



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

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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 (e.g., school closures) to reduce the morbidity and mortality of pandemic influenza has

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.

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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

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, attempts in, in.2.3./0.0eth

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

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 Spellings 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.

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

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

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.

“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

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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 significan

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)

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.

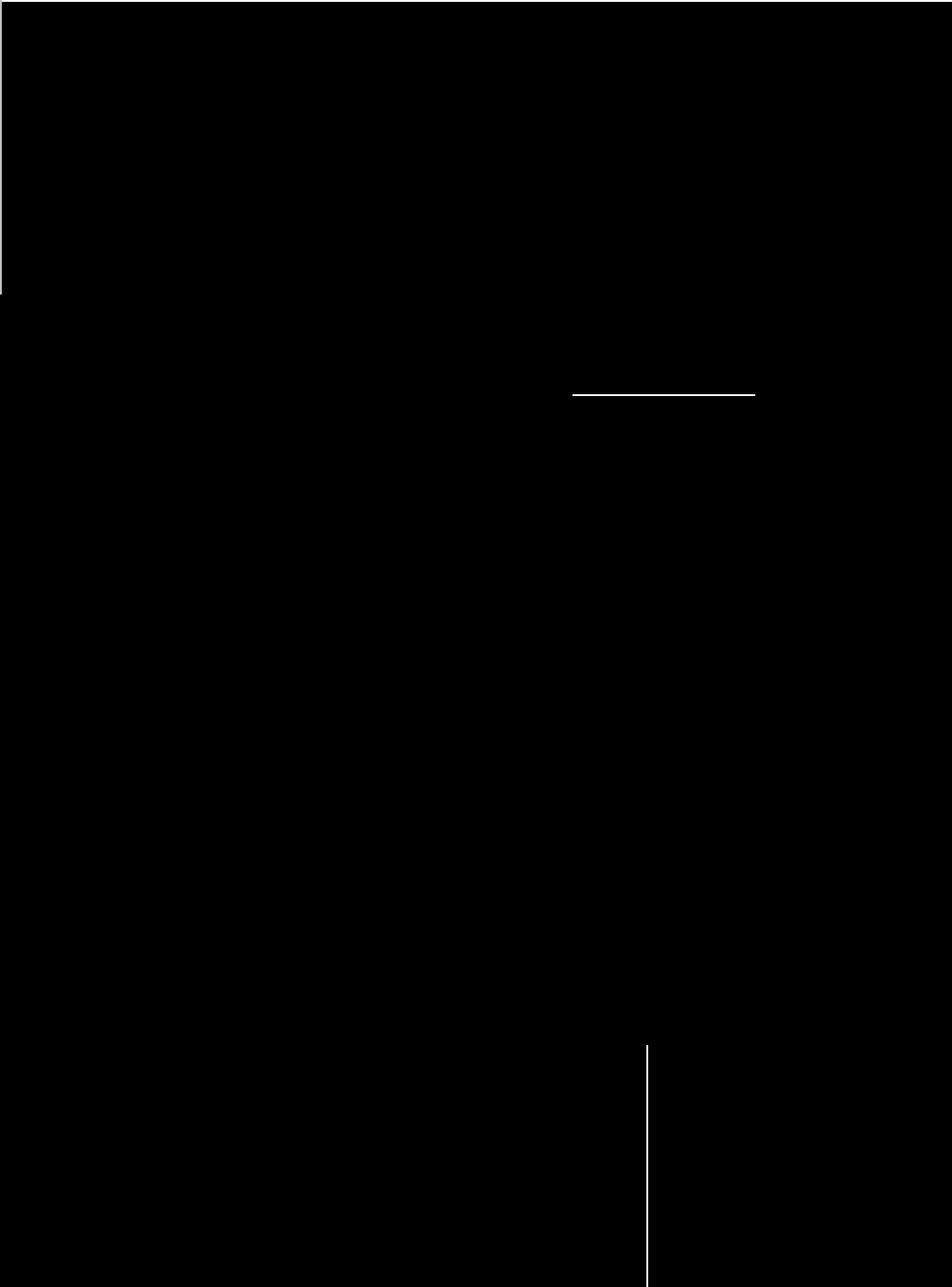
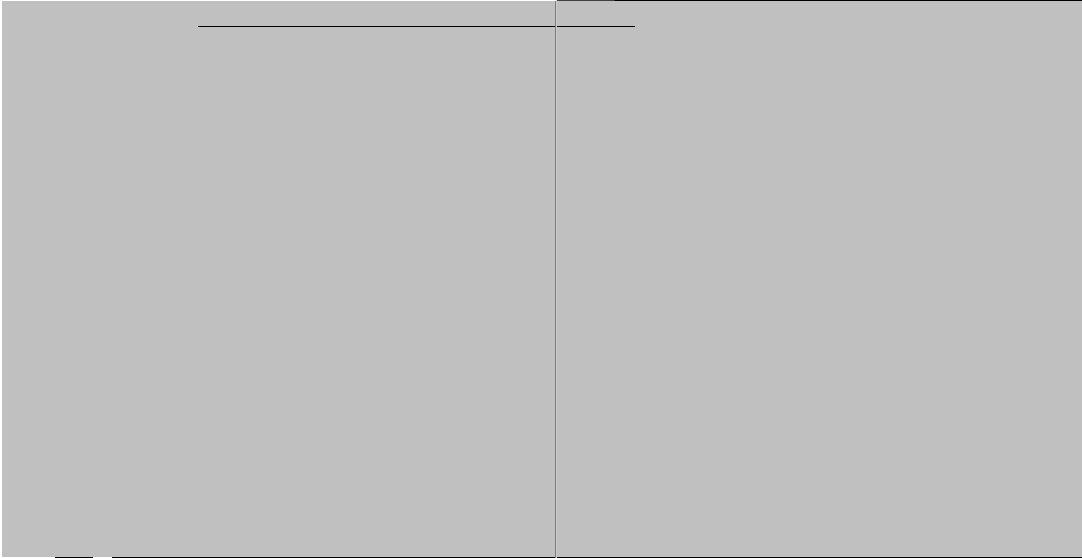
While there are multiple legal avenues to close schools in many states, a number of unresolved issues may preclude timely, consistent implementation of school closure decisions at the state and local levels. The apparent, express legal authority at the state level to close schools is distributed among different departments and levels of

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

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Introduction. Schools play a critical role in protecting the health of their students, staff, and the community from highly contagious, infectious di













State	Non-Emergencies			Emergencies		
	Dept.	Official	Legal authority	Dept.	Official	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))
					GOV	May take and use private property (e.g., schools) for emergency management purposes (W.S.A. § 166.03(1)(b)(4))
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 evacuate public from stricken areas (e.g., schools) (W.S. 1977 §§ 19-13-102(a)(ii), 104(a))



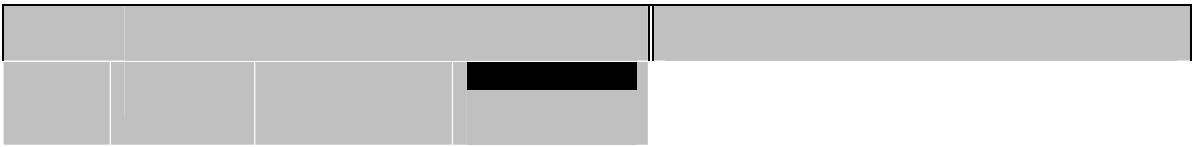
**Table 3 –
Summary of Apparent Departmental Authorization for School Closure
Across States During Non-Emergencies and Emergencies**

As of 12/19/06

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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



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	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

