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New York State Releases Reopening Guidelines for Colleges and Universities

June 21, 2020

On June 20, 2020, New York State released reopening guidelines for colleges and universities in relation to Phase Four of Governor Cuomo's reopening plan ("NY Forward"). These guidelines must be followed for institutions to reopen their campuses in the fall. As colleges and universities prepare their reopening plans, they should also be cognizant of various guidelines that have been issued by other entities regarding reopening. The following is a brief overview of issued reopening guidelines; a more detailed discussion of these guidelines, including those recently issued by New York State, will be included in a future Cullen and Dykman LLP Client Alert.

New York Guidelines

The reopening guidelines for colleges and universities issued by New York State (the "Guidance") can be found here. The Guidance includes Summary Guidelines, Read and Affirm Detailed Guidelines, and a Reopening Plan Checklist.

As previously indicated by the information displayed during Governor Cuomo's briefing on June 18, 2020, the Guidance requires that campuses have a restart plan that includes a reopening plan, a monitoring plan, a containment plan, and a shutdown plan. The restart plans must also be submitted to the State.

The Summary Guidelines include an overview of both mandatory guidelines as well as best practices that are recommended but not required, broken down into the categories of "physical distancing," "protective equipment," "hygiene, cleaning and disinfection," "communication," and "screening."

The Read and Affirm Detailed Guidelines ("Detailed Guidelines") contain the required information to be included in the reopening plan, monitoring plan, containment plan, and shutdown plan. Additionally, they include links to the other guidelines that higher education institutions must follow regarding food service, research, administrative functions, transportation, and retail. Further guidance is "forthcoming" regarding "gyms and fitness centers" and "[c]ollegiate athletics." The Detailed Guidelines also include mandatory guidelines for institutions. These guidelines are categorized under the following sub-headings: physical distancing; gatherings in enclosed spaces; operational activity; movement and commerce; protective equipment; hygiene, cleaning, and disinfection; phased reopening; communications plan; screening and testing; tracking and tracing; and institution plans. "These guidelines are minimum requirements only and each institution is free to provide additional precautions or increased restrictions."

Institutions must affirm that they have "read and understand [their] obligation to operate in accordance with" the guidelines (including the applicable linked guidelines, which are each separately affirmed) via a link at the bottom of the document. Directions for submitting restart plans to the State are also provided.

The Reopening Plan Checklist contains a brief description of each type of plan (reopening, monitoring, containment, and shutdown) and the required components to be included in each respective plan.

Additional Guidance

The Guidance specifically states that "[d]uring the COVID-19 public health emergency, all operators of higher education institutions are accountable for staying current with any updates to local, state, and federal requirements related to higher education and auxiliary activities and incorporating those changes into their operations. This guidance is not intended to replace any existing applicable local, state, and federal laws, regulations, and standards."

Federal and ACHA Guidance

Both the Centers for Disease Control and Prevention ("CDC") and the American College Health Association ("ACHA") have also issued reopening guidance for colleges and universities. The CDC guidance is available here and includes, among other guidance, Considerations for Institutes of Higher Education, for colleges and universities as they consider reopening their campuses and practical ways in which higher education institutions can help promote a healthy campus community and slow the spread of the virus, and Guidance for Cleaning and Disinfecting. The ACHA's "Considerations for Reopening Institutions of Higher Education in the COVID-19 era" are available here and cover various topics such as athletics, travel, and on-campus housing.

NYSED Guidance

The New York State Department of Education ("NYSED") has also issued guidance for institutions in light of the coronavirus, available here. Though NYSED has not yet issued all of its expected guidance regarding the Fall 2020 semester, it has stated that distance education format requirements will not apply. Institutions should look for additional guidance to be issued by NYSED in the coming weeks.

Other Local Laws or Guidance

Other local laws or guidance may govern reopening requirements for institutions in addition to the aforementioned guidelines. Institutions should be aware of and comply with any such local laws.

New Jersey Guidance

On June 18, 2020, the New Jersey Office of the Secretary of Higher Education ("OSHE") released Restart Standards for all New Jersey Institutions of Higher Education ("Restart Standards"). Issued that same day, Executive Order No. 155, which authorizes certain in-person instruction to resume as of July 1, 2020, states that the Restart Standards "are applicable to all degree-granting IHEs [institutions of higher education] that are authorized to resume in-person instruction." Additionally, "IHEs that are authorized to . . . and intend to resume instructional

in-person activity on campus must submit a restart plan to the Secretary in accordance with the Restart Standards for all New Jersey Institutions of Higher Education no later than 14 days prior to the expected date of implementation of the plan." Executive Order No. 155 also contains minimum requirements for restart plans. After the restart plan is submitted to the Secretary, it must be posted on the institution's website and distributed to students and staff prior to the anticipated implementation date.

Additional Information

Higher education institutions should be mindful that the federal and/or state guidance is likely to be updated or modified as the reopening process continues, and they should make sure to stay up to date. The New York Guidelines specifically recognize that "[t]hese guidelines are based on the best-known public health practices at the time of publication, and the documentation upon which these guidelines are based can and does change frequently." We will also continue to update our clients as more information becomes available.

Cullen and Dykman is currently working with institutions as they prepare to resume operations in the coming weeks and months, including working with institutions to draft reopening plans and assisting with the implementation of risk mitigation plans. If you have questions regarding any aspects of higher education law or restarting campus operations, please contact James G. Ryan at (516) 357-3750 or via email at **jryan@cullenllp.com**, Thomas B. Wassel at (516) 357-3868 or via email at **twassel@cullenllp.com**, Dina L. Vespia at (516) 357-3726 or **dvespia@cullenllp.com** or Hayley B. Dryer at (516) 357-3745 or via email at **hdryer@cullenllp.com**, or the attorney in the Higher Education Practice Group with whom you are regularly in contact.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

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Practices

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