
CDPH Guidance for Schools Creates Challenges and New Reopening Criteria

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On January 14, 2021, the California Department of Public Health (CDPH) issued [new guidance](#) (the Guidance) for all of California’s local educational agencies (LEAs), including county offices of education, school districts, charter schools, and private schools, including nonpublic and nonsectarian schools. The Guidance includes new guidelines affecting how LEAs should proceed with providing in-person instruction for the remainder of the 2020-2021 school year, redefines what it means for a school to have “reopened” or be “open,” creates new obligations to report information to CDPH, outlines the requirements for LEAs to prepare a COVID-19 Safety Plan, and implements new health and safety rules.

Background Information

The new Guidance issued by CDPH is characterized as a public health directive that all public and private schools must comply with. This is because Governor Newsom issued various executive orders, in accordance with his authority under the California Emergency Services Act, directing California residents to comply with guidance and directives issued by State health officials, rendering such guidance enforceable. In previous directives, CDPH has cited to the Government Code and stated that if any person violates, refuses, or willfully neglects to obey an executive order, they shall be guilty of a misdemeanor and on conviction shall be punished by a fine. Therefore, LEAs must comply with the Guidance.

Past Guidance Superseded by New Guidance

Past CDPH guidance information related to schools has included: the July 17, 2020 Reopening Framework; the August 3, 2020 COVID-19 Industry Guidance for Schools; a CDPH webpage containing Schools FAQs (last updated October 20, 2020); the Elementary Education Waiver Process; and Cohort Guidance. All of these are now consolidated, updated, and superseded by CDPH’s January 14, 2021 Reopening Framework Guidance, with the exception of the Cohort Guidance.

Notably, the Guidance is separate and apart from the Governor’s Safe Schools for All plan which is merely *proposed* budget legislation and does not have the force of law unless passed by the Legislature.

Below are some key points from the Guidance for LEAs to be aware of:

New Definition for an “Open” or “Reopened” School

The Guidance redefines what it means for a school to be “open” or have “reopened.” A school is considered to be “open” or to have “reopened” if they have offered all students, in at least one grade, the option to return for in-person instruction for at least part of the school-week. This definition is important because schools that have not yet opened or reopened have to comply with new criteria in order to do so. However, schools which are already open or are deemed to have reopened under these definitions have slightly different requirements that they must follow per the Guidance (see below). The Guidance also delineates requirements for schools that were permitted to reopen but were not able to, for schools that are mid-stream in a phased reopening, and for schools that opened under the Elementary Waiver Process.

Instructional Method Reporting Requirement—Effective January 25, 2021

Starting January 25, 2021, all LEAs must report to CDPH whether in-person, hybrid, or distance learning instruction is being provided at their school(s). This reporting must occur on every other Monday for at least the remainder of the 2020-2021 school year, except reporting will take place on Tuesday, June 1 instead of Memorial Day.

COVID-19 Safety Plan (CSP)

All LEAs that are open or that have reopened, as defined in the Guidance, are now required to post their COVID-19 Safety Plan (CSP) on their website homepage, effective February 1, 2021. For LEAs not yet open, they must post this as part of the process to reopen (see below). The CSP is a new term that was initially referenced by the Governor’s proposed Safe Schools for All plan, but is now redefined in the Guidance. Under the Guidance, a CSP includes, at a minimum, a completed COVID-19 School Guidance Checklist provided by CDPH on their new Safe Schools for All [website](#), and an updated a COVID-19 prevention program (CPP), which has already been required by CalOSHA’s Emergency regulations which went into effect on December 1, 2020, with penalties for noncompliance set to begin February 1, 2021. Additionally, LEAs must consult with labor partners and other parent and community organizations regarding the CSP, before finalizing it.

Positive Case Reporting Requirement

All LEAs must now notify and report to a local health officer within 24 hours upon receiving information that a student or employee who was on campus within the past 10 days, has tested positive for COVID-19. Notably, this report must be made to the local health officer by telephone; email is insufficient but may be advisable in addition to telephonic communication. Additionally, the report must contain 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.

Status of Schools Not Open or Reopened

For a school that does not meet the definition of “open” or “reopened,” the Guidance initially stated that the school may continue to serve students in-person as it did in the Red Tier. The Guidance was subsequently changed on January 19, 2021, to allow a school to serve students as it did as of January 14, 2021. New, additional students cannot be brought onto campus for any instruction or services unless these students are served consistent with CDPH’s Cohort Guidance, or the school meets the new reopening criteria.

New Health and Safety Requirements and Recommendations for All LEAs—Distance Between Chairs, Face Masks and Testing

The Guidance also makes changes to various other health and safety measures. Previous guidance stated schools must distance teacher desks at least six feet away from student and other staff desks. Similarly, prior guidance stated that LEAs must keep student desks six feet apart, as practicable. The Guidance is unchanged regarding staff desks, however, the Guidance now provides the LEA must make a “good faith effort” to keep student chairs at least six feet apart, while adding that under no circumstances can student chairs be closer than four feet apart. The Guidance also now requires, with limited medical or disability related exceptions, that *all* students in grades TK-12, including those in TK-2 who were previously exempt, wear face masks. Further, school district health teams and therapists can now confirm the student’s condition before an alternative, such as a face shield, is allowed to be worn. Schools must also provide face coverings to students who inadvertently fail to bring one to school or fail to bring one onto a school bus. CDPH also requires LEAs to exclude students if they refuse to wear a face covering provided by the school, if they are not otherwise exempt from wearing one. Similarly, staff that have frequent contact with students are recommended to wear surgical face masks.

Finally, the new Guidance includes a table regarding testing of students and staff for COVID-19. The Guidance, on its own, is unclear as to whether the testing schedule set forth in the table is a mandatory or recommended practice. LEAs should review the testing table and consult with legal counsel and their insurance providers in determining whether and when to test students in light of this new framework.

New Reopening Criteria for Schools Not Yet Open

CDPH has also created new criteria for schools to reopen if they were not yet “open” or “reopened” as defined under the Guidance. For grades TK-6, each of the below conditions must be met:

1. The adjusted county COVID-19 case rate is less than 25 cases per 100,000 population per day for five consecutive days before the school reopens;
2. The school posts its CSP to the school website;
3. The school submits its CSP to the local county health department and the State’s Safe Schools for All team; and
4. Seven business days have passed from the time the school submitted its CSP, without subsequent disapproval.

For grades 7-12 and TK-6 schools which did not previously seek to reopen under the Purple Tier, each of the below conditions must be met:

1. The adjusted county COVID-19 case rate is less than seven cases per 100,000 population over a seven-day average (the county is in the currently defined Red Tier or better under California's Blueprint for a Safer Economy);
2. County remains in the Red Tier for five consecutive days and has not returned to the Purple Tier;
3. The school posts the school's CSP to the school website; and
4. Five calendar days have passed from the time the school posted its CSP to the school's website.

School Closure Considerations

The Guidance states schools that have reopened are not required to close if the county moves to a Purple Tier designation under the California Blueprint for a Safer Economy or has a case rate above 25 per 100,000 population. The Guidance does not specifically identify a mandate for schools to close, no matter how large the number of COVID-19 cases per 100,000 population. However, the Guidance goes on to discuss that LEAs will have discretion to perform school closures in consultation with their local health officer. The Guidance discusses that closures may be warranted in the event of multiple outbreaks. However, if a school chooses to close for this reason, it may typically reopen after 14 days and with local health officer consultation.

Takeaways

LEAs should review the lengthy Guidance from CDPH to ensure they are in compliance with the new reporting and health and safety requirements, consider the new recommendations, and to determine whether each of its schools has reopened or will need to follow the new reopening criteria. Questions and requests for technical assistance may be submitted directly to the CDPH through their email address at: SafeSchools4All@cdph.ca.gov. LEAs are also advised to consult with legal counsel regarding how to implement many of the new requirements and to address the new recommendations.

If you have any questions about school reopening plans, including changes to face covering rules, responding to cases of COVID-19 on campus, or asymptomatic testing, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.