



MUSIC TEACHERS NATIONAL ASSOCIATION

COVID-19 FAQs FOR STATE AND LOCAL MUSIC TEACHER ASSOCIATIONS

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As most states reopen their economies, they are repealing or relaxing restrictions on mass gatherings. With the prospects of scheduling meetings, competitions and other events in the future, state and local music teacher associations have a number of questions regarding the legal ramifications of holding meetings and events. Below, MTNA has provided answers to several of the legal questions that it has received:

1. *Our association has an event scheduled later this year. What factors should we look at to decide whether to hold the in-person event, convert it to an online event, or cancel it altogether?*

The most important factor is the safety of attendees, staff and volunteers. Because the risks posed by the COVID-19 pandemic changed rapidly, you will need to monitor the situation right up to the start date of the event. If you decide to proceed with an in-person event, it would be helpful to have contingency plans in place, such as the ability to convert to an online meeting.

Also, even in cases where the association decides to continue with an in-person event or meeting, a number of potential attendees, especially those with preexisting medical conditions, are going to opt not to attend. To increase attendance and to serve these attendees, it would be beneficial if the association can arrange to have at least part of the event provided online. Of course, to cover the cost of the meeting, the association would probably have to look at some type of registration fee for online attendees.

In the response to Question 3 below, we look at a number of steps associations can take to protect the safety of attendees. When making a determination of whether to continue with an in-person event, the association should study those factors in order to ascertain whether the association will be able to safely hold the in-person event.

Although not as important as the safety of attendees, costs are also going to be a factor in deciding whether to cancel a scheduled event or convert it to an online event. Before opting to cancel, an association must examine closely its contract with hotel or event centers to determine if there is any cancellation and/or attrition penalties that would have

to be paid if the event is cancelled or if attendance falls off dramatically because of fear of contracting COVID-19.

Many hotel and event center contracts have a Force Majeure contract provision which allows the association to cancel the contract if an event occurs beyond the control of the association which makes it impossible or illegal to hold the event. Therefore, if there are prohibitions against mass gatherings that would extend to the time that the event is scheduled, the association may be able to cancel the contract with the hotel or event center under the Force Majeure clause without having to pay any penalty.

Even if there is not an applicable government order that makes it illegal to hold the event, the association may be able to negotiate with the hotel or event center to reschedule the event for another year or to promise the hotel or event center future events in exchange for cancelling the current event without any type of penalty. Associations should consult with their attorneys prior to entering into negotiations with hotel and event centers and be prepared to offer concessions in order to reduce cancellation and attrition fees.

2. *What is a state or local music teachers association's liability if it holds an event or meeting and one or more of the members or participants are diagnosed with COVID-19?*

There are three major legal doctrines that would come into play if a meeting attendee sued an association because the attendee allegedly contracted COVID-19 while at a meeting or event. The first would be the issue of causation. Considering that the incubation for COVID-19 is usually 5 to 7 days and that community spread of the virus is now found in every city and town in the U.S., it will be nearly impossible for an attendee to be able to pinpoint that his or her exposure happened at the event or meeting. Absent some type of clear-cut evidence, this would be problematic to pinpoint where any person was infected.

Secondly, in order to establish liability, an attendee would have to prove that the association was negligent. If the association held the meeting or event in violation of any applicable stay-at-home order, negligence would not be difficult to show. But, if the association operated in compliance with state and local restrictions and orders, and if it followed current CDC and state health guidelines, negligence would be very difficult to prove.

The third legal doctrine that would come into play is assumption of the risk. If an attendee sued an association for negligently holding a meeting or event during a pandemic, the association could defend by asserting that the attendee voluntarily and knowingly assumed the risk of exposure by attending the meeting or event. Since everyone is well aware of the risks of COVID-19 infection, anyone who attends a mass gathering is knowingly assuming the risk of exposure. Courts do not permit a plaintiff to

recover for an injury or illness when the plaintiff was aware of the risk and voluntarily assumed it.

Even though an association would have the above defenses to protect itself against liability, it is also advisable to either have each attendee sign a waiver or print on the registration form a disclaimer with warnings. Attached at the end of this FAQ is a sample Waiver and Release form that state and local associations may want to use for any upcoming events and meetings.

3. *What steps can we take to protect the safety of our members, their students, and their students' families during affiliate sponsored events?*

The safety steps you take will depend in large part upon the type of event, the venue where the event will be held, the duration of the event, the number of persons attending, and the ability to keep persons at a safe distance from each other. Scientists report that the infection rate with COVID-19 significantly increases when humans come in contact with an infected person in an enclosed space, over a measurable length of time, and in close proximity. So, every effort to avoid these three circumstances lessens the potential exposure to COVID-19.

For example, if an association is holding a student music competition, it could prohibit families and teachers from attending the event, space judges out so they are 10–20 feet from each other, have judges communicate scores electronically using their own computers, call students into the facility one at a time, prevent students from intermingling with each other while waiting to perform or after the performance, require all to wear masks, and thoroughly disinfecting instruments following each use.

When scheduling events keep the following recommendations in mind:

- If an event can be held outside or on an open aired porch or deck with a covering, it is safer than scheduling an event in an indoor area.
- Attendance must be restricted so safe distancing may be maintained. Chairs should be set so there is at least a 6-foot distance from each other. If attendees will be standing, limit attendance to no more than 50% of the maximum number allowed by the fire code to be in the room.
- If persons need to be lined up, maintain at least a 6-foot distance between each person. Areas where lining up will occur should be clearly marked for appropriate physical distancing and where possible, encourage one-way flow with marked entrances and exits.
- Limit the duration of the meeting or limit the time that any one person sits in a room. Encourage the use of video equipment and overflow rooms to avoid crowding.

- Don't allow items to be shared such as programs, pens, computers, musical instruments, utensils, bowls, plates, candy jars, water pitchers and glasses, and ice buckets.
- If meals are served, each attendee should be given a boxed meal with disposable utensils, plates, napkins and drinks. If a buffet is used, food should be distributed only by an employee who is wearing appropriate personal protective equipment. Sneeze and cough screens should be present at all food displays.
- Sanitization stations should be placed throughout the meeting areas. Hand sanitizer dispensers should include no less than 60% alcohol content, where available, and touchless where possible. Sanitizer stations should be placed in key entrances and contact areas.
- Any employee that will be sanitizing musical instruments or other items or who will be distributing items to attendees should wear protective gloves.
- The wearing of masks should be mandatory whenever attendees mingle with each other or attend public events. Disposable masks should be made available by the association in the event an attendee forgets to bring or wear a mask.
- It is also important for the association to coordinate closely with the venue regarding sanitization procedures and scheduling. Prior to engaging the venue and scheduling the event, the association should review with hotel management the sanitization procedures and scheduling.
- Attendees should be instructed before they come to a meeting or event that if they have had in the past 14 days a cough, fever, shortness of breath, difficulty breathing, flu-like symptoms, gastrointestinal upset, or experienced a loss of taste or smell, they are prohibited from attending the meeting. It would be helpful to include this message in the registration form, send the message again to attendees immediately prior to the meeting, and post this notice at entrances to the meeting.

4. *May a state or local association bar attendees who do not comply with safety requirements?*

Certainly. The association should include its COVID-19 requirements and restrictions in the event registration form and/or post them at the entrance to the event venue. In those requirements and restrictions, the association should note that strict adherence to the requirements as well as to the instructions of association leadership and staff at the event is a pre-condition of attending the event. If an attendee refuses to comply with safety requirements or social distancing measures, the association would be within its rights to have the person removed. Of course, association staff or volunteers should not attempt to forcibly remove anyone. Rather, security personnel or local police should be contacted.

5. *Should an association refund registration fees for events originally scheduled to be in-person that are now going to be done online?*

Whether to refund or not will depend in large part upon the wording of the event registration form. Since most registration or order forms would not have addressed the contingency of a pandemic nor provided for the option of switching an in-person event to an online event, in most cases the association will need to refund attendance fees if the attendee will not accept the online option. Certainly, the association can provide the attendee various options such as attending online, applying the prepaid admission fee as a credit toward future events, or even converting the prepayment to a donation. But, if push comes to shove, the association would, in most every case, have a legal obligation to refund the prepaid amount if that is what the attendee demands.

6. *If the association is scheduling events in the future, what provisions should the association attempt to insert into the hotel or event center contract to protect the association if there is a future outbreak of the pandemic?*

As noted in response to Question 1, the association should insist that the hotel or event center contract include a Force Majeure contract provision. Ideally, instead of limiting the Force Majeure to events that make it illegal or impossible to hold the event, it is better to broaden the cancellation contingencies to cover things such as commercial impracticality. For example, if the association could insert into the hotel contract the following Force Majeure clause, it would provide better protection against future events such as a pandemic:

“Force Majeure. Neither party will be liable to the other party for any delay or failure to fulfill its obligations under this Agreement or for the Association for failing to hold its Event in the case that acts of God, war, civil unrest, terrorist acts or threats thereof, strike, fire, the outbreak of infectious disease, curtailment of transportation preventing at least 25% of attendees from traveling, national disaster or any other event outside of such party’s control make it illegal, impossible, or commercially impracticable to perform under this Agreement or for Association to hold its Event. In such a case, Hotel shall promptly repay deposits to Association.”

7. *Where can an association find CDC and other helpful guidelines?*

CDC guidelines can be found at [cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html).

Nearly every state will also have orders and/or guidelines regarding mass gatherings. In many states, there are restrictions on the number of attendees at an event, spacing

requirements, mandates on the wearing of face masks, and other measures that an association must take. Please review all such orders and guidance carefully to ensure compliance prior to scheduling an in-person event or meeting.