



The Center for Law & the Public's Health
at Georgetown & Johns Hopkins Universities

*CDC Collaborating Center Promoting Health through Law
WHO/PAHO Collaborating Center on Public Health Law and Human Rights*

Hampton House, Room 588
624 North Broadway
Baltimore, Maryland 21205
www.publichealthlaw.net
(410) 955-7624; 410-614-9055 [fax]

Legal Preparedness for School Closures in Response to Pandemic Influenza and Other Emergencies

A Review and Report Submitted to the
Centers for Disease Control and Prevention

James G. Hodge, Jr., J.D., LL.M.
Associate Professor, Johns Hopkins Bloomberg School of Public Health
Executive Director, *Center for Law and the Public's Health*

Dhrubajyoti Bhattacharya, J.D., M.P.H.
Fellow, *Center for Law and the Public's Health*

Jennifer Gray, J.D., M.P.H.
Senior Researcher, *Center for Law and the Public's Health*

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Information in this report does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality.

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Executive Summary¹

Schools¹ play a critical role in protecting the health of their students, staff, and the community from highly contagious, infectious diseases such as seasonal or pandemic influenza. Modeling and analyses conducted by the Centers for Disease Control and Prevention (CDC) and others suggest that community-wide school closures² may mitigate the incidence of pandemic influenza, thereby reducing its impact on individuals, groups, healthcare providers, public health systems, and the economy. The public health premise, consistent with social distancing theories, is that timely closing of schools may limit the spread of influenza (or other communicable conditions). The efficacy of social distancing measures to reducing the morbidity and mortality of pandemic influenza has been shown historically.³

In furtherance of CDC's assignments via the U.S. Homeland Security Council to prepare the Nation for a potential influenza pandemic--specifically action items 6.3.2.1., 6.3.2.2., and 6.3.2.3. of the National Strategy for Pandemic Influenza Implementation Plan— (see Appendix A)), CDC's Public Health Law Program and Division of Global Migration and Quarantine asked the *Center for Law and the Public's Health* ("Center") to examine and characterize patterns in states' legal authorities to close schools. For this purpose, we reviewed the pandemic influenza preparedness and response plans all states submitted to CDC beginning in 2006.⁴ We also examined the express state laws of 52 jurisdictions, including the 50 states, the District of Columbia (D.C.), and Puerto Rico. For purposes of this report, the term "state" refers to any of the aforesaid jurisdictions. We did not review the laws of jurisdictions below the state level (e.g., county, city, or other municipalities).

The *Center's* analysis specifically addresses whether state laws expressly authorize state or local department(s) of health, education, and/or emergency management to close schools during non-emergencies and declared emergencies in response to pandemic influenza or other public health emergencies. While broad public health laws aimed generally at controlling communicable diseases or abating hazards in the community may support closing schools as a preventive measure, the *Center's* focus is on those laws within each state that appear to *expressly* authorize school closure for extended periods during non-emergencies and declared emergencies. We recognize, as noted below, that state regulations and policies, and local laws and policies may also affect the authority to close school in response to these public health emergencies.

¹ *Information in this report does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality..*

Our review of state laws looks beyond general public health legal powers to identify specific language that may authorize school closures in response to public health threats such as pandemic influenza. The scope and methodology of our analysis are addressed in Section III of this Report. They include information on specific definitions and terms, our principal assumptions, approach to conducting our analyses, the scope of state laws (i.e., statutes, administrative regulations, cases) examined, and major limitations.

Our results, addressed in Section IV and summarized below, illuminate patterns in states' laws regarding school closures in non-emergencies and declared emergencies.

Results. A majority of states (47) (92%) identify school closure as a potential mitigation strategy in their pandemic influenza plans. However, few of these plans identify any express legal authority to effectuate school closure for extended periods (up to three months) in response to an influenza pandemic.

Non-emergencies. State legal provisions specifically allowing for school closure during non-emergencies include measures to curb the spread of disease and broader efforts to protect the public's health or safety. As shown in Table 6 in the Appendices, our research suggests that 17 (33%) states appear to expressly authorize school closure in response to disease or epidemic; 10 (19%) appear to authorize closure to protect the public's health; and 22 (42%) appear to allow measures that may include school closure to be taken for other purposes. Three (5%) states (Nebraska, South Dakota, and Texas) do not seem to have laws that address school closure in non-emergencies.

Governmental departments authorized to close schools during non-emergencies vary across the states. Twenty-six (50%) states appear to empower only their health departments/officers to close schools. Nineteen (37%) states apparently authorize only departments of education to do so. No state seems to grant such authority to its emergency management department before an emergency is declared. Departmental authorization, however, is not mutually exclusive. In four (8%) states (Iowa, Mississippi, Oregon, and Puerto Rico), both the departments of health and education may be authorized to close schools. The remaining three (5%) states, as noted above, do not seem to have laws that address school closure in non-emergencies.

The level of government authorized to close schools in non-emergencies also varies between state and local entities. Laws in 12 (23%) states appear to authorize only state government to close schools in non-emergencies. Laws in 22 (42%) states appear to authorize only local government agencies to similarly implement school closure. However, in 15 (29%) states, the laws appear to authorize both state and local government authorities to engage in school closure in non-emergencies (see Figure 5 and Table 4).

Declared emergencies. Once a state of emergency has been declared, the legal authority to close schools appears to change. Schools in seven (13%) states may

apparently be closed specifically due to disease or epidemic; governmental departments in 48 (92%) states appear to be empowered to utilize or close facilities or properties (which may include schools) for public health or other purposes; and laws in 45 (87%) states seem to authorize the evacuation of persons from threatened areas (including schools). See Table 6 in the Appendices.

Whereas during non-emergencies, authority to close schools is vested in departments of health and education at the state or local levels, closure authority during emergencies seems to shift to emergency management agencies at the state level. Only nine (17%) states appear to empower the health department and six (12%) states seem to authorize the education department (or a school board/superintendent) to effectuate closure during an emergency. Laws in four (8%) states appear to concurrently authorize school closure at the county, city, or local levels during emergencies.

Discussion. While the current legal landscape suggests that multiple avenues exist to implement school closure, our findings pose a number of questions about whether existing laws support the effective use of school closure as a community strategy to mitigate the impact of pandemic influenza (or other highly-communicable conditions). Notably, many states do not seem to have laws that expressly allow for school closure for extended periods in response to anticipated or actual public health threats in non-emergencies or declared emergencies. This lack of specific authority may result in disagreement or delays in effectuating school closure as state or local government authorities debate whether, when, and how to close schools, especially before a state of emergency is declared.

Even the states that appear to expressly authorize school closure exhibit considerable heterogeneity among these laws. This is consistent with other traditional public health laws addressing the power of public health departments to isolate, quarantine, or vaccinate individuals or groups. Concerning school closure laws, additional inconsistencies may arise from differences among states as to which governmental entities and levels are responsible for closing schools. In some states, multiple departments or different levels of government are apparently authorized to close schools, which may further lead to confusion.

Significant variations among these laws, coupled with anticipated differences among community actors in exercising their lawful discretion to close schools, may lead to (1) disagreements as to who is responsible for closing schools, or when they should be closed (for example, departments of education or health may not concur on the timing or bases for closing or re-opening schools, especially in non-emergencies); (2) delays resulting from disagreements; (3) potential challenges to governments' decisions to close schools; or (4) failures to take appropriate public health action because of various pressures, economic or fiscal forces, or other social factors.

Once an emergency has been declared, the authority to decide when to close schools appears to shift to state emergency management agencies in nearly all states. Although emergency management agencies typically seek input from departments of

education or health regarding school closure, this notable shift of legal authority may create potential conflicts or uncertainty as to the decision-making authority to close schools during emergencies.

The results of this review of states' laws suggests that emergency management, health, and education officials and their legal counsel should consider assessing the express legal routes for closing schools in their states in emergency and non-emergency situations and attempt to resolve any identified issues that may impede effective implementation of school closure as a social distancing measure. Such assessments may be facilitated through tabletop or other exercises designed to test the legal authorities to close schools prior to or during states of emergencies. In addition, state and local legal counsel may conduct their own focused legal reviews of their clients' legal authorities to close schools in preparation for or response to pandemic influenza or other public health emergencies. As specific legal routes to school closure are identified, vetted, and tested through realistic exercises or legal reviews in each state, officials and their legal counsel may wish to reference relevant legal authorities in state and local pandemic influenza plans.

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I. Introduction

Protecting the health of their students, staff, and the community from highly contagious, infectious diseases like pandemic influenza is an important objective for schools. Modeling and analyses conducted by the Centers for Disease Control and Prevention (CDC) and others suggest that community-wide school closures may mitigate the incidence of pandemic influenza, thereby reducing its impact on individuals, groups, healthcare providers, public health systems, and the economy.⁵ The public health premise, consistent with social distancing theories, is that timely closing of schools may limit the spread of influenza (or other communicable conditions).⁶

However, there is incomplete and inconsistent information about the laws that may authorize school closures or other related non-pharmaceutical interventions (NPIs) in non-emergencies and declared emergencies. To address these gaps, CDC's Public Health Law Program and Division of Global Migration and Quarantine asked the *Center for Law and the Public's Health* ("Center") to examine and characterize patterns in states' legal authorities to close schools. This project was undertaken in response to Homeland Security Council assignments to CDC for its role in preparing the Nation for a potential influenza pandemic, specifically action items 6.3.2.1., 6.3.2.2., and 6.3.2.3. of the National Strategy for Pandemic Influenza Implementation Plan, in support of effective community containment strategies (see Appendix A).

Our project goal is to closely examine school closure laws across states and attempt to characterize some key patterns. Our analysis specifically focuses on *express* provisions in states' laws that appear to grant state or local department(s) of health, education, and/or emergency management the authority to mandate school closure for extended periods during non-emergencies and emergencies in response to pandemic influenza or other potential communicable disease outbreaks. We did not review the laws of jurisdictions below the state level (e.g., county, city, or other municipalities).

Our primary objective is to identify, review, and characterize state laws that are essential to the public health need to close schools to interrupt the transmission of pandemic influenza (or other communicable conditions). This characterization of school closure laws through this analysis is intended to help improve the competencies of public health, education, and other authorities to use law to further public health legal preparedness in response to pandemic influenza. In addition, we demonstrate a need for coordinating or harmonizing express laws related to school closure in response to public health threats across states.

Section II of the Report describes the rationale for the historical and modern use of NPIs and provides an overview of the role of school closure in emergency preparedness. School closure is among a variety of NPIs recommended for consideration by CDC in response to pandemic influenza. In Section III, we discuss the scope and methodology of the *Center's* characterization of laws. We examine the role of school closures in each state's pandemic influenza plan. Apparent express legal authorities to close schools are explored in non-emergencies and emergencies. Our analysis further explores the authority that states' laws grant to different departments of government (e.g., health, education, emergency management) at different levels (e.g., local, city, county, state). Results of the *Center's* examination of legal authorities for school closures are set forth in Section IV and Tables 1-5 of the Appendices. A summary of major results is provided in Table 6 of the Appendices.

Finally, in Section V, we discuss four general concerns that emerged from our analysis: (1) some states may lack the express legal authority to close schools in non-emergencies; (2) multiple departments of government may be authorized to close schools in some states; (3) school closure authority is vested in different levels (e.g., state, county, city) of government in some states; and (4) during declared emergencies, the legal authority to close schools typically shifts from local to state levels, and from departments of public health or education to emergency management departments, raising questions of coordination in actually implementing school closure.

II. Role of School Closures in Emergency Preparedness

A. Use of Non-Pharmaceutical Interventions (NPIs)

The use of NPIs may be vital to secure the public's health in response to pandemic influenza. CDC advises that well-matched vaccines or sufficient quantities of effective antiviral medications will likely not be available at the onset of pandemic influenza. Accordingly, CDC has proposed a number of NPIs be considered as part of the overall response to pandemic influenza. These include isolation of infected persons, voluntary quarantine of exposed individuals, and use of social distancing measures such as dismissal of students from school (i.e., school closure) to reduce potential transmission of influenza among members of the community.⁷ These interventions are designed to: (1) delay the exponential growth in incident cases to "buy time" for production and distribution of a well-matched pandemic strain vaccine; and (2) lessen community morbidity and mortality by decreasing the total number of incident cases.⁸

Among the five categories of pandemic influenza ("5" being the most severe), CDC suggests government officials consider school closure during a category 2 or 3 pandemic, and recommends closure during a category 4 or 5 pandemic.⁹ Although a category 4 or 5 pandemic would likely trigger declared states of emergency at the federal, state, and local levels, the likelihood of a category 1, 2, or 3 pandemic invoking similar emergency declarations is less certain.

Although debatable, modeling and analyses suggest that widespread school closures may reduce the incidence of infection (i.e. the attack rate) in a community over a period of time.¹⁰ School closure was an essential part of community strategies to limit the impact of deadly influenza during the 1918 pandemic.¹¹ Studies examining historical interventions in several U.S. cities found that school closure and other NPIs were associated with lower peak death rates in communities during the 1918 influenza pandemic.^{12,13} However, a recent CDC study following the closure of schools in Yancee County, North Carolina in October 2006 due to an outbreak of influenza B found that students continued to congregate in public areas during the closure.¹⁴ Initial attempts to increase social distancing were compromised by failure to inform parents of subsequent risks. Despite conflicting views as to if and when school closure is effective, many state and local communities are planning to close schools as needed in response to pandemic influenza (see Table 5).

B. Effect of School Closures on Communities and Students

Deciding whether to close schools for extended durations (e.g., up to 3 months) in response to pandemic influenza implicates a host of effects on the community and students. CDC has reported on the community impact of school closures on families and the workforce in its *Interim Pre-pandemic Planning Guidance*.¹⁵ It recognizes four major areas of concern, including the potential (1) adverse economic impact on families, (2) disruption of businesses, (3) reduced access to essential goods and services, and (4) disruption of school-related services.

Initial estimates indicate that school closures would affect up to 15.4 million households with children aged 15 years or less.¹⁶ A public opinion poll conducted by the Harvard School of Public Health found that 86% of families with children 5-17 years of age would have at least one adult in the household who would continue to work if classes were cancelled for up to 3 months.¹⁷ Employment protections and alternatives (e.g., option to work from home) could lessen the societal impact by encouraging families to comply without fear of employment loss. Such arrangements afford flexibility to determine which member(s) should stay home to care for the children.

Long-term school closure not only affects communities and families, but it can have potential adverse implications on the education of students who are no longer able to attend classes and for whom alternate ways of learning must be found. A number of state and federal laws regulate educational or attendance requirements for elementary and secondary school students. Most states require, for example, that children attend school until they reach the age of 16 or 18 years (depending on the state). Additionally, some states (e.g., Maryland, Mississippi, and Tennessee) require that schools must be in session at least 180 days during the year.¹⁸ Long-term closures could create significant difficulties for schools to meet these legal requirements.

For example, a year after Hurricane Katrina, approximately a third of schools in New Orleans were still closed due to physical damage.¹⁹ While school closure to prevent the spread of disease would not *per se* involve physical damage to buildings, school

facilities may be needed for other purposes such as temporary shelters or care centers.²⁰ Governments should anticipate this sort of closure and how they will handle meeting attendance requirements if the schools are no longer open to students. As discussed in Focus Box 1, below, federal and other resources can assist state and local school districts facing long-term school closures.

Focus Box 1. Impact of Hurricane Katrina on Education

Federal and state departments of education, respectively, assisted in rebuilding Louisiana schools after Hurricane Katrina.²¹ The United States Department of Education (ED) assisted Louisiana with funding and by modifying "No Child Left Behind" (NCLB) requirements. After the hurricane, ED sent out a statement showing its willingness to work with states hit by Hurricane Katrina especially concerning waivers and modifications, teacher requirements, reallocations of funds, and supplemental appropriations.²² As to NCLB requirements, ED Secretary Margaret Spelling waived requirements regarding the adequate yearly progress (AYP) determinations for schools closed over 18 days. She also allowed schools that were closed for more than 18 days to be evaluated separately regarding their AYP marks. Schools that failed to make AYP determinations were given a 1-year waiver.

ED also provided funds through the Emergency Impact Aid for Displaced Students Program. Through the program \$880 million was provided to help pay for the education of over 150,000 displaced students who were enrolled in schools across the 50 states and District of Columbia. The Impact Aid funds were designated to meet family, school, and community needs of the affected areas and could be used for services such as providing books, educating the homeless displaced by the hurricane, and tutoring services.²³ Another \$750 million was given under the Immediate Aid to Restart School Operations Program to help cover the costs of repairing and reopening the schools in the affected states. A grant of \$24 million was provided to Louisiana to help create new charter schools under the NCLB Act. In August of 2006, Secretary Spelling announced that an additional \$30 million would be provided for K-12 education in Louisiana in public, private, and charter schools.²⁴

III. Scope and Methodology

A. Overview of Strategies

For severe pandemics (Categories 4 or 5), CDC recommends early implementation of pandemic mitigation interventions (e.g., school closure) for up to 12 weeks) to potentially reduce the virus’s basic reproductive number and curtail the spread of disease.²⁵ Shorter periods of closure may be adequate in less severe pandemics.²⁶ Nonetheless, in the event of a disease threat, public health, education, and emergency management officials at all levels of government should be aware of the scope of legal authority to close schools. Absent express legal authority, officials at different levels of government may be deterred from effectuating a timely and effective response consistent with a state’s pandemic influenza plan. The *Center’s* primary research objective was to characterize states’ apparent, express legal authority to close schools (public and private, K-12) during non-emergencies and emergencies at the state and local levels. Laws that did not provide apparent, express authority to close schools were excluded from our analysis.

B. Definitions and Terms

For the purposes of this report, we use the term “school” to include all public and private schools, kindergarten (K) through grade twelve (12). The term “school closure” has historically been used (e.g., during the 1918 influenza pandemic) to refer to shutting down school buildings and suspending classroom instruction.²⁷ We use the term “school closure” more broadly to encompass other measures with similar purposes (e.g., school cancellation, student dismissal, evacuation, and control of school buildings). However, the precise scope and application of what it means to close schools are dependent on the laws of each state (see Table 1), and, could also depend on the laws of local jurisdictions within the states. For the purposes of this study, the term “state” is used to denote all 50 states, the District of Columbia, and Puerto Rico.

C. Assumptions

For the purposes of this study, we assumed that every state has some general public health legal authority that may be invoked to close schools or other facilities. For example, statutory laws authorizing public health officials to generally control communicable diseases may presumably support school closure even if these laws do not specifically spell out the ability to close schools under their broad language. In Illinois, for example, the state Department of Public Health is statutorily authorized to “take means to restrict and suppress” infectious diseases, and whenever a disease “becomes, or threatens to become epidemic,...may enforce such measures as it deems necessary to protect the public health....”²⁸ Likewise, in Maryland, the State Secretary of Health and Mental Hygiene is statutorily authorized to “[a]ct properly to prevent the spread of disease” when he “has reason to believe that an infectious or contagious disease...that endangers the public health exists within the State....”²⁹ These examples demonstrate the sort of broad public health authority that may allow government to respond to public

health threats through varied means, but do not specifically support school closure in anticipation of a disease outbreak.

Furthermore, we presumed that every school district retains some inherent authority to close schools for a myriad of reasons other than for controlling the spread of communicable disease control (e.g., inclement weather, hazardous waste or chemical spills, or failure to meet educational standards). Finally, we presumed that for each state in which we located apparent, express authority to close schools (see Section III.E and Section IV, below), the power to close schools included the ability to authorize the reopening of schools after the justification for closing schools no longer existed. Reopening schools in such cases may result from the rescinding of an order to close schools by the authorized entity, or other legal means.

D. Approach

Our focus is on those express provisions of states' laws that appear to (1) specifically authorize school closure for communicable disease control or general purposes, or (2) allow for the closure of facilities (that may include schools) for extended periods of time (discussed below). In states that do not feature specific school or facility closure laws, there may exist statutory, regulatory, or judicial provisions that generally allow for school closure, but do not expressly authorize it in response to disease threats or to protect the public's health. Laws authorizing various, unrelated reasons for closing schools (e.g., weather, bomb threats, physical infrastructure) are not cited because, depending on the jurisdiction, they may not or would not likely support school closure for extended periods in response to pandemic influenza.

E. State Laws

As noted in subsection III.A, the primary research objective of this analysis is to characterize apparent, express authority in states' laws to mandate school closure during non-emergencies and declared emergencies. We first reviewed state pandemic influenza preparedness and response plans submitted to CDC beginning in 2006.³⁰ Every state (except Puerto Rico) has adopted, and continues to update, its pandemic influenza plan (see Table 5).³¹ As of December 19, 2006, we assessed whether officials drafting these plans (1) recognize school or facility closure as a potential disease control measure, and, if so, (2) cite specific legal authority to close schools. The results (discussed in Section IV) indicate that, while many states identified the potential need for school closure in their pandemic influenza plans, few referenced relevant legal authorities to effectuate closure.

We next comprehensively examined each state's laws concerning apparent express authorities to close schools in non-emergencies and emergencies. We identified state-level laws that addressed all or part of the primary research objective and characterized them using accepted legal methods of statutory interpretation. The scope of laws and other authorities included state statutes, regulations, appellate judicial cases, and attorney general opinions found through legal research engines (e.g., LexisNexis,

Westlaw) and publicly-available legal websites (e.g., state legislatures, state attorneys general offices, state judiciaries, state health departments). Table 1 illustrates the many types of laws we examined as part of our work.

Relevant search terms for school closure ordered by each public agency or official (e.g., governor, health official, school board) included *communicable disease, epidemic, health, public health, school, facility, building, property, closure, dismissal, cancellation, and evacuation*. Each search was conducted within the applicable legal code (e.g., emergency management, health, education) that generally governs the scope of authority for each agency and official. All searches were based on information available as of December 1, 2006.

Within each state, these searches yielded numerous legal references from which we selected relevant laws related to the primary research objective. Major legal themes for school closure for extended periods were identified and used to organize each state's laws (Table 1). Results reported in Table 1 (as of December 19, 2006) were further summarized in additional tables (Tables 2-4) to illustrate specific patterns of school closure authority among different departments and levels of government.

Under the condition of non-emergencies, the specific criteria for inclusion were based on themes we gleaned from our review of statutory or regulatory laws that explicitly allowed for closure stemming from (i) a potential threat of disease, (ii) public health threat, or (iii) for a general health-related purpose. Each of these alternative bases provides a clear reason to close schools during non-emergencies. Consequently, we characterized laws relating to the authority to close schools (1) due to a disease or epidemic, (2) to protect the public's health, or (3) for other, general health-related purposes (that may include school closures). These provisions ranged from narrow provisions that identify the specific threat (e.g., disease or epidemic) that substantiates school closure to broader provisions allowing measures to protect the public's health more generally. Results that did not identify laws that contained express language with terms synonymous with a "potential threat of disease," "public health threat," or general "health-related" purpose, were excluded from our analysis.

We adopted a different approach to identify relevant school closure provisions under the condition of a declared emergency. Specifically, we characterized state laws under declared emergencies that (i) authorize measures in response to diseases or public health threats generally, (ii) enable government acquisition or utilization of property (including schools), or (iii) authorize the evacuation of persons from threatened areas (including schools). As during non-emergencies, each option provided a lawful justification to close schools during emergencies. We thus characterized apparent, express state legal authorities to close schools (1) due to disease or epidemic, (2) to utilize or close facilities/property (including schools), or (3) to evacuate the public from threatened areas (including schools). We relied on express provisions within the host of state powers granted to an emergency management agency that could be invoked to effectuate school closure. We excluded from our analysis any search results that did not identify state laws containing express language concerning "disease prevalence" or

“epidemic,” the “acquisition or use of property,” or “evacuation of persons from threatened areas.”

F. Limitations

While we attempted to identify specific laws regarding school closure in non-emergencies and emergencies, our work is not an exhaustive analysis of all relevant laws and policies. Several limitations apply. First, the focus of our research is on state-level laws and policies. Relevant federal or local laws may be selectively referenced, but have not been fully examined. Second, among the state laws we identified, we did not attempt to prioritize laws within states. For example, in states that allow departments of education and departments of health to close schools in non-emergencies, we cannot indicate whether one department’s role is primary or secondary to the other, unless this appears to be legally specified. Third, our analysis also does not address (1) the timing or appropriateness of school closure decisions with respect to the epidemiology of disease introduction, transmission, or severity, or (2) the legal liability or accountability of governmental actors in the exercise of school closure authority in response to actual or potential public health threats. These issues are beyond the scope of our study. Finally, we did not contact state legal counsel in the 52 jurisdictions addressed in this review to confirm our findings and interpretations..

IV. Results: Characterization of Apparent Legal Authority for School Closures

A. School Closures Addressed in State Pandemic Influenza Plans

While 47 (92%) states identify school closure as a potential control measure in the pandemic influenza preparedness and response plans submitted to CDC beginning in 2006, only nine (17%) state pandemic influenza plans cite specific legal authority to close schools or public facilities due to a disease threat (as of December 19, 2006) (see Table 5). Among these nine states, the specificity of laws cited in support of school closure authority varied considerably. For example, one state’s influenza pandemic response plan suggests that the Governor is statutorily authorized during a declared emergency to close schools³² (see Table 5). Our review indicated that the statute generally authorizes the state’s Governor to act as necessary to respond to an emergency, but does not specify the Governor’s ability to close schools. As noted above in subsection III.E, states are constantly reviewing and updating their pandemic influenza plans, and thus these findings may have already changed.

B. School Closure Authority in Non-emergencies

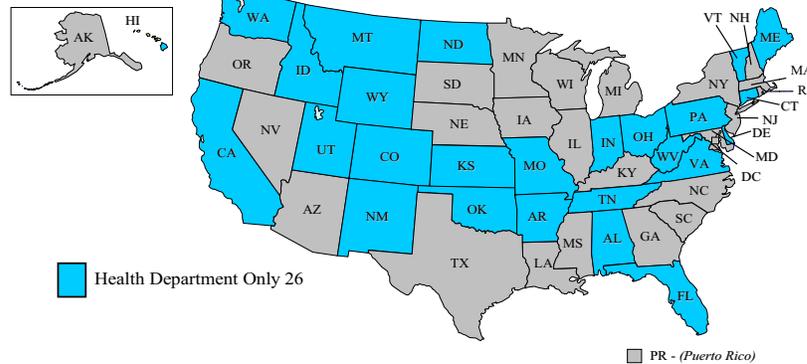
During non-emergencies, laws in a total of 27 (52%) states appear to expressly authorize schools to be closed (1) in response to a potential disease outbreak or (2) to more generally protect the public’s health. Of these 27 total states, laws in 17 states appear to grant health or education officials the authority to close schools due to the

imminent or actual presence of disease (see Table 2, column 1). For instance, Hawaii’s department of health may “refuse attendance” (i.e. close schools) when there is an imminent danger of epidemic or serious outbreak of communicable disease.³³ In Missouri, a school superintendent may close any school because of an epidemic prevailing in the school district.³⁴ In the remaining 10 states, including Idaho, local health or education officials may close schools when necessary to “protect public health.”³⁵ (see Table 2, column 2). These provisions of law among these 27 total states may provide specific legal pathways to implement school closure at the state and local levels by departments of health and education.

1. Departmental Authority for School Closure

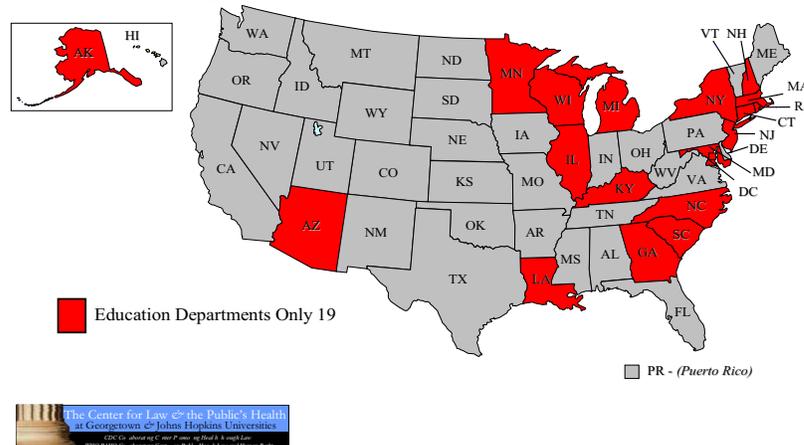
During non-emergencies, most states that appear to grant express authority to close schools in response to public health threats vest this power with their departments of health or education (see Table 3). As illustrated in Figure 1, below, laws in 26 (50%) states appear to expressly authorize only their health departments to close schools. For example, New Mexico statutes provide that the state public health department may require closure of schools if there is a likelihood of epidemic where any case of communicable disease occurs or is likely to occur.³⁶

Figure 1. States that Appear to Authorize Only Health Departments to Close Schools During Non-emergencies



Only departments of education appear to be empowered to close schools in 19 (36%) states (see Figure 2). In Arizona, for example, the department of education may close a school if a danger is posed to the health or safety of the students or staff,³⁷ but state department of health officials are not similarly authorized to expressly close schools in such circumstances.

Figure 2. States that Appear to Authorize Only Education Departments to Close Schools During Non-emergencies



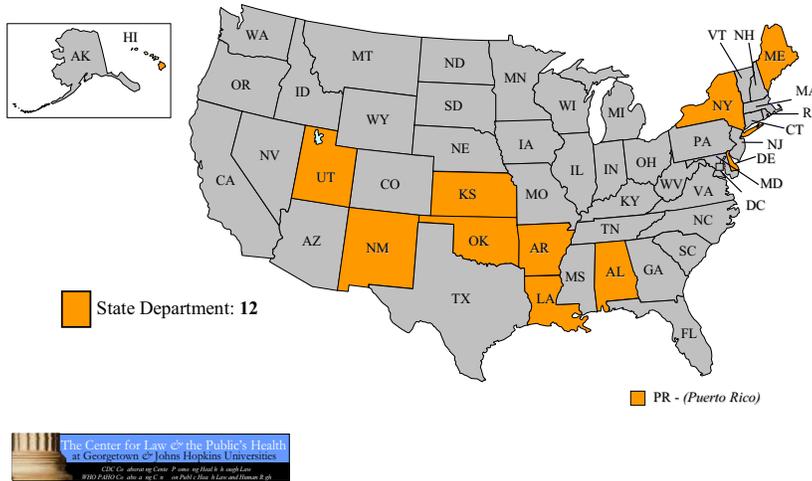
Laws in four (8%) states (Iowa, Mississippi, Oregon, and Puerto Rico) seem to authorize both departments of health and education to close schools. The laws of three states (Nebraska, South Dakota, and Texas) do not seem to address school closure in non-emergencies by any department of government.

2. Governmental Level of Authority for School Closure

Legal authorizations for different levels of government (e.g., state or local) to close schools in non-emergencies vary substantially by state. Some state laws seem to support school closure only by state-level officials. Other state laws seem to empower only local officials to close schools in non-emergencies. And, as noted below, in 15 (29%) states, the laws seem to authorize both state and local officials to close schools during non-emergencies (see Table 4). The laws of 3 (5%) states (Nebraska, South Dakota, and Texas) do not seem to address school closure in non-emergencies at any level of government.

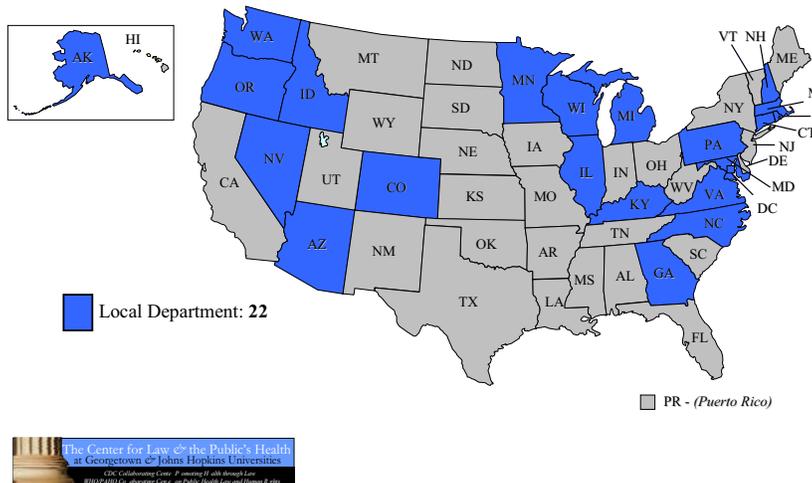
As illustrated in Figure 3, laws in 12 (23%) states seem to authorize school closure only at the state level of government. In Oklahoma, for example, the state department of public health may promulgate rules to effectuate the “exclusion of children from schools” to “prevent and control the spread of communicable disease.”³⁸

Figure 3. States that Appear to Authorize Only State Departments to Close Schools During Non-emergencies



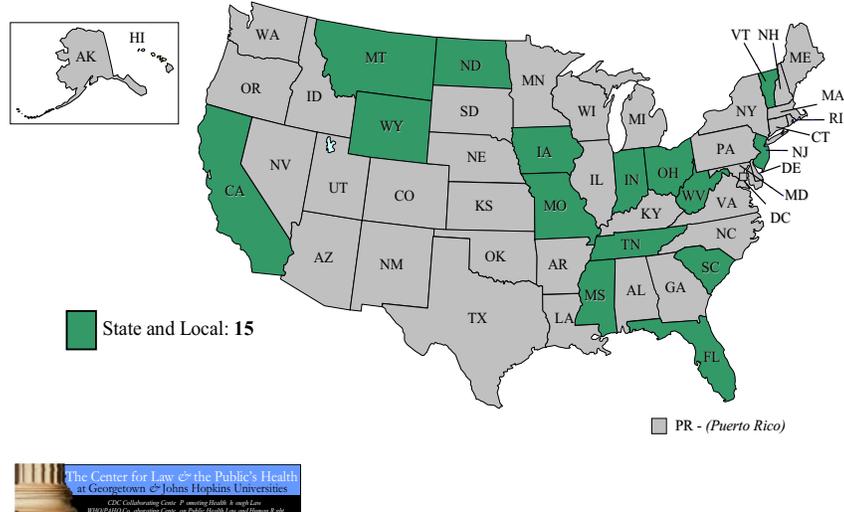
State laws, however, may also allow local departments to close schools. We found that 22 (42%) states’ laws seem to allow for closure only at the county, city, or local levels (see Figure 4). In Colorado, for example, the county department of public health can “close theatres, schools, and other public places and to forbid gatherings of people when necessary to protect the public health.”³⁹ It is important to note, as discussed in Sections III. E and F above, that this finding is based solely on our review of state-based laws. We did not separately review local-based laws (e.g., ordinances, local school policies) to assess whether they may authorize school closure at the local level.

Figure 4. States that Appear to Authorize Only Local Departments to Close Schools During Non-emergencies



Laws in the remaining states seem to authorize *both* state and local levels of government to close schools. In fact, fifteen (29%) states' laws appear to allow for school closure at the state *and* county, city, or local levels in non-emergencies (see Figure 5, below).⁴⁰

Figure 5. States that Appear to Authorize State and Local Departments to Close Schools During Non-emergencies



C. School Closure Authority in Declared Emergencies

1. Effect of a Declared Emergency

Once a state of emergency, disaster, or public health emergency has been declared, the legal landscape changes.⁴¹ The legal authority to close schools appears to change as well, often shifting to state emergency management agencies to coordinate state and local emergency response efforts.

During emergencies, schools may be closed under different legal standards from those invoked in a non-emergency. Whereas non-emergency measures may be imposed to contain localized threats, emergency responses usually entail efforts to control a disease or condition that potentially impacts a large geographic region. Laws in only seven (13%) states seem to specifically allow for school closure in response to a disease threat during emergencies (see Table 2). In most states, the authority to close schools is grounded in broader emergency powers to manage property, protect persons, or evacuate populations from threatened areas.

Laws in 48 (92%) states appear to allow for the acquisition, utilization, or control over public and private property, which includes schools. For example, in Kentucky, the

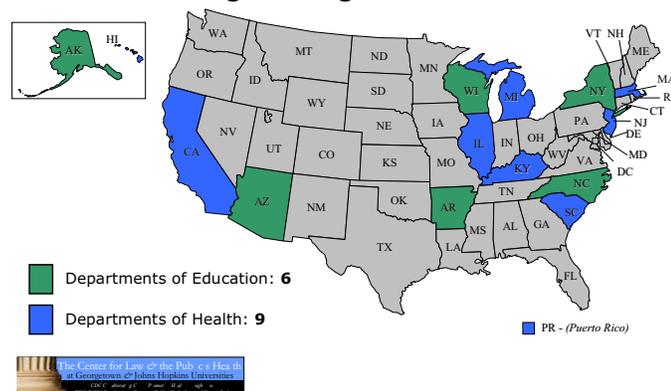
Governor may authorize government’s temporary or permanent acquisition (or “taking”) of property, including buildings (e.g., schools) to protect the public.⁴² In Minnesota, facilities may be procured as a preparatory step in time of need.⁴³ Other states, such as Pennsylvania, authorize the use of public or private property as needed to respond to an emergency.⁴⁴ Emergency laws in 45 (87%) states seem to authorize the evacuation of persons from threatened areas. In Tennessee, the Governor may deem a school to be or be within a “threatened area” and “compel public evacuation.”⁴⁵ The common denominator among these provisions is the ability to exert control over a school and its population. While these provisions afford distinct legal pathways to close schools, they are grounded in government’s goal of protecting the public’s health.

2. Departmental Authority for School Closure

Laws in only six (6) (12%) states appear to authorize a department of education to close schools during an emergency (see Figure 6). Of these, only one (1) state (Alaska⁴⁶) provides statutory authority to close schools in response to a disease outbreak, and another (Arkansas⁴⁷) allows closure in response to circumstances that are “hazardous to student health.” Nine (9) (17%) states appear to authorize health authorities to close schools (see Figure 7). Of these, only four (4) (8%) – Hawaii, Illinois, Massachusetts, and Pennsylvania – seem to specify closure authority in response to a disease outbreak.

In contrast, the Governor or emergency management agency is apparently authorized to close schools in virtually every state (except New Jersey, where the department of health is vested with this statutory power) pursuant to their emergency powers to control property or evacuate populations. The uniformity of these legal provisions is reflected in most states’ pandemic influenza plans that identify state governments as responsible for managing response efforts during a declared emergency.

Figure 6. States that Appear to Authorize Health and Education Departments to Close Schools During Emergencies



3. Governmental Levels of Authority for School Closure

In addition to the shift in departmental authorization during emergencies, laws in every state seem to authorize government at the state level to close schools during emergencies, primarily through the state emergency management agencies (see Table 4). However, four (8%) states (Arizona, Illinois, Michigan, and Wisconsin) appear to grant dual authority for school closure to state and county, city, or local governments during emergencies.⁴⁸

V. Discussion: Key Issues Concerning Apparent Legal Authority to Close Schools

Public health authorities have historically and successfully used NPIs to control the spread of influenza. Despite significant advancements in medical science and healthcare in the last half-century, modern pandemic influenza planners recognize that vaccines, treatments, and medical personnel will either be in short supply (or not available at all) during a modern influenza pandemic. Correspondingly, NPIs remain an essential part of modern pandemic planning.⁴⁹ Isolation, quarantine, and social distancing measures, including school closure, can effectively reduce transmission of influenza among members of the community, especially when layered within a community.⁵⁰

The ability to close schools in non-emergencies and emergencies in response to pandemic influenza is intrinsically tied to legal authorization at the state and local levels. However, our survey and characterization suggest that specific legal authority at the state level to close schools is ambiguous. As with other traditional, state-based public health powers (e.g. quarantine, isolation, vaccination), there is considerable heterogeneity of laws concerning school closure across states. Express legal authority to close schools may be lacking in some states and confusing in others. Multiple departments or levels of government may concurrently share some legal authority to close schools during non-emergencies in some states. During emergencies, the legal authority to close schools appears to shift to other governmental actors. Legal complexities and potential dilemmas arising from these and other findings are further discussed below under four major themes. Additional clarification of these legal authorities may be obtained through (1) consultation with state or local legal counsels, or (2) state-based tabletop or other exercises designed to explore government's legal ability to close schools through simulated pre-emergency or emergency events.

A. States May Lack Express Legal Authority to Close Schools

One of the emerging historical lessons from the 1918 pandemic influenza is that school closure, among other social distancing methods, can be an effective tool for preventing the spread of highly contagious, airborne disease.^{51,52} Though subject to ongoing debate as to its modern-day effectiveness, public health authorities may need to be able to close schools uniformly within and across states even during the early stages of a modern influenza pandemic before formal states of emergency are declared..

Actually implementing school closure, however, may not be so easy. There are significant, competing reasons why states may want to be cautious in deciding whether to close schools for prolonged periods of time. As discussed in Section II.B., economic impacts, social disarray, loss of worker productivity, educational disadvantages for students, and other issues may militate against early decisions to close schools. These and other factors may be used to challenge initial calls for school closure, especially if the laws cited in support of closure are general or amorphous in nature. For example, where state laws do not specify the authority to close schools, departments of education or health may find it difficult to determine who is in charge of such decisions, and under what circumstances. In absence of clear legal authority, their potential reliance on broad authority to operate schools or protect the public's health, respectively, may not wholly support school closure. Departments of education or health that seek to close schools in the face of such competing concerns or amidst legal confusion or generalities may have to withstand legal challenges.

During non-emergencies, however, laws in only 17 (32%) states appear to authorize school closure due to the imminent or actual presence of disease (see Table 2, column 1). As a result, 35 (67%) states seemingly lack express authority to close schools during, or in anticipation of, an imminent disease outbreak (see Table 2, column 1). A few states (10 (19%) - see Table 2, column 2) appear to allow for school closure to protect the public's health, which may clearly include closures in anticipation of or response to pandemic influenza. Still, health officials may be reluctant (as in North Carolina) to invoke this broader authority to implement school closures (see Focus Box 2).

Even when express authority to close schools exists in state laws, few laws precisely suggest when closure must occur. Rather, these decisions are often left to the discretion of various governmental authorities. Some states identify specific factors (e.g., threshold absenteeism) to determine when schools should be closed. Identifying criteria for school closure in advance may help authorities gauge when to actually close schools. However, rigid adherence to particular criteria may hinder officials from closing schools, particularly on a local scale (i.e. before the disease spreads to other regions, triggering an emergency).

Thus, while schools may be closed through a number of legal routes, it is legally unclear when and under what circumstances government officials may enforce school closure in many states. Further efforts may assist in clarifying the criteria upon which decisions are made, the procedural nuances when potential conflicts of authority exist, and the potential liability of individuals or agencies involved in making these decisions.

B. Multiple Departments May Be Authorized to Close Schools

Determining when to close schools in response to pandemic influenza in many states may be complicated by the fact that school closure authority is apparently vested in different agencies before a state of emergency is declared. The allocation of school closure authority to specific departments varies by state. This authority resides in

departments of health alone in 26 (50%) states and in departments of education alone in 19 (37%) states. In four (8%) states, the laws seem to authorize both departments of health and education to close schools. In the remaining three (5%) states, no laws seem to authorize school closure by any department of government during non-emergencies.

Whether at the state or local levels, these governmental departments have different missions, objectives, and priorities that may significantly impact their decisions to close schools. Recent influenza B outbreaks in North Carolina illustrate that health and education officials may not agree as to the need for or effectiveness of school closure (see Focus Box 2). During an influenza pandemic, inconsistencies in decisions to close schools within and across states have the potential to contribute to the spread of disease. However, such inconsistencies are predictable based on the varying legal authorities vested in the departments of health and education in the various states.

C. School Closure Authority May Be Vested in Different Levels of Government

In addition to variations among the departments of government authorized to close schools, there is significant differentiation in the levels of government responsible for closing schools. Our analysis suggests that laws in 12 (23%) states appear to authorize only state government agencies to close schools in non-emergencies. Laws in 22 (42%) states appear to authorize only local government agencies to implement school closure during non-emergencies. However, in 15 (29%) states, the laws appear to dually authorize state and local government authorities to engage in school closure in non-emergencies (see Figure 5 and Table 4). In the remaining three (5%) states, as noted above, no laws seem to authorize school closure during non-emergencies. This clearly illustrates the potential for overlapping authority in states whose laws appear to authorize government at the state *and* local levels to close schools in non-emergencies.

The apparent authority vested in the boards of health at different levels of government in California provides an apt example of the dual authority granted to state and local governments to close schools. Under the California Education Code, the city, county, or state boards of health appear to possess the authority to order the closing of schools during non-emergencies.⁵³ Even so, the state board of health may have the authority to override the decisions of local or county boards through its power to isolate property (including schools) if necessary to protect the public's health.⁵⁴

Coordination concerning the decision to close schools among different levels of government can be essential to protect the public's health. As illustrated in Focus Box 2, local decisions predominated initial responses to close schools (1) during Hurricane Katrina in Louisiana, (2) in response to an Influenza B outbreak in North Carolina, and (3) as addressed in the Contra Costa County, California pandemic influenza plan.

Focus Box 2. Local Decisions and Coordination of Authority Concerning School Closures

Local Decisions Predominate Initial Response for School Closure in Louisiana Following Hurricane Katrina (2005)

Though Louisiana educational officials were aware of the strength and potential damage Katrina could cause, it is unclear whether there was a coordinated effort to close schools on a statewide level. Prior to Katrina making landfall in 2005, there was no statewide closure of the schools by the Health Department, Department of Education, or the Governor. Under Louisiana law, each parish school board is the governing body of its school district.^{55,56,57} Following the hurricane, it appears that decisions to close schools were made on a parish-by-parish basis. For example, in Baton Rouge the superintendent decided to close schools after evacuations were ordered for residents of the southern part of the state. Many evacuees fled to Baton Rouge where schools and other facilities were needed as shelters.^{58,59} The strongest impact from Katrina was felt by the southern parishes of Louisiana. State Superintendent of Education stated that schools were damaged in at least 6 parishes in this region, requiring their closure and leaving over 135,000 students without schools to attend for weeks.⁶⁰

School Closure Decisions Among State and Local Health and Education Officials – Yancee County, North Carolina (2006)

On November 2, 2006, schools were closed in Yancee County, NC, in response to an outbreak of influenza B virus. High incidence rates among students and staff, and inadequate numbers of substitute teachers, prompted local school board and health officials to close schools for 10 days. Initial reactions were mixed, however, as to the timing and effect of county-wide school closures. The state epidemiologist suggested that health officials should not generally recommend closure because (1) it was not proven to be an effective control measure; (2) was done too late due to high absenteeism;⁶¹ and (3) it was very restrictive to society and inconsistent with the state department of health policy of using the least restrictive measures necessary.⁶² The head of the State Public Health Surveillance Team agreed, but thought these were local decisions to make.⁶³ The local decision to close schools in Yancee County prompted similar action in adjacent Mitchell County. The Mitchell County School Superintendent explained that the decision to close schools was a precautionary measure in response to 46 confirmed cases and the outbreak in Yancee County.⁶⁴ While local officials were able to contain the spread of disease in Yancee County, disagreements among state and local government officials as to the efficacy of school closures as a control measure illustrate the potential for delays or resistance to efficient statewide school closures in response to pandemic influenza.

Local Plan Uses Threshold Absenteeism to Determine when Schools Should be Closed – Contra Costa County, California (2006)

Contra Costa County (CCC), CA has been recognized as a leader in preparing for the potential effect of pandemic influenza on schools. It has designed a detailed and thorough pandemic influenza school action kit.⁶⁵ This innovative action kit was made available in 2006 for other counties and states to use as a tool to assist in their pandemic influenza plans.⁶⁶ It includes a school response to pandemic influenza flow chart, public health instructions, planning checklist, sample letters to be sent out at various stages of the pandemic, and various fact sheets and surveillance materials. The plan details what actions schools should take at different levels of the pandemic based on the percentage of absentees in the school. For example, after the first reported influenza case the county goes on heightened surveillance. If less than 10% of the students are absent, a letter is sent to the parents informing them how to prepare for and prevent the spread of influenza. When more than 10% of students are absent, then intensive surveillance is initiated, a press release is distributed, and parents are sent a letter urging them to keep ill children at home. If more than 30% of students are absent, the county health department is contacted, and the health officer is directed to close schools. CCC's plan has been noted for its clear threshold for school closure.⁶⁷ Other states and counties have referenced or modeled their pandemic planning tools after CCC including: Nebraska,⁶⁸ Illinois,⁶⁹ Minnesota,⁷⁰ and San Luis Obispo County, CA.⁷¹

D. Declarations of Emergency Shift the Locus of Authority to Close Schools

Responding to pandemic influenza or other public health emergencies involves a series of stages and appropriate public health interventions that may include school closures. At some point in the varying stages of response, state or local governments may need to declare a state of emergency to invoke specific emergency powers. Emergency public health powers may greatly facilitate public and private sector responses, but they also have the immediate effect of changing the legal landscape. This alteration and its effect on school closure authority are pronounced.

The authority of departments of health and education in non-emergencies to close schools is largely supplanted by the state emergency management agency during declared emergencies. State emergency management agencies are apparently authorized in 51 (98%) states to control emergency response efforts, including closing schools or other facilities. As often reflected in state pandemic influenza plans, deciding when to close schools during emergencies is a shared responsibility of state departments of health, education, and emergency management. As noted in Table 6, laws in 14 (27%) states may allow both state departments of emergency management and health or education departments to close schools in declared emergencies.

Indiana's pandemic influenza plan encourages "advance discussions" among multiple key decision-makers, including government officials, before issuing any mandates to close schools or take other actions (see Table 5). Similarly, in Mississippi, "cooperation and enforcement" of an order to close schools "will be executed with the cooperation of . . . the Emergency Support Functions of the State Emergency Operations Center, including the Mississippi Department of Education, Mississippi Department of Public Safety, and other law enforcement agencies as deemed necessary" (see Table 5). However, if conflicts arise among governmental authorities as to whether (or for how long) to close schools in emergencies, emergency management agencies (controlled by the Governor) are specifically authorized in most states to effectuate closure in declared emergencies.

VI. Conclusions

As part of comprehensive social distancing measures, school closures have historically been proven to be efficacious, and will likely have modern utility during an influenza pandemic. The goal is to ensure legal preparedness to protect the health of populations during pandemic influenza or other public health emergencies.

While there are multiple legal avenues to close schools in many states, a number of unresolved issues may preclude timely, consistent implementation of school closure decisions at the state and local levels. The apparent, express legal authority at the state level to close schools is distributed among different departments and levels of government across states in non-emergency and emergency settings. Significant variations among these laws, coupled with anticipated differences among community actors in exercising their lawful discretion to close schools, may lead to (1) disagreements

as to who is responsible for closing schools, or when they should be closed; (2) delays inherent in these disagreements; (3) potential challenges to governments' decision to close schools; or (4) failures to take appropriate action recommended by public health authorities due to various pressures, economic or fiscal forces, or other social factors.

The results of this review of states' laws suggests that emergency management, health, and education officials and their counsels should consider assessing the express legal routes for closing schools in their states, and attempt to resolve any identified issues that may impede effective implementation of school closure as a social distancing measure. Such assessments may be facilitated through tabletop or other exercises designed to test the legal authorities to close schools prior to or during states or emergencies. In addition, state and local legal counsels may conduct their own focused legal reviews of their clients' legal authorities to close schools in preparation for, or in response to, pandemic influenza or other public health emergencies. As specific legal routes to school closure are identified, vetted, and tested through realistic exercises or legal reviews in each state, officials and their legal counsel may wish to reference relevant legal authorities in state and local pandemic influenza plans.

Appendix and Tables

Appendix A

HOMELAND SECURITY COUNCIL PANDEMIC INFLUENZA IMPLEMENTATION PLAN: ACTION ITEMS RELATED TO SOCIAL DISTANCING

6.3.2. Provide guidance, including decision criteria and tools, to all levels of government on the range of options for infection control and containment, including those circumstances where social distancing measures, limitations on gatherings, or quarantine authority may be an appropriate public health intervention.

6.3.2.1. HHS, in coordination with DHS, DOT, Education, DOC, DOD, and Treasury, shall provide State, local, and tribal entities with guidance on the combination, timing, evaluation, and sequencing of community containment strategies (including travel restrictions, school closings, snow days, self-shielding, and quarantine during a pandemic) based on currently available data, within 6 months, and update this guidance as additional data becomes available. Measure of performance: guidance provided on community influenza containment measures.

6.3.2.2. HHS shall provide guidance on the role and evaluation of the efficacy of geographic quarantine in efforts to contain an outbreak of influenza with pandemic potential at its source, within 3 months. Measure of performance: guidance available within 72 hours of initial outbreak.

6.3.2.3. HHS, in coordination with DHS and DOD and in collaboration with mathematical modelers, shall complete research identifying optimal strategies for using voluntary home quarantine, school closure, snow day restrictions, and other community infection control measures, within 12 months. Measure of performance: guidance developed and disseminated on the use of community control.

Source: www.hhs.gov/pandemicflu/implementationplan/chapter3.htm#bookmark_16
(accessed Jan. 16, 2008).

Table 1 –
**Potential Legal Authorities in Support of School Closures
During Non-Emergencies and Declared Emergencies by State
and Essential Determinants²**

Information in this Table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

Introduction. Schools play a critical role in protecting the health of their students, staff, and the community from highly contagious, infectious diseases such as seasonal or pandemic influenza. Modeling and analyses conducted by CDC and others indicate, for example, that community-wide school closures may mitigate the incidence of pandemic influenza, thereby reducing its impact on individuals, groups, healthcare providers, public health systems, and the economy. The public health premise is that closing schools limits the spread of influenza (or other communicable conditions) consistent with social distancing theories.

Local, state, and federal agencies, however, have incomplete and inconsistent information about the relevant laws and policies that may allow school closure or other measures in public health emergencies. Accordingly, CDC asked the *Center for Law and the Public's Health* (“Center”) to research key legal provisions among states as to whether state or local department(s) of health, education, and/or emergency management may mandate school closure during non-emergencies and emergencies in response to potential communicable disease outbreaks. For the purpose of this document, “schools” are defined to include public and private schools that admit students in grades kindergarten (K) through twelve (12).

Scope. While nearly every state may feature general communicable disease laws during non-emergencies or broad emergency powers that may authorize school closures, Table 1 (below) primarily tracks those legal provisions that (1) specifically allow for school closure for communicable disease control or general purposes, or (2) allow for the closure of facilities (that may include schools), for extended periods of time (potentially up to 12 weeks). In those states that do not feature specific school or facility closure laws, Table 1 provides statutory, regulatory, or judicial provisions that may generally allow for school closure, but do not expressly authorize it in response to disease threats or to protect the public’s health. School closure laws relating to inclement weather, hazardous waste or chemical spills, general safety concerns, or failure to meet educational standards are not included in this table because they would not likely support school closure for extended periods in response to pandemic flu.

Table 1 Explanation. The table organizes school closure laws at the state level under two main categories:

² Thanks to Jennifer Gray, J.D., M.P.H., Johns Hopkins Bloomberg School of Public Health, for her research and editing assistance, and P.J. Wakefield for his editing and formatting assistance.

1. Non-emergencies – specifically focusing on laws concerning school closure or facility closure (which could include schools); and
2. Emergencies – specifically focused on laws during declared states of emergency that (1) specifically authorize school closure; (2) specifically authorize facility closures (which could include schools); or (3) generally authorize evacuation requirements for premises or areas (which could include schools).

The table’s legend includes a common series of terms and abbreviations. Relevant legal citations (including active hyperlinks where possible) and short explanations are provided. Columns within the table categorize key legal provisions as follows:

- **Dept.** – this column notes the specific government departments *i.e.*, health/public health, education, or emergency management that are authorized to close a school during a non-emergency or emergency.
- **Official** – this column identifies specific officials *i.e.*, public health official, commissioner of education, school board, Governor authorized to close schools.
- **Legal authority** – this column discusses the specific nature of the legal authority and criteria underlying school closure. This includes legal provisions (e.g., statutes, administrative regulations, cases) that enunciate the specific criteria used by a department or official to ascertain the appropriateness of school closure. These provisions may also describe the hierarchy of authority when conflicts arise as to the appropriateness of a decision to close (or not close) a school. Legal provisions that are *italicized* and in **blue** text suggest statutory, regulatory, or judicial provisions that may generally allow for school closure in absence of specific authorization.



Information in this Table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality.

**Table 1 – Potential Legal Authorities in Support of School Closures During Non-Emergencies and Declared Emergencies by State and Essential Determinants
(as of 12/19/2006)**

Level of Govt		Department		Health/Public Health		Education		Emergency Management		Officials	
St	County	PH	EM	PHO	COM	GOV	MYR	DIR	PHO	COM	GOV
									Public Health officer	Commissioner of Educ	Mayor or other local exec
									SUP	SBD	Director
									County Superintendent	School Board	Police Officer
									AGA	Any Government Agent	

State		Non-Emergencies			Emergencies		
State	Dept.	Official	Legal authority	Dept.	Official	Legal authority	
CO	Cnty PH		May close schools when necessary to protect the public's health (C.R.S.A. 25-1-708(1)(d))	St PH		May control property (e.g., schools), but only for isolation and quarantine of persons (CRS 25-1.5-102 (1)(b)(VI)(c))	
					GOV	May utilize any private property (e.g., schools) to cope with the disaster (CRS 24-32-2104(7)(d))	
					GOV	May compel evacuation of a threatened area (e.g., schools) (CRS 24-32-2104 (7)(e))	
CT		Loc PHO	<i>May employ such means as necessary to provide for the segregation of students, staff, or teachers in the event of a communicable disease outbreak in any school (Conn. Agencies Regs. § 19a-36-A8(g))</i>			May order the evacuation of a threatened area (e.g., schools) (C.G.S.A. § 28-9(f))	
DE	St PH		May close or evacuate any facility (e.g., schools) reasonably believed to endanger the public health (DE Admin Code tit 16. Chapt.5 § 508(c))	GOV		May utilize any private or public property (e.g., schools) to cope with the emergency or disaster (DE Code tit. 20 § 3116(b)(1))	
						May compel evacuation from any threatened area, (e.g., schools) (DE Code tit. 20 § 3116(b)(3))	
DC		St, Cnty, City, Loc SBD	<i>Must adhere to a Facilities Master Plan, which includes recommendations on school closure (D.C. St § 38-2803(b)(2))(no factors enunciated via statute)</i>	GOV	MYR	<i>May direct any persons to remain off the public streets, (i.e. effectuating school closure) (DC-ST § 7-2304)</i>	
FL	St PH		May quarantine and close premises (e.g., schools) to control disease or protect from unsafe conditions (Fla. Stat § 381.0011(6)(a)(1))		GOV	May control any public facility (e.g., schools) and regulate its use and persons using it (Fla. Stat § 14.021(1))	
					GOV	May utilize any private property (e.g., all schools) (F.S.A. § 252.36(5)(d))	
					GOV	May compel evacuation from any threatened area (e.g., schools) (F.S.A. § 252.36(5)(e))	
GA	Loc ED		<i>May close schools generally (Ga. Code Ann. § 20-2-260 (k.1)) (although intent appears to be permanent closure, as opposed to short term measures)</i>		GOV	May use and employ any of the property (e.g., schools) within the state (Ga. Code Ann. § 38-3-22 (b)(3))	
					GOV	May compel evacuation from any threatened area (e.g., schools) (Ga. Code Ann. § 38-3-51(d)(5))	

State		Non-Emergencies		Emergencies		Legal authority	
State	Dept.	Official	Legal authority	Dept.	Official	Legal authority	Legal authority
HI	St PH	Loc PHO	May refuse attendance (i.e. close schools) at any school in the state when there is an imminent danger of epidemic or serious outbreak of communicable disease (H.R.S. § 321-1(d)).	St PH		May implement measures to refuse attendance at any school if there is imminent danger of an epidemic or serious outbreak of communicable disease (H.R.S. § 302A-1133 , pursuant to H.R.S. § 321-1(d))	H.R.S. § 128-6(8)(U)
				GOV	GOV	May take possession of any public schools (H.R.S. § 128-10(6))	
ID	Loc PHO	Loc PHO	May order closing of any schools to protect the public's health (IDAPA 16.02.10.015(05))	GOV	GOV	May direct and control evacuation of the civilian population as necessary (H.R.S. § 128-6(8)(U))	H.R.S. § 46-1008(5)(d)
				GOV	GOV	May utilize any private property (e.g., schools) (IC § 46-1008(5)(d))	
IL	St ED	SUP	Shall close facility (e.g., schools) if there is an imminent threat to health or safety (23 Ill. Admin. Code § 180.420(a))	St PH	Loc PHO	Direct and compel the evacuation of the population from any threatened area (IC § 46-1008(5)(e))	77 Ill. Admin. Code § 690.1000 (g)(1)
				St PH	Loc PHO	Shall close schools upon identification of a single case of a communicable disease (77 Ill. Admin. Code § 690.1000 (g)(1))	
IN	St PH	Loc PHO	Shall not close schools upon identification of a communicable disease unless emergency exists (77 Ill. Admin. Code § 690.1000 (g)(1))	GOV		May recommend evacuation of any threatened area, (e.g., schools) and occupy premises (20 ILCS 3305/7 Sec 7. (a)(6),(8))	IC § 10-14-3-12 (b)(2)(B) , & evacuate people from any threatened area as necessary (IC § 10-14-3-12 (d)(5)) .
				GOV	GOV	May use facilities (IC § 10-14-3-12 (b)(2)(B)), & evacuate people from any threatened area as necessary (IC § 10-14-3-12 (d)(5)).	
IA	St or Loc PH or ED	Loc PHO	May order schools closed when considered necessary to prevent and stop epidemics. (IC § 16-19-3-10)	GOV			I.C.A. § 29C.12
				GOV	GOV	May order schools closed when considered necessary to prevent and stop epidemics. (IC § 16-20-1-24)	
IA	St or Loc PH or ED	Loc SBD	May apparently order school closings because of contagious disease, <i>Op.Atty.Gen. 1918 p.459, alluding to the departments' authority to affirm that teachers are entitled to be paid during closings</i> <i>Has broad authority in deciding to close schools, Keeler v. Iowa State Bd of Public Instruction, 331 N.W.2d 110, 112, (citing I.C.A. § 274.1, granting loc SBD control/use of its property, i.e. buildings as pertains to school matters)</i>	GOV	GOV	May utilize facilities of existing departments (e.g., schools) (I.C.A. § 29C.12)	I.C.A. § 29C.6(13)
				GOV	GOV	May direct the evacuation of the population from any threatened area as necessary (I.C.A. § 29C.6(13))	

State	Non-Emergencies			Emergencies		
	Dept.	Official	Legal authority	Dept.	Official	Legal authority
NE						May utilize any private property (e.g., schools) (Neb. Rev. Stat. § 81-829.40(6)(d))
NV						May compel the evacuation of the population from a threatened area (e.g., schools) (Neb. Rev. Stat. § 81-829.40(6)(e))
NV		Loc SBD	May close a school (N.R.S. 393.080(1)(d)) if supported by evidence to alleviate a problem (e.g., financial constraints), <i>Bartlett v. Board of Trustees of White Pine Cnty Sch Dist</i> , 550 P.2d 416, 417 (Nev. 1976) (court did not challenge SBD's authority despite questioning the validity of evidence presented)	GOV	GOV	May order public evacuation (N.I.R.S. § 414.060(3)(g)(7))
NH		Loc SBD	May generally close schools, as alluded to in N.H. Code Admin. R. Ed 306.18(b)(5) (public schools), N.H. Code Admin. R. Ed 407.01 (nonpublic schools), and N.H. Code Admin. R. Pos 1114.01 (institutions of higher learning). These laws pertain to permanent closure, but not short term closures in response to health/safety threats.	GOV	GOV	May utilize the facilities of existing departments (e.g., schools) (N.H. Rev. Stat. § 21-P:44)
NJ	St, Cnty, or Loc ED	St, Cnty, City or Loc SBD	May close schools upon recommendation of Loc PH if necessary because of epidemic or ill health (N.J. Stat § 26:4-5)	St PH	COM	May close and compel the evacuation of any facility (e.g., schools) that endangers public health (N.J. Stat. § 26:13-8(a))
NM	St PH		May require closure of schools if there is a likelihood of epidemic where any case of communicable disease occurs or is likely to occur (N.M.A.C. § 7.4.3.9(D)(2))		GOV	May utilize facilities of all departments and agencies (e.g., schools) upon request (N.M.S.A. 1978 § 12-10-9)
NY					Loc SBD	Assess appropriate response, including school cancellation (8 NYCRR 155.17(d)(7)(i))
				St ED	COM	Can override BD response to cancel schools and mandate action (8 NYCRR 155.17(m))
	St ED	COM	May adopt regulations re: school building health & safety; BD must comply (NY CLS Educ. § 409(1))		MYR	May prohibit use of buildings (e.g., schools) in designated areas (NY CLS EXC Art 2-B § 24 (1)(b))
					GOV	May compel MYR to designate areas (e.g., schools) where building use is prohibited (NY CLS EXC Art 2-B § 28 (2)(b))
						Enforce evacuation procedures (NY CLS EXC Art 2-B § 22(3)(b)(6))

State	Non-Emergencies			Emergencies		
	Dept.	Official	Legal authority	Dept.	Official	Legal authority
NC	Loc ED		May close schools to serve the educational interests of students (N.C. Gen. Stat. § 115C-72(a))(no indication of measures to preserve health or safety; intent appears to be permanent closures, as opposed to short term)	St ED		May order extended recesses or adjournment of public schools (N.C. Gen. Stat. § 115C-84.2(G)) May utilize facilities (e.g., schools) of existing departments (N.C. Gen. Stat. § 166A-5 (1)(a)(6)) May order the evacuation of any school (N.C. Gen. Stat § 14-288.19(a))
ND	St, Cnty or Loc PH	Loc PHO	Shall, upon PH request, order school closure due to disease prevalence (ND Admin 33-06-03-03)		GOV	May occupy premises (e.g., schools) of any designated disaster or emergency area (NDCC 37-17.1-05(6)(g)) May compel public evacuation from a threatened area (e.g., schools) (NDCC 37-17.1-05(6)(e))
OH	St, Cnty or Loc PH		May close any school during an epidemic or threatened epidemic if there is an imminent public health threat (R.C. § 3707.26(A))	GOV St EM GOV		May implement a plan for public evacuation as warranted (R.C. § 5502.40, Article X) May utilize all available resources of the state (e.g., schools) and its political subdivisions (63 Okl. St. Ann. § 6403(B)(2))
OK	St PH		May exclude children from school as deemed necessary to prevent and control disease (63 Okl. St. Ann. § 1-502(a))	GOV St EM	St DIR	Evacuate persons from affected areas (63 Okl. St. Ann. § 683.3(1)), subject to GOV direction under 63 Okl. St. Ann. § 683.4(D)(1))
OR		Loc PHO or Loc SBD	May adopt stringent rules concerning exclusion of children from schools (e.g., school closure), in addition to the exclusion of individuals who may already have contracted the disease, if the disease or condition poses a significant public health threat in that setting (e.g. schools). (Or. Admin. R. 333-019-0010(6))	GOV	GOV	May direct any agencies (e.g., ED) to utilize facilities (e.g., schools) for the performance of any activities (O.R.S. § 401.065(3))
PA	Loc PH		Primarily responsible for disease control in public and private schools (35 P.S. § 521.3(a)) and may issue rules and regulations (e.g., impose school closure) for prevention or control of disease (35 P.S. § 521.16(a)(7))		GOV	May order public evacuations from affected areas (e.g., schools) (Op.Atty.Gen. No. 8239, April 3, 1996, citing GOV authority to issue an emergency order under O.R.S. § 401.055)
					GOV	May utilize any private property (e.g., schools) to cope with the disaster (35 Pa. C.S.A. § 7301(f)(4))
					GOV	May compel evacuation of the population from a threatened area (e.g., schools) (35 Pa. C.S.A. § 7301(f)(5))

State		Non-Emergencies		Emergencies	
State	Dept.	Official	Legal authority	Dept.	Official
PR	St PH		Shall have power to prescribe, repeal, and amend rules and regulations in order to protect public health in any schools (3 L.P.R.A. § 178(2)) <i>Acting through its Secretary, is responsible for the opening and the temporary or permanent closedown of school facilities (L.P.R.A. § 145f(b))</i>		St PHO
					GOV
RI	St ED	Loc SBD	May close schools upon a showing of good cause (Gen. Laws 1956, § 16-2-15(a)) (focus is on permanent closure, and may not contemplate short term closures re: health threats)	St EM	
				GOV	
SC	St, Cnty, City or Loc ED	St, Cnty, City or Loc SBD	May prohibit attendance at any school (i.e. close schools) on account of the prevalence of any contagious or infectious diseases or to prevent its spread (S.C. Code Ann. § 44-29-200) <i>May control school property (e.g., direct school closure) (S.C. Code 1976 § 59-19-90(5); see Gamble v. Williamsburg Cnty Sch Dist, 408 S.E.2d 217 (S.C. 1991) (concerning closure due to funding issues. Intent is for permanent closures as opposed to short term closures)</i>	St PH	
				GOV	
SD		Cnty or Loc SBD	Section repealed as pertains to legal discontinuance of schools & closings because of disease (former SDCL § 13-26-3 repealed by SL 1986, ch 122, § 6)		GOV
				GOV	
TN		St or Loc PHO	May, upon receiving report of a suspected epidemic of disease, close establishments (e.g., schools) for the protection of the public's health (TN Admin. Code § 1200-14-1-.15(e))		GOV
				GOV	

State		Non-Emergencies		Emergencies	
State	Dept.	Official	Legal authority	Dept.	Official
TX					<p>Legal authority</p> <p>May use state resources (e.g., schools) and commandeered private property (Tex. Gov't Code. § 418.017(a),(c))</p> <p>May recommend public evacuation from any threatened area (Tex. Gov't Code § 418.018(a))</p> <p>May control the movement of persons, and the occupancy or evacuation of premises (e.g., schools) in disaster areas (U.C.A. 1953 § 63-5a-4(2)(c))</p> <p>May order public evacuation from any threatened area (e.g., schools) (U.C.A. 1953 § 63-5a-4(2)(c))</p> <p>May use any of the property of the state (e.g., schools) (20 V.S.A. § 9(6))</p> <p>May order public evacuation in any area where a state of emergency has been declared (e.g., communities with school buildings) (20 V.S.A. § 9(9))</p>
UT	St PH		May close schools when necessary to protect the public's health (U.C.A. 1953 § 26-1-30(2)(i))	GOV	GOV
VT		St or loc PHO	May order the closing of a school to mitigate a significant public health risk or prevent any public health hazard (18 V.S.A. § 126(d)(6))	GOV	GOV
VA		Loc PHO	May judge potential threats of disease transmission and impose a modified quarantine upon children (12 VAC 5-90-90(E)) (including, <i>but not limited to</i> , children diagnosed with, exposed to, or unimmunized against, a disease), that includes the exclusion of children from school (12 VAC 5-90-10(2) ; PHO may possibly impose school closure as a means of exclusion).	GOV	GOV
WA		Loc PHO	May, after an outbreak of a contagious disease, close schools when there is a potential for a case or cases within the schools (Wash. Admin. Code § 246-110-020(1)(a))	GOV	GOV
WV	St, Cnty, City or Loc PH	St, Cnty, City, or Loc PHO	May close any schools on account of the prevalence of contagious disease or any other calamitous cause over which the SBD has no control (W. Va. Code § 18A-5-2)	GOV	GOV
					<p>May utilize the facilities (e.g., schools) of existing departments (RCWA § 38.52.110(1))</p> <p>May prohibit any persons from being in a public place (e.g., schools) (RCWA § 43.06.220(1)(a))</p> <p>May control the movement of persons in disaster areas and the occupancy of premises (e.g., schools) (W. Va. Code, § 15-5-6(f))</p> <p>May compel public evacuation from any threatened area (e.g., schools) (W. Va. Code § 15-5-6(e))</p>

State		Non-Emergencies		Emergencies		Legal authority	
State	Dept.	Official	Legal authority	Dept.	Official	Legal authority	Legal authority
WI			May close any school in the event of an epidemic (W.S.A. § 119.18(6)(b))		SBD	May close any school in the event of an emergency (W.S.A. § 119.18(6)(b))	
WY	St PH SBD	St, Cnty, or Loc PHO	May close schools when necessary to protect the public's health (W.S. 1977 § 35-1-240(a)(iv))		GOV	May take and use private property (e.g., schools) for emergency management purposes (W.S.A. § 166.03(1)(b)(4))	
					GOV	May evacuate public from stricken areas (e.g., schools) (W.S. 1977 §§ 19-13-102(a)(ii), 104(a))	

**Table 2 –
Summary of Apparent Legal Status of School Closure Across States
During Non-Emergencies and Emergencies**

As of 12/19/06

Information in this Table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

Table 2, below, attempts to summarize the apparent, specific legal authority for school closure at the state level in the various states during non-emergencies and emergencies based on research presented in Table 1 - Potential Legal Authorities in Support of School Closures During Non-Emergencies and Declared Emergencies by State and Essential Determinants. During non-emergencies, apparent legal authority in each state is summarized as to whether schools may be closed via (1) express authority due to a disease or epidemic, (2) general authority to protect the public’s health, or (3) general authority for other purposes. During emergencies, apparent legal authority in each state is summarized as to whether schools may be closed via (1) express authorization to close due to a disease or epidemic, (2) authorization to utilize or close facilities or property (e.g., schools), or (3) authorization to evacuate the public from threatened areas (e.g., schools).

State	Non-Emergencies			Emergencies		
	Apparent express authority to close schools due to a disease or epidemic	Apparent general authority to close schools to protect the public’s health	Apparent general authority to close schools for other purposes	Apparent express authority to close schools due to a disease or epidemic	Apparent authority to utilize or close facilities/property	Apparent authority to evacuate the public from threatened areas
AL	No	No	Yes	No	Yes	Yes
AK	No	No	Yes	Yes	Yes	Yes
AZ	No	No	Yes	Yes	Yes	No
AR	No	Yes	*	No	Yes	Yes
CA	Yes	*	*	No	Yes	No
CO	No	Yes	*	No	Yes	Yes
CT	No	No	Yes	No	No	Yes
DE	No	Yes	*	No	Yes	Yes
DC	No	No	Yes	No	No	No
FL	No	No	Yes	No	Yes	Yes
GA	No	No	Yes	No	Yes	Yes
HI	Yes	*	*	Yes	Yes	Yes
ID	No	Yes	*	No	Yes	Yes
IL	No	No	Yes	Yes	Yes	Yes
IN	Yes	*	*	No	Yes	Yes
IA	No	No	Yes	No	Yes	Yes
KS	No	No	Yes	No	Yes	Yes
KY	Yes	*	*	No	Yes	Yes
LA	No	No	Yes	No	Yes	Yes

States	Non-Emergencies			Emergencies		
	Apparent express authority to close schools due to a disease or epidemic	Apparent general authority to close schools to protect the public's health	Apparent general authority to close schools for other purposes	Apparent express authority to close schools due to a disease or epidemic	Apparent authority to utilize or close facilities/property	Apparent authority to evacuate the public from threatened areas
ME	Yes	*	*	Yes	Yes	Yes
MD	No	No	Yes	No	Yes	Yes
MA	No	No	Yes	No	Yes	Yes
MI	No	No	Yes	No	Yes	Yes
MN	No	No	Yes	No	Yes	Yes
MS	Yes	*	*	No	Yes	Yes
MO	No	Yes	*	No	Yes	No
MT	No	No	Yes	No	Yes	Yes
NE	No	No	No	No	Yes	Yes
NV	No	No	Yes	No	Yes	Yes
NH	No	No	Yes	No	Yes	Yes
NJ	Yes	*	*	No	Yes	Yes
NM	Yes	*	*	No	Yes	No
NY	No	No	Yes	No	Yes	Yes
NC	No	No	Yes	No	Yes	Yes
ND	Yes	*	*	No	Yes	Yes
OH	Yes	*	*	No	No	Yes
OK	Yes	*	*	No	Yes	Yes
OR	Yes	*	*	No	Yes	Yes
PA	No	No	Yes	No	Yes	Yes
PR	No	Yes	*	No	Yes	Yes
RI	No	No	Yes	No	Yes	Yes
SC	Yes	*	*	Yes	Yes	Yes
SD	No	No	No	No	Yes	No
TN	No	Yes	*	No	Yes	Yes
TX	No	No	No	No	Yes	Yes
UT	No	Yes	*	No	Yes	Yes
VT	No	Yes	*	No	Yes	Yes
VA	Yes	*	*	No	Yes	Yes
WA	Yes	*	*	No	Yes	Yes
WV	Yes	*	*	No	Yes	Yes
WI	Yes	*	*	Yes	Yes	No
WY	No	Yes	*	No	No	Yes
Totals	17(Y), 35(N)	10(Y),25(N),17(*)	22(Y), 3(N), 27(*)	7(Y), 45(N)	48(Y), 4(N)	45(Y), 7(N)

* Indicates that the authority has been satisfied by a narrower provision allowing for school closure

**Table 3 –
Summary of Apparent Departmental Authorization for School Closure
Across States During Non-Emergencies and Emergencies**

As of 12/19/06

Information in this Table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

Table 3, below, summarizes apparent departmental authorization for school closure during non-emergencies and emergencies based on research presented in Table 1 - Potential Legal Authorities in Support of School Closures During Non-Emergencies and Declared Emergencies by State and Essential Determinants. In each of the two major categories (Non-emergencies and Emergencies), the table identifies which governmental departments (Health, Education, or Emergency Management) are apparently authorized to close schools under existing laws. Information concerning the specific level (state, county, city, or local) of the department or officials (commissioner, superintendent, board, Governor) apparently authorized to close schools is not included in this table, but may be obtained from Table 1 and Table 4.

State	Non-Emergencies			Emergencies		
	Health	Education	Emergency Management	Health	Education	Emergency Management
AL	Yes	No	No	No	No	Yes
AK	No	Yes	No	No	Yes	Yes
AZ	No	Yes	No	No	Yes	Yes
AR	Yes	No	No	No	Yes	Yes
CA	Yes	No	No	Yes	No	Yes
CO	Yes	No	No	No	No	Yes
CT	Yes	No	No	No	No	Yes
DE	Yes	No	No	No	No	Yes
DC	No	Yes	No	No	No	Yes
FL	Yes	No	No	No	No	Yes
GA	No	Yes	No	No	No	Yes
HI	Yes	No	No	Yes	No	Yes
ID	Yes	No	No	No	No	Yes
IL	No	Yes	No	Yes	No	Yes
IN	Yes	No	No	No	No	Yes
IA	Yes	Yes	No	No	No	Yes
KS	Yes	No	No	No	No	Yes
KY	No	Yes	No	Yes	No	Yes
LA	No	Yes	No	No	No	Yes
ME	Yes	No	No	No	No	Yes
MD	No	Yes	No	No	No	Yes
MA	No	Yes	No	Yes	No	Yes
MI	No	Yes	No	Yes	No	Yes
MN	No	Yes	No	No	No	Yes

States	Non-Emergencies			Emergencies		
	Health	Education	States	Public Health	Education	Emergency Management
MS	Yes	Yes	No	No	No	Yes
MO	Yes	No	No	No	No	Yes
MT	Yes	No	No	No	No	Yes
NE	No	No	No	No	No	Yes
NV	No	Yes	No	No	No	Yes
NH	No	Yes	No	No	No	Yes
NJ	No	Yes	No	Yes	No	No
NM	Yes	No	No	No	No	Yes
NY	No	Yes	No	No	Yes	Yes
NC	No	Yes	No	No	Yes	Yes
ND	Yes	No	No	No	No	Yes
OH	Yes	No	No	No	No	Yes
OK	Yes	No	No	No	No	Yes
OR	Yes	Yes	No	No	No	Yes
PA	Yes	No	No	No	No	Yes
PR	Yes	Yes	No	Yes	No	Yes
RI	No	Yes	No	No	No	Yes
SC	No	Yes	No	Yes	No	Yes
SD	No	No	No	No	No	Yes
TN	Yes	No	No	No	No	Yes
TX	No	No	No	No	No	Yes
UT	Yes	No	No	No	No	Yes
VT	Yes	No	No	No	No	Yes
VA	Yes	No	No	No	No	Yes
WA	Yes	No	No	No	No	Yes
WV	Yes	No	No	No	No	Yes
WI	No	Yes	No	No	Yes	Yes
WY	Yes	No	No	No	No	Yes
Total	30(Y), 22(N)	23(Y), 29(N)	0(Y), 52(N)	9(Y), 43(N)	6(Y), 46(N)	51(Y), 1(N)

* Indicates that the authority is not applicable and has been satisfied by a narrower provision allowing for school closure

**Table 4 –
Summary of Apparent Governmental Level of Authorization for School
Closure Across States During Non-Emergencies and Emergencies**

As of 12/19/06

Information in this report does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

Table 4, below, summarizes the apparent governmental level of authorization for school closure during non-emergencies and emergencies based on the state level research presented in Table 1 - Potential Legal Authorities in Support of School Closures During Non-Emergencies and Declared Emergencies by State and Essential Determinants. In each of the two major categories (Non-emergencies and Emergencies), the table identifies which level of governmental authority (State, or County/City/Local) is apparently authorized under state law to close schools under existing laws. Since multiple departments at different levels of government may potentially be authorized to close schools, the appropriate level(s) within each state are indicated by a (√), accordingly.

	Non-Emergencies			Emergencies	
State	State	County, City, or Local	State and County, City or Local	State	County, City, or Local
AL	√			√	
AK		√		√	
AZ		√		√	√
AR	√			√	
CA	√	√	√	√	
CO		√		√	
CT		√		√	
DE	√			√	
DC		√			√
FL	√	√	√	√	
GA		√		√	
HI	√			√	
ID		√		√	
IL		√		√	√
IN	√	√	√	√	
IA	√	√	√	√	
KS	√			√	
KY		√		√	

	Non-Emergencies			Emergencies	
States	State	County, City, or Local	States	State	County, City, or Local
LA	√			√	
ME	√			√	
MD		√		√	
MA		√		√	
MI		√		√	√
MN		√		√	
MS	√	√	√	√	
MO	√	√	√	√	
MT	√	√	√	√	
NE				√	
NV		√		√	
NH		√		√	
NJ	√	√	√	√	
NM	√			√	
NY	√			√	
NC		√		√	
ND	√	√	√	√	
OH	√	√	√	√	
OK	√			√	
OR		√		√	
PA		√		√	
PR	√			√	
RI		√		√	
SC	√	√	√	√	
SD				√	
TN	√	√	√	√	
TX				√	
UT	√			√	
VT	√	√	√	√	
VA		√		√	
WA		√		√	
WV	√	√	√	√	
WI		√		√	√
WY	√	√	√	√	
Total	27	37	15	52	4

Table 5 – Summary of School Closure Addressed in State Pandemic Influenza Plans

As of 12/19/06

Information in this Table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

Every state (except Puerto Rico) has adopted, and continues to update, a Pandemic Influenza Plan. These plans are provided by the U.S. Department of Health and Human Services, available online at: <http://www.pandemicflu.gov/plan/states/index.html>. Table 5, below, summarizes the relevant provisions of each state plan pertaining to school closure. The table addresses three key issues for pandemic influenza plans in each state: (1) whether the plan recognizes school or facility closure as a potential disease control measure, (2) whether the plan cites specific legal authority to close schools, and (3) page references within the plan addressing school/public facility closure or applicable laws.

Collectively, these data highlight the need to conduct thorough legal analyses pertaining to school closure. Although forty-seven (47) states recognize school closure as a potential control measure, only nine (9) states cite specific legal authority to close schools or public facilities. Even among these 9 states, legal citations may be questionable as to their accuracy. One state’s pandemic influenza response plan, for example, suggests that the Governor is statutorily authorized during a declared emergency to close schools (Ark. Code. Ann. § 12-75-103). The statute generally authorizes the Governor to act as necessary to respond to an emergency, but does not mention closing schools. As documented in [Table 1](#), other statutory provisions potentially allow the Governor (and the Department of Education) to close schools during an emergency.

State	Pandemic influenza plan recognizes school/ public facility closure as a control measure	Pandemic influenza plan cites specific legal authority to close schools/public facilities	Page references within the plan addressing school/public facility closure or applicable laws
AL	No	No	n/a
AK	Yes	No	[29]
AZ	Yes	No	[9-10]
AR	Yes	Yes	[12], broad cite
CA	Yes	No	[137-138]
CO	Yes	No	[24]
CT	Yes	No	[4]
DE	Yes	No	[44]
DC	Yes	No	[88]
FL	Yes	No	[18-19]
GA	Yes	No	[33]
HI	Yes	No	[3, 23, 38]

States	Pandemic influenza plan recognizes school/ public facility closure as a control measure	Pandemic influenza plan cites specific legal authority to close schools/public facilities	Page references within the plan addressing school/public facility closure or applicable laws
ID	Yes	No	[v]
IL	Yes	No	[48]
IN	Yes	Yes	[13], accurate
IA	Yes	No	n/a
KS	Yes	No	[15, 37-38]
KY	Yes	No	n/a
LA	Yes	No	[10, 20]
ME	Yes	No	[31, 33-34]
MD	No	No	[19, 40-42]
MA	Yes	No	n/a
MI	No	No	n/a
MN	Yes	No	[13, 21]
MS	Yes	Yes	[53], accurate
MO	Yes	No	[14]
MT	Yes	Yes	[4]
NE	Yes	No	[16, 38, 41]
NV	Yes	No	[7, 14]
NH	No	No	[8-9, 36. 48]
NJ	Yes	No	n/a
NM	Yes	No	[5, 19]
NY	Yes	Yes	[Appendix 1-C]
NC	Yes	Yes	[Appendix L-4, Emergency order]
ND	Yes	No	[6]
OH	Yes	No	[5, 15, 24]
OK	Yes	No	[x, 20]
OR	Yes	No	[5, 8]
PA	Yes	No	[5]
RI	Yes	No	[9, 120]
SC	Yes	Yes	[Attchmnt H, Annex- 25], Emergency order
SD	Yes	No	[5, 22]
TN	Yes	Yes	[150], Emergency Order
TX	Yes	No	[7, 31]
UT	Yes	No	[7, 12]
VT	Yes	No	[9, 44, 51]
VA	Yes	No	[4, Supp 8:3-4]
WA	Yes	No	n/a
WV	Yes	No	n/a
WI	Yes	No	[4, Appendix I]
WY	Yes	Yes	[6], accurate
Totals	47 (Y), 4 (N)	9 (Y), 42 (N)	

**Table 6 –
Summary of State³-level Apparent Legal Authorization to Close
Schools⁴ in Non-Emergencies and Emergencies
According to Various Factors⁵**

As of 12/19/06

Information in this table does not represent the official legal positions of the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention/HHS, other federal agencies, or state or local governments and is not meant to provide specific legal guidance or advice. The study focused on express state laws and did not consider local laws and policies on school closure. Thus, users of this report, including state and local officials, should consult with their state and local attorneys and legal advisors for a more complete review of laws and policies that may affect school closures in a particular state or locality

	Non-Emergencies	Emergencies
Apparent Authorized Reasons for School Closure	Disease or Epidemic 17 States	Disease or Epidemic 7 States
	Protect the Public’s Health 10 States	Evacuation 45 States
	Other Purposes ⁶ 22 States	Use or Closure of Properties 48 States
Governmental Levels of Authority that are Apparently Authorized to Close Schools	State Department (Only) 12 States	State Department 52 States
	Local, County, or City Department (Only) 22 States	Local, County, or City Department 4 States

³ “State” includes all fifty (50) states, the District of Columbia (D.C.), and Puerto Rico.

⁴ “Schools” are defined to include public and private schools admitting students in grades K-12.

⁵ Please note that the results within each category are not mutually exclusive.

⁶ This includes other purposes or general justifications for the closure of school (as defined in the report) which are not specifically based on “disease or epidemic” or to “protect the public’s health.” For example, the authority to close schools may be (1) due to the presence of “unsafe conditions” or “imminent threats to health or safety;” (2) based on a showing of “good cause;” or (3) for any purpose pursuant to a public hearing.

	Both State and Local Departments 15 States	Both State and Local Departments 4 States
Departmental Authority that is Apparently Authorized to Close Schools	Health Department (Only) 26 States	Health Department 9 States
	Education Department (Only) 19 States	Education Department 6 States
	Both Health and Education Departments 4 States	Both Health and Education Departments 0 States
	Emergency Mgmt Department 0 States	Emergency Mgmt Department 51 States
		Both Emergency Mgmt Department and Health or Education Department 14 States

References

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- ¹ “Schools” are defined to include public and private schools admitting students in grades K-12.
- ² “School closure” is used generally in this Report to refer to closing school buildings, suspending on-site classroom instruction, class cancellations, or student dismissal or evacuation.
- ³ Markel H et al. Nonpharmaceutical interventions implemented by US cities during the 1918-1919 influenza pandemic. *JAMA* 2007 Aug 8;298(6):644-54.
- ⁴ See <http://www.pandemicflu.gov/plan/states/stateplans.html> (accessed Jan. 16, 2008).
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- ¹⁷ Centers for Disease Control and Prevention, *Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States*, 52 (February, 2007).
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- ²⁸ 20 ILCS 2305/2 § 2(a).
- ²⁹ MD Code, Health - General, § 18-102(b).
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- ³² Ark. Code. Ann. § 12-75-103.
- ³³ H.R.S. § 321-1(d).
- ³⁴ Miss. Code. Ann. § 37-13-65.
- ³⁵ IDAPA 16.02.10015(05)
- ³⁶ N.M.A.C. § 7.4.3.9(D)(2)
- ³⁷ A.R.S. § 15-341(A)(36)
- ³⁸ 63 Okl. St. Ann. § 1-502(a))
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