Considerations for Institutions of Higher Education
Planning for 2020-2021

Educational institutions around the country are grappling with whether to open their doors for the fall 2020 semester in light of the COVID-19 pandemic. Some institutions will decide not to open and to instead offer strictly online learning. Other institutions are considering a hybrid approach that will combine online learning with more limited residential campus offerings.

Institutions that decide to welcome students back to campus will need to carefully consider how to do so. For example, institutions will need to decide when they will open, and some institutions may decide to delay their start dates until October or later. Those schools that decide to open will likewise need to consider how to maintain a safe environment for their faculty, staff, and students.

The list of considerations below is a starting point for the discussions schools will need to have as they contemplate opening this fall. Please note that this list does not constitute legal advice and is not intended to be exhaustive. Each institution has unique educational, financial, and operational issues to consider, as well as differing state and local orders and regulations. Drummond Woodsum attorneys and consultants stand ready to work with individual colleges and universities as they navigate these uncharted waters. Please contact Ann Chapman, Jerry Crouter, Adrianne Fouts, Jeanne Kincaid, Allen Kropp, or Elizabeth Mooney for assistance.

I. *Communications Plan*
a. Whether you plan to reopen your campus or continue with online learning, transparency is key. Develop a communications plan that will keep all relevant stakeholders–-prospective and current students, parents, faculty, staff, alumni/ae—apprised of your plans and what they can expect in the coming months. Consider assigning point people to respond to COVID-19-specific inquiries and ensure that the information and messaging you provide remain consistent across constituencies.

II. *Social Distancing and Other Precautions*
a. Consider how your institution will implement measures to reduce the likelihood of spreading COVID-19. In particular, consider whether to require masks and/or gloves, whether you will supply them to students and staff, and whether you will refuse access to campus buildings or implement other enforcement mechanisms for noncompliance.
b. Consider how you will approach gatherings, including those sponsored by your institution (such as a panel discussion) and those that happen on campus (such as student parties). For example, consider whether to impose limits on the number of people who can gather at a time and whether to mandate that events be held outdoors whenever possible.

III.   *Facilities*
a. Consider how you will approach classes, including whether to host sessions online, limit enrollment, stagger schedules, or allow small group sessions hosted by Teaching Assistants.
   i. Consider the physical layout of your classrooms, including whether you can place desks at least 6' apart or conspicuously mark fixed seating areas so available seating is at least 6' apart, whether you can increase cleanings, and whether the classrooms are sufficiently ventilated.
b. Consider how you will approach housing sponsored by your institution, including whether to: increase cleanings; reduce the amount of available housing (for example, requiring students to live alone rather than having roommates or limiting housing to first year students); or implement schedules in shared bathrooms to limit the number of people using the bathroom at any one time.
c. Consider how to approach other shared spaces, including dining halls, meeting spaces, and the library. For example, consider removing tables and chairs to limit the amount of available seating and limiting the total number of people in a space at any time.

IV.   *New Outbreak – Contingency Plans*
a. Consider how your institution will handle a new outbreak, if one happens after students return, and any related social distancing orders rendered by government officials. In particular, consider:
   i. Plans to identify and isolate individuals who test positive, or are suspected to be positive, for COVID-19 (be mindful of HIPPA, FERPA, and other privacy regulations);
   ii. How COVID-19 positive or potentially positive students will continue their education;
   iii. Plans to provide separate housing, if the COVID-19 positive individual is a student;
   iv. Whether to implement testing (and who will pay for this testing) and/or whether to conduct temperature checks before allowing individuals to enter school buildings;
   v. Whether to train or employ contact tracers who can identify and alert others who may have come into contact with the COVID-19 positive (or suspected positive) individual;
   vi. Plans to help students return to their homes, if necessary, following additional stay-at-home orders, including plans for low-income, international, and other students who may not be able to easily return home;
   vii. Communication plans, including who will draft alerts relating to COVID-19, who needs to approve those alerts, and how they will be distributed;

    viii.   Any Clery Act reporting requirements that may be implicated;

    ix.   Plans for staff, including ensuring compliance with OSHA requirements (for example, consider who will transport sick students and how, or who will clean dorms occupied by students who have tested positive).

V. *On-Campus Health Facilities*

a. If your institution has a health facility, consider how best to assess possible COVID-19 cases that present in-house and ensure that any individuals who test positive or who are suspected to be positive are kept apart from other community members (keep in mind applicable privacy laws, including HIPPA (for those institutions that are covered entities or hybrid entities) and FERPA).

b. Consider whether you have sufficient Personal Protective Equipment ("PPE") for your health staff and whether you have sufficient testing capabilities or will instead need to coordinate with local health care providers.

c. Consider too whether you can or should offer additional telehealth appointments for issues that do not require in-person visits. Keep in mind the legal and technical overlay; among other things, consider whether your state allows telehealth visits and how to protect privacy during those appointments.

VI. *Contracts*

a. Consider whether any contracts need to be updated to include a contingency clause or other language specifically relating to COVID-19, particularly if you're concerned that a current force majeure clause does not offer adequate coverage. In particular, consider whether to revise:

    i.   Enrollment contracts, which may need to be updated to address whether your institution will offer any refunds in the event your campus cannot reopen and you switch to online learning;

    ii.   Housing contracts, which may need to be updated to note that your institution will only open dorms if the campus itself is open this fall; to note whether refunds will be issued in the event campus does not open or closes earlier than planned; and whether to insert conditions that may be imposed upon students who elect to live on campus (such as temperature checks, testing, contact tracing, quarantine, etc.).

    iii.   Employment contracts;

    iv.   Collective bargaining agreements (if applicable);

    v.   Vendor contracts, including cafeteria services, janitorial services, construction, security, and others.

b. Consider the scope of your current insurance coverage, including whether it covers COVID-19 related events and, if it does not, whether to seek such coverage.

VII.   *Employment – Faculty & Staff*
   a. Consider revisiting employment offers and contracts and assess whether to include language that any employment offers are contingent on your campus reopening this fall.
   b. Consider whether to implement reduced workloads for faculty and staff this fall if your institution has seen a drop in demand.
   c. Consider how to implement furloughs or layoffs, if necessary, including any related communication plan and decision tree.
   d. Consider whether certain positions can work remotely some or all of the time to decrease the density in certain workspaces.
   e. Consider how to support faculty as they transition to socially distanced classes or continue online learning.

VIII.   *Policies*
   a. Review your institution's policies with an eye toward updating them in light of COVID-19. Consider creating a COVID-19 specific website/web pages and mailing hard copy information packets to students, faculty, and staff outlining your institution's COVID-19 protocols and procedures.
        i. Consider establishing protocols that set expectations for students and faculty who are feeling unwell, including guidance regarding what to do if they are feeling unwell, to whom they can report their symptoms, and next steps (for example, testing and, if applicable, possible relocation from a residential dorm).
        ii. Consider whether to implement repercussions for failure to follow these policies, including any disciplinary or employment consequences.
   b. Consider whether to update your student or faculty handbooks, which could incorporate by reference the COVID-19 policies you have established.
   c. Consider how you will conduct investigations and disciplinary hearings in light of social distancing mandates or if your institution needs to return to remote learning during the fall (including new procedure for Title IX).

IX.   *CARES Act*
   a. If your institution accepted CARES Act funds, ensure you have protocols in place to comply with relevant recordkeeping and other requirements.
   b. Consider how you are disbursing the money and ensure that any such disbursements comply with the Act's requirements.
   c. Consider too whether and how to apply for additional funds, should they become available.

X.   *Americans with Disabilities Act*
   a. Consider the mandates of the ADA as you think about bringing students back to campus or implementing another semester of online learning.

       i. Among other things, consider how changes made to implement social distancing might affect students and/or faculty with disabilities. For example, if you are turning new spaces into classrooms, ensure that they are wheelchair accessible.

      ii. Consider too how best to ensure that your institution offers online content in an accessible format.

b. Consider how you will address concerns raised by faculty, staff, and/or students who have underlying conditions who may face serious health consequences if exposed to COVID-19 or who make special requests for accommodation based on COVD-19.

c. Consider how to respond to employees who have underlying health conditions who may not wish to return to campus to protect their own health and employees who may be living with a loved one at serious risk if exposed to infection.

d. Consider how the campus may be asked to support the influx of students and employees with pre-existing mental health conditions where COVID-19 may extenuate their symptoms. Consider too how to support students/employees with new mental health conditions resulting from the pandemic.

e. Consider what information you may ask or require students and staff to provide regarding COVID-19, such as symptoms and/or diagnoses. Consider whether to develop a plan to address contact tracing for staff and/or students who report positive diagnoses, including how state public health agencies will be involved.

XI. *Families First Coronavirus Response Act (FFCRA)*

a. Keep in mind that, for covered institutions (generally private institutions with 500 or fewer employees and public colleges and universities, regardless of the number of employees), the FFCRA creates two new leave entitlements for certain employees (which became available April 1 and continue through the end of the year) in addition to existing leave entitlements. The FFCRA also allows some employers to redeem tax credits to cover the cost of these new benefits.

XII. *Programming*

a. If your institution moved to online learning during the spring 2020 semester, consider what worked—and what did not—and make adjustments as needed.

       i. Consider whether you need to change or add to the suite of technology products you're using, and whether you need additional licenses or products.

      ii. Pay particular attention to privacy and/or security issues when considering the use of technology products.

b. Consider whether you will need to reduce the number of programs and courses offered by your institution, and the effects of any such reduction on accreditation, budget, required staffing levels, etc.

XIII.   *Labs*
a. If your institution has labs, consider whether you can continue to operate them in a socially distanced fashion.
b. Consider too what steps you need to implement if your school has to close again during the upcoming academic year. For example, consider whether there are animals that need care or research projects that need to be continued.

XIV.   *Study Abroad Programs*
a. If your institution plans to sponsor or allow students to participate in study abroad programs during the 2020-2021 academic year, consider how COVID-19 will affect those programs.
    i. In particular, consider whether your institution will help repatriate students if necessary. Consider too whether to implement a COVID-19 specific release into any study abroad contracts that will limit your institution's liability in the event a program is canceled or students have to return home early.

XV.   *International Students*
a. Consider how you will support international students during this time, including those who will be joining your campus community for the first time this fall.
b. Consider whether any special precautions need to be taken for students coming from areas then deemed high risk for COVID-19 outbreaks.
c. Consider how you will support these students in the event additional stay-at-home orders are issued and students must return home; consider reaching out to these students in advance to address and plan for that possibility.

XVI.   *Admissions/Alumni/Visitors to Campus*
a. Consider how COVID-19 will affect your institution's ability to welcome visitors to campus. For example, consider whether you can conduct admissions tours that comply with social distancing and how you might modify tours, admission interviews, and recruitment events. Alternatively, consider hosting more events virtually.
b. Consider how your institution will engage with alumni. For example, consider whether you can safely host events like homecoming or reunions in light of any then-applicable regulations regarding social distancing. To the extent you decide to host any in-person events, check your state's guidelines regarding gathering sizes and restrict the number of guests accordingly.
c. Assess whether and how your institution will interact with the broader community. For example, consider whether to continue sponsoring internships that send students into the community and whether to host programs that invite the community members to your campus.

XVII. Sports, Clubs, and Other Student Activities

a. The NCAA and other leagues will largely dictate whether varsity sports will resume in the fall. Keep abreast of guidance issued by your league.
   i. Consider whether any changes will affect students' athletic scholarships.
   ii. Consider how coaches will approach recruitment; in particular, consider whether to limit travel and instead approach recruitment via remote means.

b. Consider whether your institution can resume club or intramural sports this fall. In particular, consider whether you can implement appropriate social distancing measures and whether any extra precautions should be taken.

c. If your institution plans to open on-campus athletic facilities this fall, plan for additional cleaning and limited numbers of students/faculty in particular facilities, such as gyms, cycling studios, basketball courts, and other sports facilities, at any one time.

XVIII. Budget/Fundraising

a. Consider the effect the pandemic will have on your budget. Prepare for cuts as your institution adjusts to less revenue attributable to lost tuition and fees and lost income from programs—such as those that were scheduled for summer 2020—that may not happen.
   i. Consider the effect any budget shortfalls will have on financial aid, and assess admissions and financial aid decisions with those shortfalls in mind.

b. Consider how to move your institution's fundraising efforts online, and prepare for the likelihood that fundraising levels will drop as the economic fallout from the pandemic continues.

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