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LEGAL UPDATE

July 21, 2021

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Associate General Counsel *J.H.*
Subject: CDPH Updates Its K-12 Schools Guidance
Memo No. 21-2021

In response to the Center for Disease Control’s (“CDC”) July 9 updated K-12 schools’ recommendations¹, the California Department of Public Health (“CDPH”) issued updated K-12 Schools Guidance on July 12, 2021, which generally required masking indoors.² In response to backlash, on July 12, the CDPH issued a notification on Twitter that “California’s school guidance will be clarified regarding masking **enforcement**”.³ Pending that clarification, the remaining guidance is effective immediately.

The fundamental intent of the guidance is for all students to have access to safe and full-time in-person instruction. Primary factors to follow in determining which recommendations to follow, in conjunction with local public health departments, include: level of community transmission; vaccination coverage among students, faculty, staff, and community; and local outbreaks. For example, each Bay Area school district’s determination regarding how to enforce its masking protocols should include as a factor its county’s recommendation whether individuals should return to indoor masking.⁴

The below merely serves as recommended guidance, except where specific measures are required as noted.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/K-12-Guidance-2021-22-School-Year.aspx>.

³ <https://twitter.com/CAPublicHealth/status/1414772859767910407>.

⁴ As of this week, a majority of Bay Area counties recommend that all individuals mask indoors, regardless of vaccination status. <https://sf.gov/news/bay-area-counties-recommend-masking-indoors-everyone-precaution-against-increased-circulation>. American Academy of Pediatrics also recommends that everyone older than age 2 wears masks at school, regardless of vaccination status. <https://services.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-updates-recommendations-for-opening-schools-in-fall-2021/>.



Masks: Students are required to mask indoors, regardless of vaccination status. Adults are required to mask when sharing indoor space with students.⁵ Persons exempt from masking due to medical conditions must wear an alternative, such as a face shield with a drape, as their condition permits.

Required Mask Protocols:

- Local Educational Agencies (“LEAs”) must develop and implement protocols to provide masks to students who fail to bring one.
- LEAs must develop and implement protocols to enforce mask requirements. The CDPH has already indicated it will revise its schools guidance regarding enforcement of mask requirements.⁶

Distancing: Distancing is no longer required when “other mitigation strategies” such as masking are implemented.

Quarantine Recommendations:

- **Required** Case reporting: AB 86 and 17 Cal. Code of Regs Section 2500 requires districts to report positive cases to county public health department.⁷
- Advise all employees and students to stay home when they have symptoms, and do not return until: 24 hours have passed since resolution of fever, other symptoms improved, and 10 days have passed (10-day period can be shortened with a negative test, or medical documentation that the symptoms are not COVID-related).
- Advise all employees and students to get tested when they have symptoms. (Note that per Cal/OSHA Regulations, employers are still **required** to make testing available at no cost to all employees who had a close contact with a positive case at work.)
- Student quarantine – vaccinated: For student contact with a positive case where the exposed students is vaccinated, follow CDPH May 12 Fully Vaccinated People guidance, which allows vaccinated people to skip the quarantine and testing if asymptomatic.⁸
- Student quarantine – unvaccinated but masked: For student contact with a positive case where the exposed student is unvaccinated but both parties were masked during the close contact: Unvaccinated students may continue to attend school during the 10-day quarantine period **if** they are asymptomatic, continue to mask, get tested twice weekly, and quarantine from extracurricular activities, including sports.

⁵ Although employees are subject to the mandatory Cal/OSHA Covid-19 Emergency Temporary Standards (ETS), which generally allow confirmed vaccinated employees to forego masking while at work, the ETS defers to CDPH guidance regarding youth settings, and excludes indoor public settings. (See our June 25, 2021 Legal Update regarding Cal/OSHA Regulations; <https://sclscal.org/legal-update-memo-no-12-2021cc-cal-osh-guidance-harmonized-with-other-state-laws-orders-and-regulations-ccd/>.)

⁶ Although the CDPH states that LEAs “should” also offer alternative instruction for students who refuse to wear a mask, be aware that per AB 130, LEAs are now **required** to offer independent study for the 2021-22 school year to all students who request it. (See our July 15, 2021 Legal Update regarding AB 130: <https://sclscal.org/legal-update-memo-no-12-2021-education-budget-bill-ab-130-enacted-k-12/>.)

⁷ See our March 5 Legal Update regarding AB 86: <https://sclscal.org/wp-content/uploads/2021/03/09-2021-AB-86-Californias-Final-Reopening-Plan-JH.pdf>.

⁸ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-Public-Health-Recommendations-for-Fully-Vaccinated-People.aspx>.



- Student quarantine – unvaccinated and unmasked: For student contact with a positive case where the unvaccinated student was not masked during the close contact: exposed students must quarantine for 10 days, or quarantine for 7 days with a negative test.

Other Required Protocols:

Safety Plan: LEAs receiving ESSER funds are required to adopt a Safety Plan and review it at least every six months for updates. It is recommended that LEAs post their safety plan on their website and at school sites.

Disability Accommodations: CDPH refers LEAs to CDC’s July 9 K-12 Schools Guidance, Section 2 “Additional Considerations for K-12 Schools.”⁹

Public Transportation: Although the July 12 CDPH guidance did not address school buses, in its June 24, 2021 Guidance for the Use of Face Coverings, CDPH stated that on public transit including buses, “masks are required for everyone, regardless of vaccination status.”¹⁰

Other Recommendations:

Vaccines: Vaccination is strongly recommended for all eligible teachers, staff, and students.

Ventilation: Should be optimized. See CDPH Guidance on Ventilation.¹¹

Hand Hygiene: Teach and reinforce washing hands throughout the day, avoiding touching face, etc. Ensure adequate hygiene supplies.

Cleaning: Clean once a day, disinfect after a positive case.

Food service: Eat outdoors as much as feasible, and maximize physical distancing when eating indoors.

Visitors: Continue to limit nonessential visitors.

The CDPH will separately issue guidance covering childcare settings, and youth activities such as band and drama. CDPH will determine by November 1 whether to update mask requirements or recommendations, based upon evolving conditions.

Please contact our office with questions regarding 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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⁹ https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html#anchor_1625662037558.

¹⁰ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>. The CDE also states that masks are required on school buses. See California Department of Education’s Stronger Together – Transportation rules, updated May 28, 2021 (<https://www.cde.ca.gov/ls/he/hn/sandtschservtransportation.asp>).

¹¹ <https://www.cdph.ca.gov/Programs/CCDC/DEOD/DEOD/EAQ/Pages/Airborne-Diseases.aspx>.