

## Containing COVID-19? Plan to Contain Discrimination Too

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Three federal agencies charged with enforcing antidiscrimination laws have a message for covered organizations: the changes and challenges brought about by the current public health emergency do not excuse unlawful discrimination.

That discrimination will not be tolerated by the offices that enforce civil rights statutes is not a recent development, but the guidance has recently been specific to discrimination that may result from circumstances related to COVID-19. Consequently, the federal [Equal Employment Opportunity Commission](#) updated its "[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)" guidance on March 21. Similarly, the federal Department of Health and Human Services published a bulletin entitled "[Civil Rights, HIPAA, and the Coronavirus Disease 2019](#)" on March 28.

U.S. Department of Education on March 4 released the [first COVID-19 guidance for the potential for discrimination](#). The bulletin, addressed to education leaders, warned of an uptick in reports of discriminatory conduct targeting individuals of Asian descent. The bulletin explained that the discriminatory conduct was based on racial or ethnic stereotypes and misunderstandings about contracting COVID-19.

Pennsylvania schools are implementing "Continuity of Education Plans," moving instruction and educational activities to a remote delivery method and relying heavily on technology. As students, teachers, and families adjust to this new normal, schools should take action to prevent instances of discrimination through harassment and bullying. Discriminatory conduct that would not be tolerated in a brick-and-mortar setting should not be tolerated in the remote educational setting either.

Schools and colleges are always charged with investigating reports of discriminatory harassment, eliminating hostile environments, preventing harassment from recurring, and remedying the effects of harassment. As the enforcement arm of several anti-discrimination statutes, the department's bulletin reiterated that "ethnic harassment or bullying exacerbates hatred, harms students, and is never justified. These incidents can create a climate of misunderstanding and fear. This hurts all of us."

While the department's guidance has greater implications for educational organizations under Title VI of the Civil Rights Act of 1964, all organizations that are covered by antidiscrimination and workplace protection laws should note the potential for liability exposure under corresponding statutes.

Amid continued concerns about health and safety, educational institutions and other organizations have adopted precautionary measures and taken action to prevent the spread of COVID-19. Those measures and strategies should not be grounded in fear. Rather, they must be unbiased and applied consistently. Fact-based and accurate explanations provided to the educational community about COVID-19 should also provide avenues for reporting

possible discrimination, and reports should be addressed promptly.

Please reach out to any member of the [Barley Snyder Education Practice Group](#) if you have any questions about cultivating an organizational environment that is free from unlawful discrimination or about continued legal obligations related to coronavirus.

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