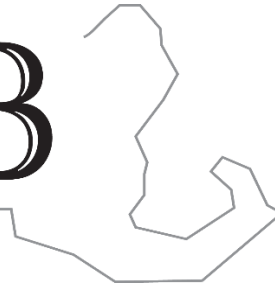


# MAHIB

Assisting Massachusetts Boards of Health through training, technical assistance and legal education



## MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS

**TO: LOCAL BOARDS OF HEALTH (LBOHS)**  
**FROM: MAHB**  
**RE: COVID-19-RELATED PRIVACY ISSUES**  
**DATE: OCTOBER 5, 2020**

**THIS INFORMATION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT LEGAL ADVICE. IT IS ONLY GUIDANCE AND HAS NOT BEEN APPROVED OR REVIEWED BY ANY STATE AGENCY.**

### SUMMARY OF LBOH RELEVANT DESE GUIDANCE FOR SCHOOLS

- Key: For specific instances of cases and/or symptoms, please contact:
  - DESE Rapid Response Help Center at 781.338.3500
  - Takeaways:
    - Evaluate each event on a Case by Case basis.
      - When dealing with any issues, give as little personal identifying information as is practical under the circumstances of each case.
    - Use your judgment as a public health professional.
      - LBOH need not rely solely on DESE's medical, scientific, or public health guidelines.
    - BOH can be stricter than state guidance, so enforcement decisions ultimately rest with LBOH.
- Goal: Safe return to in-person school environments.
  - Combination of mitigation strategies:
    - Masks required from 2<sup>nd</sup> grade and above, says K-1<sup>st</sup> students “should” wear masks.
      - However, CDC and AAP say masks for anyone over 2 years of age, which means all students in K-12 system.
    - Handwashing required periodically throughout the day.
    - Physical distancing – aim for 6 ft. For any and all contact within this 6’ range, masks should be worn.

- If 3 ft., must wear mask.
    - 3 ft. will cause more close contact tracing.
  - Cohorts/assigned seating.
    - The mere fact that students are in cohorts does not in and of itself mean that there is no inter-cohort contact
      - Again, must look at this case by case.
- Comprehensive communication strategy is essential.
  - There should be an ability to communicate with the “COVID lead” and LBOH “24/7” in emergency situations.
- Be prepared to provide remote learning “on a dime.”
  - If the situation is creating an imminent threat to public health, the LBOH has the power to declare a public health emergency under the nuisance statutes (G.L. ch. 111, §§ 122, 123), and take steps to abate the nuisance.
    - LBOH can order a school to be closed, with or without consent of DESE and/or Superintendent pursuant to public nuisance statutes.
    - Check with your municipality’s counsel.
- Testing, tracing, and isolation.
  - When a case tests positive, the LBOH or the CTC will notify the positive case/case’s guardian.
    - Provide support for isolation.
    - Begin contact tracing.
      - “to further assist with contract tracing” positive case “are asked” to reach out to personal contacts and notify the school.
      - *Need some clarification here. LBOH in charge of contact tracing – NOT school department.*
      - *LBOH should not abdicate its authority.*
  - Self-isolation for 10 days.
    - With 24 hours free from fever without fever-reducing medication.
    - Improvement of other symptoms.
    - Cleared for return by LBOH or CTC.
  - Close contacts.
    - Within 6 ft. of positive case for 15 minutes
      - The 15 minutes can be cumulative over the course of a school day and need not be in one exposure.
      - *While DESE sets a 3’ minimum for social distancing, the definition of a “close contact” does not consider 3’ as relevant, and all contacts within 6’ for 15 minutes (cumulative in a school day) are considered close contacts.*
    - or having direct contact with infectious secretions.
    - Must self-quarantine for 14 days after last exposure to positive case.

- DESE requires that all positive cases be reported *to them* with no personal identifiable information.
  - DESE will not “play a formal role in tracking or monitoring cases at a local or state-wide level” but they will be able to provide support “in consultation” with local public health authorities (i.e., LBOH).
  - Protocol dated 9.18.2020
- Protocol when there is a positive case:
  - Positive case *must* stay home and isolate.
  - Notify school, personal close contacts, and assist school in contact tracing efforts, answer LBOH/CTC calls.
  - *Need clarification here. LBOH in charge of contact tracing.*
  - Notify designated “COVID-19 lead”, who notifies other school personnel previously identified.”
    - Assure that designated school COVID lead maintain contact with LBOH throughout the process.
  - Determine whether positive case was on premises two days prior to symptom onset or positive test. If so,
    - Close areas visited by positive case until areas can be cleaned and disinfected.
    - Clean and disinfect classroom and other facilities, including buses visited by positive case.
  - *Communication strategy:*
    - School should help identify close contacts through:
      - Assigned seating charts
        - Seating charts may be less than effective for children in younger age-groups
      - Proximity related to class activities
        - Specials (art, gym, music) may have merged cohorts, so be aware of inter-cohort contacts.
      - 6 ft. of positive case for at least 15 minutes (cumulative over school day)
        - 2 days before symptom onset or 2 days before positive test for asymptomatic person.
      - In class, other school spaces, on bus, or at extracurricular activities
        - *Need clarification here. LBOH in charge of contact tracing.*
    - Written communication to staff/teachers/families of close contacts that there has been a positive case.
      - Do not share name of case.
      - Communication to families/staff should include the following:
        - Inform them that there is a positive case and where the close contact was in “close contact” with positive case.
          - For example: on bus, class, or other activity.

- Impart as little information as possible for privacy reasons.
- Inform close contact that s/he should be tested.
- Instruct close contact to “isolate” prior to test and while waiting for results.
- Instruct close contact to notify school of test results.
  - *Need clarification and full understanding here. LBOH will be notified of positive tests by DPH/MAVEN.*
  - Assure that the school confirms that the LBOH in each municipality the school serves has that information, as students may be from different jurisdictions, and the particular LBOH may not have the relevant information for a given contact, especially in regional school districts.
- Scenario: School notified by LBOH of positive case during school day:
  - Identify close contacts and notify students and families.
  - Confirm that close contacts are wearing masks, including K – 1<sup>st</sup> students.
  - Enforce strict social distancing.
    - Make no assumptions that a given student is not a close contact until all confirmations are complete.
  - Require handwashing.
  - Caregivers of close contacts may pick up students prior to end of day.
    - Caregivers must wear masks.
  - Close contacts should not ride bus to get home.
  - Make a list of contact information for close contacts.
    - *Give list to LBOH/CTC.*
    - ***HIPAA not an issue for LBOH. LBOH needs to know this information.***
- Protocol: Close contact tests positive:
  - Close contact isolates at home.
  - Close contact notifies school.
  - *If close contact lives in a different city/town than where the school is located, LBOH should have been notified by DPH/MAVEN. But school should notify health department where close contact lives as well.*
    - ***HIPAA not an issue for LBOH. LBOH needs to know this information.***
- Protocol: Presence of multiple cases in the school or district:
  - More than one positive case in school at one time or series of single cases in a short time.
    - Work with LBOH to determine whether transmission is happening in school.
    - Follow the lead of the LBOH.
      - Review public health metrics.

- *NEEDS CLARIFICATION. School should be working with LBOH consistently, not just to identify a cluster.*
    - Must have regular and open line of communication between LBOH and the schools' "COVID-19 lead."
  - Before making a final decision to close or shut down all or parts of school, "the superintendent must consult with DESE for further guidance."
    - Superintendent and/or COVID-19 lead must keep the LBOH apprised of all evolving situations.
  - If there remains a public health emergency in the opinion of the LBOH, and the Superintendent has not closed the school, the LBOH may exercise its statutory powers and close a school.
- Protocol: If there are many cases in a municipality, consult with LBOH to determine whether to close schools.
  - Before making a final decision to close or shut down all or parts of school, "the superintendent must consult with DESE for further guidance."
  - *Final decision should be made by LBOH.*

## PRIVACY ISSUES

The outline above is an attempt to simplify DESE guidelines relative to COVID-19 issues in the school setting. The outline identifies two main issues that need some clarification. The first is the need to assure that LBOHs are the lead partner in any and all COVID-19 surveillance in schools and school districts. The second surrounds privacy and confidentiality issues that will arise in collecting and receiving protected health information without individual authorization.

The Health Insurance Portability and Accountability Act's (HIPAA) Privacy Rule permits a covered entity to disclose without authorization, the "protected health information" (PHI) of a person who has been infected with or exposed to COVID-19 to a local public health authority that "is authorized by law to collect or receive such information for *the purpose of preventing or controlling disease, injury or disability, including for public health surveillance, public health investigations, and public health interventions*"<sup>1</sup> "Covered entities" include hospitals, public and private health insurance, and health care providers.

While schools and local boards of health are not covered entities, HIPAA's Privacy Rule provides a helpful analogy in addressing the sharing of the name and/or other identifying information of a person who has been infected with or exposed to COVID-19. If the sharing of PHI is necessary for the purpose of preventing or controlling disease, injury, or disability, including for public health surveillance, public health investigations, and public health interventions, then school personnel and LBOHs should be able to share PHI to prevent a serious and imminent threat to public health and safety. The disclosure can be to persons at risk of contracting or spreading a disease. It can also be to a patient's family

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<sup>1</sup> 45 CFR §154.512(b)(1)(i).

members, friends, or other persons responsible for the patient’s care. The means of disclosure should be consistent with the above-described DESE protocols and should be limited to information which is the “minimum necessary” to accomplish the purpose.<sup>2</sup>

In light of the above, the disclosure of protected health information should happen only when necessary to protect a serious threat to public health and should be limited to information which is the minimum necessary. The decision to disclose such information should be made by exercising the judgment of a public health professional based upon the specific circumstances of the case at hand.

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<sup>2</sup> HHS HIPAA Bulletin.