



2020

PUBLIC HEALTH LAW
**VIRTUAL
SUMMIT**

**COVID-19 Response
and Recovery**

September
16-17

**Protecting the Health of
Children and Families**

Using SNAP to Address Food Insecurity During the COVID-19 Pandemic

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9/17/2020

Food Insecurity-Baseline



❑ **USDA 2019 report indicated that 37.2 Million Americans were food insecure.**

- National Average: 11.1%
- White Americans: 8.1%
- Hispanic Americans: 16.2%
- Black Americans: 21.2%
- **Native American: 25%**



❑ **Food insecurity increase the risk for:**

- Coronary heart disease, Stroke, Cancer, Diabetes, Arthritis, Chronic Obstructive Pulmonary disease, Obesity, Depression, Suicidal Ideation, Poor academic performance, Impaired cognitive development,

The Challenge of COVID-19

- ❑ Over **45.7 million Americans** have filed for unemployment as a result of the pandemic (6/18/2020).
- ❑ In 2020, an estimated an additional **17.1 Million Americans** will be forced into food insecurity because of the pandemic.
 - Total of 54 million Americans
 - 7 million additional children (totaling 18 million)
 - Now 1 in 4 children food insecure



SNAP: The Largest Nutrition Program

Number of People

- ☐ **April 2020 (preliminary data)- 43 Million**
- ☐ **FY 2019-35.7 Million**
- ☐ **FY 2018-39.8 Million**
- ☐ **FY 2017-42.2 Million**

Amount of Funding

- ☐ **FY 2019-\$55.6 Billion in Benefits**
- ☐ **FY 2018-\$60.4 Billion in Benefits**
- ☐ **FY 2017-\$63.7 Billion in Benefits**



**Supplemental
Nutrition
Assistance
Program**

Economic Impact of SNAP

- ❑ During a weak economy, every additional SNAP dollar creates an additional \$1.54 in economic activity.
- ❑ An additional billion dollars in SNAP funding supports 13,560 jobs.
 - **Agriculture, transportation, manufacturing, food service, health care,**



Measures to make SNAP more Responsive to COVID-19 Food Insecurity

1. Increase the value of the SNAP allotment
2. Increase the number of people eligible for SNAP
3. Incorporating social distancing into the administration of SNAP



Increase the Value of the Allotment-Current Measures

Emergency Allotments (FFCRA)

- ❑ Normally amount of money is determined by income and number of people in a household
- ❑ Emergency Allotment provision allows states to increase the amount of money given to a SNAP household regardless of income
- ❑ Increase limited to the existing maximum allotment for a household of its size.
- **Example max for a household of 4 is \$646/month**
- ❑ Initial planned for two months (April/May) but USDA has been granting 1-month extensions.
- ❑ Initially all 50 states participated and extensions through Aug.

The Problem with the Emergency Allotment

- ❑ Ignores households with the lowest incomes because they already receive the maximum allotment—**40% of SNAP households**.
- ❑ **Under normal conditions SNAP allotments are inadequate.**
- ❑ IOM found that they failed to provide for a minimally adequate diet. (failed to keep up with inflation)
- ❑ Food Research Action Center
 - **Flawed Thrifty Food Plan**: impractical food lists, lacks variety to meet dietary guidelines ignores special dietary needs, unrealistic assumptions regarding food availability and affordability....



FRAC
Food Research
& Action Center

Congress Should Increase the Maximum Allotment

- ❑ Helps families who received no additional support from the Emergency Allotment Provision
- ❑ Utilized in the past during great Recession
 - Temporarily increased the maximum allotment by 13.6%
 - Resulted in improved food security, health outcomes, decreased healthcare costs, and promoted economic growth (\$40 billion)
- ❑ **HEROES Act (House)—proposes a 15% increase that sunsets on 9/30/2021.**
 - ❑ It would be better if any plan to increase the allotment was earmarked to actual economic recovery rather than a set date.



Congress Should Increase the Minimum Allotment

- ❑ SNAP households composed of one or two people guaranteed a minimum allotment of \$16 per month.
 - 1.8 million households and the majority of which are elderly individuals
- ❑ Increase minimum benefit to \$30 as proposed by the HEROES Act.
- ❑ If Congress fails to act, states can increase the minimum allotment
 - **Maryland increased it for households with an individuals at least 62 years of age.**
- ❑ **Not a moot point because unclear how long the emergency allotment provision will continue.**



Increasing Eligibility for SNAP



- ❑ **Able Bodied Adults without Dependents (ABAWD)**
 - Requires people 18-49 who can work and do not have dependents to meet special work requirements.
 - **FFCRA waived** it from April 1 through one month after the termination of the federal public health emergency declaration.
 - **Set expiration of COVID waiver to an economic recovery metric.**
 - Normally states can secure geographic waivers when there are poor economic conditions and offer individual exemptions.

USDA Must Rescind Restrictive New Regulations

- ❑ In 2019, USDA changed ABAWD regulations.
- ❑ Estimated to remove 700,000 individuals from SNAP.
- ❑ Made it harder for states to qualify for geographic waivers and lessened their ability to grant individual exemptions.
- ❑ The validity of these regulations have been challenged in court.
 - Preliminary injunction issued for the geographic waiver provision
- ❑ **Regardless of outcome must rescind these harmful regulations.**



USDA Must Rescind Proposed Categorical Eligibility Regulations

- ❑ Categorical Eligibility- households automatically qualify for SNAP if they receive gov. benefits from programs that check income and assets. (e.g., TANF)
- ❑ Propose changing the government benefits that confer categorical eligibility.
- ❑ 3.1 million expected to lose SNAP.
- ❑ Also impact school lunch and breakfast program eligibility
 - Automatically qualify for free school meals if household participates in SNAP
 - hundreds of thousands of children will lose access to free school meals.



Repeal Ban on Individuals with Drug Felony Convictions

- ❑ Congress created the lifetime ban from SNAP in 1996
 - Disproportionately impacts people of color
 - Undermines food security of families
 - Creates barriers to reintegration

- ❑ States can pass legislation opting out of the ban or modifying it.
 - Only SC has full ban in place
 - However, 27 states still have a modified ban.
 - Disqualified after multiple convictions, Requires drug testing, Requires drug treatment, Post conviction/ release ineligibility period,....

Social Distancing in SNAP

- ❑ **Adjustment of application and issuance methods**
 - Waiver of face- to face interview requirement for SNAP certification and recertification
- ❑ **Rapidly Expanding SNAP online Purchasing Pilot**
 - Great for social distancing and for people in low food access communities.
 - Started 2019 in NY
 - Currently 44 states and D.C. are running the pilot.
 - Only select retailers (Amazon and Walmart)



Pass legislation to address cost of food delivery

- ❑ Currently, SNAP benefits cannot be used to cover delivery fees
- ❑ Federal legislation should be passed that requires food retailers participating in the online program to offer free delivery.
 - Minimum purchase amount=Proposed \$30 minimum allotment as baseline.
- ❑ Large amount of SNAP funding involved
 - 2017: ~\$64 Billion in Benefits
 - 2018: ~\$61 Billion in Benefits
 - 2019: ~\$56 Billion in Benefits
- ❑ Currently major retailers in every state (Amazon and Walmart) who have the economy of scale to sustain additional expense

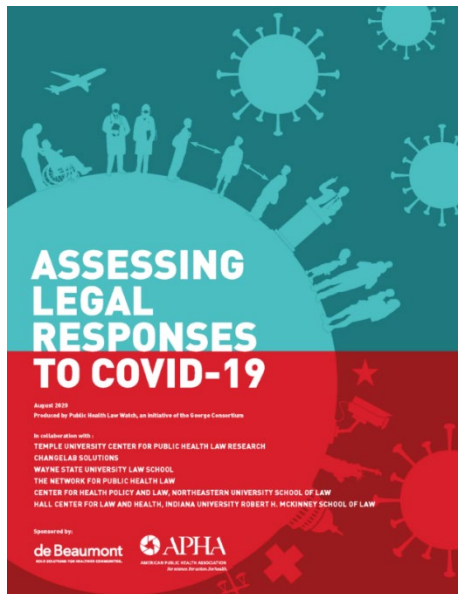


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If you're tweeting from the Summit, remember to use this hashtag to share your insights with Summit attendees and others:
#COVID19PolicyPlaybook

Access the full *Assessing Legal Responses to COVID-19* report or individual chapters at:
COVID19PolicyPlaybook.org



Thank you for your time.

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The Network
for Public Health Law

Ideas. Experience. Practical answers.

To Open or Not to Open: Deciding How to Educate Children during a Pandemic

**2020 Public Health Law Virtual Summit
COVID-19 Response and Recovery**

September 17, 2020

Kathi Hoke

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Overview

Education as Social Determinant of Health

Federal Issues

IDEA; Section 504 of the Rehabilitation Act; ADA

Liability Immunity for IDEA Violations

CARES Act Funding; Litigation

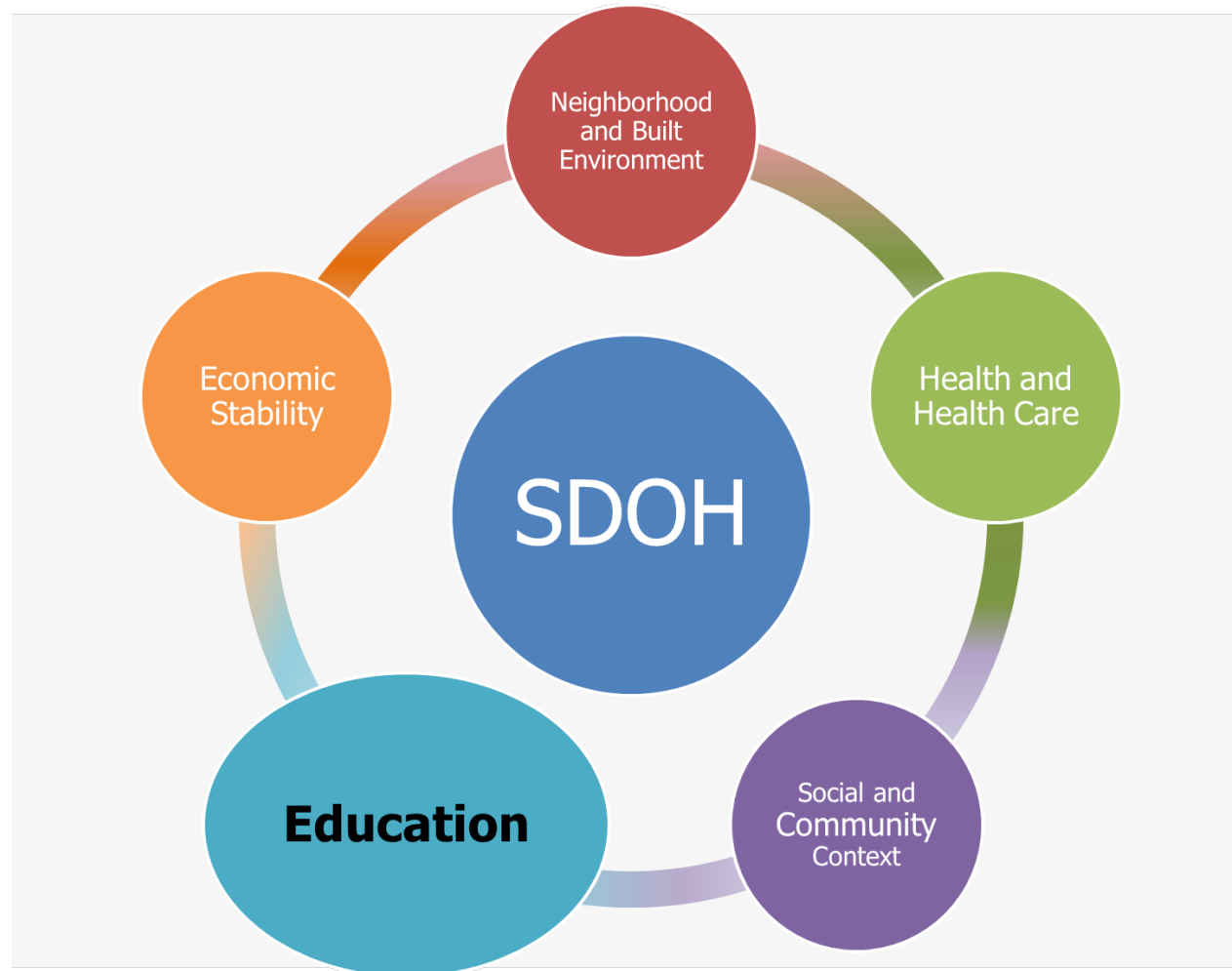
State/Local: School Closures

State v. Local Powers

Litigation







Other Issues

Education is a Social Determinant of Health










Federal Law: Educating Children with Disabilities

Students with disabilities are entitled to:

-  *Free and Appropriate Public Education (FAPE) §504 Rehab Act*
-  Including special education and related services
-  *Individualized Education Plan (IEP), pursuant to Individuals with Disabilities Education Act (IDEA), or Section 504 Plan*
-  Mandatory timeline for IEP/504 Plan assessment, review, renewal, and modification
-  *Americans with Disabilities Act (ADA)*
-  Requires schools to make educational opportunities, extracurricular activities, and facilities accessible to all students

Federal Law: Educating Children with Disabilities: COVID

Department of Education Advisory Factsheets

-  *Ensuring compliance with IDEA, Section 504, and the ADA should not prevent any school from offering educational programs through distance learning. (March 16; March 21)*
-  *Flexibility meeting IEP/Plan req'ments when schools closed*
-  *Not required to provide some services in closure period; can modify*
-  *Must provide compensatory services when school resumes*
-  *IEP Teams not required to meet in person*
-  *Parent may consent to virtual assessments, observations, meetings*
-  *Timeline/deadline flexibility*

Federal Law: Immunity from IDEA Compliance

School Leader Voices: Concerns and Challenges to Providing Meaningful IDEA-related Services During COVID-19

Although the U.S. Department of Education recognized that exceptional circumstances may affect how special education and related services/supports are provided to students with disabilities and would offer flexibility, the policy support has been inadequate. The . . . ambiguity of federal or state policies could lead to legal challenges for school practitioners.



Federal Funding: CARES Act

CARES Act allocated \$31 Billion to education



\$13 Billion to states



Sanitizing schools, purchasing technology, training educators, ensuring access for students with disabilities, and providing students emergency funding for food/housing/essentials



\$14 Billion for higher education



\$3 Billion to Governors for emergency education relief for school districts, higher education, or both



Federal Funding CARES Act: Litigation

Department of Education issued rule requiring public school systems to share CARES funds with private schools (regardless of income of student families):



NAACP and public school parents and systems sued



Federal district court ruled in favor of plaintiffs and voided rule

“Congress expressed a clear and unambiguous preference for apportioning funding to private schools based on the number of children from low-income families.... Contrary to the Department’s interim final rule, that cannot mean the opposite of what it says.”

State/Local: School Closures

Best Tracking: Education Week

[Interactive Map](#) with State Level Details below map

[Reopening Plans Snapshot](#) Sampling of Reopening Plans

As of September 2, 73% of the 100 largest school districts, have chosen remote learning as their exclusive back-to-school instructional model, affecting over 8 million students. There are over 50 million public school students in the United States.

CDC

[Guidance on Safe Operation for In-Person Learning](#)

State/Local: School Closure Laws 2008 Study

“[E]xpress legal authority . . . to close schools is distributed among different departments and levels of government 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.”



State/Local School Closures: Power

Maryland

Montgomery County Health Officer ordered *private* schools to remain closed through September pursuant to authority given to locals under Gov'r Executive Order

Gov'r retracted portion of the EO giving local power over private schools and explicitly prohibited a blanket closure order

Locals must consider each private school independently

Local health officers in Maryland are state officials subject to the control and direction of the State Sec'y of Health and the Governor

State/Local School Closures: Litigation

Disagreements on Who is Responsible/When to Close often pits state agency/Gov'r against locals:

Florida

State Dept of Ed ordered all public schools to open or risk loss of state funding

Teachers' Union successfully sued but order stayed on appeal

Some counties opened, full or hybrid, though some with high rates were permitted to do distance learning temporarily

State/Local School Closures: Litigation

Iowa

Gov'r issued order requiring schools to reopen with at least some in-person instruction unless

- ✓ Infection rate in County was 15% and more than 10% of students were absent due to illness; or
- ✓ Infection rate in County was 20%

DesMoines sought temp injunction and lost but opened school solely online in defiance of Gov'r and court; case continues

Gov'r threatening that online days will not count toward required 180 days of instruction; administrators could be disciplined

State/Local School Closures: Litigation

California

Gov'r issued order setting parameters for counties to open schools; most counties are on the "watch list" so do not meet the standards to reopen

Many counties had planned to open

Center for American Liberty and parents and Orange County School Board sued, challenging the order as denying access to education, harming low-income, of color, and disabled students in violation of 14th Amendment



Other Issues . . .

Broadband Access

[*NAACP Letter to Internet Service Providers*](#)

Nutrition Access

School Breakfast and Lunch Programs

Access to Health Care

FQHC in School; Mental Health Care

Much More . . .

So check in with the Network if you have questions!