



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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serving school and college
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5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Loren W. Soukup
Erin E. Stagg

Of Counsel
Ellie R. Austin
Robert J. Henry
Frank Zotter, Jr.

LEGAL UPDATE

December 4, 2020

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Assistant General Counsel *KAS*
Subject: Governor’s Regional Stay-at-Home Order
Memo No. 71-2020

On December 3, 2020, Governor Newsom issued a Regional Stay-at-Home Order, which goes into effect on December 5, 2020.¹ This Order modified previous orders addressing the COVID-19 pandemic, including specifically the Governor’s November 19, 2020 limited Stay-at-Home Order, which established a state-wide curfew between 10 p.m. and 5 a.m.

The December 3rd Order divides the state into five “regions,” including the Bay Area² and Northern California.³ The Order applies to each region based upon the availability of Intensive Care Unit (“ICU”) capacity. If the region has less than 15% of its total ICU capacity available, the Order will apply to the region and must be implemented within 24 hours. If after three weeks from the Order taking effect in a region, the California Department of Public Health’s four-week projections of the region’s total available adult ICU bed capacity is greater than or equal to 15%, the Order will no longer apply to the region. Current ICU projections show all regions except the Bay Area meeting this threshold in the next few days. The Bay Area is currently projected to drop below 15% ICU capacity later this month.

¹ The full text of the Order can be found at: <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>.

² The Bay Area Region is comprised of: Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma Counties. This region as of December 3rd had 25.3% ICU capacity available. Up to date capacity numbers are available at: <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.

³ The Northern California Region is comprised of: Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Shasta, Siskiyou, Tehama, and Trinity Counties. This region as of December 3rd had 18.6% ICU capacity available. Up to date capacity numbers are available at: <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.



Despite the impact of this Order on operations, public and private, throughout the State, it is clear that it does not amend, change or modify any existing guidance relating to schools. Specifically, the Order states, “Guidance related to schools remain in effect and unchanged. Accordingly, when this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and schools may continue to bring students back for in-person instruction under the Elementary School Waiver Process or Cohorting Guidance.”^{4,5} School employees, as critical infrastructure workers, are not required to stay at home when performing their duties.

Thus, there is no change to the current guidance on school operations,⁶ regardless of whether the Region that the District is located within becomes subject to the Order.

In addition, child care and pre-kindergarten “are allowed to remain open when a remote option is not possible with appropriate infectious disease preventative measures including 100 percent masking and physical distancing.”⁷

Please contact our office with questions regarding the Regional Stay-at-Home Order, this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁴ December 3, 2020 Regional Stay-at-Home Order, Paragraph 2.e.

⁵ The Order cites to the following school guidance documents: Elementary School Waiver Guidance, CDPH: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/In-Person-Elementary-Waiver-Process.aspx>; Cohorting Guidance, CDPH: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/small-groups-child-youth.aspx>.

⁶ All current CDPH school guidance can be found at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>, under the heading “Schools and Universities.”

⁷ <https://www.gov.ca.gov/2020/12/03/california-health-officials-announce-a-regional-stay-at-home-order-triggered-by-icu-capacity/>.