

## **NAACP Legal Defense and Educational Fund Position on School Reopening During COVID-19 Pandemic**

The NAACP Legal Defense and Educational Fund (LDF) believes an equitable and quality public education system, is essential to the success of our multi-racial democracy and must be strengthened and expanded, especially, during the COVID-19 pandemic. Since the historic Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483(1954), LDF has worked to advance the struggle for educational equity in the United States, especially for students of color and other historically disadvantaged students. Providing a quality public education is one of the most essential functions of government. The Supreme Court has recognized that education “is the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values, in preparing him [or her] for later professional training, and in helping him [or her] to adjust normally to ... the environment.” *Id.* at 493. Beyond education, public schools serve as the cornerstones of communities and families –providing students with the meals, safety, health screenings, and other social supports necessary for their survival. Public schools are both the safety net and the launch pads for children’s futures.

The shuttering of schools across the United States this past spring due to the COVID-19 pandemic made clear how indispensable public schools are to American life. Recent calls to return the nation’s children to in-person instruction in schools for the new academic year reflect an understandable desire to ensure that students can receive the full benefits of both the academic and social components of education. These calls, however, fail to fully appreciate the danger of in-person attendance to the health of children, teachers, administrators, and other school staff during the COVID-19 pandemic. These dangers are exacerbated for Black and Latinx communities and for those with pre-existing medical conditions.

Any effort to re-open schools must comply with public health guidance, including social distancing, screening, and disinfecting guidelines. Until schools can provide safe spaces for in-person schooling, schools should employ quality distance learning and ensure that vulnerable students, including students with disabilities, continue to receive essential services.

There will be no one-size-fits-all approach. The rate and intensity of COVID-19 infection is affecting various regions of the country differently. States and cities have taken differing approaches to closures, testing, mask-wearing requirements, and quarantines. Thus any plans to re-open schools must consider the particular dangers to children and school personnel in regions where infection rates are increasing. Likewise, not all schools are the same. Vast inequities still plague our educational system. Therefore plans to re-open schools must also give due regard to existing racial and socioeconomic disparities in school districts across states, and must ensure that under-resourced school districts are provided with the tools and funding needed to meet the challenges of educating children safely in school, and to providing quality, meaningful online instruction.

For these reasons, LDF recommend states and school districts adopt the following principles for school re-opening.

## **LDF RECOMMENDS THE FOLLOWING PRINCIPLES FOR RACIALLY EQUITABLE AND INCLUSIVE SCHOOL REOPENINGS**

### **1) Funding—Congress must allocate additional funds for public schools to be able to safely educate and serve all students.**

- a) States must make sure that funds are **equitably** distributed to support students with the highest needs and institute robust oversight measures to encourage transparency and accountability.
- b) The Trump Administration and Governors must immediately cease efforts to divert funds from public schools to private schools.
- c) Given the continuing economic downturn and rise in food insecurity, the [U.S. Department of Agriculture \(USDA\) must extend or grant new waivers](#) and Congress must provide the necessary funding and guidance to continue to provide free meals to students who need them in ways without undue administrative burden and with proper social distancing.

### **2) Protecting Public Health—Before resuming in-person instruction, schools must ensure the physical safety of all students, staff, and communities.**

- a) The public health guidance is abundantly clear: Social distancing, handwashing, and face coverings are essential to reducing the spread of COVID-19. Community facilities like schools must be frequently and thoroughly cleaned and disinfected. The decision to open or close schools must be based on local data and public health guidance.
- b) Additional resources must be allocated to [ensure that all schools are properly retrofitted to reduce the spread of COVID-19](#) through social distancing, sufficient ventilation, and frequent handwashing. This should include resolving water quality issues. Schools must also have the necessary custodial and teaching staff to implement social distancing guidance and cleaning protocols.
- c) School re-opening plans and decisions must include ongoing parental, school staff, and community engagement. Districts must make specific efforts to ensure non-English speaking parents are informed and engaged.
- d) Schools in other countries that successfully re-opened did so with a tremendous amount of national support and by implementing rigorous protocols in schools and the greater community. It is worth noting that successful re-opening has occurred in countries where school conditions (e.g. class sizes; health and safety measures) and COVID infection rates are incomparable to that of the United States. Several countries have demonstrated that re-opening schools too soon may lead to dangerous school-based outbreaks of the coronavirus.
- e) When the coronavirus has been sufficiently contained to allow for in-person learning, decisionmakers must ensure students have safe transportation to and from the building. This

must take into account social distancing guidelines on school-operated transportation, and importantly, the specific needs of students that take public transportation to school.<sup>1</sup>

**3) Equitable Access to School Resources During COVID-19 School Closures— When in-person instruction is not safe, all students must have access to: 1) essential school-based services including meals, and 2) high quality distance learning, including high-speed broadband internet, their own device, technology support, and culturally-responsive instruction.**

- a) States should regularly track and report on students’ access to high-speed broadband internet and appropriate devices necessary for distance learning, disaggregated by race, gender, household income and disability status.
- b) Universal access should be maintained for all students. Districts should ensure equitable access to coursework, including access to International Baccalaureate, Gifted and Talented, and Advanced Placement programs. Students with disabilities and English Language Learners should continue to receive their supports and services virtually.
- c) Teachers should receive additional professional development and continued support necessary to deliver high quality distance learning instruction.
- d) Students should be taught by district personnel who can sustain relationships with students and their families. Instruction should not be outsourced to private companies who are not invested in the students or school communities.
- e) Schools must track student participation to distance learning, which includes documenting absenteeism; however, schools should address absenteeism non-punitively and reconnect students to school by identifying barriers and providing necessary supports to students and their families. Specifically, states should issue guidance that limits the use of punitive responses to absenteeism and truancy including referrals to the criminal justice system.
- f) Any partial re-opening should prioritize access for high-needs students, such as certain students with disabilities whose services cannot be delivered virtually and students who need the safety and supervision of in-person school including children of essential workers and students experiencing homelessness.
- g) During school closures, school districts must ensure that students have continued access to meals and other essential school-based services. School districts should ensure that meals are distributed in ways that are equitable and allow for social distancing.

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<sup>1</sup> Research shows that the COVID-19 death rate for people who use public transportation is 10 times greater than those who use any other method (see Christopher R. Knittle and Bora Ozaltun, 2020. *What Does and Does Not Correlate with COVID-19 Deaths*, NBER Working Paper No. 27391). Moreover, a substantial portion of the Black-White racial disparities in COVID-19 cases is accounted for by the use of public transportation (see John McLaren, 2020. *Racial Disparity in COVID-19 Deaths: Seeking Economic Roots with Census Data*, NBER Working Paper No. 27407).

**4) Instruction and Assessment—Instruction and assessment must be reimagined to center anti-racism and student engagement and address learning loss.**

a) Assessments must rely less on high stakes testing, and instead emphasize culturally relevant diagnostic tools to identify areas of need and performance-based assessments that engage students and allow them to demonstrate their learning.

b) Instruction must involve some real time or synchronous instruction, so that students can interact with teachers, as well as small groups and/or group projects that foster intergroup interaction.

c) Schools should have specific evidence-based strategies and direct additional resources to address the expected COVID-19 learning loss for the most vulnerable students. Schools should not rely on grade retention or “holding” students back to address gaps in learning, nor should students be placed into inflexible tracks.

d) School staff should implement culturally responsive teaching methods and ensure the curriculum is racially inclusive.

**5) Social and Emotional Learning—Schools must be equipped with the necessary resources to mitigate the stress and trauma stemming from the COVID-19 pandemic school closures.**

a) School re-opening plans must also include strategies to address the overall mental health and well-being of Black students, who have been disproportionately impacted by the economic and health consequences of the pandemic as well as the personal and collective trauma resulting from high-profile incidents of police violence against Black people.

b) Trauma informed care should be integrated into both online and in-person schooling to meet the mental health needs of students and to create a positive and healthy school culture.

c) Distance and in-person learning must promote positive school climates where students’ social and emotional needs are met with student supports, not exclusionary discipline practices. Therefore, school districts should institute a moratorium on all suspensions and modify school discipline policies to be trauma informed and supportive.

d) Staff resources should be shifted from school resource officers to nurses, counselors, social workers, and school psychologists. [Ninety percent](#) of students are in public schools where the number of counselors, social workers, nurses, and psychologists do not meet recommended professional standards. Three million students attend schools with police but no school nurse. Fourteen million students attend schools with school police but no counselor, nurse, psychologist, or social worker.

**6) Safeguarding Workplace Protections in Schools—Educator safety, retention, and training must be a priority for all school districts, especially for Black educators and the educators of Black students.**

- a) School staff should be involved in decision-making regarding school reopenings and their rights to safe and healthy working environments must be protected
- b) Educators, especially those in under-resourced, high-poverty schools and with experience working with students of color should be protected from layoffs and forced retirement to lower the likelihood that vulnerable students will lose access to high-quality teachers. The prevention of teacher shortages is essential to implement potentially life-saving measures, such as smaller class sizes, and to avoid a further widening of the racial achievement gap.
- c) Requiring students' families and school employees to sign liability waivers is not a substitute for implementing public health guidance. School staff must be free to express their concerns about safety and readiness for re-opening without fear of retaliation.

### **The Challenging Landscape for School Re-Opening**

Currently, many states are reporting record high rates<sup>2</sup> of community spread of the novel coronavirus and expect second waves of infection this winter. Consequently, schools must develop the capacity to seamlessly and safely transition individual students, classes, or the entire student body between in-person and online schooling without significant disruption in their education or access to meals and other critical school-based services. Schools must also be equipped to meet the needs of students who have lost learning and experienced traumatic disruption due to the pandemic. Schools will need substantial human and financial resources to implement public health guidance for in-person instruction when it is safe for students and staff to return to school. Such an approach will require thoughtful, collaborative planning and additional resources to school districts with input from families and community partners.

### ***The Particular Risks to Black Students and Black Communities***

Schools that primarily serve children of color were already understaffed, overcrowded, and dilapidated prior to COVID-19. Without an infusion of additional federal funds –to (1) hire additional personnel; (2) purchase personal protective equipment, cleaning supplies, and technology equipment; (3) provide professional development for educators; (4) retrofit facilities to adhere to safety protocols for ventilation, handwashing, and social distancing; and (5) ensure safe transportation to and from school -- schools serving the most vulnerable students will not be able to provide safe, in-person instruction OR accessible, high-quality distance learning.

- According to CDC guidelines, full-size classes, where students are not spaced six feet apart, are considered “high risk.” Likewise, classrooms where materials and supplies are shared among students are also unsafe. These are the precise conditions that many Black and Latinx students experienced pre-pandemic and returning to these schools make them and their families especially vulnerable to coronavirus spread.

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<sup>2</sup> <https://www.nytimes.com/2020/06/24/world/coronavirus-updates.html>

- Black and Latinx students are concentrated in high-poverty schools. High poverty schools often share books, technology, and other materials because they do not have adequate supplies to individually distribute to students.
- In 2018, 25 percent of school districts had less than one technological device per student, meaning that at least one-quarter of students share devices at school.
- Black students are more likely than all other racial groups to lack the resources needed for online instruction. Among Black households surveyed, 9% reported that their children rarely or never have access to a device for learning, which was 4% higher than all the other racial groups. This racial disparity was even greater in large urban areas. In Detroit, almost 20% of Black households did not have resources for online learning, as compared to about 7% of white households in the city. In 2018, 19% of 5- to 17-year old Black students in Baltimore City Public Schools had no internet access or only dial-up access, compared to 7% of white students. The failure to bridge this digital divide has been consequential for tens of thousands of Baltimore students in light of the pandemic-induced school closures.
- Without a significant increase in funding, it is unlikely that high need schools will be able to make the changes necessary to adhere to CDC guidance to prevent community spread among students. For example, the CDC calls for schools to conduct daily health checks, such as temperature screening and other symptom checking. Yet, many high needs schools would need to increase the hiring of nurses or CNAs to conduct temperature checks and other related COVID-19 screenings, including administration of COVID-19 tests if families opt to have their children tested at schools.

The failure to enact the necessary safety protocols to prevent the spread of COVID-19 will lead to preventable suffering and death of Black students, families, and communities, which are disproportionately vulnerable to severe illness and death from COVID-19 due to structural racism. Black families should not have to choose between their health and the education of their children.

- The racial disparities in COVID-19 death rates are staggering. As of July 8, 2020, 26,426 Black Americans have died of COVID-19, representing 23% of all COVID-19 deaths in the US, almost double their population share (12.5%). These stark racial disparities are evident in many states across the country: Black people in Louisiana comprise 53% of deaths but only 32% of the population; Black people in Florida comprise 22% of deaths but 16% of the population; Black people in Texas comprise 20% of deaths but 12% of the population; Black people in Michigan comprise 42% of deaths but 14% of the population; and Black people in Mississippi comprise 50% of deaths but 37% of the population.
- Black students and their families, due to residential segregation and other forms of systemic racism, experience higher rates of the preexisting conditions (asthma, hypertension, diabetes, obesity) that create more severe consequences of exposure to the

coronavirus.<sup>3</sup> Risk factors for severe cases of COVID-19 in children include autoimmune disorders, cancer, chronic kidney disease, chronic lung disease, moderate to severe asthma, diabetes, serious heart conditions, and obesity. In 2015, Black children were 4 times more likely to be admitted to the hospital for asthma, likely due to environmental racism. Lack of access to healthy foods in Black neighborhoods contributes to higher rates of childhood obesity among Black children.

- Unless schools take the necessary public health precautions, Black students exposed to and possibly infected with the coronavirus will return home and place their families at an even greater risk, causing a spike in what is already high infection and death rates among Black Americans. Black students more likely to have an elderly person in the home. Twenty-six percent of Black Americans live in multigenerational households, compared to 15% of white Americans.
- Black parents are in greater need of support from schools because they are less likely to be able to work from home. Black and Latinx people are also more likely to be employed in jobs deemed essential during the pandemic in the food services, delivery services, and home healthcare industries. The Economic Policy Institute's analysis of flexible work schedules in 2018 revealed that only 19.7% of all Black workers were able to telework as compared to 29.9% of white workers. This pattern has only been exacerbated by COVID-19.

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<sup>3</sup>Kesha Moore, Structural Racism is a Public Health Crisis: Addressing Racial Disparities in COVID-19, Thurgood Marshall Institute, (May 2020).