



New Hampshire

Department of Education

Department of Education Guidance Relating to Emergency Orders #16 and #17

On March 23, 2020, and March 26, 2020, respectively, Governor Sununu issued Emergency Orders 16 and 17 (the “Orders”), directing the closure of non-essential businesses throughout New Hampshire. Order 17 (paragraph 5) explicitly exempts K-12 schools from the closure requirement and its Exhibit A lists educators and staff supporting remote learning in K-12 schools as providing essential functions. The Orders urge those sectors deemed essential to observe CDC guidance regarding social distancing.

The social distancing guidelines prohibit gatherings or 10 or more individuals. Does this mean that we cannot have more than 10 individuals in a school building?

No. As long as there are not more than 10 individuals in a single enclosed space, i.e., a room with four walls, and that space is large enough to permit appropriate six-foot spacing between the individuals therein, the Orders do not prohibit having more than 10 individuals in a building at one time. Building administrators are encouraged to make efforts to promote social distancing, such as designating restrooms for different sections of the building. Additionally, school leaders are encouraged to take steps to permit school staff to work from home where possible and to be sensitive to individuals who may have specific health risks or have regular contact with someone who has specific health risks.

Can I continue to provide special education services, such as physical therapy, that require physical contact or approaching within six feet of a student?

Yes. Special education services are essential functions and if a provider needs to approach a student to perform services, that is consistent with the Orders.

Can we continue to provide and drop off meals?

Yes, Order 17 explicitly provides for the continuation of this essential function. As with all essential functions, care should be taken to observe social distancing guidelines.

Can parents leave their homes to pick up meals or educational materials?

Yes. Parents are permitted to travel for these purposes, but school personnel, parents and students should take care to observe appropriate social distancing guidelines when interacting with each other.

What if I cannot observe social distancing guidelines, such as maintaining six feet of separation between individuals, in performing an essential function pursuant to the Orders?

Social distancing guidelines should be followed whenever possible in performance of essential functions. If an essential function cannot be performed in accordance with social distancing practice, best hygiene practices should be observed (e.g., hand washing) as well as the use of personal protective equipment (PPE) where appropriate (e.g., gloves). Additionally, screening of all persons involved should be undertaken prior to undertaking such contact. A sample screening tool can be found here: [COVID-19 Visitor Active Screening Tool](#) If other persons are in the room, only those required to approach within six feet to provide the services should do so.

If educators are considered essential personnel does that mean they are not required to stay at home pursuant to the Orders?

Except when in furtherance of their official duties, all school personnel should observe the stay-at-home directive in Order 17, leaving their homes only for the reasons designated in Order 17 (e.g. official duties, grocery store, pharmacy, etc.).

Who determines which “other functions” are necessary to the provision of the essential educational functions set forth in Exhibit A to Order 17?

Any function explicitly delineated in Exhibit A to Order 17 is an essential function and schools must take measures to ensure the continuance of such functions. As to what ancillary functions are necessary to facilitate the provision of those essential functions, such a determination should be made by school leaders.

This guidance will be updated periodically.

March 30, 2020