State Issues Clear Guidance on School Reopening, Face Coverings and More

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At a press conference held on Friday, July 17, 2020, Governor Newsom announced a much anticipated California Department of Public Health (CDPH) Framework (located here) and Guidance (located here) for reopening schools in the 2020-2021 school year, amidst the COVID-19 pandemic and in the face of rising infection rates in many parts of the state.

The CDPH Framework and Guidance collectively provide needed clarification on a range of significant issues, including:

1. When schools can open.
2. When schools that have opened must be closed.
4. Mask/face covering requirements for younger students.
5. Options for dealing with students that will not wear a mask.

Pursuant to the Governor’s Executive Order N-25-20, issued on March 12, 2020, the guidelines set forth in these documents are mandatory and enforceable in the State of California.

NEW CDPH CRITERIA TO OPEN SCHOOL

Under the CDPH Framework, an LEA cannot reopen for in-person instruction unless the county in which the LEA is located has been off the State’s County Monitoring List for at least 14 consecutive days. The County Monitoring List, which is regularly updated, can be found at the following link (https://covid19.ca.gov/roadmap-counties/).
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The only apparent exception to this criterion allows a district superintendent (or equivalent for a charter or private school) to seek a waiver for an elementary school (i.e. K–8). However, a waiver request may only be made “in consultation with labor, parent and community organizations,” and requires both review by local public health officials and consultation with CDPH.

LEAs barred from offering in-person instruction by September 1 (as required by SB 98) should also have a comfort level that funding will not be denied for that reason (though additional legislation on this front may be required).

In evaluating whether a county will be placed on the monitoring list, CDPH uses a number of different factors including elevated cases in specific populations, large outbreaks in congregate settings, elevated public interests, and significant resource requests for personal protective equipment, contact tracers, or testing capacity. However, CDPH has identified the following as the primary metrics considered:

1) **Case Rate.** CDPH will flag the county if either of the following occurs –

   - The infection rate exceeds 100 individuals per 100,000 (this is calculated as the total number of cases diagnosed over 14 days, divided by the total number of county residents, multiplied by 100,000) or
   - The rate exceeds 25 individuals per 100,000 (calculated using the same method above) and the county has greater than an 8% testing positivity rate over a 7-day period (calculated as the number of positive tests, divided by the total number of tests over the period, multiplied by 100);

2) **Hospitalization Rate.** This metric will be flagged if there has been greater than a 10% increase in the average number of COVID-19 patients hospitalized over the last 3 days;

3) **Hospital Capacity.** Specific considerations include the overall hospital capacity, availability of intensive care unit beds, and availability of ventilators. If there is an increased transmission rate in the county, along with increased hospitalization, this factor becomes important for determining whether the county is capable of responding to needed treatments. A county is flagged if –
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- Less than 20% of staffed intensive care unit beds are available or
- Less than 25% of ventilators are available

When a county fails to meet the minimum requirements for these various metrics, CDPH monitors the county for 3 days before placing it on the monitoring list. Once on the list, CDPH works directly with the county to develop strategies, identify action steps, and create timelines for reducing transmissions, including a process for exiting the monitoring list.

CLOSING SCHOOLS ONCE REOPENED

Once a school or district has reopened, closure is not mandatory simply because the county in which the LEA is located goes back on County Monitoring List. Rather, CDPH advises that case-by-case decisions to close must be made based on the following principles, and in consultation with local health officials:

- **Individual school closure** may be warranted if the school has “multiple cases in multiple cohorts” or “at least 5 percent of the total number of teachers/students/staff are cases within a 14-day period” or as otherwise determined by local public health authorities.
- **District closure** may be warranted if 25% of schools within the district are closed.

Schools/Districts that have closed (after initially opening) may generally reopen after 14 days, but must clean and disinfect the facility, and must engage with local public health officials for purposes of investigation and consultation.

RESPONDING TO COVID-19 SYMPTOMS AND CONFIRMED CASES

The CDPH Guidance provides additional clarity as to how LEAs should respond to reports of COVID-19 symptoms or confirmed COVID-19 cases amongst students/staff. As always, LEAs are advised to consider orders of local county public health officers, which may be more restrictive and may have requirements in addition to those of the CDPH Guidance.
Responding to Students/Staff With COVID-19 Symptoms

The CDPH Guidance articulates a clear rule for use when students/staff report COVID-19 symptoms (e.g., fever, cough, loss of taste or smell, difficulty breathing). In those situations, the individual should be separated and sent home and encouraged to test. The CDPH specifically advises: (1) use of an isolation room; (2) not cleaning the exposed area for 24 hours or as long as practicable; and (3) immediate notification of local public health authorities.

If students/staff test negative, they may return three days after symptoms have resolved.

Significantly, CDPH advises that other students/staff need not be sent home unless a positive case is confirmed, though they advise that LEAs consider notifying students/staff.

Responding to Students/Staff With Confirmed COVID-19 Infection

The CDPH Guidance articulates rules for responding to confirmed cases (e.g., positive test result, doctor’s diagnosis) of COVID-19 infection, but there is significant room for LEAs to decide, in consultation with local public health officials, how to apply this guidance.

LEAs should first determine when a confirmed case arose for purposes of determining whether others should be required to self-quarantine. The Centers for Disease Control (CDC) currently advises that contact with a person who has COVID-19 is significant for purposes of considering whether self-quarantine is required if the contact occurs: (1) 48 hours prior to a positive COVID-19 test if there are no symptoms; or (2) 48 hours prior to the onset of symptoms. (See link https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html). Note that local public health guidance on this point may be more restrictive.

At a minimum, any “close contacts” (i.e., within 6 feet for 15 or more minutes) of a confirmed COVID-19 case must be sent home to self-quarantine for 14 days. CDPH specifically advises: “In some school situations, it may be difficult to determine whether individuals have met this criterion and an entire cohort, classroom, or other group may need to be considered exposed, particularly if people have spent time together indoors.”

How to apply this rule in California classrooms — many of which are aiming for roughly 6-foot separation between desks (right on the border of the 6-foot “close contact” zone) — is not entirely clear. For this reason, LEAs are advised to adopt a clear rule for responding to confirmed cases that can be applied quickly and communicated in advance to parents, students, and staff. In particular, LEAs may wish to consider one of the following options for classrooms:
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Option 1: Send home only the infected student/staff member plus any “close contacts” identified by interview.

Comment: Assuming all desks are at least 6 feet apart, this option could result in as little as 1 person (i.e. the infected person) being sent home, and, at least initially, would have minimal impact on the classroom. However, LEAs are advised to quickly identify and send home “close contacts,” and to consider the possibility that additional students or staff in proximity to the student may have been infected, and could infect others.

Option 2: Send home the infected student/staff plus anyone sitting in an adjacent desk (or in the same cohort) plus any “close contacts” identified by interview.

Comment: This option strikes a balance by considering at least all persons in adjacent desks or in the same “cohort” to be “close contacts.” This option would have moderate impact on the classroom, though, in the high school setting, a student surrounded by others may be adjacent to 8 students per class, and, thus, application of this option could result in sending almost 50 students home. LEAs implementing this option will need exact seating charts for all classes. However, LEAs are advised to consider the possibility that additional students or staff in proximity to the student may have been infected, and could infect others.

Option 3: Send home the entire classroom plus any “close contacts” identified by interview.

Comment: This option, which views the entire classroom as “close contacts” of the infected person, and may have some practical advantage in that the entire class will receive the same mode of instruction (i.e. distance education) using their regular teacher. However, this option, in a high school setting, could easily result in sending 90 students (assuming 15 students per class) and 6 teachers home.

When Can Students/Staff Return to School After Being Sent Home

CDPH advises that students/staff who are infected be sent home for at least 10 days from the onset of symptoms, and in compliance with current CDC guidance (which, as of this writing, requires that symptoms have improved and the individual have gone 24 hours without fever and without use of fever-reducing medication).

CDPH advises that students/staff sent home to self-quarantine because they are “close contacts” of an infected person may return 14 days after their last exposure.
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CDPH advises that students/staff sent home with symptoms — but no positive test — may return 3 days after symptoms resolve.

DEVELOPING A PLAN TO RESPOND TO SUSPECTED OR CONFIRMED CASES AT SCHOOL

After an LEA resumes in-person instruction, the LEA must be prepared to quickly respond to symptomatic or infected students and staff. Likely concerns will include at least the following:

- With whom was the student/employee/visitor in contact, and when?
- When did the student/employee/visitor first exhibit symptoms? Receive a diagnosis?
- If there is not a confirmed diagnosis, is one pending, and what is the timeline for test results?
- Who at the school is responsible for obtaining reliable information regarding the above?
- If a student is exhibiting symptoms at school, where will the student wait until a parent/guardian can arrive, and who will be with the student until then?
- Should the classroom be closed? The entire school? Should only some students/staff be told not to return for now? For how long? If information regarding contacts/testing results/confirmation of diagnosis is imperfect, conflicting, or uncertain, does that weigh in favor of or against closure? Who will make these decisions, according to what criteria, and how quickly?
- Must or should local public health officials be contacted to report information and/or seek guidance, and if so, who is responsible for doing that?
- What should be communicated to parents/guardians, when, and who will communicate it?
- Who will clear students/employees to return to school and according to what criteria?
- What areas should be cleaned/disinfected, and how thoroughly? Are there employees on staff who are trained and equipped to do this, or is it necessary to call in an outside service with specialty training and equipment?

Given the broad range of possible scenarios, it is advisable that LEAs develop specific response plans, and that such plans be communicated to employees, along with appropriate training, so that employees are aware of the requirements of the plan, and follow it when circumstances dictate.

Indeed, some local public health orders may specifically require this. For example, the Los Angeles County Reopening Protocol for K12 Schools (July 10, 2020) [http://www.ph.lacounty.gov/media/Coronavirus/docs/protocols/Reopening_K12Schools.pdf] specifically requires a school to have a “COVID-19 Containment, Response, and Control Plan,” with specified elements, including but not limited to “A plan or protocol, for steps that will be taken immediately upon notification of school officials that any member of the school community (faculty, staff, student or visitor) tests positive for, or has symptoms consistent with COVID-19.” For those LEAs in counties where the local county health order does not include such specific requirements, the detailed elements of the Los Angeles County order may nevertheless be useful as a planning tool.
In developing such plans, LEAs should refer to:

- The CDPH July 17 COVID-19 Industry Guidance: Schools and School-Based Programs, Section 10: Plan for When a Staff Member, Child or Visitor Becomes Sick, and Section 12: Considerations for Reopening and Partial or Total Closures. The CDPH Guidance emphasizes the importance of having a plan in place in advance of a case occurring at school, and identifies specific elements that should be included in such a plan.

- The California Department of Industrial Relation’s Cal/OSHA Interim General Guidelines on Protecting Workers from COVID-19 (May 14, 2020) These state that California employers are required to establish and implement an Injury and Illness Prevention Program (IIPP) to protect employees from workplace hazards, including infectious diseases: “Employers are required to determine if COVID-19 infection is a hazard in their workplace. If it is a workplace hazard, then employers must implement infection control measures... For most California workplaces, adopting changes to their IIPP is mandatory since COVID-19 is widespread in the community.” The DIR’s website also has a page, “What an IIPP Is and How It Works” [https://www.dir.ca.gov/dosh/etools/09-031/what.htm], which states the required elements of an IIPP and has various other links about how to develop one.

- California Department of Education’s “Stronger Together” guidance (June 8, 2020), which includes recommendations to “Plan to Address Positive COVID-19 Cases or Community Surges,” with specified elements, and to update the IIPP to address circumstances unique to COVID-19.


- Applicable local public health orders.

Because these source materials frequently change, LEAs are advised to document the specific source material (i.e. local/state/federal orders and guidance) on which their plans are based, and to continually monitor local, state, and federal public health guidance for any changes that may dictate changes to an LEA’s plans. LEAs are advised also to consult with local public health authorities, medical professionals (staff or external), JPAs/liability carriers, and legal counsel in the development of their plans.

By developing a sound plan to respond to suspected or confirmed cases before they arise, an LEA will be better positioned to respond to such cases with decisiveness and consistency, maintain the continuity of instruction, and in so doing better protect the health and safety of students and staff, to maintain the confidence of the community, and to protect against liability.
Under the new CDPH Guidance, the pre-existing face-covering guidance (discussed in a prior Alert here https://www.aalrr.com/newsroom-alerts-3741) has been adjusted in a number of key respects.

With respect to students, the rules have been clarified as follows:

- Face coverings are not required for babies or toddlers under 2 years old.
- **Face coverings are “strongly encouraged” but no longer required for children age 2 years old through 2nd If children of this age cannot wear a face covering properly, a face shield is an acceptable alternative. LEAs may, in our view, adopt a stricter standard.**
- Face coverings remain required for students in grades 3-12, unless exemptions apply.

Students who are required to wear face coverings, and who refuse to do so, must be excluded from campus:

- CDPH: “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.” Such students may be excluded from campus, but should be offered alternative educational programs (e.g. 100% distance education).

Under the new CDPH Guidance, the following clarifications apply to staff:

- All staff are obligated to use face coverings in accordance with prior CDPH guidelines unless Cal/OSHA standards require respiratory protection;
- In limited situations where face coverings cannot be used for pedagogical or developmental reasons, such as communicating or assisting young children or those with special needs, a face shield can be used instead of a cloth face covering while in the classroom as long as the wearer maintains physical distance from others, to the extent practicable. 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.

**COVID-19 TESTING, PREVENTING OUTBREAKS AND IDENTIFYING ROOT CAUSES OF AN OUTBREAK IF ONE OCCURS**

The Guidance provides that LEAs should begin certain health monitoring activities that have not previously been directed by order or specific state guidance. One of these activities is testing for COVID-19. The Guidance specifies that once schools are re-opened to at least some in-person instruction, surveillance testing should be implemented based on “local disease trends.” If epidemiological data indicates concern for increasing community transmission, LEAs should increase testing of staff to detect potential cases as lab testing capacity allows. The Guidance does not appear to go so far as to **mandate** testing, but rather
encourages that LEAs begin regularly testing employees who have regular/frequent contact with students in consultation with local health departments.

The Guidance also challenges LEAs to begin the use of contact tracing and other similar measures designed to identify the origin and spread of COVID-19. The Guidance advises LEAs to generally “investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection.” The Guidance goes on to provide specific tasks to help in this assessment, in addition to remedial measures. These include all of the following:

- Identify individuals who have been in close contact (within six feet for 15 minutes or more) of an infected person and take steps to isolate COVID-19 positive person(s) and close contacts
- Document/track incidents of possible exposure and notify local health officials, staff and families immediately of any exposure to a positive case of COVID-19 at school while maintaining confidentiality
- Implement procedures for daily symptom monitoring for staff, including monitoring absenteeism patterns to determine if there is a potential outbreak
- Implement screening and other procedures for all staff and students entering facilities, including taking temperatures with no touch thermometers
- Conduct visual wellness checks of all students or establish procedures for parents to monitor at home
- Ask all individuals if they or anyone in their home is exhibiting COVID-19 symptoms
- Monitor staff and students throughout the day for signs of illness and send home students and staff with a fever of 100.4 degrees or higher, cough or other COVID-19 symptoms
- Maintain communication systems that allow staff and families to self-report symptoms and receive prompt notifications of exposures and closures, while maintaining confidentiality

Also of note, the Guidance specifically imposes a requirement on LEAs to notify local health officials immediately of any positive cases of COVID-19, and to notify exposed staff and families (as relevant) while maintaining confidentiality as required by law. In this respect, the Guidance may require more reporting than some previously-issued local public health guidance (e.g. the July 10 Los Angeles County Reopening Protocol for K12 Schools, referred to above). LEAs are advised to follow the stricter guidance (i.e. that which imposes the higher reporting obligation).

**CURRENTLY OPEN PROGRAMS**

The CDPH Guidance and Framework does not address summer school and other programs that are currently open in counties on the County Monitoring List. While LEAs may opt to close these programs, we note that the CDPH Framework does allow schools to remain open for instruction if they reopen and the county is subsequently placed on the monitoring list. The document states, with respect to those schools and districts: “Schools should begin testing staff, or increase frequency of staff testing but are not required to close.” As such, we believe summer school programs currently in operation may rely on this guidance and
remain open while either beginning or increasing the frequency of staff testing for the virus.

This topic is also addressed in a prior Alert. (see https://www.aalrr.com/newsroom-alerts-3749).

**DAY CAMPS**

Separately, though not part of Governor Newsom’s announcement, the Interim Industry Guidance for Day Camps was also updated by CDPH on July 17. The updated guidance continues to recommend promoting healthy hygiene practices, intensified cleaning and disinfecting protocols, and physical distancing.

Unlike the school guidance, the day camp guidance has not been revised to add a face covering requirement for the campers. The added considerations for partial or total closures recommend that day camp operators monitor local transmission rate and closures daily to adjust operations accordingly. In the event that a camper or staff member tests positive for COVID-19 and has exposed others at the camp, the guidance recommends consulting with local public health department and consider whether and for how long closure is warranted. The camp will also typically need to close the exposed area temporarily for cleaning and disinfection. The guidance also recommends day camps implement communication plans for possible closure and maintain regular communications with the local public health department.

**CONCLUSION**

The new CDPH Framework and Guidance provide needed clarity with regard to school reopening and closing. Please feel free to contact the authors or your usual AALRR attorney with any questions regarding this Alert.

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[1] A “cohort” is defined by CDPH as “a stable group with fixed membership that stays together for all courses and activities (e.g., lunch, recess, etc.) and avoids contact with other persons or cohorts.”