New Jersey Governor Allows Certain In-Person Higher Education to Resume on July 1

Article By
Jennifer Barna
Epstein Becker & Green, P.C.
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On June 18, 2020, New Jersey Governor Phil Murphy issued Executive Order 155 (“EO 155”), which as of July 1, 2020, allows degree-granting public and private institutions of higher education (“IHE”) to resume instruction that cannot be readily taught other than in-person. Specifically, EO 155 allows resumption of in-person labs, technical, clinical, or hands-on instruction, with enhanced health and safety protocols.

IHEs that are authorized and intend to resume in-person instruction pursuant to EO 155 must submit a restart plan to the Secretary of Higher Education (the “Secretary”), in accordance with the Restart Standards for All New Jersey Institutions of Higher Education, no later than 14 days prior to the expected date of implementation of the plan. Certain IHEs that had previously received a waiver to hold in-person instruction pursuant to Executive Orders No.104 and 107 (2020) must do so by July 2, 2020 (i.e., within two weeks of E.O. 115’s date of issuance).
The restart plan must include, at a minimum, the development and implementation of policies and procedures to address a variety of issues (listed in Paragraph 4 of EO 155), which include by way of example: training for students and staff concerning COVID-19 sanitization and social distancing practices and protocols; use of face coverings for faculty, staff, students and visitors; and plans for on-campus transportation, food service and dining operations, and for separating individuals who test positive for COVID-19. Following submission to the Secretary, the restart plan must be posted on the IHE’s website and provided to students and staff in advance of the anticipated implementation date.

Additionally, if a program operated by an IHE is subject to authorization, accreditation, licensure, approval, or similar requirements by one or more state agencies, in addition to the Secretary (e.g. the Department of Labor and Workforce Development, the Department of Education, or the Division of Consumer Affairs within the Department of Law and Public Safety), the program must also adhere to any health and safety standards issued by such other agency or agencies.

EO 155 provides that the Secretary retains the authority to grant waivers to degree-granting IHEs on a case-by-case basis to allow in-person instruction beyond that authorized by EO 155 where a compelling rationale to allow such instruction exists. The information that must be included, at a minimum, in a waiver application is listed in Paragraph 6 of EO 155.

EO 155 also allows for the resumption of in-person instruction, including laboratory or clinical components, at all private trade schools, career schools and other post-secondary facilities that offer or maintain a course of instruction or instructional program utilized to prepare individuals for future education or the workplace, but that are not subject to oversight by the Secretary (“training schools”). To resume such instruction, the training school must comply with all applicable Executive Orders and have in place a restart plan that includes the development of policies and procedures, the full list of which can be found in Paragraph 10 of EO 155. Like IHEs, training schools must post the policies and procedures on their website and provide them to staff and students in advance of the anticipated implementation date.

Training schools subject to accreditation, approval, or licensure by any professional licensing board within the Division of Consumer Affairs must submit their restart plans to the applicable board prior to the resumption of in-person education and comply with all applicable rules or standards of such board. To the extent that any clinical or hands-on instruction entails the provision of licensed services, training schools must ensure that such services are performed in a manner consistent with all requirements applicable to licensees performing those services. EO 155 makes clear, however, that the provision of personal care services by students at such training schools to members of the public shall remain prohibited until the Director of the Division of Consumer Affairs establishes standards for the supervision of students providing such services.

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