

FILED
Clerk of the Superior Court

MAR 17 2021

By: M. Garland

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

A.A. et al.,

Plaintiffs,

v.

GAVIN NEWSOM, in his official
capacity as Governor of the State of
California, et al.,

Defendants.

Case No. 37-2021-00007536-CU-WM-NC

~~CAF~~
**[PROPOSED] REVISED ORDER ON
PLAINTIFFS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER**

Dept: N-27

Judge: Hon. Cynthia A. Freeland

Date: March 17, 2021

Time: 8:30 a.m.

Action Filed: February 16, 2021

Trial Date: Not set

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~~PROPOSED~~ REVISED ORDER ON PLAINTIFFS' EX PARTE
APPLICATION FOR TEMPORARY RESTRAINING ORDER

1 The following Order to Show Cause and Temporary Restraining Order supersede the
2 Order to Show Cause and Temporary Restraining Order from the final paragraph of page 15
3 through the last page of the Court's Minute Order dated March 15, 2021 ("March 15, 2021
4 Order," attached hereto as Exhibit A). In the event this document is inconsistent with March 15,
5 2021 Order, this document shall govern.

6 Plaintiffs' Ex Parte Application for Temporary Restraining Order having been heard on
7 March 15, 2021, and the State Defendants' Ex Parte Application for Clarification of the Court's
8 Order Granting in Part Plaintiffs' Request for a Temporary Restraining Order having been heard
9 on March 17, 2021, in the above-entitled Court, and the Court, having considered the pleadings in
10 this action, the parties' memoranda in support and in opposition, declarations filed, and argument
11 of counsel, and good cause appearing:

12 **ORDER TO SHOW CAUSE**

13 To Defendants GAVIN NEWSOM, Governor of the State of California, DR. MARK
14 GHALY, Secretary of the Department of Health and Human Services of the State of California;
15 DR. NAOMI BARDACH, Successful Schools Team Lead and Safe Schools for All Team Lead
16 for the Department of Health and Human Services of the State of California; DR. TOMÁS
17 ARAGÓN, Director and State Public Health Officer of the Department of Public Health of the
18 State of California (collectively, "State Defendants") and to Defendants San Dieguito Union High
19 School District ("SDUHSD"), Carlsbad Unified School District ("CUSD"), and Poway Unified
20 School District ("PUSD"); Oceanside Unified School District ("OUSD"); San Marcos Unified
21 School District ("SMUSD"); and Vista Unified School District ("VUSD") (collectively, "School
22 District Defendants"):

23 You are ordered to appear on April 1, 2021, at 1:30 p.m. in Department N-27 of this Court
24 to show cause why a preliminary injunction pending trial in this action should not be ordered as
25 follows:

26 1. Restraining and enjoining the State Defendants, their officers, agents, or any other
27 persons acting with them or on their behalf from applying and enforcing the following
28 prescriptions/provisions of the COVID-19 and Reopening In-Person Instruction Framework and

1 Public Health Guidance for K–12 Schools in California, 2020–2021 School Year dated January
2 14, 2021 (“January 2021 Framework,” attached hereto as Exhibit B) and any orders, rules, or
3 guidance that include such prescriptions/provisions against any local educational agency (as
4 defined in section 32094, subd. (a), of the Education Code) in the State of California:

- 5 a. The definition of “Reopen for in-person instruction” at pages 5–6 of the
6 January 2021 Framework;
- 7 b. The “Criteria to Reopen for In-Person Instruction” at pages 8–9 of the
8 January 2021 Framework to the extent it distinguishes between elementary
9 students and students in grades 7–12;
- 10 c. Table 1 on page 14 of the January 2021 Framework to the extent it imposes
11 different reopening criteria for schools serving elementary students and
12 students in grades 7–12 while a county is in the “Purple Tier;” and
- 13 d. The “Classroom Space” rules on pages 23–24 of the January 2021
14 Framework pertaining to spacing or distancing between student chairs,
15 specifically, the statement, “Under no circumstances should distance
16 between student chairs be less than 4 feet;” and

17 2. Restraining and enjoining the State Defendants, their officers, agents, or any other
18 persons acting with them or on their behalf from applying and enforcing the March 7, 2021
19 “Approval with Conditions” of Safety Review Requests submitted by SDUHSD, CUSD, and
20 PUSD; and

21 3. Ordering the School District Defendants to reopen their schools for in-person
22 instruction to the greatest extent possible at the earliest practicable time.

23 Nothing in the foregoing Paragraph 1 shall be construed as preventing the State
24 Defendants from issuing non-binding guidance or recommendations on any subject matter.

25 This Order to Show Cause and supporting papers shall be served on Defendants no later
26 than March 19, 2021, by electronic service. Proof of such service shall be filed and delivered to
27 the court no later than March 22, 2021. Any additional opposition papers shall be filed by
28 Defendants and served on Plaintiffs by electronic service no later than March 25, 2021. Any

1 additional reply papers shall be filed by Plaintiffs and served on Defendants by electronic service
2 no later than March 29, 2021.

3 **TEMPORARY RESTRAINING ORDER**

4 Pending hearing on the above Order to Show Cause, the State Defendants, their officers,
5 agents, or any other persons acting with them or on their behalf are restrained and enjoined from:

6 1. Applying and enforcing the following prescriptions/provisions of the January 2021
7 Framework and any orders, rules, or guidance that include such prescriptions/provisions against
8 any local educational agency (as defined in section 32094, subd. (a), of the Education Code) in
9 the State of California:

- 10 a. The definition of “Reopen for in-person instruction” at pages 5–6 of the
11 January 2021 Framework;
12 b. The “Criteria to Reopen for In-Person Instruction” at pages 8–9 of the
13 January 2021 Framework to the extent it distinguishes between elementary
14 students and students in grades 7–12;
15 c. Table 1 on page 14 of the January 2021 Framework to the extent it imposes
16 different reopening criteria for schools serving elementary students and
17 students in grades 7–12 while a county is in the “Purple Tier;” and
18 d. The “Classroom Space” rules on pages 23–24 of the January 2021
19 Framework pertaining to spacing or distancing between student chairs,
20 specifically, the statement, “Under no circumstances should distance
21 between student chairs be less than 4 feet;” and

22 2. Applying and enforcing the March 7, 2021 “Approval with Conditions” of Safety
23 Review Requests submitted by SDUHSD, CUSD, and PUSD.
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1 Nothing in the foregoing Paragraph 1 shall be construed as preventing the State
2 Defendants from issuing non-binding guidance or recommendations on any subject matter.

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4 IT IS SO ORDERED.

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6 Dated: 3-17-21

Cynthia A. Freeland
7 Hon. Cynthia A. Freeland
8 Superior Court Judge
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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY**

MINUTE ORDER

DATE: 03/15/2021

TIME: 01:31:00 PM

DEPT: N-27

JUDICIAL OFFICER PRESIDING: Cynthia A. Freeland

CLERK: Michael Garland

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2021-00007536-CU-WM-NC** CASE INIT.DATE: 02/16/2021

CASE TITLE: **A.A. vs NEWSOM [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ex Parte

APPEARANCES

The Court, having taken the above-entitled matter under submission on March 15, 2021, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

See attached.

DRAFT

DATE: 03/15/2021

MINUTE ORDER

DEPT: N-27

Page 1
Calendar No.

Having considered the papers filed in support of the Ex Parte Application, including all admissible declarations and lodged exhibits, the opposition to the Ex Parte Application, including all supporting declarations and lodged exhibits, the arguments of counsel, and all matters about which the Court may properly take judicial notice, the Court rules as follows: The Ex Parte Application for Temporary Restraining Order is **GRANTED IN PART**.

PROCEDURAL BACKGROUND

The matter came on for a hearing on Plaintiffs' Ex Parte Application for Temporary Restraining Order on March 10, 2021 at 8:30 a.m. in Department N-27 of the San Diego Superior Court. As of the time of the hearing, the Court did not have proof that the First Amended Complaint, which apparently had been filed on March 9, 2021, had been served on all parties. Further, the attorneys for Governor Gavin Newsom in his official capacity as Governor of the State of California, Dr. Mark Ghaly, in his official capacity as Secretary of the Department of Health and Human Services, Dr. Naomi Bardach, in her official capacity as Successful School Team Lead for the Department of Health and Human Services, and Tomas Aragon, in his official capacity as Director and State Public Health Officer of Department of Public Health (collectively, the "State Defendants") argued that the Plaintiffs' *ex parte* papers had not been served sufficiently in advance to allow them to prepare a thorough response¹. As a result, the Court continued the hearing to March 15, 2021 at 9:00 a.m. and set a briefing schedule for the service/filing of any supplemental pleadings.

On March 12, 2021, the Court received the "Formal Objection by Defendants Oceanside Unified School District and Vista Unified School District to Ex Parte Application for Temporary Restraining Order Due to Lack of Service." As a result of lack of service, these two school districts request that the Court not issue any order against them. As the request at issue on March 15, 2021 is whether a temporary restraining order should issue enjoining the State Defendants from enforcing/applying the January 2021 Framework or the "Approval with Conditions" to the Safety Review Request made by San Dieguito Union High School District ("SDUHSD"), Carlsbad Unified School District ("CUSD"), and Poway Unified School District ("PUSD"), the Court concludes that the Formal Objection does not impede or otherwise prevent the Court from ruling on the requested provisional relief.

At the outset of the March 15, 2021 hearing, Plaintiffs' counsel inquired of the State Defendants' counsel whether the January 2021 Framework was merely "guidance" or whether it was intended to serve as a requirement. The inquiry seemed to be driven by confusion perpetuated by the State Defendants' opposition(s), wherein the State Defendants refer to the framework as setting forth guidance as well as requirements. The State Defendants' counsel noted that some aspects of the January 2021 Framework were intended to serve as a guideline while other aspects were

¹ To the extent that the State Defendants contended in their original Opposition that the Ex Parte Application should be denied because Plaintiffs gave defective notice and because the Plaintiffs failed to comply with California Rules of Court, Rule 3.1204(a)(2), the Court respectfully rejects this contention. Any prejudice suffered by any purportedly defective notice has been remedied by the continuance of the hearing. Moreover, failure to articulate compliance with Rule 3.1204(a)(2) does not necessitate a denial of the application. As the State Defendants since have submitted an opposition, any purported failure to comply with Rule 3.1204(a)(2) has been rendered irrelevant.

requirements. With that clarification (or essentially lack thereof), counsel proceeded with their oral arguments.

LEGAL ANALYSIS

The Court acknowledges that these are unprecedented times. No one can deny that the world will be recovering from the effects of the deadly COVID-19 pandemic for years to come. Similarly, no one can or should take issue with the fact that governments have struggled (understandably so) with how best to minimize the devastating effects of the virus but nonetheless have done the best that they could with the information (or lack thereof) that was available. In such uncertain times, there is no path that is free from risk. This means that there must be careful forethought given to the steps that are taken to prevent the spread of the virus and a careful balancing of the need for those steps versus the impact those steps will affect all aspects of human existence. In engaging in the balancing analysis, it is incumbent upon the State Defendants to ensure that any steps taken are within appropriate legal boundaries. In this case, Plaintiffs seek injunctive relief, in sum, because they believe certain steps taken by the State Defendants exceeded the appropriate legal boundaries.

A restraining order may issue where “[i]t appears from the facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.” (Cal. Code Civ. Proc. § 527(c)(1).) “The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause.” (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73.) Toward that end, in determining whether an injunction should issue, “a court must weigh two “inter-related” factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-78.) As the California Supreme Court explained, “[t]he trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction.” (*Id.*, at 678.) To be clear, however, both factors must be present for an injunction to issue. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442-43.)

1. Merits of Plaintiffs’ Claims

In this case, Plaintiffs’ claims, although bearing different titles in the operative pleading, can be summarized as follows: (1) the January 2021 Framework violates the Equal Protection Clause as set forth in the California Constitution², (2) the State Defendants are in violation of SB 98, (3) the January 2021 Framework violates the Separation of Powers Clause of the California Constitution³,

² Although the State Defendants’ Opposition to Plaintiffs’ Ex Parte Application for Temporary Restraining Order filed on March 10, 2021 argued, in part, that the application should be denied because the complaint did not plead an Equal Protection claim predicated on Article I, Section 7 of the California Constitution, the argument was rendered moot (even assuming it was substantively correct) by the filing of the First Amended Complaint. As styled, the Fifth Cause of Action in the First Amended Complaint is “Violation of the Equal Protection Clause of the California Constitution.”

³ The State Defendants argue that Plaintiffs are unlikely to prevail on their first cause of action (violation of Article IX of the California Constitution) and their second cause of action (violation of the Separation-of-Powers Clause). As

and (4) the California Department of Public Health's ("CDPH") denial of the school district requests for waiver was unlawful. As discussed more fully below, the Court concludes that Plaintiffs have demonstrated the requisite probability of success on the merits.

a. The January 2021 Framework Violates the Equal Protection Clause

The California Constitution, Article I, § 7(a) provides, in pertinent part, that "[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws" "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." [Citations.] (*In re Eric J.* (1979) 25 Cal.3d 522, 531.) As Plaintiffs accurately note:

[t]he California Constitution thus prohibits the government from making a law, rule, or regulation that restricts the freedom of one group while not restricting the freedom of other similarly situated groups unless there is a rational basis connected to a legitimate governmental interest sufficient to justify the disparate treatment. Where "the disparate treatment has a real and appreciable impact on a fundamental right or interest," strict scrutiny applies. (Butt, *supra* 4 Cal.4th at 685-686.)

(Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Ex Parte Application for TRO ("Pl. Memo of P(s) & A(s)"), ll. 5-10.) At issue, in part, in this litigation, is the January 2021 Framework, which has as its effect the unequal treatment of students in the various Defendant School Districts. More specifically, secondary students in the Defendant School Districts have been prevented from returning to in-person learning whereas elementary students have been provided the opportunity to receive varying levels of in-person instruction. Indeed, there can be no dispute that students throughout the districts at issue have, as a result of frameworks or rules adopted by various governmental agencies, received differing forms and levels of education, which the evidence demonstrates have significantly affected the quality of education being delivered to students. Because of this, it cannot be denied that the January 2021 Framework touches upon, in a direct and significantly impactful way, a fundamental interest, namely education.

In analyzing whether education is a fundamental interest, the California Supreme Court in *Serrano v. Priest* (1971) 5 Cal.3d 584 commenced its analysis with the following observation:

[w]e, therefore, begin by examining the indispensable role which education plays in the modern industrial state. This role, we believe, has two significant aspects: first, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a

discussed in detail below, however, because the Court concludes that the Plaintiffs have demonstrated a likelihood of prevailing on their Fifth Cause of Action (violation of the Equal Protection Clause), this is sufficient to issue the provisional relief requested, and there is no need to analyze the likelihood of prevailing on all causes of action at this stage of the proceedings.

child's development as a citizen and his participation in political and community life. "[T]he pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable." (Note, Development in the Law – Equal Protection (1969) 82 Harv.L.Rev. 1065, 1129.) Thus, education is the lifeline of both the individual and society.

(*Id.*, at 605.) The court thereafter concluded that "the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest'." (*Id.*, 608-609.) The California Supreme Court has reached this conclusion time and time again. (See e.g., *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 880 ("[i]n view of the importance of education to society and to the individual child, the opportunity to receive schooling furnished by the state must be made available to all on an equal basis."); *Butt v. State of California* (1992) 4 Cal.4th 668, 685 ("[i]t therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibit maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts."))

While the State Defendants do not dispute the importance of education and, indeed, concede the State's ultimate responsibility to ensure a level of educational equality that meets constitutional standards, they nonetheless contend that the Plaintiffs have not made the requisite showing of a "constitutional disparity" because they have not demonstrated that "the actual quality of [a particular] districts' program, viewed as a whole, falls fundamentally below prevailing statewide standards[.]" (*Butt, supra*, 4 Cal.4th at 686-89.) To this point, the State Defendants contend that: (1) Plaintiffs have not alleged or established a "prevailing statewide standard" against which their opportunity to access education can be measured, and (2) "[n]or can the plausibly do so, as the evidence plaintiffs submitted establishes that many schools (and in San Diego, the majority of public schools) are not offering full-time in-person learning as plaintiffs ask this Court to compel." (State Defendants' Opposition to Plaintiffs' Ex Parte Application for Temporary Restraining Order ("State Defs. Opp."), p. 8, l. 23-p. 9, l. 4.) Given this, the State Defendants conclude that strict scrutiny of the disparity is not required and that the framework at issue should be analyzed using the rational basis standard. The Court respectfully finds this conclusion to be misguided.

Notably, the California Supreme Court in *Butt* confirmed that "[a] finding of constitutional disparity depends on the individual facts." (*Butt, supra*, 4 Cal.4th at 687.) Initially, the Court finds that it is disingenuous for the State Defendants to argue that Plaintiffs cannot demonstrate that the January 2021 Framework causes the school districts' programs to fall fundamentally below a prevailing statewide guideline because the evidence presented demonstrates that the nearly 73% of K-12 students in San Diego county have not been physically in a classroom in nearly one year. This argument is circular – how could Plaintiffs demonstrate the prevailing standard to be applied to in-person learning without being permitted to attend in-person learning? Moreover, and perhaps of more significance, the State Defendants' argument lacks credibility given that the State Defendants, themselves, perpetuated (if not created) the predicament in which the Plaintiffs

currently find themselves, physically shut out of the premises wherein the educational standard could be analyzed.

The fact that the majority of students in San Diego County have not physically been in a classroom for over year is not dispositive of a prevailing statewide standard. Instead, the Court looks to the Education Code for that issue. As Plaintiffs demonstrated, the prescriptions of California Education Code section 43504 are mandatory – local educational agencies *shall* offer in-person instruction to the greatest extent possible. This prescription was reiterated in AB86. As such, the Court concludes that the prevailing statewide standard is in-person learning⁴.

As an aside, Plaintiffs' preliminary showing suggests that the impact of the January 2021 Framework has caused and will continue to cause an extreme and unprecedented disparity on educational service and progress. Plaintiffs have presented evidence that general academic success, as measured by standardized grades, significantly has declined since the school closures and the implementation of remote learning nearly one year ago, with school districts issuing an enormous number of D and F grades in that period of time. (Plaintiffs' Notice of Lodgment of Exhibits in Support of Plaintiffs' Ex Parte Application for Temporary Restraining Order, Ex. 9 ("Pl. NOL, Ex. __"). As set forth in the Declaration of Cecilia Duenas, PsyD, "[i]n October of 2020, the Carlsbad Unified School District reported an over 300 percent increase in "F" grades compared to last year." (Declaration of Cecilia Duenas, PsyD, ¶ 4.)

To demonstrate the effect remote learning has had on an individualized basis, Plaintiffs have submitted the Declarations of A.I, who declared her son is now receiving C and D letter grades which he previously had never done before, C.R, who declared her son consistently had earned straight A(s) but, due to remote learning, fell behind and received F grades, and C.U., whose son had been a "solid A/B student his entire life" but finished the first semester of the 2020/2021 school year with failing grades and now 25 credits behind the pace necessary to graduate with his classmates. Based on the evidence presented, it is difficult to conclude that remote learning is an effective educational model.

Additionally, Plaintiffs have submitted evidence that distance learning has resulted in reduced instruction time, with some teachers being online for only 15 to 20 minute periods. (See Declaration of S.D. in Support of Plaintiffs' Ex Parte Application for Temporary Restraining Order, ¶ 7; Declaration of C.U. in Support of Plaintiffs' Ex Parte Application for Temporary Restraining Order, ¶ 8.) Indeed, such evidence begs the question how could such limited actual instruction time comport with prevailing statewide guidelines when the average class time pre-pandemic was, in many cases, three times more than this. While the State Defendants urge that such a deficiency falls on how the individual school district provide education, such a position ignores the disparities in *access* to education perpetuated by the January 2021 Framework.

⁴ To the extent that the State Defendants' counsel argued during the hearing that the prevailing statewide standard is distance learning, the Court finds this argument unavailing given that the State Defendants acknowledge that throughout the state schools have been and are in varied degrees of "open" and/or postures with regard to in-person learning.

Further, as explained by the California Supreme Court, education, “is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, *and in helping him to adjust normally to his environment*. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” (*Serrano v. Priest*, 5 Cal.3d at 606 (emphasis added).) As Plaintiffs have demonstrated, and the State Defendants have not refuted, remote learning has led to alarming rates of depression, suicidal ideation, anxiety, and substance abuse among children. (See Declaration of Veronica Naudin, M.D., FAAP, ¶ 7; Declaration of Anna Mendenhall, M.D., FAAP, ¶ 8; Declaration of Cecilia Duenas, PsyD.) More specifically, as Dr. Duenas explained in her declaration,

the Centers for Disease Control and Prevention found that from April to October 2020, hospitals saw a 24 percent increase in the proportion of mental health emergency visits for children ages 5 to 11, and a 31 percent increase for children ages 12 to 17. . . .

According to a report from FAIR Health of medical insurance claims from 2019 to 2020, there was a 334 percent increase in intentional self-harm claims among teenagers aged 13-18 as a percentage of all claims, a 95 percent increase in overdose claims and a 94 percent increase in in [sic] generalized anxiety disorder claims. . . .

It is my professional opinion, to a reasonable degree of medical certainty, that in-person learning is vital to the mental health of all children.

(Declaration of Cecilia Duenas, PsyD, ¶¶ 6-8.) With the mental health effects resulting from (or being exacerbated by) remote learning, one can conclude that disparate treatment being experienced by children affected by the January 2021 Framework is depriving those same children of a fundamental benefit of education, namely provision of the necessary tools to help children adjust normally to their environment.

Notwithstanding the above, the State Defendants contend that the Plaintiffs have failed to demonstrate that the State’s actions discriminate against an identifiable group and/or that the difference in the State’s approach between elementary and secondary grades is warranted because the groups are not similarly situated. In support of this contention, the State Defendants represent that there is evidence establishing different risks of transmission of and seriousness of illnesses from COVID-19 among younger children. For this proposition, the State Defendants rely on the Declaration of James Watt, M.D., M.P.H. and they cite to a document entitled “Evidence Summary:TK-6 Schools and COVID-19 Transmission updated December 20, 2020 and February 23, 2021. (See cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Safe-for-All-Plan-Science.aspx.) The Court respectfully must disagree with the State Defendants’ contention for several reasons.

First, the Declaration of Dr. Watt, while setting forth a historical perspective of the State’s response to COVID-19, provides no specific, admissible evidence in support of the State Defendants’

contention that elementary school students are not similarly situated with middle and high school students. Instead, in paragraph 36 of his declaration, Dr. Watt concludes, without reference to any specific report or study, that COVID-19-related risks in elementary-age students in grades TK-6 are lower than and different from the risks to staff and students that serve older students and that there appears to be a lower child-to-child and child-to-adult transmission in children under 10. Dr. Watts also notes, in paragraph 28 of his declaration, that elementary students are less likely to get COVID-19 because their systems are more accustomed to fighting off common colds. Again, however, Dr. Watt cites to no specific study for this conclusion. To the extent that Dr. Watt is referring to the document entitled “Evidence Summary:TK-6 Schools and COVID-19 Transmission updated December 20, 2020 and February 23, 2021,” as discussed more fully below, Dr. Watt’s declaration is unhelpful.

Second, while the State Defendants cite to (and request that the Court take judicial notice of) various governmental publications, guidelines, frameworks, legislation, and information accessible through various websites, including the link set forth above, the State Defendants did not provide the Court with hard copies of the information upon which it would have the Court rely. This is problematic because the information on websites has a shelf-life and may be changed after dates of last access. Seeming to acknowledge this, the State Defendants represent, in footnote 1 to their Request for Judicial Notice, that all links in that document are current as of March 11, 2021.

Third, when a party simply refers the Court to a website link, the party runs that risk that the Court is not able to access the information.⁵ For example, in the State Defendants’ Request for Judicial Notice, they request that the Court take judicial notice of “the following facts and matters in support of their opposition to plaintiffs’ ex parte application for a temporary restraining order . . . 18. California Department of Public Health, Evidence Summary: TK-6 Schools and COVID-19 Transmission, Dated December 20, 2020, updated February 23, 2021, available at [https://cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Safe-fir\[sic\]-All-Plan-Science.aspx](https://cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Safe-fir[sic]-All-Plan-Science.aspx).” The misspelling in the link initially hindered the Court’s ability to access the information, which is the information upon which the State Defendants purportedly rely for the disparate treatment of elementary versus secondary school students.

Fourth, the State Defendants proffer that this specific link is the proper subject of judicial notice because it is an official act of an executive department in that because it is an executive order, order of the public health department, and county health emergency operation. (See State Defs. Request for Judicial Notice, p. 5, ll. 18-22.) The “Evidence Summary,” however, is not such an order. Instead, it is a summary of, in some cases, unidentified studies conducted globally and nationally by unidentified individuals/groups. The State Defendants have proffered no legal authority for the proposition that the Court can take judicial notice of a governmental agency’s summary of studies done by unaffiliated and unidentified entities.

Fifth, even if the Court considers the Evidence Summary and Dr. Watt’ reliance on it, the summary generally talks about *children*, without defining the age groups considered. Throughout most of

⁵ For purposes of the hearing on the order to show cause why a preliminary injunction should not issue, parties are directed to lodge any additional authorities upon which they intend to rely in support of their respective positions.

the summary, the CDPH distinguishes instead only between “children” and “adults,” which vague distinction provides no support for the State Defendants’ position. While there is a specific reference to two distinct age groups in the Evidence Summary, the discussion upon which the State Defendants seems to rely similarly is unavailing.

More specifically, the Evidence Summary does include the following discussion:

There are two general explanations for why children get COVID-19 less frequently and have less severe disease compared to adults. The first is that they produce fewer ACE-2 receptors. Essentially, ACE-2 receptors are doorways into human cells for SARS-CoV-2, the virus that causes COVID-19. A study from May 2020 showed that elementary students produce fewer ACE-2 receptors than middle and high school-aged students, who produce fewer receptors than receptors [sic] adults. Consequently, children have fewer doorways into the body for the virus, which leads to fewer infections and less severe infections for those who catch the virus.

The other explanation is that, because children’s immune systems are used to fighting off colds, they are better primed to fight off COVID-19. Other viruses in the same family (coronaviruses) as the SARS-CoV-2 virus cause the common cold. Since they are in the same family of virus, some parts of the virus, including something called the S2 spike, are very similar. There is a study of children from 2011-2018 (before SARS-CoV-2 appeared) that shows that more children (ages 1-16) had antibodies against S2 spike than young adults (17-25), likely because they have coughs and colds from other coronaviruses more often than adults. It is likely a combination of these two phenomena-ACE-2 receptor production and pre-existing antibodies to other coronaviruses – that explain why children get disease less frequently and less severely.

This analysis, however, at least to the extent that the State Defendants rely on it for the basis of the January 2021 Framework, suffers from the following flaws: (1) no definitive data is provided so as to assess the propriety of the guess-work captured therein or from which to assess the vacuum in which the conclusion is reached, (2) the conclusions about the S2 spikes (along age lines that do not support a distinction among students in elementary, middle and high schools), pre-date COVID-19, and (3) it is contrary to the specific studies that were identified in the February 23, 2021 update, one of which was provided by Plaintiffs in their Notice of Lodgment.

In particular, Plaintiffs have presented the Court with the North Carolina study that is referenced in the February 23, 2021 update of the CDPH Evidence Summary. The North Carolina study, which is COVID-19 specific, demonstrates that there is no basis for distinguishing between elementary students, on the one hand, and secondary students, on the other, as it relates to the number of in-school transmission cases. To the contrary, the North Carolina Study concluded that

the number of in-school transmission cases for middle and high schools *combined* was precisely the same as for elementary schools. (Pl. NOL, Ex. 16.)

Further, as Plaintiffs point out, the French study relied upon by the CDPH in its Evidence Summary is inapposite because it was based on infection data at a single high school in January to March 2020, before any mitigation measures were implemented. This factor, namely the lack of implementation of any safety mitigation measures, also renders the information about the outbreak at the high school in Israel inapposite. Consequently, the State Defendants have not refuted the position asserted by the Plaintiffs, namely that students in public schools, regardless of grade, are similarly situated but they nonetheless are being treated differently under the January 2021 Framework.

In light of all of the considerations set forth above, the Court concludes that enforcement of the January 2021 Framework has had and will continue to have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.⁶ Given the significance of the issue at play in this litigation and given that the disparate treatment of similarly situated individuals implicates the State's constitutional duty, the Court must analyze the January 2021 Framework under a strict scrutiny standard⁷. Under the applicable standard of review, "the governmental entity 'bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.'" (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 921 quoting *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 785.) In assessing the propriety of the law, the Court also must consider whether the law is no more broadly drafted than necessary to serve the compelling government interest.

While the Court acknowledges the State Defendants have a compelling interest in protecting the public by stemming the spread of COVID-19, the Court cannot conclude that the January 2021 Framework is so narrowly tailored to serve the articulated compelling interest. To the contrary, the January 2021 Framework is selective in its applicability, vague in its terms, and arbitrary in its prescriptions. For example, the January 2021 Framework provides, in pertinent part, as follows:

The COVID-19 and Reopening In-Person Learning Framework for
K-12 Schools in California, 2020-2021 School Year (July 17, 2020)

⁶ Additionally, the State Defendants do not thoroughly address Plaintiffs' position that disparate outcomes for poor and minority children are increasing, with "[o]nly 60% of low-income students regularly log into their online classes, while 90% of high-income students do." (Pls. Memo of P(s) & A(s), p. 9, ll. 6-8; Pls. NOL, Ex. 24.) As the January 2021 Framework disparately affects those of different financial positions, and as disparate treatment on this basis has been determined to implicate a "suspect class," (*see Serrano v. Priest, supra*), the framework at issue arguably would require analysis under the strict scrutiny standard under this theory alone.

⁷ Even if the standard to be applied was "rational basis," which the Court concludes is not the appropriate standard in this case, as the Defendant School Districts point out in their March 12, 2021 Response to the Ex Parte Application for TRO, there is no rational basis to distinguish between schools in a county that happened to open more fully and quickly than other schools in a county that took time to implement safety measures before more fully reopening. To this point, regardless of any comparisons between public and private schools, the evidence presented demonstrates that there are numerous schools in San Diego County that opened to *all students* during the pandemic and that those schools remain open, which argument undermines the State Defendants' position that there is rational basis for the January 2021 Framework and/or any distinctions drawn therein. (*See* <http://covid-19.sdcoe.net/Reopening-Plan/School-Reopening-Dashboard>.)

Framework) permitted schools to reopen for in-person instruction at all grades if they are located in counties in the Red, Orange, or Yellow Tiers under the Blueprint for a Safer Economy. Operations for schools that are already open must adhere to the School Reopening Guidance section below. . . . ***Schools that have reopened are not required to close if the county moves to the Purple Tier or goes over a CR of 25 per 100,000 population.***

(Pl. NOL, Ex. 4, pp. 7-8 (emphasis added).) If the purpose of the January 2021 Framework is to stem the spread of the virus, how do the State Defendants justify the exception and/or the changing definitions of “open” and “reopening”? The State Defendants have not demonstrated that the disparate treatment of elementary schools and secondary schools serves the purpose of slowing the spread of COVID-19. To the contrary, if it is possible for some schools to continue to offer in-person instruction, even while the County is in the Purple Tier, it must be possible, with the appropriate precautions and adherence to standardized safety protocols, for all schools to offer at least some in-person instruction.

Further, the State Defendants effectively concede that the undefined “stable groups” requirement imposed by the January 2021 Framework is vague, ambiguous, and arbitrary, as evidenced by the State’s implicit retreat from the requirement by the CDPH’s directive that the school districts follow the “intent” of the requirement, even in the absence of the ability to discern that intent. Indeed, the State Defendants’ counsel conceded at the outset of the March 15, 2021 hearing that the “stable groups” reference is a guideline, not a requirement. Moreover, the State Defendants proffer no satisfactory justification for the arbitrary retreat from the previously prescribed social distancing requirement (which provided “wiggle” room) to the four-foot distancing requirement mandated by the January 2021 Framework, which modification has affected the Defendant School Districts’ ability to reopen for in-person learning and/or the extent to which the Defendant School Districts can offer in-person learning. As such, Plaintiffs have demonstrated that the January 2021 Framework has created an unconstitutional disparately applied impediment to schools offering in-person instruction which impediment is not so narrowly tailored as to serve the underlying compelling state interest.

The State Defendants alternatively posit that it is unlikely that Plaintiffs will prevail on the merits because Plaintiffs “cannot establish that the harms that [Plaintiffs] allege are caused by the State’s actions rather than other factors, such as how a particular school conducts its distance learning program or whether and how the school chooses to open when previously permitted to do so.” (State Defs.’ Opp. p. 9, l. 24 – p. 10, l. 2.) The Court finds this argument unpersuasive.

To reiterate, Plaintiffs’ evidence demonstrates, and the State Defendants do not dispute, that it is possible for local educational agencies to offer, at the very least, some in-person instruction. Indeed, some of the defendant school districts did reopen and continue, ***to this day***, to operate elementary schools with at least some in-person learning. Further, as evidenced by the Defendant School Districts’ lack of opposition to the requested temporary restraining order, those Defendants concur that the State Defendants’ actions, namely the implementation of the January 2021 Framework and the effective denial of the Defendant School Districts Safety Review Requests,

effectively have prevented the Defendant School Districts from complying with the prescriptions of California Education Code section 43504.

As reflected in correspondence provided by CUSD Superintendent Dr. Ben Churchill dated January 15, 2021, but for the January 2021 Framework, CUSD was ready to expand to Phase 3 of its reopening plan at both the elementary and the secondary level on January 25, 2021. However, with the issuance of the January 2021 Framework, Dr. Churchill noted, in bold, that CUSD planned to continue to Phase 3 of its elementary reopening on January 25, 2021 but that “[a]t the secondary level, we will not be allowed by CDPH to implement the hybrid schedule as planned on January 25. (Pl. NOL, Ex. 5 (emphasis in original).) This position is confirmed in the Response of Defendants Carlsbad Unified School District and Poway Unified School District to Plaintiffs’ Ex Parte Application for a Temporary Restraining Order, in which those defendants note:

[a]ccordingly, the Districts are in support of Plaintiffs’ application for a temporary restraining order inasmuch as the State and Dr. Naomi Bardach are the sole barriers between a safe reopening and return to in-person instruction for their middle schools and comprehensive high schools. Absent the State Defendants’ actions, the Districts would already be providing in person instruction to the greatest extent possible, based on the District’s local discretion and the counsel of the local San Diego public health officials.

(Response of Defendants Carlsbad Unified School District and Poway Unified School District to Plaintiffs’ Ex Parte Application for a Temporary Restraining Order, p. 10, ll. 20-25.) Given this, the State Defendants should not be permitted to deny liability when they, themselves, are hindering the Defendant School Districts from complying with the mandates of the California Education Code, even if the State Defendants, as discussed below, are not themselves subject to compliance with the pertinent sections of the Education Code.

In further support of their contention that the Plaintiffs have not shown the likelihood that they will prevail on the merits, the State Defendants also assert that the Plaintiffs:

completely ignore the substantial efforts that the State has made, not only to support safe reopening of schools, but also to ensure school districts have the resources to, and in fact provide, extended learning to address any impacts on students and disparities that may have occurred due to the implementation of distance learning in response to a once-in-a-century pandemic that has cost more than 54,000 lives of Californians to date.

(State Defs’ Opp. p. 10, ll 5-9.) For this proposition, the State Defendants cite to AB86, which was approved by the Governor on March 5, 2021 and filed with the Secretary of State the same day. While the Court concurs that the State is making fiscal efforts to mitigate the damage that has been done, the State Defendants’ argument somewhat supports Plaintiffs’ points for two reasons.

First, the State Defendants argue that the State has taken steps to ensure resources are provided to address any impacts and disparities that may have occurred due to the implementation of distance learning. The Court takes this as an implicit, if not explicit, acknowledgment that disparities have occurred. As discussed herein, those disparities have only been exacerbated by the perpetuation of distance learning for some students, namely secondary students, but not for others, namely elementary students; in sum, there has been unequal treatment of similarly situated individuals.

Second, AB86 resulted in the adoption of California Education Code section 43520, which provides, in pertinent part, that:

[i]t is the intent of the Legislature that local educational agencies offer in-person instruction to the greatest extent possible during the 2020–21 school year, consistent with subdivision (b) of Section 43504, and, starting in the 2020–21 school year and continuing into the 2022–23 school year, expand in-person instructional time and provide academic interventions and pupil supports to address barriers to learning and accelerate progress to close learning gaps. The Legislature strongly encourages local educational agencies to prioritize pupils who would benefit the most from in-person instruction and who have been identified as needing integrated supports or academic interventions, *including, but not limited to*, pupils with disabilities, youth in foster care, homeless youth, English language learners, pupils from low-income families, pupils without access to a computing device, software, and high-speed internet necessary to participate in online instruction, disengaged pupils, credit-deficient high school pupils, pupils at risk of dropping out, pupils with failing grades, and pupils identified as needing social and mental health supports.

(Emphasis added.) The evidence submitted by the Plaintiffs, particularly when considered against the backdrop of the expansive language of Section 43520 emphasized above, suggests that *all students* in TK-12 public schools fall into the categories of students for whom the Legislature strongly encourages in-person instruction, and Plaintiffs have demonstrated that the January 2021 Framework, which is not modified substantively by SB86, undermines the expressly articulated legislative intent.

b. SB 98/California Education Code section 43504

Plaintiffs also contend that the State Defendants, as well as the Defendant School Districts, are in violation of California Education Code section 43504⁸. In particular, section 43504(b) requires

⁸ The Court is perplexed by the State Defendants' contention that Plaintiffs, in their *ex parte* papers, fail to address, among other things, the claim under SB 98. (See State Defs. Opp., p. 7, ll. 22-24.) To this point, in their *ex parte* application, Plaintiffs expressly state, which statement is supported by the evidence submitted, that numerous schools in this state (indeed, several located within the school districts named as Defendants) have reopened "demonstrating not only that it is "possible" to reopen, but that it is "possible" to do so safely without the new and arbitrary rules of the January 2021 Framework." (Pl. Memo of P(s) & A(s), p. 18, ll. 15-17.) While the Court concludes that California

that “[a] local educational agency shall offer in-person instruction to the greatest extent possible.” A “local educational agency,” for purposes of the statute is defined to mean “a school district, county office of education, or charter school, excluding a charter school classified as a nonclassroom-based charter school pursuant to Sections 47612.5 and 47634.2 as of the 2019–20 fiscal year.” (Cal. Educ. Code § 43500(c).) Given the plain language of the statute, section 43504 does not apply to the State Defendants. As a result, Plaintiffs have not demonstrated that there is a likelihood that they will prevail on their fourth cause of action as alleged against the State Defendants.⁹

c. CDPH’s Approval with Conditions of Safety Review Request

In response to the January 2021 Framework, CUSD, SDUHSD, and PUSD applied for a “Safety Review Request,” which, if granted, effectively would have served as a waiver of the pertinent requirements under the January 2021 Framework and would have allowed those school districts to open their secondary schools for in-person learning as they stood poised to do. (Pl. NOL, Ex. 7.) As reflected in Dr. Churchill’s Declaration, CUSD spent millions of dollars implementing safety measures that met with approval by local health officials, and the district had reached an agreement with the pertinent labor groups based on the safety measures adopted. (Declaration of Benjamin Churchill, Ed.D. in Support of Defendant Carlsbad USD’s Response to Plaintiffs’ Ex Parte Application for a Temporary Restraining Order, ¶¶ 15-16; Declaration of Marian Kim, Ed.D. in Support of Defendant Poway USD’s Response to Plaintiffs’ Ex Parte Application for a Temporary Restraining Order, ¶ 18.) The Defendant School Districts’ Safety Review Request was “Approved with Conditions,” (the “Approval with Conditions”). (See Pl. NOL, Ex. 15.) Plaintiffs argue that the “Approval with Conditions” suffers the same fate as the January 2021 Framework and that the Approval with Conditions was predicated upon “arbitrary, capricious, and unlawful agency action”. The Court agrees.

First, there is no need for a Safety Review Request in the absence of enforcement of the January 2021 Framework. Moreover, the State’s adoption of a safety review process after the implementation of the January 2021 Framework suggests that the January 2021 Framework is not so narrowly tailored to pass strict scrutiny analysis.

Second, to approve with conditions the Safety Review Request on the ground that there is an “[i]nsufficient track record of experience implementing safety protocols and routines, as indicated by small percentages of students being on campus” is, as Plaintiffs contend, circular. As set forth above, the State Defendants have prevented the students at issue from returning in sufficient numbers to allow a sufficient track record of experience, whatever it means to be “sufficient.”

Moreover, to the extent that the State Defendants conditionally approved the Defendant School Districts’ Safety Review Request on the ground that there was an “inadequate plan for ongoing safety monitoring using an asymptomatic testing regime,” the State Defendants’ position does

Education Code section 43504 does not apply to the State Defendants, the State Defendants’ actions do prevent the School District Defendants from complying with the Education Code mandate.

⁹ Plaintiffs have demonstrated a likelihood that they will prevail on the fourth cause of action as it is alleged against the Defendant School Districts. However, the temporary injunctive relief sought is only against the State Defendants.

nothing more than highlight the vagaries from which the underlying framework suffers in the first instance. This is true as to the changing definition of “open” as well, which demonstrates the unfettered discretion with which the State Defendants change pertinent rules. Compliance with rules that are ever-changing cannot be accomplished fully, and the State Defendants fail to adequately address the Safety Review Request issue in their opposition papers. In sum, Plaintiffs have demonstrated a likelihood of prevailing on the merits with respect to the impropriety of the State Defendants’ response to the Defendant School Districts’ Safety Review Request.

2. Interim Harm

Given that Plaintiffs have demonstrated the likelihood of prevailing on the merits as to the claims discussed above, the Court must analyze the relative harm to the parties from the issuance or nonissuance of the provisional relief requested. Initially, the Court is perplexed by the State Defendants’ contention that the “Plaintiffs have not shown that any interim harm they may suffer is irreparable.” (State Defs’ Opp., p. 12, l. 24.) To the contrary, the Plaintiffs have submitted numerous declarations, many of which are uncontradicted, detailing the substantial harm that has been inflicted and will continue to be inflicted if, at a minimum, a temporary restraining order is not issued. The evidence submitted demonstrates that the January 2021 Framework and the Approval with Conditions, which perpetuate remote learning for some students while not for others, has created an impermissible divide in access to education as otherwise guaranteed by the California Constitution and as otherwise prescribed by the California Education Code. As the California Supreme Court in *Serrano* noted, “unequal education . . . leads to . . . handicapped ability to participate in the social, cultural, and political activity of our society.” (*Serrano, supra*, at 606.) At a minimum, the declarations of the named Plaintiffs demonstrate just how significantly the January 2021 Framework has adversely impacted secondary students’ abilities to fully and in a meaningful way participate in an education system that should be equally available to all students.

In contrast, the State Defendants have offered no evidence to suggest that the harm the State will suffer, if any, as a result of the issuance of injunctive relief outweighs the harm that will befall the Plaintiffs if the injunctive relief is not granted. The State Defendants argue that the public has a strong interest in protecting itself from infectious disease and in curbing COVID-19 to prevent illness and death. The Court concurs, as the Court is confident so too do Plaintiffs. Indeed, the Court does not take Plaintiffs’ position to be one that disregards the State’s need to ensure that all who participate in the education process, teachers, staff, and students alike, are protected to the greatest extent possible as the schools reopen.

Where the State Defendants and the Court diverge, however, is with the State Defendants’ contention that “[t]he public interest would be directly harmed if the State is unable to enact temporary restrictions tailored to fit regional needs to stave off the very real possibility of increased rates of transmission caused by school reopenings with no meaningful restrictions . . .” (State Defs. Opp., 13, ll. 11-13.) While the Court takes no issue with the premise, the Court disagrees

that the January 2021 Framework is “tailored to fit regional needs.”¹⁰ The State Defendants have offered no admissible evidence to justify the disparate treatment of similarly situated students, which failure then undermines their contention that the January 2021 Framework is tailored to fit regional needs or that the Approval with Conditions serves the regional needs.

The State Defendants additionally argue that any limited and temporary harm Plaintiffs may suffer from the January 2021 Framework is outweighed by the potential harm to the public health should the enforcement of the January 2021 Framework be enjoined, especially because the January 2021 Framework “may become moot if San Diego advances to the Red Tier under the March 4 update” In the State Defendants’ Supplemental Opposition filed on March 12, 2021, the State Defendants more specifically argue that “the extraordinary relief Plaintiffs seek should be denied because their schools will be able to reopen on Wednesday.” (State Defendants’ Supplemental Opposition, p. 5, ll. 7-8.) From this, the State Defendants conclude that emergency relief is not warranted. The issue of mootness, however, already has been rejected by courts faced with challenges to orders promulgated purportedly to attempt to stem the spread of COVID-19.

As courts have explained, applications to enjoin orders are not rendered moot where the plaintiffs remain subject to the real possibility that evolving circumstances may lead to the resurrection/imposition of the same restrictive orders in the future. (*See County of Los Angeles Department of Public Health v. Sup. Ct.* (2021) 2021 DJDAR 1969, 1971 citing *Roman Catholic Diocese v. Cuomo* (2020) 592 U.S. ___, [141 S.Ct. 63, 68, 208 L.Ed.2d 206, 210].) In this case, the State Defendants do not confirm or otherwise guarantee that once the County moves into the Red Tier, students may be free from concerns about future distance learning mandates. This case presents the classic example of a “substantial and continuing public interest” that is capable of repetition yet could evade review, a conclusion supported by the State Defendants’ acknowledgment that the existing framework is “continually adjusted to account for evolving scientific understanding and changing conditions . . .”. (*See Amgen Inc. v. California Correctional Health Care Services* (2020) 47 Cal.App.5th 76, 728; State Defendants’ Supp. Opp., p. 14, ll. 10-12.)

For all of the foregoing reasons, the Court grants Plaintiffs’ request for and hereby issues a temporary restraining order, albeit more limited than that specifically requested by Plaintiffs. The Court issues a temporary restraining order enjoining and restraining the Defendants from: (1) applying and enforcing the provisions of the January 2021 Framework, which framework prevents Plaintiffs’ children and other children in TK-12 public schools from receiving in-person instruction; and (2) applying and enforcing the March 7, 2021 “Approval with Conditions” of Safety Review Requests by SDUHSD, CUSD, and PUSD.

¹⁰ As the United States Supreme Court has explained, under the Constitution, the responsibility for addressing COVID-19 matters such as phased reopenings and school closures lies with the state and local governments, not the courts. That being said, the United States Supreme Court also has explained that COVID-19 is not a “[b]lank check for a State to discriminate There are certain constitutional red lines that a State may not cross even in a crisis.” (*County of Los Angeles Department of Public Health v. Sup. Ct.*, *supra*, at 1972 citing *Jacobson v. Massachusetts* (1905) 197 U.S. 11.)

Further, the parties are ordered to appear on March 30, 2021 at 9:00 a.m. in Department N-27 of this Court to show cause why a preliminary injunction pending trial in this action should not be ordered as follows:

- (1) Restraining and enjoining you, your officers, agents or any other persons acting with you or on your behalf from applying or enforcing the provisions of the January 2021 Framework or other orders, statutes or laws that include the prescriptions/provisions of the January 2021 Framework;
- (2) Restraining and enjoining you, your officers, agents or any other persons acting with you or on your behalf from applying or enforcing the March 7, 2021 "Approval with Conditions" of Safety Review Requests by SDUHSD, CUSD, and PUSD; and
- (3) Directing the Defendant School Districts to reopen their schools for in-person instruction to the greatest extent possible at the earliest practicable time.

The Order to Show Cause and supporting papers shall be served on all Defendants no later than March 16, 2021 by electronic service. Proof of such service shall be filed with the Court no later than March 17, 2021. Any additional opposition papers shall be filed and served by Defendants on Plaintiffs by electronic service no later than March 23, 2021. Any additional reply papers shall be filed and served by electronic service by Plaintiffs on Defendants no later than March 26, 2021.

IT IS SO ORDERED.

Date: MAR 15 2021

Cynthia A. Freeland
Cynthia A. Freeland
Judge of the Superior Court

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

13 A.A. et al.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, in his official
capacity as Governor of the State of
17 California, et al.,

18 Defendants.

Case No. 37-2021-00007536-CU-WM-NC

**[PROPOSED] ORDER ON PLAINTIFFS'
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Dept: N-27
Judge: Hon. Cynthia A. Freeland
Date: March 10, 2021
Time: 8:30 a.m.

Action Filed: February 16, 2021
Trial Date: Not set

FILED
Clerk of the Superior Court

MAR 15 2021

By: M. Garland

1 The hearing on Plaintiffs' ex parte application for a temporary restraining order and order
2 to show cause re a preliminary injunction, having come in on March 10, 2021, at the above-
3 entitled Court, and the Court, having considered the pleadings in this action, the memorandum of
4 points and authorities, declarations filed, and argument of counsel, and good cause appearing:

5 **ORDER TO SHOW CAUSE**

6 To Defendants GAVIN NEWSOM, Governor of the State of California, DR. MARK
7 GHALY, Secretary of the Department of Health and Human Services of the State of California;
8 DR. NAOMI BARDACH, Successful Schools Team Lead and Safe Schools for All Team Lead
9 for the Department of Health and Human Services of the State of California; DR. TOMÁS
10 ARAGÓN, Director and State Public Health Officer of the Department of Public Health of the
11 State of California (collectively, "State Defendants") and to Defendants San Dieguito Union High
12 School District ("SDUHSD"), Carlsbad Unified School District ("CUSD"), and Poway Unified
13 School District ("PUSD"); Oceanside Unified School District ("OUSD"); San Marcos Unified
14 School District ("SMUSD"); and Vista Unified School District ("VUSD") (collectively, "School
15 District Defendants"):

16 Based upon the ex parte application filed in this action, you are ordered to appear on
17 MARCH 30, 2021, at 9:00 ~~a.m.~~/p.m. in Department N-27 of this
18 Court to show cause why a preliminary injunction pending trial in this action should not be
19 ordered as follows:

20 1. Restraining and enjoining you, your officers, agents, or any other persons acting
21 with you or on your behalf from applying and enforcing the provisions of the January 2021
22 Framework ~~and any other related or subsequent government orders~~ ^{any orders} ~~that prevent~~ ^{include}
23 ~~the prescriptions/provisions of January 2021 Framework~~
24 ~~Plaintiffs' children and any other children in TK-12 schools in the State of California from~~
~~receiving in-person instruction in any public or private school;~~

25 2. Restraining and enjoining you, your officers, agents, or any other persons acting
26 with you or on your behalf from applying and enforcing the March 7, 2021 "Approval with
27 Conditions" of Safety Review Requests by SDUHSD, CUSD, and PUSD; and

28 3. Ordering the School District Defendants to reopen ~~all~~ their schools for ~~some form~~

1 ~~of in-person instruction within seven days and to return to full-time in-person instruction no later~~
2 ~~than April 15, 2021.~~ *to the greatest extent possible at the earliest practicable time.*

3 This Order to Show Cause and supporting papers shall be served on Defendants no later
4 than 3/16, ²⁰²¹~~2020~~, by electronic service. Proof of such service shall be filed and
5 delivered to the court hearing the Order to Show Cause no later than 3/17, 2021.

6 *additional opposition*
Any ~~reply~~ papers shall be filed and served by Defendants on Plaintiffs by electronic service
7 no later than 3/23/21 ~~a.m./p.m.~~ on 2021. *Any additional reply papers shall be filed and served by electronic service by Plaintiffs on Defendants no later than 3/24/21.*

8 TEMPORARY RESTRAINING ORDER

9 Pending hearing on the above Order to Show Cause, Defendants, their officers, agents,
10 and/or any other persons acting with them or on their behalf, are restrained and enjoined from:

11 1. Applying and enforcing the provisions of the January 2021 Framework ^{or} ~~and any~~
12 ~~any other related or subsequent government orders, statutes, or laws that prevent Plaintiffs' children~~
13 ~~and any other children in TK-12 schools in the State of California from receiving in-person~~
14 ~~instruction in any public or private school; and~~ *that include the prescriptions/provisions of the January 2021 Framework*

15 2. Applying and enforcing the March 7, 2021 ~~applying and enforcing the March 7,~~
16 ~~2021~~ "Approval with Conditions" of Safety Review Requests by SDUHSD, CUSD, and PUSD.

17 IT IS SO ORDERED.

18
19 Dated: 3-15-21

Cynthia A. Freeland
Hon. Cynthia A. Freeland
Superior Court Judge

Cynthia A. Freeland

EXHIBIT B

COVID-19 and Reopening In-Person Instruction Framework & Public Health Guidance for K-12 Schools in California, 2020-2021 School Year

January 14, 2021

CALIFORNIA
ALL

Your Actions
Save Lives



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Overview

The California Department of Public Health (CDPH) developed the following framework to support school communities as they decide when and how to implement in-person instruction for the 2020-2021 school year. This document is rooted in the scientific evidence available to date and supports twin goals: **safe** and **successful** in-person instruction.

Understanding and evidence about the transmission and epidemiology of SARS-CoV-2, the virus that causes COVID-19, has evolved significantly over the course of the pandemic. Schools throughout the state are now in various stages of instruction including fully distance learning, fully in-person learning, and hybrid instruction based on local conditions.

Key mitigation strategies, studied in multiple settings and used successfully in schools nationally and internationally, allow for safe in-person instruction. The thoughtful implementation of mitigation strategies, specific to school context, provides a careful and effective pathway forward as community transmission rates fluctuate.

Information about the latest science of COVID-19 transmissions, including evidence regarding the lower risk of transmission for elementary aged students compared to middle and high-school aged students, is available here as an evidence summary. However, new evidence and data about COVID-19 transmission, including variations by age, and the effectiveness of disease control and mitigation strategies continues to emerge regularly.

Recommendations regarding in-person school reopening and closure should be based on the latest available evidence as well as state and local disease trends and we will update this guidance as needed to reflect new evidence.

This document is intended to provide an update to the *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year (July 17, 2020)* guidance. This document also provides a consolidation of content from other CDPH COVID-19 and school-related guidance and supersedes previous CDPH COVID-19 and Cal/OSHA school guidance.

AUTHORITY

This guidance is a public health directive that applies to all public and private schools operating in California. Under operative executive orders and provisions of the California Health and Safety Code, schools must comply with orders and guidance issued by the California Department of Public Health and relevant

local health departments (LHDs) to limit the spread of COVID-19 and protect public health.

Governmental and non-governmental entities at all levels have issued guidance and directives relating to the safe reopening of schools for in-person instruction. Schools may comply with guidance from other federal, state, local, and non-governmental sources, to the extent those guidelines are not weaker than or inconsistent with state and local public health directives.

This updated directive also incorporates two other public health directives issued January 14, 2021, related to: (1) reporting details of any positive case of a person who has been on campus to LHDs and (2) reporting to CDPH whether and to what degree all public and private schools have reopened to serve students in-person on campus. These directives are attached as Appendices 3 and 4.

SUMMARY OF CHANGES AND ADDITIONS

CDPH developed this comprehensive framework to support school communities as they determine how to implement in-person instruction for the remainder of the 2020-2021 school year.

This document is intended to consolidate and update prior state public health guidance and orders related to schools. Specifically, this document supersedes the following guidance, orders, and frequently asked questions:

- *COVID-19 Industry Guidance: Schools and School-Based Programs* (first published in May 2020; last updated August 3, 2020).
- *The COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year* (July 17, 2020).
- The Elementary Education Waiver process and the associated School Waiver Letter and Cover Form and Local Health Officer Waiver Notice Form (all issued on August 3, 2020).
- CDPH Schools Frequently Asked Questions (first issued August 3, 2020; last updated October 20, 2020).

This update provides both K-12 schools and LHDs additional guidance for providing in-person instruction, including:

1. Criteria and processes for school reopenings under the Blueprint for a Safer Economy framework. (Updated on January 19, 2021 to clarify language in the Re-open definition. Updated on February 22, 2021 to clarify eligibility window for re-opening.)
2. Considerations intended to help school community leaders plan for and prepare to resume in-person instruction including steps to take when a

- student or staff member is found to have COVID-19 symptoms during the school day and while participating in before and after school programs.
3. Response to confirmed COVID-19 infections when:
 - a. a case of COVID-19 is confirmed in a student or staff member; and
 - b. a cluster or outbreak of COVID-19 at a school is being investigated.
 4. Physical distancing in classrooms.
 5. Implementation of stable groups of students and staff.

This document does not modify or supersede the Guidance Related to Cohorts for Children and Youth (first issued on August 25, 2020; last updated September 4, 2020), which applies to groups of children and youth in controlled, supervised, and indoor environments. The Cohort Guidance continues to allow schools that are not permitted to reopen under state or local public health directives and schools (and any grades at schools) that have not yet reopened if permitted to do so to serve students in-person in small, stable cohorts, as specified in the Cohort Guidance.

DEFINITIONS

Schools and Local Educational Agencies (LEAs): As used throughout this document, refer to county offices of education or their equivalent, school districts, charter schools, and the governing authorities of private schools (including nonpublic nonsectarian schools).

Transitional Kindergarten: Means the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate. As used throughout this document, "kindergarten" is inclusive of transitional kindergarten.

Cohorts: In this document, "cohorts" has a specific meaning, which are groups of students who are meeting for targeted supports and intervention services, under the direction of an LEA, while the school is closed to in-person instruction and in addition to distance learning. Sometimes these groups are also called "learning hubs" or "pods." Regardless of the name, all of the provisions in the Cohorting Guidance must be followed for such cohorts to meet, whether they are operated by LEAs, non-profits, or other providers, as a maximum of 16 individuals (students and staff). In this document, "cohort" does not refer to the more general "stable groups" that are described in the Stable Group Guidance section below.

Reopen for in-person instruction:

What does it mean to be "open" or "reopened"? The term "open" or "reopen" refers to operations for at least one grade at the school that are permitted only

if the county satisfies the eligibility requirements for schools to “open” or “reopen.” Specifically, the school must have given all students in at least one grade the option to return for in-person instruction for at least part of the school-week to be considered to “open” or “reopen.” This includes a school that has offered all students in at least one grade the option of receiving in-person instruction for only certain days during the week (commonly referred to as a “hybrid” model). Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” or “reopened.”

In addition, if only some students were being served in-person in a school in a county in the Red Tier or lower (e.g., only students with disabilities) and all students in at least one grade did **not** have the option to return in-person as described above, the school has not “opened” or “reopened.” In such circumstances, if the school is located in a county that shifts to the Purple Tier, the school may continue serving the students in-person as it did as of January 14, 2021, but it may not bring additional students back for in-person instruction and services, unless it adheres to the Cohort Guidance for the students newly brought back in-person.

Is a school “reopened” if it was previously permitted to reopen but became ineligible to reopen before actually reopening? No. Schools must have actually reopened for in-person instruction (using the definition above) while the county was in the Red Tier in order to remain open if the county moves back to Purple Tier, outside of the three-week period allowed for opening noted below in the “School re-opening eligibility window” section. If the county is in the Purple Tier, and the three-week period has passed, the school must wait until it is eligible again.

If a school was implementing a phased reopening (e.g., only opened grades 9-10 for in-person instruction with set plans to phase in grades 11 and 12) while the county was in the Red Tier, the school site may continue their phased reopening if the county reverts back to the Purple Tier, if authorized by local health officer (LHO). This is only applicable to individual school sites. If a school district has a phased reopening of their schools, the schools in that district that did not open for in-person instruction may not re-open until the county meets the reopening criteria.

This also applies to schools subject to the updated Elementary Reopening Process (see below) applicable to the Purple Tier. Even if the school previously received a waiver under the former Elementary Education Waiver Process or meets the conditions to reopen under the updated Elementary Reopening Process, if it has not yet reopened within the three-week period described below in “School re-opening eligibility window” and the county case rate (CR) exceeds the criteria described below, the school must delay reopening until the

county case rate drops below the threshold.

In-Person School Reopening

The two subsections below describe the requirements for all schools, including those that have already reopened and those that have not. The Blueprint for a Safer Economy continues to inform the school reopening process. The Blueprint for a Safer Economy is based on Tiers, defined using the CR, the 7-day average of daily COVID-19 cases per 100,000 population, and the test positivity in a county. This Schools Framework uses the adjusted case rate, as described in the Blueprint.

Under this updated guidance, all schools must complete and post to their website homepages a COVID-19 Safety Plan (CSP), described below in COVID-19 Safety Plan for In-person Instruction section (page 10) prior to reopening for in-person instruction. Schools that have already reopened are required to post their CSPs by February 1, 2021. The CSP is intended to consolidate requirements to develop written plans pursuant to CDPH guidance first issued in May 2020 and the Cal/OSHA Emergency Temporary Standards finalized in November 2020.

Of note, the Cal/OSHA Emergency Temporary Standards require a written plan called the Cal/OSHA COVID-19 Prevention Program (CPP) (see the COVID-19 Safety Plan for In-person Instruction for more information); therefore, schools are expected to have already created this written plan. In order to align with Cal/OSHA standards and minimize burden to schools, the CPP for the school is the first component of the CSP.

As described below, under the updated Elementary Reopening Process, schools must also submit a copy of the CSP to the LHD and the State Safe Schools for All Team before they reopen elementary schools if they are operating within a jurisdiction or county that is in the Purple Tier.

REQUIREMENTS FOR SCHOOLS THAT HAVE ALREADY REOPENED

The *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year* (July 17, 2020 Framework) permitted schools to reopen for in-person instruction at all grades if they are located in counties in the Red, Orange, or Yellow Tiers under the Blueprint for a Safer Economy. Operations for schools that are already open must adhere to the School Reopening Guidance section below.

Schools that have already reopened for in-person instruction must, by February 1, 2021, complete and post a COVID-19 Safety Plan (CSP) to their website homepage or, in the case of schools that do not maintain websites, in another

publicly accessible manner, to continue operating in-person instruction, as described in the Covid-19 Safety Plan for In-Person Instruction section.

Schools that have reopened are not required to close if the county moves to the Purple Tier or goes over a CR of 25 per 100,000 population. See School Closure Determinations below for more information.

CRITERIA TO REOPEN FOR IN-PERSON INSTRUCTION

Red, Orange, and Yellow Tiers. Consistent with the July 17 Framework, schools may reopen at all grades if they are located in counties in the Red, Orange or Yellow Tiers under the Blueprint for a Safer Economy. Operations once reopened must adhere to the updated Sector Guidance for School and School-Based Program reflected in this document (see below). Schools that reopen under this paragraph must complete and post a CSP to their website homepage before reopening for in-person instruction, as described in the CSP Posting and Submission Requirements for In-Person Instruction [section](#).

Purple Tier. Schools may not reopen for grades 7-12 if the county is in Purple Tier. Subject to the limitation in the bullet immediately below, schools serving grades K-6 may reopen for in-person instruction in the Purple Tier, including during a State of California Regional Stay at Home Order, if they complete and post a CSP to their website homepage and submit the CSP to their local health officer (LHO) and the State Safe Schools for All Team and there are no identified deficiencies, as described in the Covid-19 Safety Plan (CSP) Posting and Submission Requirements for In-Person Instruction [section](#) below.

- **K-6 schools in counties in Purple Tier with CR \geq 25:** Schools serving students in grades K-6 may not reopen for in-person instruction in counties with adjusted CR \geq 25 cases per 100,000 population per day. They may post and submit a CSP, but they are not permitted to resume in-person instruction until the county adjusted CR is $<$ 25 per 100,000 population per day according to the Blueprint for a Safer Economy posted [here](#). The Blueprint is released weekly on Tuesdays and takes effect the next day on Wednesday. The Blueprint adjusted CR reflects a 7 day average and a 7-day lag in its calculation (described [here](#)), so reflects consistent and ongoing downwards trends of being below a CR of 25. The choice of a case rate of $<$ 25 reflects [recommendations](#) from the Harvard Global Health Institute analysis of safe school reopening policy. Please find additional information on how the adjusted CR is calculated [here](#). Recognizing that re-opening for in-person instruction takes time to routinize and improve safety, and that some schools may have already been conducting in-person learning successfully and had time to optimize all their policies and procedures to support minimal disease transmission

on-site and detect new cases, schools who have already opened, as defined above, with minimal or no in-school transmission, may remain open and may consider increasing testing per CDPH supported testing framework.

- **School re-opening eligibility window:** During the pandemic, counties move above and below an adjusted case rate of 25 and counties move into and out of the Red Tier. School communities may need time to organize final Board approvals and do final preparations for safe school opening once a county has met the relevant criterion for school re-opening. To address this, schools have a three-week period to open, starting the day the county meets the criterion for re-opening, even if the county stops meeting the criterion during that window (i.e., case rate is ≥ 25 in a subsequent calculation or the county assignment goes back to the Purple Tier during the window). The window will be determined as follows: The first day a county is considered in the Red Tier is the Wednesday following the weekly county tier assignments are announced and posted on the Blueprint website (Tuesdays). Similarly, the first day that elementary schools in a county are eligible for the elementary reopening process is the Wednesday after a weekly case rate of less than 25 is posted. For example, if a county is assigned to the Red Tier on Tuesday, March 9, the first full day the county is in the Red Tier is Wednesday, March 10. The window of eligibility for re-opening would continue until the end of the day on March 30th regardless of any change to Purple tier assignment during that time. On March 31st, schools in that county would not be able to open if the county had gone back to the Purple tier. If the county is in the Red Tier on March 31st, then the schools remain eligible to re-open. The goal of the three-week window is to facilitate calm and safe school re-openings.

These new criteria and the requirements below replace the Elementary Education Waiver (issued August 3) that allowed LHOs to grant a waiver to school applicants for grades K-6 if specific criteria were satisfied. All waivers approved prior to this date remain valid.

COVID-19 SAFETY PLAN (CSP) FOR IN-PERSON INSTRUCTION

The COVID-19 Safety plan (CSP) consists of two parts: (1) the Cal/OSHA COVID-19 Prevention Program (CPP) and (2) the COVID-19 School Guidance Checklist.

Cal/OSHA Prevention Program (CPP)

On December 1, 2020, Cal/OSHA's Emergency Temporary Standards requiring employers to protect workers from hazards related to COVID-19 went into effect. The regulations require that employers, including schools, establish and implement a written CPP to address COVID-19 health hazards, correct unsafe or unhealthy conditions, and provide face coverings. Employers can also create a written CPP by incorporating elements of this program into their existing Injury and Illness Prevention Program (IIPP), if desired. Cal/OSHA has posted FAQs and a one-page fact sheet on the regulation, as well as a model COVID-19 prevention program.

- Cal/OSHA [Frequently Asked Questions](#)
- Cal/OSHA [Fact Sheet](#)
- Cal/OSHA Prevention Program Template - [Example](#)

COVID-19 School Guidance Checklist

In addition to the CPP, a COVID-19 School Guidance Checklist must be included and be posted online and submitted as outlined below.

COVID-19 SAFETY PLAN (CSP) POSTING AND SUBMISSION REQUIREMENTS FOR IN-PERSON INSTRUCTION


The Tiers from the Blueprint for a Safer Economy Framework inform the process needed for submission of CSPs for maintaining and/or resuming in-person instruction as described below and in Table 1.

Yellow (Tier 4/Minimal), Orange (Tier 3/Moderate), and Red (Tier 2/Substantial):

- For schools that have already reopened and are located in a county that is in the Yellow, Orange, or Red Tier, the LEA must post the CSP publicly on its website homepage by February 1, 2021.
- For those schools that have not reopened, and the county has been in the Purple Tier, schools are eligible to re-open the day the county is considered in the Red Tier (which is on the day after the assignment is posted [here](#); assignments are posted on Tuesdays, so the school may re-open on the Wednesday). See above for description of the "School re-opening eligibility window".
- For schools that have not reopened, the LEA must complete and post the CSP publicly on its website homepage at least 5 days prior to providing in-person instruction.
- While developing and prior to posting a CSP, it is strongly recommended that the LEA (or equivalent) consult with labor, parent, and community organizations. Examples of community organizations include school-based non-profit organizations and local organizations that support student enrichment, recreation, after-school programs, health services, early childhood services, or provide family support.

Purple (Tier 1/Widespread):

- For schools that have already reopened and are located in a county or LHD that is in the Purple Tier, the LEA must post the CSP publicly on its website homepage by February 1, 2021.
- Schools serving grades K-6 not already open, may reopen for in-person instruction if the LEA completes and posts a CSP to its website homepage and submits the CSP to their LHD and the State Safe Schools for All Team and does not receive notification of a finding that the CSP is deficient within 7 business days of submission. Under these circumstances, schools serving grades K-6 may only reopen for their K-6 grade students, even if their school serves non-K-6 grade students (e.g., a 6-8 school).
 - While developing and prior to submitting a CSP, the LEA must consult with labor, parent, and community organizations. Examples of community organizations include school-based non-profit organizations and local organizations that support student enrichment, recreation, after-school programs, health services, early childhood services or provide family support.
 - The COVID-19 School Guidance Checklist requires that the LEA provide evidence of consultation with labor, parent, and community organizations.
 - The LEA must sign an attestation confirming the names and dates that the organizations were consulted. If school staff are not represented by a labor organization, then the



applicant must describe the process by which it consulted
with school staff.

- The LEA must confirm publication of the CSP on the website of the LEA.
- The LEA must submit the CSP on behalf of all schools within their direct administrative authority, with site-specific precautions noted within the CSP to address considerations unique to specific school sites, as applicable. For example, a school district must submit a consolidated CSP for every school under its direct administrative authority, and must outline site-specific precautions insofar as there are features unique to the site that raise greater risks of COVID-19 transmission.
- If a group of private, faith-based, or charter schools within a single county are subject to the same governing authority (e.g., an archdiocese, charter management organization, etc.), the governing authority may submit the CSP on behalf of those schools, but must address site-specific considerations consistent with the bullet above. Otherwise, independent, private, faith-based, or charter schools that are affiliated with a broader network should post and submit the CSP for each school.
- LHDs and the State Safe Schools for All Team have 7 business days to provide feedback to the LEA regarding deficiencies in the CSP.
- The school may reopen on the eighth business day after submitting the CSP if the LHD and/or State Safe Schools for All Team do not provide notification that the CSP is unsafe within 7 business days of submission.
- If the LHD and/or State Safe Schools for All Team identify any deficiencies during the 7-business-day review period, the LEA will receive feedback on what they need to improve in order to be able to reopen for in-person instruction.
- After the LEA responds to feedback and re-submits the plan, the entity that identified the deficiency will have 7 business days to review revisions.
- If the LHD has noted a deficiency in a submitted CSP and has required a response prior to opening for in-person instruction, the LHD must notify the State Safe Schools for All Team.
- The school may reopen on eighth business day after submitting the revisions if the LHD and the State Safe Schools for All Team do not provide additional feedback.
- As noted above, schools serving grades K-6 may not reopen for in-person instruction in jurisdictions with CR ≥ 25 cases per 100,000 population per day.

Table 1. School reopening actions for in-person instruction, by Blueprint Tier			
	Orange	Red	Purple
- CSP posted publicly for K-12 th grades 5 days prior to in-person instruction.	- CSP posted publicly for K-12 th grades 5 days prior to in-person instruction.	- CSP posted publicly for K-12 th grades 5 days prior to in-person instruction. - Schools may post the CSP while the county is in Purple tier.*	- <u>Already reopened</u> : CSP posted publicly by 02/01/21. - <u>Not previously open</u> : - CSP posted publicly for K-6, and submitted concurrently to LHD and State Safe Schools for All Team. - 7 business days for review. - 7 th -12 th grade reopening not permitted if in this tier. - K-6 th grade reopening not permitted if CR≥25*, though CSP can be posted and submitted for review. - Note: Targeted in-person instruction may be offered pursuant to the Cohorting Guidance.

*Note three-week eligibility window for school re-opening noted above in "School re-opening eligibility window." While not required, LEAs are strongly encouraged to post on their website, along with the CSP, the detailed plans describing how they will meet the requirements outlined in the CSP elements. This can provide transparency to school community members making decisions about participation in in-person learning.

The email address for submission of the CSP to the State Safe Schools for All Team is: K12csp@cdph.ca.gov.

Cohorting Guidance for Specialized Services

This updated guidance does not modify or supersede the applicability of the Cohorting Guidance to school settings. More information regarding the minimum health and safety guidelines that must be followed to provide in-person services and supervision to children and youth in cohorts is set forth in the Cohorting Guidance, which applies across multiple sectors serving youth, including childcare and schools that are not reopened for in-person instruction.

The stable groups described in the Cohorting Guidance, and described below in the Stable Group Guidance decreases opportunities for exposure to or transmission of the virus; reduces the numbers of exposed individuals if COVID-19

is introduced into the cohort; facilitates more efficient contact tracing in the event of a positive case; and allows for targeted testing and quarantine of a single cohort instead of potential schoolwide closures in the event of a positive case or cluster of cases.

The Cohorting Guidance provides a way for schools not yet permitted to reopen under state and local public health directives or that have not yet reopened even though permitted to reopen to provide in-person supervision, instruction, targeted support services, and facilitation of distance learning for some students, especially high-need student groups and students who may not be able to benefit fully from distance learning offerings.

Existing state law requires public schools to provide in-person instruction to the greatest extent possible (Education Code section 45304(b)). State law further requires that distance learning ensure access to connectivity and devices that allow students to participate in the educational program and complete assigned work. In addition, state law requires that students with disabilities and English learners receive educational and related services to which they are entitled under the law, among other requirements (Education Code section 45303(b) (1), (4) & (5)). The Cohorting Guidance therefore provides an important avenue for schools that have not yet reopened under this guidance to provide supervision, instruction and support to small cohorts of students to ensure students receive necessary services even while students are generally participating in distance learning.

ADDITIONAL REOPENING CONSIDERATIONS

Availability of Distance Learning for Students Who Request It. Schools should continue to offer distance learning for students who request it.

Thoughtful, Phased Implementation. K-12 school sites should employ a phased-in model as a part of their reopening plan. Phased reopening plans for in-person instruction may include, but are not limited to:

- Shifting from a full distance learning model to hybrid.
- Gradually allowing for specified grades and/or a percentage of each grade to resume in-person learning, beginning with the youngest and most disproportionately impacted students.
- Allowing for a gradual number of students, at a specified capacity, per grade or school site.

If a school with a phased-in model has opened for in-person instruction, and the county changes to the Purple Tier or to a CR \geq 25, the school may continue the phased reopening.

Staff Access to Campus if Not Reopened for In-Person Instruction. Teachers, school and support staff, and administrators may return to work physically without students on site while counties are not open for in-person instruction, provided that those on site follow the school's COVID-19 Safety Plan consistent with Cal/OSHA regulations.

Boarding Schools. Residential components of boarding schools are to remain closed (with the exception of residential components of boarding schools that are currently operating with the permission of local health authorities, and those serving wards or dependents of the juvenile courts) regardless of the Tier status of their county until further guidance is issued. The non-residential components of boarding schools (e.g., in-person instruction for day students) are governed by the same guidelines as other K-12 schools.

School Reopening Guidance

All guidance, as schools plan and prepare to resume in-person instruction, should be implemented as outlined in the In-Person School Reopening section, including the development of a CSP.

LAYERS OF SAFETY: INFECTION MITIGATION STRATEGIES

A key goal for safe schools is to reduce or eliminate in-school transmission. A helpful conceptual framing as schools plan for and implement safety measures for in-person instruction, is the layering of mitigation strategies. Each strategy (face coverings, stable groups, distancing, etc.) decreases the risk of in-school transmission; but no one layer is 100% effective. It is the combination of layers that are most effective and have been shown to decrease transmissions.

As schools plan for reopening for in-person instruction and as they continue to work on operations once open, it may be helpful to understand the mitigation strategies with stronger evidence supporting their use. We have ordered the list below such that the interventions known at this time to be more effective in reducing the risk of transmission appear before the ones that are helpful but may have a potentially smaller effect or have less evidence of efficacy. Of note, though scientific comparative assessments are limited, the top three items are likely of similar importance:

1. Face coverings.
2. Stable groups.
3. Physical distancing.
4. Adequate ventilation.
5. Hand hygiene.

6. Symptom and close contact exposure screening, with exclusion from school for staff or students with symptoms or with confirmed close contact.
7. Surveillance or screening testing.

Frequent disinfection, which was thought at the beginning of the pandemic to be a key safety component, can pose a health risk to children and students due to the chemicals used and has proven to have limited to no impact on COVID-19 transmission. Disinfection with specified products (see [Cleaning and Disinfection section](#)), is recommended for schools after a case has been identified in the school, in the spaces where the case spent a large proportion of their time (e.g., classroom, or administrator's office if an administrator). Please see [Cleaning and Disinfection section](#) for additional details.

Of note, adults (>18 years old) appear to be more infectious overall than children, making staff-to-staff transmission an important focus for safety efforts. A specific situation that has resulted in exposure and transmission among staff in multiple schools is eating and drinking indoors without being physically distant (for instance, in break rooms or common areas). Specific messaging and support to staff to prevent this scenario are strongly recommended.

The following sections outline specific actions school sites should take to keep students and staff safe.

GENERAL MEASURES

Establish and continue communication with local and state authorities to determine current disease levels and control measures in your community. For example:

- Consult with your LHO, or designated public health staff, who are best positioned to monitor and provide advice on local conditions. A directory can be found [here](#).
- Collaborate with other schools and school partners in your region, including the county office of education.
- Access State Technical Assistance resources available for schools and for LHDs to support safe and successful in-person instruction, available on the [Safe Schools for All Hub](#).
- Regularly review updated guidance from state agencies, including [CDPH](#) and [California Department of Education](#).

Per Cal/OSHA requirements noted above, establish a written CPP at every facility, perform a comprehensive risk assessment of all work areas and work tasks, and designate a person at each school to implement the plan.

FACE COVERINGS

Face coverings must be used in accordance with CDPH guidelines unless a person is exempt as explained in the guidelines.

- Information contained in the CDPH Guidance for the Use of Face Coverings should be provided to staff and families of students. The face covering guidance applies to all settings, including schools. The guidance discusses the circumstances in which face coverings must be worn and the exemptions, as well as any policies, work rules, and practices employers have adopted to ensure the use of face coverings.
- Teach and reinforce use of face coverings, or in limited instances, face shields with drapes.
- Students and staff should be frequently reminded not to touch the face covering and to wash their hands frequently.
- Information should be provided to all staff and families in the school community on proper use, removal, and washing of cloth face coverings.
- Training should also include policies on how people who are exempted from wearing a face covering will be addressed.
- **Students in all grade levels K-12 are required to wear face coverings at all times, while at school, unless exempted.**
 - A cloth face covering or face shield should be removed for meals, snacks, naptime, or when it needs to be replaced. When a cloth face covering is temporarily removed, it should be placed in a clean, safe area, clearly marked with the student's name and date, until it needs to be put on again.
- Participants in youth and adult sports should wear face coverings when participating in the activity, even with heavy exertion as tolerated, both indoors and outdoors.
- The face covering guidance recognizes that there are some people who cannot wear a face covering for a number of different reasons. People are exempted from the requirement if they are under age 2, have a medical or mental health condition or disability that would impede them from properly wearing or handling a face covering, those with a communication disability, or when it would inhibit communication with a person who is hearing impaired. Those with communication disabilities or caregivers of those with communication disabilities can consider wearing a clear mask or cloth mask with a clear panel when appropriate.
- Persons exempted from wearing a face covering due to a medical condition, as confirmed by school district health team and therapists, must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

- Schools must develop protocols to provide a face covering to students who inadvertently fail to bring a face covering to school to prevent unnecessary exclusions.
- Schools should offer alternative educational opportunities for students who are excluded from campus because they will not wear a face covering.
- In order to comply with this guidance, schools must exclude students from campus if they are not exempt from wearing a face covering under CDPH guidelines and refuse to wear one provided by the school.
- Employers must provide and ensure staff use face coverings and all other required personal protective equipment in accordance with CDPH guidelines.
- The California Governor's Office of Emergency Services (CalOES) and CDPH are and will be working to support procurement and distribution of face coverings and needed personal protective equipment to schools. Additional information can be found here.
- The Department of General Services negotiated statewide master contracts, which LEAs may leverage to reduce costs and secure supply chains. Additional information can be found here.
- Face covering policies apply on school buses and any vehicle affiliated with the LEA used to transport students, staff, or teachers to and/or from a school site.
- Classrooms, school buses, and shared school office spaces used by persons who cannot tolerate face coverings are less safe for others who share that environment. Schools may want to consider notifying others who share spaces with unmasked or sub-optimally masked individuals about the environment. Also consider employing several additional mitigation strategies (or fortifying existing mitigation strategies) to optimize safety. These may include increasing the frequency of asymptomatic tests offered to unmasked or sub-optimally masked individuals, employing longer social distances, installing clear physical barriers, reducing duration of time in shared environments, and opting for either outdoor or highly-ventilated indoor educational spaces, as possible.

Staff

- All staff must use face coverings in accordance with CDPH guidelines unless Cal/OSHA standards require respiratory protection.
- For staff who come into routine contact with others, CDPH recommends the use of disposable 3-ply surgical masks, which are more effective than cloth face coverings.

- In limited situations where a face covering cannot be used for pedagogical or developmental reasons, (e.g., communicating or assisting young children or those with special needs) a face shield with a drape (per [CDPH guidelines](#)) can be used instead of a face covering while in the classroom as long as the wearer maintains physical distance from others. Staff must return to wearing a face covering outside of the classroom.
- Workers or other persons handling or serving food must use gloves in addition to face coverings.
- Employers should consider where disposable glove use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for workers who are screening others for symptoms or handling commonly touched items.

STABLE GROUP GUIDANCE CONSIDERATIONS BY GRADE LEVEL

Stable groups provide a key mitigation layer in schools. A stable group is a group with fixed membership that stays together without mixing with any other groups for any activities.

Guidance from other agencies, including the federal Centers for Disease Control and Prevention (CDC), sometimes refers to them as “cohorts”¹ or “pods.”

Implementing stable groups of students and staff reduces the numbers of exposed individuals if COVID-19 is introduced into the group, decreases opportunities for exposure to or transmission of the virus; facilitates more efficient contact tracing in the event of a positive case; and allows for targeted testing and quarantine of a small group instead of potential schoolwide closures in the event of a positive case or cluster of cases.

How can an elementary school create stable groups?

- Students can be placed into stable groups that stay together all day with their core teacher (and any aide or student teacher who is present). If there are counselors or teachers of electives, they should ideally be assigned to only one group or conduct their classes / counseling virtually.

¹ The CDC’s use of the term is different from the use of “cohort” within California’s guidance. “Cohort” is specifically defined in the Cohort Guidance as a group no larger than 16 individuals. To avoid any confusion, this guidance uses “stable group” instead of “cohort” for this concept.

- Students should eat lunch and go to recess with their group at times that are staggered and separated from other groups.
- There are different approaches to organizing stable groups. Students can be divided into smaller groups that attend school in person on a rotating schedule. Here are a few examples:
 - A group of students comes to school for in-person instruction on Monday and Tuesday. Another attends on Thursday and Friday.
 - On the alternating days, they learn remotely.
 - Some LEAs or schools have students attend school in-person during alternating weeks.
 - Other LEAs or schools have one group of students attend school in person in the morning and another group attend school in person in the afternoon.

These approaches create even smaller groups that stay together and do not mix with one another. Electives or counseling can be conducted virtually to limit the number of staff in direct contact with any given stable group.

How can a middle or high schools school create stable groups?

- Students can be placed into groups that remain together all day during in-person instruction. Middle or high school groups are often larger than elementary school groups. Because middle and high school curricula differ from elementary school curricula, teachers are not usually assigned to one stable group of students, creating an opportunity for mixing across stable groups or students. The following guidance provides examples of approaches to minimizing crossover of staff across stable groups of students.
- The CDC guidance notes that schools may keep a single group together in one classroom and have educators rotate between groups, or have smaller groups move together in staggered passing schedules to other rooms they need to use (e.g., science labs) without allowing students or staff to mix with others from distinctive groups.
- Teachers and supports staff from different content areas can work in teams that share students, preferably in a dedicated space, separate from others. For example: math, science, English, and history teachers might work as a team with a set group of students they share.
- When combined with block schedules that reduce the number of courses students take in any one day, the number of educators and students who interact can be minimized further.
- It is also possible to keep students in one stable group that stays together with one or two instructors who teach them directly part of the day and

support their instruction from others who teach them virtually during other parts of the day.

- Electives can be offered virtually or organized so that no group of students takes more than one elective in a term and the elective teachers do not work with more than one or two groups.
- Stable groups could switch schedules or even membership after a break at the quarter, trimester, or semester in ways that support students being able to take additional classes without substantial group mixing.
- The school year can be divided into even smaller time units – 4 to 8 weeks for example – in which students study one or two subjects intensively, completing all of the work they might normally have completed in a semester or a year. They stay in stable groups with only 1 or 2 teachers during this time. At the end of unit, they switch schedules and groups to take 1 or 2 other courses, and so on throughout the year.
- Additional examples of approaches to creating stable groups of students that limit the risk of transmission across large groups of students are available [here](#).

OTHER CONSIDERATIONS:

- **Schedule for Access and Inclusion:** The construction of stable groups can increase or decrease equity or segregation across the school campus, so consider how to support inclusion and access for all student populations as you organize students for learning.
- **Schedules as Tools for Physical Distancing:** To the extent possible, schools should think about how to reconfigure the use of bell schedules to streamline foot traffic and maintain practicable physical distancing during passing times and at the beginning and end of the school day. Create staggered passing times when students must move between rooms minimize congregated movement through hallways as much as is practicable.
- **Restructure Electives:** Elective teachers who move in and out of stable groups can become points of exposure for themselves and the students they work with. Some models have made elective teachers part of middle and high school stable groups, while others have used them only for remote instruction. Other options include ensuring elective teachers maintain longer distance from students (e.g., 12 feet).

IMPLEMENTING DISTANCING INSIDE AND OUTSIDE THE CLASSROOM

Arrival and Departure

- Maximize space between students and between students and the driver on school buses and open windows to the greatest extent practicable. Two windows on a bus should be opened fully at a minimum.
- Minimize contact at school between students, staff, families and the community at the beginning and end of the school day. Prioritize minimizing contact between adults at all times.
- Stagger arrival and drop off-times and locations as consistently as practicable to minimize scheduling challenges for families.
- Designate routes for entry and exit, using as many entrances as feasible. Put in place other protocols to limit direct contact between people as much as practicable.
- Ensure each school bus is equipped with extra unused face coverings for students who may have inadvertently failed to bring one.

Classroom Space

- Maximize space between seating and desks. Distance teacher and other staff desks at least 6 feet away from student and other staff desks.

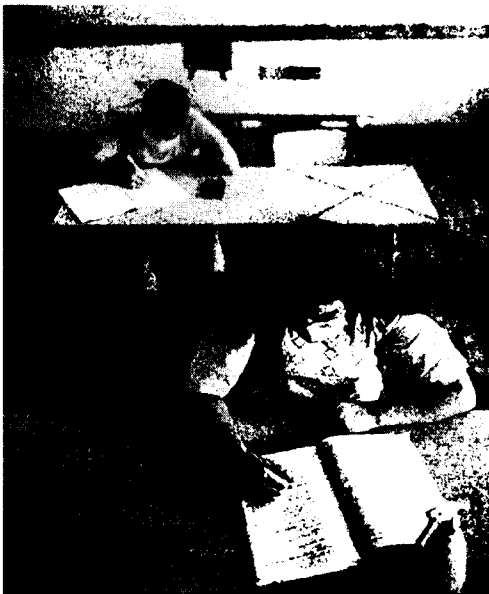


Figure 1. Classroom with adequate spacing between students

Distance student chairs at least 6 feet away from one another, except where 6 feet of distance is not possible after a good-faith effort has been made. Upon request by the local health department and/or State Safe Schools Team, the superintendent should be prepared to demonstrate that good-faith effort, including an effort to consider all outdoor/indoor space options and hybrid learning models. Please reference Figures 1 and 2 for examples of adequate and inadequate spacing. Under no circumstances should distance between student chairs be less than 4 feet. If 6 feet of distance is not possible, it is recommended to optimize ventilation and consider using other separation techniques such as



Figure 2. Classroom without adequate spacing between students

partitions between students or desks, or arranging desks in a way that minimizes face-to-face contact.

- Short-term exposures of less than 6 feet between students and staff are permitted (e.g., a teacher assisting a student one-on-one), but the duration should be minimized and masks must be worn.

- Consider redesigning activities for smaller groups and rearranging

furniture and play spaces to maintain separation.

- Staff should develop instructions for maximizing spacing and ways to minimize movement in both indoor and outdoor spaces that are easy for students to understand and are developmentally appropriate.
- Prioritize the use and maximization of outdoor space for activities where possible.
- Activities where there is increased likelihood for transmission from contaminated exhaled aerosols such as band and choir practice and performances are permitted outdoors only, provided that precautions such as physical distancing and use of face coverings are implemented to the maximum extent (see below in Non-classroom spaces).
- Consider using cleanable privacy boards or clear screens to increase and enforce separation between staff and students.

Non-Classroom Spaces

- Limit nonessential visitors, volunteers and activities involving other groups at the same time. School tours are considered a non-essential activity and increase the risk of in-school transmission.
- Limit communal activities. Alternatively, stagger use, properly space occupants and clean in between uses.
- Consider use of non-classroom space for instruction, including regular use of outdoor space, weather permitting. For example, consider part-day instruction outside.
- Minimize congregate movement through hallways as much as practicable. For example, establish more ways to enter and exit a campus, create staggered passing times when necessary or when students cannot stay in one room and use visual reminders on the floor

that students can follow to enable physical distancing while passing and waiting in line. In addition, schools can consider eliminating the use of lockers, which can become congregating areas.

- Serve meals outdoors or in classrooms instead of cafeterias or group dining rooms where practicable. Where cafeterias or group dining rooms must be used, keep students together in their stable groups, ensure physical distancing, hand hygiene before and after eating, and consider assigned seating. If indoor meal times are paired with recess or outdoor time, consider having half of a stable group of students eat while the other half is outdoors and then switch. Serve individually plated or bagged meals. Avoid sharing of foods and utensils and buffet or family-style meals.
- Consider holding recess activities in separated areas designated by group.
- School athletic activities and sports should follow the CDPH Outdoor and Indoor Youth and Adult Recreational Guidance. Note that risk of infection transmission increases for indoor activities; indoor sports are higher risk than outdoor sports due to reduced ventilation. And transmission risk increases with greater exertion levels; greater exertion increases the rate of breathing and the quantity of air that is inhaled and exhaled with every breath.
- Outdoor singing and band practice are permitted, provided that precautions such as physical distancing and mask wearing are implemented to the maximum extent possible. Playing of wind instruments (any instrument played by the mouth, such as a trumpet or clarinet) is strongly discouraged. School officials, staff, parents, and students should be aware of the increased likelihood for transmission from exhaled aerosols during singing and band practice, and physical distancing beyond 6 feet is strongly recommended for any of these activities.

VENTILATION

- Ensure sufficient ventilation in all school classrooms and shared workspaces per American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) guidance on ventilation.
 - Contact a mechanical engineer, heating, ventilation, and air conditioning (HVAC) design professional, or mechanical contractor in order to evaluate your ventilation system in regards to the ASHRAE guidance.
 - If opening windows poses a safety or health risk (e.g., by allowing pollen in or exacerbating asthma symptoms) to persons in the

- facility, consider alternatives. For example, maximize central air filtration for HVAC systems by using filters with a minimum efficiency reporting value (MERV) of at least 13.
- Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in classrooms, offices and other spaces.
 - If not able to properly ventilate indoor instructional spaces, outdoor instruction is preferred (use caution in poor air quality conditions).
- Ventilation considerations are also important on school buses; use open windows as much as possible to improve airflow.
 - Specific practices to avoid:
 - Classrooms or buses with no ventilation.
 - Classrooms or buses with increased airflow across occupants (e.g., air conditioners or fans blowing into the classroom or overhead fans creating air currents across occupants).

PROMOTE HEALTHY HAND HYGIENE PRACTICES

- Teach and reinforce washing hands, avoiding contact with one's eyes, nose, and mouth, and covering coughs and sneezes among students and staff.
 - Teach students and remind staff to use tissue to wipe their nose and to cough/sneeze into a tissue or their elbow.
 - Students and staff should wash their hands frequently throughout the day, including before and after eating; after coughing or sneezing; after classes where they handle shared items, such as outside recreation, art, or shop; and before and after using the restroom.
 - Students and staff should wash their hands for 20 seconds with soap, rubbing thoroughly after application. Soap products marketed as "antimicrobial" are not necessary or recommended.
 - Staff should model and practice handwashing. For example, use bathroom time in lower grade levels as an opportunity to reinforce healthy habits and monitor proper handwashing.
 - Students and staff should use fragrance-free hand sanitizer when handwashing is not practicable. Sanitizer must be rubbed into

- hands until completely dry. Note: frequent handwashing is more effective than the use of hand sanitizers.
- Ethyl alcohol-based hand sanitizers are preferred and should be used when there is the potential of unsupervised use by children.
- Isopropyl alcohol-based hand sanitizers are more toxic when ingested or absorbed into skin.
- Do not use hand sanitizers that may contain methanol which can be hazardous when ingested or absorbed.
 - Children under age 9 should only use hand sanitizer under adult supervision. Call Poison Control if consumed: 1-800-222-1222.
- Consider portable handwashing stations throughout the school site and near classrooms to minimize movement and congregating in bathrooms to the extent practicable.
- Develop routines enabling students and staff to regularly wash their hands at staggered intervals.
- Ensure adequate supplies to support healthy hygiene behaviors, including soap, tissues, no-touch trashcans, face coverings, and hand sanitizers with at least 60 percent ethyl alcohol for staff and children who can safely use hand sanitizer.

CLEANING AND DISINFECTION

The section below provides recommendations for cleaning and disinfection. "Cleaning" involves water and soap or a detergent, does not use disinfecting agents, and significantly decreases germs on surfaces and decreases infectious risks. "Disinfection" kills germs on surfaces using specific agents (see below for those approved for use). If a case has been identified, the spaces where the case spent a large proportion of their time (e.g., classroom, or administrator's office if an administrator) should be disinfected. Frequent disinfection can pose a health risk to children and students due to the strong chemicals often used and so is not recommended in the school setting unless a case has been identified.

- Staff should clean frequently-touched surfaces at school and on school buses daily.
- Buses should be thoroughly cleaned daily and after transporting any individual who is exhibiting symptoms of COVID-19. Drivers should be provided cleaning materials, including but not limited to wipes and disposable gloves, to support cleaning of frequently touched surfaces during the day.
- Frequently touched surfaces in the school include, but are not limited to:
 - Sink handles.

- Shared tables, desks, or chairs.
 - If a school has morning and afternoon stable groups, the desks and tables are considered shared and should be cleaned before the next group arrives.
 - Desks or chairs do not need daily cleaning if only used by one individual during the day.
 - Door handles.
 - Shared technology and supplies.
- If used, outdoor playgrounds/natural play areas only need routine maintenance. Make sure that children wash or sanitize their hands before and after using these spaces. When hand hygiene is emphasized, cleaning of outdoor structures play is not required between cohorts.
- When choosing disinfection products after an in-school COVID-19 case has been identified (see "What to do if there is a case of COVID-19 in a School"), use those approved for use against COVID-19 on the Environmental Protection Agency (EPA)- approved list "N" and follow product instructions.
 - To reduce the risk of asthma and other health effects related to disinfection, programs should select disinfectant products on list N with asthma-safer ingredients (hydrogen peroxide, citric acid or lactic acid) as recommended by the US EPA Design for Environment program.
 - Avoid products that contain peroxyacetic (peracetic) acid, sodium hypochlorite (bleach) or quaternary ammonium compounds, which can cause asthmatic attacks.
 - Follow label directions for appropriate dilution rates and contact times. Provide workers training on the chemical hazards, manufacturer's directions, Cal/OSHA requirements for safe use, and as applicable and as required by the Healthy Schools Act.
 - Custodial staff and any other workers who clean and disinfect the school site must be equipped with proper personal protective equipment, including gloves, eye protection, respiratory protection, and other appropriate protective equipment as required by the product instructions. All products must be kept out of the reach of children and stored in a space with restricted access.
 - Establish a cleaning schedule in order to avoid both under- and over-use of cleaning products.
- Ensure safe and correct application of disinfectant and keep products away from students.

- Ensure proper ventilation during cleaning and disinfecting. Introduce fresh outdoor air as much as possible for example by opening windows where practicable. When disinfecting, air out the space before students arrive; disinfection should be done when students are not present.
- Take steps to ensure that all water systems and features (for example, drinking fountains and decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of Legionnaires' disease and other diseases associated with water.

CHECK FOR SIGNS, SYMPTOMS AND EXPOSURES

- Actively encourage staff and students who are sick or who have recently had close contact with a person with COVID-19 to stay home. Develop policies that encourage sick staff and students to stay at home without fear of reprisal, and ensure staff, students and students' families are aware of these policies.
- Implement symptom and exposure screening for all staff and students at home each day before leaving for school.
- Students or staff exhibiting symptoms of COVID-19 at school (fever of 100.4 degrees or higher, cough, difficulty breathing, or other COVID-19 symptoms) must be immediately isolated in a private area until they can leave school or be picked up by a parent or guardian. Ill students and staff should be recommended to be tested for COVID-19 as soon as possible.
- Policies should not penalize students for missing class.

Symptom and Exposure Screening

Daily screening for COVID-19 symptoms and for exposure to someone with COVID-19 prior to leaving for school can prevent some people with COVID-19 from coming to school while infectious, thus preventing in-school transmission. Screening does not prevent asymptomatic cases from being at school and spreading SARS-CoV2, the virus that causes COVID-19.

CDPH recommends that:

1. Parents be provided with the list of COVID-19 symptoms and instructed to keep their child at home if the child is feeling ill or has symptoms of COVID-19, even if symptoms are very mild, and to get their ill child tested for SARS-CoV2.
2. Staff members be provided with the list of COVID-19 symptoms and be instructed to call in sick and stay home if having symptoms of COVID-19 and to get tested for SARS-CoV2.

Note: If a student or staff member has chronic allergic or asthmatic

symptoms (e.g., cough or runny nose), then a change in their symptoms from baseline would be considered a positive symptom.

Implementation of home symptom and exposure screening

- There are several implementation options, each with benefits and challenges. Implementing a daily reminder system for home screening, such as a text message or through an online screening application, can support families and staff to review the symptom list each day before leaving for school and confirm that they do not have symptoms of COVID-19 and have not had close contact with a known case. This is likely the easiest and most effective approach, but families or staff may not all have technology access to support this. For those who do not, a list of screening questions on paper can be provided for daily review at home. Schools do not need to monitor compliance with home screening.

Symptoms at School

- Identify an isolation room or area to separate anyone who exhibits 1 or more symptoms of COVID-19 while at school.
- Staff and students should self-monitor throughout the day for signs of illness; staff should observe students for signs or symptoms of illness to support students who are less able to self-monitor or less likely to self-report.
- Any students or staff exhibiting 1 or more symptoms should be required to wait in the previously identified isolation area until they can be transported home or to a healthcare facility, as soon as practicable.
- If a student is exhibiting 1 or more symptoms of COVID-19, staff should communicate with the parent/caregiver and refer to the student's health history form and/or emergency card.
- Unless the LHD recommends otherwise, there is no need to exclude asymptomatic contacts (students or staff) of the symptomatic individual from school until test results for the symptomatic individual are known.

Return to school after exclusion for symptoms at home or in school:

- Ensure that students, including students with disabilities, have access to instruction when out of class, as required by federal and state law.
- Testing of symptomatic students and staff can be conducted through local health care delivery systems or other testing resources, as fits the context of the local health jurisdiction. Advise staff members and students with symptoms of COVID-19 infection not to return for in-person instruction until they have met CDPH criteria to discontinue home isolation for those with symptoms:

- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and
- Other symptoms have improved; and
- They have a negative test for SARS-CoV-2, OR a healthcare provider has provided documentation that the symptoms are typical of their underlying chronic condition (e.g., allergies or asthma) OR a healthcare provider has confirmed an alternative named diagnosis (e.g., Streptococcal pharyngitis, Coxsackie virus), OR at least 10 days have passed since symptom onset.

STAFF-TO-STAFF INTERACTIONS

- Ensuring staff maintain physical distancing of six feet from each other is critical to reducing transmission between adults.
- Ensure that all staff use face coverings in accordance with CDPH guidelines and Cal/OSHA standards.
- Support staff who are at higher risk for severe illness or who cannot safely distance from household contacts at higher risk, by providing options such as telework, where appropriate, or teaching in a distance learning context.
- Conduct all staff meetings, professional development training and education, and other activities involving staff with physical distancing measures in place, outside, or virtually, where physical distancing is a challenge.
- Minimize the use of and congregation of adults in staff rooms, break rooms, and other settings. Try to provide space outside whenever possible.

LIMIT SHARING

- Consider suspending or modifying use of site resources that necessitate sharing or touching items. For example, consider suspending use of drinking fountains and instead encourage the use of reusable water bottles.
- Limit use and sharing of objects and equipment, items such as electronic devices, clothing, toys, games, and art supplies to the extent practicable, or limit use of supplies and equipment to one group of children at a time and clean between uses.
 - Cleaning shared objects between uses (for example with microfiber cloths or baby wipes) can help to physically remove germs on surfaces.
 - Ensure adequate supplies to minimize sharing of high-touch materials.

- Keep each student's individual belongings separated and in individually labeled storage containers, cubbies or areas.

TRAIN ALL STAFF AND EDUCATE FAMILIES

- Train all staff and provide educational materials to families in the following safety actions:
 - Proper use, removal, and washing of face coverings.
 - Physical distancing guidelines and their importance.
 - Symptoms screening practices.
 - COVID-19 specific symptom identification.
 - How COVID-19 is spread.
 - Enhanced sanitation practices.
 - The importance of staff and students not coming to work they have symptoms, or if they or someone they live with or they have had close contact with has been diagnosed with COVID-19.
 - For staff, COVID-19 specific symptom identification and when to seek medical attention.
 - The employer's plan and procedures to follow when staff or students become sick at school.
 - The employer's plan and procedures to protect staff from COVID-19 illness.

Consider conducting the training and education virtually, or, if in-person, outdoors, and ensure a minimum of six-foot distancing is maintained.

MAINTAIN HEALTHY OPERATIONS

- Monitor staff absenteeism and have a roster of trained back-up staff where available.
- Monitor symptoms among your students and staff on school site to help isolate people with symptoms as soon as possible.
- Designate a staff liaison or liaisons to be responsible for responding to COVID-19 concerns. Other staff should know who the liaisons are and how to contact them. The liaison should be trained to coordinate the documentation and tracking of possible exposures, in order to notify local health officials, staff and families in a prompt and responsible manner. This will support local health department contact tracing efforts.
- Maintain communication systems that allow staff and families to self-report symptoms and receive prompt notifications of exposures, exclusions, and closures, while maintaining confidentiality, as required by

FERPA and state law related to privacy of educational records. Additional guidance can be found [here](#).

- Consult with [CDPH K-12 School Testing Guidance](#) if routine testing is being considered by a LEA.
- Support students who are at higher risk for severe illness or who cannot safely distance from household contacts at higher risk, by providing options such as distance learning.

What to do if there is a Confirmed or Suspected Case of COVID-19 in a School

What measures should be taken when a student, teacher or staff member has symptoms, is a contact of someone infected, or is diagnosed with COVID-19?

Table 2. Actions to take if there is a confirmed or suspected case of COVID-19 in a school

	Student or Staff with:	Action	Communication with school community
1.	COVID-19 symptoms (e.g., fever, cough, loss of taste or smell, difficulty breathing) Symptom screening: per CDC Symptom of COVID-19 .	<ul style="list-style-type: none"> • Send home if at school. • Recommend testing (If positive, see #3, if negative, see #4). • School/classroom remain open. 	<ul style="list-style-type: none"> • No action needed.
2.	Close contact (+) with a confirmed COVID-19 case.	<ul style="list-style-type: none"> • Send home if at school. • Exclude from school for 10 days from last exposure, per CDPH quarantine recommendations. • Recommend testing 5-7 days from last exposure (but will not shorten 10-day exclusion if negative). • School/classroom remain open. 	<ul style="list-style-type: none"> • Consider school community notification of a known exposure. No action needed if exposure did not happen in school setting.
3.	Confirmed COVID-19 case infection.	<ul style="list-style-type: none"> • Notify the LHD. • Exclude from school for 10 days from symptom onset date or, if asymptomatic, for 10 days from specimen collection date. • Identify school contacts (+), inform the LHD of identified contacts, and exclude 	<ul style="list-style-type: none"> • School community notification of a known case. • Notification of persons with

		<p>contacts (possibly the entire stable group (††)) from school for 10 days after the last date the case was present at school while infectious.</p> <ul style="list-style-type: none"> • Recommend testing asymptomatic contacts 5-7 days from last exposure and immediate testing of symptomatic contacts (negative test results will not shorten 10-day exclusion). • Disinfection and cleaning of classroom and primary spaces where case spent significant time. • School remains open. 	<p>potential exposure if case was present in school while infectious</p>
4.	<p>Symptomatic person tests negative or a healthcare provider has provided documentation that the symptoms are typical of their underlying chronic condition, or at least 10 days have passed since symptom onset</p>	<ul style="list-style-type: none"> • May return to school after 24 hours have passed without fever and symptoms have started improving. • School/classroom remain open. 	<ul style="list-style-type: none"> • Consider school community notification if prior awareness of testing.

(†) A contact is defined as a person who is within 6 feet from a case for more than 15 minutes cumulative within a 24-hour period, regardless of face coverings. In some school situations, it may be difficult to determine whether individuals have met this criterion and an entire stable group, classroom, or other group may need to be considered exposed, particularly if people have spent time together indoors.

(††) See Stable Group Guidance for definition of a stable group. In some situations, (e.g., when seating charts are used, face covering is well adhered to, and teachers or staff have observed students adequately throughout the day), contact tracing and investigation may be able to determine more precisely whether each stable group member has been exposed. In this situation, those who were not close contacts could continue with in-person instruction.

CONFIRMED COVID-19 CASE

Although the LHD may know of a confirmed or probable case of COVID-19 in a student or staff member before the school does, it is possible that the school may be made aware of a case before the LHD via a parent or staff member



report.

The following are the interim COVID-19 case definitions from the Council of State and Territorial Epidemiologists'.

Confirmed case: Meets confirmatory laboratory evidence (detection of SARS-CoV-2 RNA in a clinical or autopsy specimen using a molecular amplification test).

Probable case: Meets clinical criteria AND epidemiologic linkage(‡) with no confirmatory lab testing performed for SARS-CoV-2; OR meets presumptive laboratory evidence (detection of SARS-CoV-2 by antigen test in a respiratory specimen); OR meets vital records criteria with no confirmatory laboratory evidence for SARS-CoV-2.

(‡) Epidemiologically-linked cases include persons with close contact with a confirmed or probable case of COVID-19 disease; OR a member of a risk stable group as defined by public health authorities during an outbreak. This includes persons with identifiable connections to each other such as sharing a defined physical space e.g., in an office, facility section or gathering, indicating a higher likelihood of linked spread of disease than sporadic community incidence.

Local Health Department Actions

1. Interview the case to identify the infectious period and whether case was infections while at school; identify household and community close contacts, particularly any close contacts at school.
2. It may be necessary to consider the entire class or members of the case's stable group exposed, as it can be challenging to determine who may have had contact with the case within 6 feet for at least 15 cumulative minutes in a 24-hour period. In some situations, case investigations may be able to determine individual members of a stable group are close contacts, and allow those who are not identified as close contacts to continue in-person instruction.
3. Notify the school COVID-19 coordinator or point person at the school that a case of COVID-19 in a student or staff member has been reported and provide guidance to identify and generate a line list of close contacts at the school.
4. Notify all close contacts at the school and instruct them to follow CDPH COVID-19 Quarantine Guidance . (or follow LHO orders, if relevant and/or more stringent).
5. Recommend that all close contacts be tested; symptomatic contacts should be prioritized for immediate testing, and asymptomatic contacts should be recommended to be tested 5-7 days from last exposure.
6. Contacts who test negative must still complete the required quarantine as defined in the CDPH guidance.
7. Contacts who test positive are required to isolate until at least 10 days

have passed since symptom onset; and at least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and other symptoms have improved. If asymptomatic, cases should be isolated for 10 days after the specimen collection date of their positive test.

8. Investigate COVID-19 cases in school students and staff to determine if in-school transmission likely occurred and whether any school-related factors could have contributed to risk of infection. Assist schools to update protocols as needed to prevent additional cases.

School Actions

1. Schools must adhere to required reporting requirements and notify, as indicated, the LHD of any newly reported case of COVID-19 in a student or staff member if the LHD has not yet contacted them about the case.
2. If the case is present at school at the time the school is notified, the case must go home and be excluded from school for at least 10 days from symptom onset date or, if asymptomatic, 10 days from the date the specimen was collected for the positive test.
3. Send a notice, developed in collaboration with the LHD, to parents and staff to inform them that a case of COVID-19 in a student or staff member has been reported and that the school will work with the LHD to notify exposed people. (see sample notification #1 in Appendix 2).
4. Arrange for cleaning and disinfection of the classroom and primary spaces where case spent significant time (see Cleaning and Disinfection above for recommendations). This does not need to be done until students and staff in the area have left for the day.
5. Implement online/distance learning for student cases if they are well enough to participate.

School closure determinations should be made in consultation with the LHO according to the section "School Closure Determinations." A school with confirmed cases and even a small cluster of COVID-19 cases can remain open for in-person education as long as contact tracing identifies all school contacts for exclusion and testing in a timely manner, any small cluster is investigated and controlled rapidly, and the LHO agrees that the school can remain open.

MEASURES FOR WHEN A CLUSTER OR OUTBREAK IS BEING INVESTIGATED AT A SCHOOL

When either a school or LHD is aware that an outbreak may be underway, the LHD should investigate, in collaboration with the school, to determine whether

these cases had a common exposure at school (e.g., a common class or staff member, bus ride, or other common exposures outside of school).

CDPH defines a school outbreak as 3 or more confirmed or probable cases of staff or students occurring within a 14-day period who are epidemiologically-linked in the school, are from different households and are not contacts of each other in any other investigation cases (e.g., transmission likely occurred in the school setting).

The objectives of a school outbreak investigation are to identify and isolate all cases and to identify, quarantine, and test contacts to prevent further transmission of COVID-19 at the school. In addition, the investigation will attempt to ascertain whether the cases had a common exposure at school (e.g., a common class or teacher, bus ride, or other common exposures in the school setting). The investigation may also reveal common exposures outside of the school setting.

As noted above, an outbreak investigation is also an opportunity to understand the circumstances that may have allowed for transmission in the school setting. It is recommended that investigations determine whether there is adherence to key mitigation strategies to prevent school transmission. If gaps are identified, schools should take steps to strengthen strategies to prevent future outbreaks.

Local Health Department Actions

1. Review interviews (or re-interview as needed) of clustered cases to identify common exposures and determine whether the cluster suggests an outbreak with transmission at the school. If data suggest an outbreak, then notify the school about starting an investigation.
2. Provide the school with guidance on identifying and creating a line list of all school cases and contacts, including illness onset date, symptoms, date tested, test results, etc. (see sample data collection notification in Appendix 2).
3. Consult with CDPH as needed for technical assistance, testing, and other resources.
4. Form an outbreak investigation team with a lead investigator and including one or more school staff members to assist with the investigation.
5. Identify all potential exposures and close contacts and implement testing of contacts, prioritizing symptomatic contacts for testing.
6. Testing may be recommended for those who were not identified as close contacts but could potentially have been exposed; the fastest pathway to get test results rapidly should be used.
7. All symptomatic contacts should be considered probable cases and be

interviewed to identify prioritized close contacts and exposures while awaiting their test results.

8. Implement isolation of all cases and symptomatic contacts and quarantine of all asymptomatic contacts of confirmed and probable cases.
9. Investigate to determine if in-school transmission likely occurred and whether any school-related factors could have contributed to risk of transmission. Assist schools to update and strengthen protocols as needed to prevent additional cases.
10. Determine, in collaboration with the school, whether the school meets closure criteria. See School Closure Determinations (page 36).
11. Determine, in collaboration with the school, when the school should be closed for 14 days even if the conditions outlined in School Closure Determinations below have not been reached. This may be when: 1) the investigation shows that cases or symptomatic students or staff members continue to be identified and school-based transmission of SARS-CoV2 is likely ongoing despite implementation of prevention and control measures; or 2) other local epidemiologic data support school closure.

School Actions

1. Notify parents/guardians and school staff of a cluster/outbreak investigation related to the school and encourage them to follow public health recommendations (see sample notification #2 in Appendix 3).
2. Identify, as part of the CSP, one or more school staff member who can liaise with the LHD regarding the cluster/outbreak investigation by confirming which classes and stable groups included confirmed cases or symptomatic students and staff members, and if recent events or gatherings involved any cases or symptomatic persons.
3. Identify absenteeism among those in affected classes or stable groups, and coordinate with the LHD to contact these absentees to screen for symptoms of COVID-19 if they were exposed to a case during the cases infectious period.
4. Coordinate with the LHD to share a line list of cases and contacts with dates present at or absent from school.
5. Arrange for cleaning and disinfection of classrooms or other areas where cases or symptomatic students or staff members spend significant time.
6. Coordinate with the LHD on notifications to the school community, including specific notifications of stable groups or classrooms regarding their exclusion status and instructions.
7. Coordinate with the LHD on whether and when the school should be

- closed and reopened.
8. Notify the school community if the school is to be closed for 14 days due to widespread and/or ongoing transmission of SARS-CoV2 at the school or in the general community, and repeat recommendations for prevention and control measures (see sample notification #3 in Appendix 2).
 9. Implement online/distance teaching and learning during school closure.
 10. Arrange for cleaning and disinfection of entire school before reopening in the case of closure.

School Closure Determinations

What are the criteria for closing a school to in-person learning?

Individual school closure, in which all students and staff are not on campus, is recommended based on the number of cases and stable groups impacted, which suggest that active in-school transmission is occurring. Closure should be done in consultation with the LHO. Situations that may indicate the need for school closure:

- Within a 14-day period, an outbreak has occurred in 25% or more stable groups in the school.
- Within a 14-day period, at least three outbreaks have occurred in the school AND more than 5% of the school population is infected.
- The LHO may also determine school closure is warranted for other reasons, including results from public health investigation or other local epidemiological data.

Length of closure: 14 days, or according to a decision made in consultation with the LHO.

The State Safe Schools for All Technical Assistance teams (TA teams), comprised of experts across multiple state agencies, will be available to assist schools with disease investigation for those with outbreaks that cannot find resources to investigate the outbreaks. The TA teams will also be available to help schools that close in order to identify and address any remediable safety issues.

If a school is closed, when may it reopen?

Schools may typically reopen after 14 days and if the following have occurred:

- Cleaning and disinfection
- Public health investigation
- Consultation with the LHD

What are the criteria for closing a LEA?

A school district should close if 25% or more of schools in a district have closed due to COVID-19 within a 14-day period and in consultation with the LHD.

If a LEA is closed, when may it reopen?

LEAs may typically reopen after 14 days, in consultation with the LHD.

K-12 School Testing

OVERVIEW

Used in conjunction with other mitigation strategies, testing for SARS-CoV-2 provides an additional tool to support safe and successful K-12 in-person instruction. Testing can allow for early identification of cases and exclusion from school to prevent transmission. However, it should not be used as a stand-alone approach to prevent in-school transmission. A negative test provides information only for the moment in time when the sample is collected. Individuals can become infectious shortly after having a negative test, so it is important to maintain all other mitigation strategies even if a recent negative test has been documented.

There are several circumstances under which a student or staff member might undergo testing. Below, we outline these circumstances and considerations for testing implementation in K-12 schools.

DEFINITIONS

Symptomatic testing: This testing is used for individuals with symptoms of COVID-19, either at home or at school. In this situation, the school guidance requires that these individuals stay home and isolate in case they are infectious. The Guidance includes the possibility of return to school in the case of a negative test for SARS-CoV-2 and 24 hours after fever is resolved and symptoms are improving.

Response testing: This testing is used to identify positive individuals once a case has been identified in a given stable group. Response-based testing can be provided for symptomatic individuals or for asymptomatic individuals with known or suspected exposure to an individual infected with SARS-CoV-2.

Asymptomatic testing: This testing can be used for surveillance, usually at a cadence of every 2 weeks or less frequently, to understand whether schools have higher or lower rates of COVID19 rates than the community, to guide decisions about safety for schools and school administrators, and to inform LHDs about district level in-school rates. Asymptomatic testing can also be used for screening, usually at a higher cadence (weekly or twice weekly) than

surveillance testing, to identify asymptomatic or pre-symptomatic cases, in order to exclude cases that might otherwise contribute to in-school transmission. Screening testing is indicated for situations associated with higher risk (higher community transmission, individuals at higher risk of transmission (e.g., adults and high school students transmit more effectively than elementary aged students).

TESTING STRATEGY APPROACH

Asymptomatic testing considerations

The science regarding the extent to which asymptomatic testing will achieve the goal of safe and successful schools is still under development. Empirically, schools that have successfully implemented the core mitigation strategies outlined in the School Guidance are operating safely, with limited or no in-school transmission, under a range of asymptomatic testing approaches. The approaches range from no additional asymptomatic testing, to testing a sample of staff and students monthly, to testing all students and staff every other week. Modeling studies show that masking alone and cohorting alone can decrease symptomatic infections more than weekly testing of students and school staff. Taken together, these data suggest that a range of potential testing approaches can be considered for implementation as part of a comprehensive safety strategy.

The state of California has put into place support for the testing cadences in Table 3, through supplemental testing supplies, shipment, laboratory capacity, enrollment and reporting technology, training, and assistance with insurance reimbursement.

The increased levels of testing in the higher Tiers in Table 3 reflect the higher likelihood that someone in the school community might be infected due to higher levels of circulating virus in the surrounding community.

Table 3. Testing Cadences with Support from the State of California for K-12 schools

	Green	Orange	Red	Purple	CR >14*
Staff	Symptomatic and response testing.	Symptomatic and response testing.	Symptomatic and response testing + every 2 weeks asymptomatic testing.	Symptomatic and response testing + every 2 weeks asymptomatic testing.	Symptomatic and response testing + weekly asymptomatic (PCR or twice weekly antigen testing)**.
Students K-12	Symptomatic and response testing.	Symptomatic and response testing.	Symptomatic and response testing + every 2 weeks asymptomatic testing.	Symptomatic and response testing + every 2 weeks asymptomatic testing.	Symptomatic and response testing + weekly asymptomatic (PCR or twice weekly antigen testing)**.

TP = test positivity

* The case rates above are adjusted case rates.

** Weekly asymptomatic testing assumes the use of a PCR test. If antigen testing is used, testing should be at a twice weekly cadence.

Students or staff who have tested positive for active infection with SARS-CoV-2 virus within the last 90 days are exempt from asymptomatic testing.

Any school currently open is subject to the minimum testing requirement standards established by [Cal/OSHA](#). These standards include response testing for exposed cases and outbreak testing for everyone weekly until no longer considered an outbreak. Please refer to [Cal/OSHA guidance](#) for complete details.

Vaccines for K-12 Schools

CDPH strongly recommends that all persons eligible to receive COVID-19 vaccines receive them at the first opportunity. Currently, people under 16 are not eligible for the vaccine since trials for that group are still underway.

In addition to vaccines required for school entry, CDPH strongly recommends that all students and staff be immunized each autumn against influenza unless contraindicated by personal medical conditions, to help:

- Protect the school community.
- Reduce demands on health care facilities.
- Decrease illnesses that cannot be readily distinguished from COVID-19 and would therefore trigger extensive measures from the school and public health authorities.

Because vaccine implementation for schools is rapidly evolving, we are providing a separate vaccine guidance document that will be available on the Safe Schools for All Hub [here](#).

Appendix 1: Resources

SCHOOL RESOURCE LINKS

- [Safe Schools for All Hub](#)
- [Testing Guidance](#)

Appendix 2: Sample Notifications

SCHOOL EXPOSURE TO A CASE OF COVID-19 NOTIFICATION

K-12 SCHOOL NAME/LETTERHEAD

From School Principal (or Designee)

Date

Dear Parents/Guardians,

We would like to inform you that we have been notified about a confirmed case of COVID-19 (Coronavirus Disease 2019) in a member of our school community. The individual who tested positive (the "case") was last on school

premises on [DATE]. All school areas where the case spent time will be cleaned and disinfected before they are in use again.

Our school is working with the [LOCAL HEALTH DEPARTMENT] to follow up with the case and will reach out to all persons who are identified as having had close contact with the case to recommend home quarantine and COVID-19 testing. If you or your child are not contacted, it means that you or your child were not identified as exposed to the case.

Please remind your child to use their face covering, stay at least 6 feet from other people, and wash their hands often with soap and water for at least 20 seconds.

Symptoms of COVID-19 may appear 2-14 days after exposure to the virus and include:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

Anyone with COVID-19 symptoms should be tested. However, many infected people do not develop symptoms, which is why it is recommended that exposed people be tested whether they have symptoms or not.

Ensuring the health and safety of our students, teachers, and staff members is of the utmost importance to us. If you have any questions or concerns, please contact [CONTACT NAME] at XXX-XXX-XXXX.

Sincerely,

COVID-19 SCHOOL OUTBREAK NOTIFICATION

TK-12 SCHOOL NAME/LETTERHEAD

From School Principal (or Designee)

Date

Dear Parents/Guardians, Teachers, and Staff Members,

We would like to inform you that we are working with the [LOCAL HEALTH DEPARTMENT] on their investigation of a COVID-19 outbreak in our school community. Our school is working with the [LOCAL HEALTH DEPARTMENT] to follow up with all cases and symptomatic contacts to identify all exposed persons and recommend home quarantine and testing. If you or your child are not contacted, it means that you or your child were not exposed to either a case or a symptomatic contact.

If you are a parent/guardian, please remind your child to use their face covering, stay at least 6 feet from other people, and wash their hands often with soap and water for at least 20 seconds.

Symptoms of COVID-19 may appear 2-14 days after exposure to the virus and include:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

Anyone with COVID-19 symptoms should be tested. However, many infected people do not develop symptoms, which is why it is recommended that exposed people be tested whether they have symptoms or not.

Ensuring the health and safety of our students, teachers, and staff members is of the utmost importance to us. If you have any questions or concerns, please contact [CONTACT NAME] at XXX-XXX-XXXX.

Sincerely,

SCHOOL CLOSURE DUE TO COVID-19 NOTIFICATION

TK-12 SCHOOL NAME/LETTERHEAD

From School Principal (or Designee)

Date

Dear Parents/Guardians, Teachers, and Staff Members,


We are informing you that we are closing our school, starting on [DATE] due to the ongoing COVID-19 outbreak and likely continuing transmission at our school. In consultation with the [LOCAL HEALTH OFFICER], we have been advised that the school should be closed for 14 days to prevent further transmission of COVID-19 and to clean and disinfect the school before reopening on [DATE].

During school closure, the school will switch to online teaching to continue our classes; please see attached information sheet on how students can sign in to continue their schoolwork online. The [LOCAL HEALTH DEPARTMENT] will also continue to follow-up with cases and contacts during school closure to ensure isolation and quarantine and testing.

If upon school reopening, your child is feeling ill or having a fever or symptoms of COVID-19, even if symptoms are very minor, please do not send your child to school and consider getting your ill child tested for COVID-19. If your child is well without any symptoms, please remind your child before going back to school to use their face covering, stay at least 6 feet from other people, and wash their hands often with soap and water for at least 20 seconds. School staff should call in sick and stay home if having a fever or symptoms of COVID-19 and consider getting tested.

Symptoms of COVID-19 may appear 2-14 days after exposure to the virus and include:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea



Ensuring the health and safety of our students, teachers, and staff members is of the utmost importance to us. If you have any questions or concerns, please contact [CONTACT NAME] at XXX-XXX-XXXX.

Sincerely,



Appendix 3: Public Health Directive

REPORTING DETAILS OF POSITIVE CASES

Required COVID-19 Case Reporting By Schools

January 14, 2021

Following school closures that occurred in spring 2020 in response to the COVID-19 pandemic, the California Department of Public Health ("CDPH") developed the "COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year" (July 17, 2020) to support school communities as they decided when and how to implement in-person instruction for the 2020-2021 school year. Public and private K-12 schools throughout the state are currently in various stages of instruction including distance learning, in-person learning, and hybrid instruction based on local conditions.

New evidence and data about COVID-19 transmission coupled with the experiences of schools both nationally and internationally demonstrates that schools, particularly elementary schools, can operate in-person instruction safely with the correct safety protocols in place. Concurrently with this directive, CDPH issued updated, consolidated guidance for K-12 schools (including public, private, and charter) to support school re-openings and safe implementation of in-person instruction for students and staff.

Under current guidance, schools that have already reopened are permitted to continue offering in-person instruction, and additional schools are expected to reopen under the forthcoming K-12 school guidance. To be equipped to prevent and mitigate ongoing community COVID-19 transmission, a comprehensive and coordinated approach for the secure sharing of vital data and information regarding COVID-19 infections among school employees and students is necessary, especially in light of current epidemiological conditions.

The sharing of identified case information data with public health professionals is therefore necessary to ensure that state and local public health experts can respond to confirmed cases of COVID-19 who have been present at a school site, to track and understand the extent of disease transmission within the state, and to support communities with appropriate prevention strategies and support. Accordingly, to monitor and prevent the spread of COVID-19, it is necessary for CDPH and local health jurisdictions to have accurate information about COVID-19 infections among school employees and students. Specifically, the prompt, secure, and confidential sharing of information about individuals within the school community who have tested positive for COVID-19 is critical to ensure that public health authorities can rapidly respond by:

1. Instituting necessary case investigation and contact tracing;
2. Focusing public health resources to effectively provide comprehensive support to the affected schools related to further investigation, mitigation strategies, and operational plans;
3. Assessing and monitoring the practices and activities that may have led to the infection or transmission of COVID-19;
4. Taking appropriate measures to protect the health of both the school community and population-at-large; and
5. Ensuring that CDPH and local health jurisdictions have the information necessary to accurately assess the impact of school reopening on COVID-19 transmission and case rates to effectively update operative public health guidance and directives as necessary.


Schools are authorized under the Family Educational Rights and Privacy Act (FERPA) to disclose personally identifiable information without parental consent to local health departments regarding COVID-19 testing and cases. (20 USC § 1232g(b)(1)(I).) In response to the COVID-19 pandemic, California has been under a State of Emergency since March 4, 2020. California continues to see the dire effects of this pandemic through limited ICU capacities and new cases and deaths each day. The COVID-19 pandemic poses an extreme threat to the health and safety of all Californians. Even with protocols in place to mitigate the transmission of COVID-19, the presence of an individual who has tested positive of COVID-19 on a K-12 public or private school campus is an emergency that poses a risk to health or safety of students and employees present on the campus. Reporting to the local health officer the presence of a positive case of COVID-19 in an individual who is or has been present on a K-12 public or private school campus is necessary to protect the health and safety of students and

employees present on the campus. California law (17 C.C.R. section 2508) also requires anyone in charge of a K-12 public or private school kindergarten to report at once to the local health officer the presence or suspected presence of any of the communicable disease, which includes COVID-19.

Accordingly:

- Effective immediately, every local educational agency (school district, county office of education, and charter school) and private school in California shall notify its local health officer of any known case of COVID-19 among any student or employee who was present on a K-12 public or private school campus within the 10 days preceding a positive test for COVID-19. Specifically, the local educational agency or private school shall report the following information:
 - The full name, address, telephone number, and date of birth of the individual who tested positive;
 - The date the individual tested positive, the school(s) at which the individual was present on-site within the 10 days preceding the positive test, and the date the individual was last on-site at any relevant school(s); and
 - The full name, address, and telephone number of the person making the report.
- This information shall be reported to the local health officer by telephone within twenty-four hours from the time an individual within the local educational agency or private school is first made aware of a new case.
- This reporting shall continue until this directive is modified or rescinded.

Information reported to the local health officer pursuant to this directive shall not be disclosed except to (1) the California Department of Public Health; (2) to the extent deemed necessary by the local health officer for an investigation to determine the source of infection and to prevent the spread of COVID-19, including with health officers in other jurisdictions as necessary to monitor, investigate, prevent, and/or control the spread of COVID-19; (3) if required by state or federal law; or (4) with the written consent of the individual to whom the information pertains or the legal representative of the individual.



This reporting does not replace or supersede any other statutory or regulatory requirements that require reporting of COVID-19 cases and/or outbreaks to other entities or institutions, such as Cal/OSHA.



Appendix 4: Public Health Directive

REPORTING DETAILS OF IN-PERSON INSTRUCTION

COVID-19 School Reopening Status Reporting

January 14, 2021

Following school closures that occurred in spring 2020 in response to the COVID-19 pandemic, the California Department of Public Health (CDPH) developed the "COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year" (July 17, 2020) to support school communities as they decided when and how to implement in-person instruction for the 2020-2021 school year. Schools throughout the state are currently in various stages of instruction including distance learning, in-person learning, and hybrid instruction based on local conditions.

New evidence and data about COVID-19 transmission and experience nationally and internationally demonstrate that schools, particularly elementary schools, can operate safely for in-person instruction with the correct safety protocols in place. Concurrently with this directive, CDPH issued updated, consolidated guidance for public and private K-12 schools to support school reopenings and safe implementation of in-person instruction for students and staff.

Under the guidance, schools that have already reopened are permitted to continue offering in-person instruction, and additional schools will reopen through the early spring. To be equipped to prevent and mitigate ongoing community COVID-19 transmission, it is necessary for CDPH and local health jurisdictions to have accurate information about which school sites are serving students in-person and to which degree such in-person services are being provided, especially in light of evolving epidemiological conditions.

This information will assist public health authorities maintain awareness of possible locations where case transmission may occur and can rapidly respond

to any confirmed positive cases of individuals who have been on-site at schools offering in-person instruction and services. It is also necessary to focus public health resources to support schools, including COVID-19 testing support, contact tracing, and technical assistance related to mitigation strategies and operational plans, to make the most efficient and effective use of those resources. Finally, this information will assist CDPH and local health jurisdictions to accurately assess the impact of school reopening on COVID-19 and update operative public health guidance and directives as necessary.

Accordingly:

- Beginning January 25, 2021, every local educational agency (school district, county office of education, and charter school) and private school in California shall notify the California Department of Public Health whether it is serving students in-person. Specifically, the local educational agency or private school shall report the following information:
 - In-person instruction is provided full-time, including whether provided for all grades served by the local educational agency or private school or only certain grade spans.
 - In-person instruction is provided only part-time (hybrid model), including whether provided for all grades served by the local educational agency or private school or only certain grade spans.
 - In-person instruction and services are provided only pursuant to the Guidance Related to Cohorts issued by the California Department of Public Health.
 - No in-person instruction and services are provided (distance learning only).
- This reporting shall continue every other Monday (or the Tuesday immediately following, if the Monday is a state holiday) until this directive is modified or rescinded.
- This information shall be reported via a web form that will be made available by the California Department of Public Health.
- The California Department of Public Health will provide this information to local health officers and, once the information is processed, will make this information publicly available on the Safe Schools For All Hub website.