

CAPLAW WEBINAR
AUGUST 26, 2021

HEAD START: BACK TO SCHOOL

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Meet Your Presenter

R. Brian Tipton, Esq., is a practicing attorney with over two decades of experience working with nonprofits and grant-funded organizations across the United States. Currently, Brian is Managing Director with Kirk Private Client Law, LLC, in Atlanta, where he heads the firm's tax-exempt organizations practice. Brian is a summa cum laude graduate of the Louisiana State University and the Cumberland School of Law of Samford University. He regularly advises and represents Head Start and other grant-funded entities in the areas of regulatory compliance, audits, funding source disputes, administrative appeals, and litigation. Brian also consults with organizations on governance, human resources, program, and corporate matters, and develops and presents training programs for nonprofits and a wide range of grant-funded entities.

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CAPLAW HEAD START: BACK TO SCHOOL 2

Agenda

- OHS Expectations for 2021-2022
- Safely Returning
 - Vaccine Policies
 - Use of Relief Funding
 - Facilities Improvements
 - Supporting Staff
- Promoting Diversity
- Administrative Flexibilities
- Audience Question and Answer Period

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CAPLAW HEAD START: BACK TO SCHOOL 3

New Head Start Year

A cartoon illustration of a blue dog with floppy ears and a mask, holding a white sign with the text "WHAT NOW?" written in a bold, blue, hand-drawn font.

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CAPLAW HEAD START: BACK TO SCHOOL 4

Poll # 1

During the 2020-2021 Head Start Program Year, our agency's program:

- Operated primarily virtually or remotely
- Operated primarily in person
- Did not operate

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Expectations

For the 2021-2022 Head Start Program Year, Office of Head Start expects return to *in-person model*

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Expectations

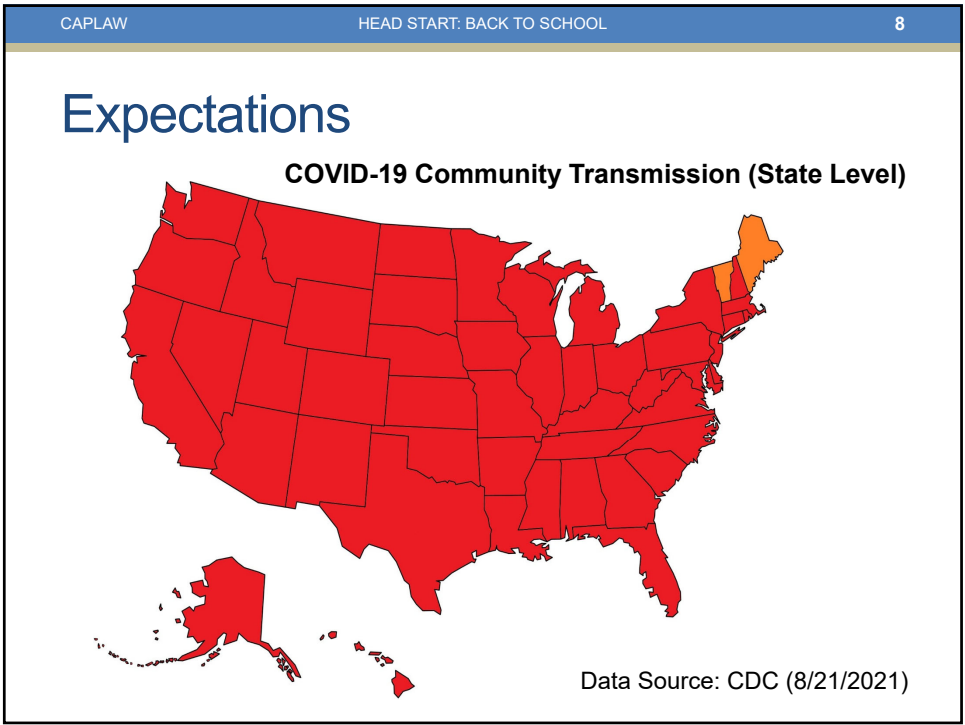
- OHS expectations found in recent Program Instruction ACF-PI-HS-21-04 (May 20, 2021)
 - “OHS’s expectations [are] for Head Start programs to begin working toward full enrollment and providing in-person comprehensive services for all enrolled children, regardless of program option.”
 - “Virtual and remote services for children are considered an interim strategy in the presence of an emergency or disaster and will not be approved as an LDO.”
 - “Beginning January 2022, OHS will reinstate pre-pandemic practices for tracking and monitoring enrollment.”
- More or less return to normal by January 2022

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Expectations

- Expectations also seen in 2021-2022 Program Year monitoring process
 - Return to on-site reviews (Focus Area 2), including CLASS
 - On-site reviews will begin January 2022
 - Contingent on local conditions
- See Information Memorandum ACF-IM-HS-21-03 (July 27, 2021)

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Safely Returning

TEAM MEETING

The slide features a vertical line on the left side. To the right of this line, the text 'TEAM MEETING' is written in a blue, outlined font. Below the text is a simple line drawing of six chairs arranged in a circle, suggesting a meeting or discussion.

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Poll # 2

In terms of COVID vaccination for staff, our agency's policy:

- Requires vaccination
- Provides incentives (but does not require vaccination)
- Encourages vaccination (but does not provide incentives)
- Does not exist (no policy)

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Vaccines

- Well-settled law that states **can require** vaccination
 - *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)
 - *Zucht v. King*, 260 U.S. 174 (1922)
- Employers generally **can require** vaccination
- Emergency use authorization generally does **not** prohibit vaccination requirements

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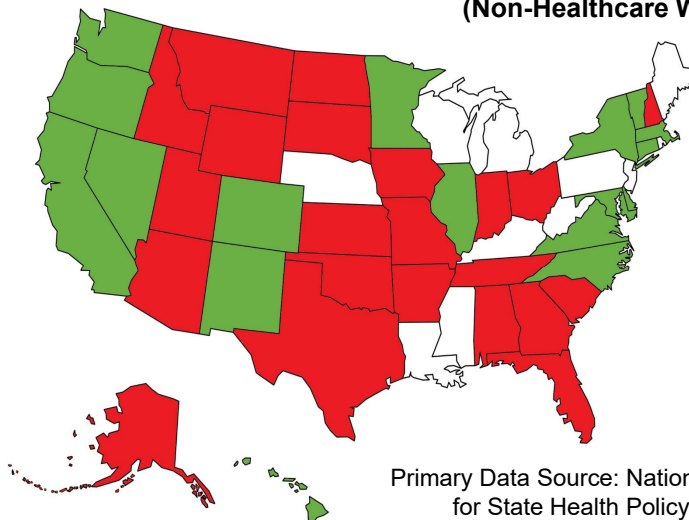
Vaccines

- EEOC has issued updated guidance on employer vaccination requirements (May 28, 2021)
 - Employers can require employees entering workplace to be vaccinated against COVID-19 under Federal EEO laws
 - May need to make reasonable accommodations under Title VII, ADA, or other laws
 - Employers may offer incentives to get vaccinated or provide proof of vaccination
- However, **state or local laws may affect employer's ability require vaccination or proof of vaccination**

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Vaccines

Vaccine Mandates and Restrictions (Non-Healthcare Worker)



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Vaccines



- On August 23, 2021, FDA gave full approval to Pfizer/BioNTech COVID-19 vaccine
- For persons 16 and up
- Full approval could have positive effect on lingering vaccine hesitancy
- Additional COVID-19 vaccine mandates now possible (even likely)

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CDC Guidance

- CDC updated COVID-19 Guidance for Operating Early Care and Education/Child Care Programs on July 9, 2021
- Key strategies
 - Promoting vaccination
 - Consistent and correct mask use
 - Physical distancing and cohorting
 - Ventilation
 - Handwashing and respiratory etiquette
 - Staying home when sick and getting tested
 - Contact tracing in combination with isolation and quarantine
 - Cleaning and disinfecting

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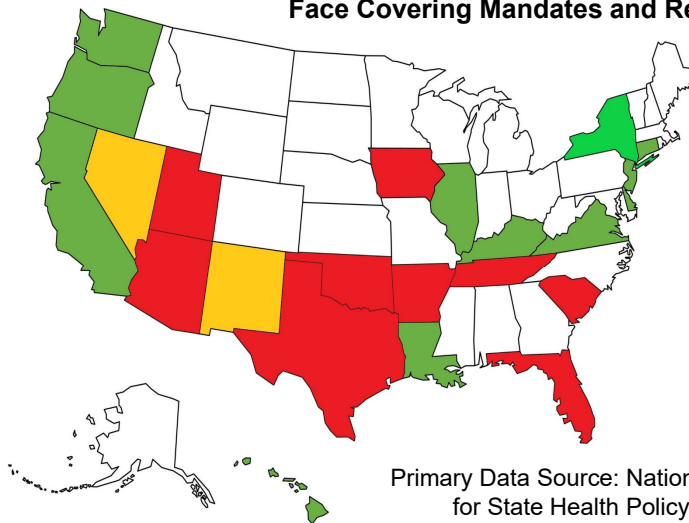
CDC Guidance

- Indoor mask use recommended for people not fully vaccinated (but universal indoor masking recommended in schools given Delta variant)
- In areas of substantial/high transmission, not fully vaccinated people should wear mask outdoors in crowded settings or activities involving sustained contact with not fully vaccinated people
- Programs may require universal mask use regardless of vaccination status
 - Increasing or substantial/high transmission within program or community
 - Increasing community transmission of a more severe or easily spread variant
 - Low vaccination rates (within families, staff, or community)
- Children under 2 years of age should not wear a mask

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Face Coverings

Face Covering Mandates and Restrictions



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Relief Funding

- OHS has outlined 3 broad ways for agencies to use American Rescue Plan Act funding
 - Reaching more families
 - Readyng facilities for in-person comprehensive services
 - Supporting Head Start staff
- See recent Program Instruction ACF-PI-HS-21-03 (May 4, 2021)

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Families

- Enrollment and recruitment
- Additional programming
- Family supports (e.g., employment, education, and career goals)
- Mental health support for children and families
- Provision of non-USDA reimbursed meals and snacks
- Transportation (e.g., buying buses and hiring more drivers and monitors)
- Greater inclusion of children with disabilities and children experiencing homelessness
- Unique community needs (e.g., internet access)

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Facilities

- Improved ventilation to reduce risk of indoor transmission and make facilities safer
- Greater use of outdoor learning and play
- Purchasing cleaning supplies or services
- Renovations or other space modification
- Renting or arranging for additional space
- Locally determined actions

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Staff

- Planning sessions for staff
- Staff wellness and mental health support
- Hiring additional staff
- Professional learning and development for staff
- Vaccination support
- Other personnel costs (e.g., fringe benefits and expanded sick leave)

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Staff

- OHS has authorized programs to pay group health insurance premiums for furloughed workers (if expected to return to work)
 - Not limited to COVID-related furlough (i.e., can be furlough for regular summer closure)
 - Programs can pay premiums for up to 90 days
 - Payments can be full or partial
- See recent Information Memorandum ACF-IM-HS-21-02 (June 2, 2021)

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Poll # 3

How has your agency used additional Head Start COVID relief funding?

- Facilities and equipment
- Serving more families
- Staff support
- All the above
- Other ways

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Sustainability

- Need to consider sustainability when deciding how to use relief funding or making other changes
- Is this something that would continue (or be expected to continue) post-COVID?
- Would this create a significant on-going expense?
- What is the (potential) funding source?
- What would be the effect if agency could not maintain or needed to discontinue?

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Other Issues



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Promoting Diversity

- Consider post-COVID return as opportunity to promote diversity through procurement
- Already required to take affirmative efforts to make opportunities available to small and minority businesses, women's business enterprises, and labor surplus area firms
- See 45 C.F.R. § 75.330
- Also consider Federal "buy American" preference

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Poll # 4

When was the last time your agency comprehensively reviewed its supplier base?

- Within the last year
- Within the last 5 years
- More than 5 years ago
- Never

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Administrative Flexibilities

- OHS has updated COVID-19 fiscal and administrative flexibilities
 - Some flexibilities have specific end dates
 - Others extend through HHS public health emergency declaration for COVID-19
- Based on OMB administrative relief guidance in OMB Memorandum M-21-20
- See Information Memorandum ACF-IM-HS-21-01 (April 14, 2021)

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Administrative Flexibilities

- SAM registration or recertification (Sept. 30, 2021)
- Abbreviated continuation requests (Dec. 31, 2021)
- No-cost extensions on expiring awards
- Allowability of costs not normally chargeable
- Prior approval waivers (Dec. 31, 2021)
- Exemption for geographic preference limitations in procurement

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Administrative Flexibilities

- Reporting and audit extensions
- Closeout extension up to 1 year (Dec. 31, 2021)
- Extension up to 12 months for inventories (Dec. 31, 2021)
- Non-Federal share waivers
- Administrative cost limitation waivers
- Waiver of full Governing Body approvals

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Question & Answer Time

What Are Your Questions?



"Did someone have a question?"

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