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**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MATTHEW BRACH, an individual;
JESSE PETRILLA, an individual;
LACEE BEAULIEU, an individual;
ERICA SEPHTON, an individual;
KENNETH FLEMING, an individual;
JOHN ZIEGLER, an individual;
ALISON WALSH, an individual;
ROGER HACKETT, an individual;
CHRISTINE RUIZ, an individual; and
Z.R., a minor;

Plaintiffs,
v.

GAVIN NEWSOM, in his official
capacity as the Governor of California;
XAVIER BECERRA, in his official
capacity as the Attorney General of

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 California; **SONIA Y. ANGELL**, in
 2 her official capacity as the State Public
 3 Health Officer and Department of
 4 Public Health Director; and **TONY**
 5 **THURMOND**, in his official capacity
 6 as State Superintendent of Public
 7 Instruction and Director of Education
 8 Defendants.

9 *Today, education is perhaps the most important function of state and local*
 10 *governments. Compulsory school attendance laws and the great*
 11 *expenditures for education both demonstrate our recognition of the*
 12 *importance of education to our democratic society. It is required in the*
 13 *performance of our most basic public responsibilities, even service in the*
 14 *armed forces. It is the very foundation of good citizenship. Today it is the*
 15 *principal instrument in awakening the child to cultural values, in preparing*
 16 *him for later professional training, and in helping him to adjust normally to*
 17 *his environment. In these days, it is doubtful that any child may reasonably*
 18 *be expected to succeed in life if he is denied the opportunity of education.*
 19 *Such an opportunity, where the state has undertaken to provide it, is a right*
 20 *which must be made available to all on equal terms. – Chief Justice Earl*
 21 *Warren, Brown v. Board of Education, 347 U.S. 483, 491 (1954).*

22 Plaintiffs Matthew Brach, Jesse Petrilla, Lacey Beaulieu, Erica Sephton, Kenneth
 23 Fleming, John Ziegler, Alison Walsh, Roger Hackett, Christine Ruiz, and her minor
 24 child, referred to by his initials, Z.R., by their attorneys, Dhillon Law Group, Inc., for
 25 their claims against Defendants Gavin Newsom, in his official capacity as the Governor
 26 of California; Xavier Becerra, in his official capacity as the Attorney General of
 27 California; Sonia Y. Angell, in her official capacity as the State Public Health Officer
 28 and Department of Public Health Director; Tony Thurmond, in his official capacity as

1 State Superintendent of Public Instruction and Director of Education, allege and show
2 the Court as follows (this “Complaint”).

3 NATURE OF ACTION

4 1. Defendants have ushered in a new wave of COVID-19 restrictions, this
5 time barring in-person schooling for most children in California. In Defendants’ rush to
6 enact these new restrictions, they have placed politics ahead of the wellbeing of
7 children, and children’s important—indeed, fundamental—interest in receiving equal
8 access to meaningful education. Defendants’ arbitrary restrictions on in-person
9 schooling effectively deprive Plaintiffs’ children, and millions of other children across
10 California, of the opportunity for meaningful education and the attendant hope for a
11 brighter future.

12 2. This Action presents facial and as-applied challenges to the Governor of
13 California’s May 4, 2020 Executive Order N-60-20 (“State Order”), attached here as
14 **Exhibit 1**, which requires Californians to obey all State Public Health directives and
15 orders, including the State’s July 17, 2020 “COVID-19 Industry Guidance: School and
16 School-Based Programs,” attached here as **Exhibit 2**.

17 3. This Action is brought pursuant to 42 U.S.C. § 1983, on the grounds that
18 the State Order and associated guidance and directives, and Defendants’ enforcement
19 thereof, violate Plaintiffs’ constitutionally and federally protected rights, including
20 specifically: (1) the right to equal protection, free from arbitrary treatment by the State
21 (U.S. Const. amend. XIV); (2) the right to procedural and substantive due process (U.S.
22 Const. amend. XIV); (3) the right to be free from federally-funded state action resulting
23 in a disparate impact on racial minorities (Title VI of the Civil Rights Act of 1964, 42
24 U.S.C. 2000d, *et seq.*); and (4) the right to equal and meaningful access to education,
25 free from arbitrary state action resulting in a disparate impact on those with disabilities
26 (Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; Title II of the
27 Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.*; and Section 504 of
28 the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*)).

4. With the school year commencing in mere weeks from the date of this filing, time is of the essence, and the Court should not hesitate to ensure that Plaintiffs' fundamental interests in securing a meaningful education for their children are preserved and protected from Defendants' arbitrary actions.

JURISDICTION AND VENUE

5. This action arises under 42 U.S.C. § 1983 in relation to Defendants’ deprivation of Plaintiffs’ rights as secured by the U.S. Constitution and federal law. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys’ fees and costs under 42 U.S.C. § 1988.

6. The Central District of California is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which Defendants maintain offices, exercise their authority in their official capacities, and will enforce the State Order; and it is the District in which substantially all of the events giving rise to the claims occurred.

PARTIES

7. Plaintiff Matthew Brach is a resident of Rancho Palos Verdes, California. He is suing in his individual capacity and not as an elected member of the Board of Education for the Palos Verdes Peninsula Unified School District. He is the father of two children. His sixteen-year-old son and thirteen-year-old daughter are students in the Palos Verdes Peninsula Unified School District. His son is entering his senior year and will suffer academically as a result of the denial of personal interaction with teachers and positive academic role models. His son's learning style requires him to be able to ask questions of and interact with his teachers and to learn collaboratively with peers. His daughter is already suffering emotionally from being isolated from her learning community.

1 8. Plaintiff Jess Petrilla is a resident of Mission Viejo, California. He has a
2 son who is about to enter first grade. Last school year, when his son was in kindergarten
3 and transitioned from in-classroom to distance learning, Petrilla noticed a significant
4 decline in his discipline and engagement. His son's enthusiasm for learning declined,
5 and his son became restless. Petrilla's wife has been forced to take time off of work in
6 order to oversee her son's education. The Petrillas are concerned about the negative
7 effects that this prolonged absence from the social aspects of structured education will
8 have on the future development of their son.

9 9. Plaintiff Lacey Beaulieu is a resident of La Jolla, California. She has two
10 children, a daughter who is entering the ninth grade at a private school and a son who is
11 about to enter 5th grade in the San Diego Unified School District. One of her biggest
12 challenges with distance learning was trying to balance screen time. Her son's doctor
13 has recommended that he not spend more than two hours a day in front of computer
14 screens. With distance learning, this instruction has been almost impossible to honor.
15 She is concerned that if her son is going to keep up academically, this could come at a
16 cost of brain development issues as a result of him spending too much time in front of
17 computer screens. She found it unrealistic to expect her son to follow the daily/weekly
18 schedule on his own. If she was tied up with work, her son was unable to proceed with
19 his daily lesson plans. While her daughter had more interaction with her teachers,
20 because of the lack of labs, she was unable to properly do science experiments.
21 Beaulieu believes that the increased screen time has had a negative affected on both of
22 her children. She has noticed that they have difficulty with sleep schedules, both are
23 depressed, and their discipline in completing school assignments has decreased. The
24 enforced deprivation of personal contact with their peers has also affected these
25 children negatively.

26 10. Plaintiff Erica Sephton is a resident of Murrieta, California. She has a
27 daughter who is about to enter transitional kindergarten at Saint Jeanne de Lestonnac
28 Catholic school in Temecula. Sephton understands that her daughter needs social

1 interaction with her fellow classmates, something that she cannot get at home doing
2 distance learning. Sephton is aware of the risks of COVID-19 and believes that these
3 minor risks for children do not outweigh the harm that her daughter is suffering by
4 being deprived of her in-person education. While the school, the teachers and the
5 students are ready to resume school instruction in the classroom with proper
6 precautions, Sephton believes that they are being held back because of positive test
7 results in other parts of the county and not because of any substantial risk in her
8 community. She does not understand why her daughter is allowed to spend all day in a
9 childcare facility, but cannot spend the same period of time in a private school,
10 learning.

11 11. Plaintiff Kenneth Fleming is the father of a public high school senior in
12 Long Beach, California. His daughter has maintained straight A's on her report card for
13 the last three years. She is a student athlete with ambition to earn a sports scholarship to
14 attend her dream school. Plaintiff Fleming is concerned that online-only education,
15 which has not been awarding letter grades to students, adversely impacts his daughter's
16 opportunity to compete for a college scholarship. He also believes that online-only
17 education does not assist his daughter either athletically or academically in preparing
18 for college.

19 12. Plaintiff John Ziegler is a resident of Camarillo, California and is the father
20 of an eight-year-old girl enrolled in public school. When her school moved from in-
21 person instruction to an online platform during the Spring 2020 semester, her
22 educational development suffered. She fell behind in her academic progress. As a result
23 of the denial of in-person educational instruction, Plaintiff Ziegler's wife is left with no
24 choice but to forgo her employment to stay home with their daughter.

25 13. Plaintiff Alison Walsh is the mother of two children who were in the
26 Capistrano Unified School District during the 2019-2020 school year. When CUSD
27 moved to an online platform in the 2020 spring semester, her children's education
28 suffered. Her children's school did not offer her children any live instruction. Their

1 teachers merely sent work packets to the students to complete independently. In
2 preparation for the 2020-2021 academic year, Plaintiff Walsh enrolled her children in
3 private school to ensure that her children could receive academic instruction. Now with
4 Defendants' guidance, even the private school is required to provide distance learning.

5 14. Plaintiff Roger Hackett lives in Ventura County and has a son who will
6 attend a private middle school in Westlake Village, California. His son's school has
7 made significant preparations for safe in-person instruction pursuant to the CDC and
8 local guidelines. This school is willing to offer both in-person and distance learning
9 options based on the preference of the parents, and is ready to safely reopen in-school
10 classes and non-contact athletics starting August 12. Plaintiff Hackett's concern is that
11 online-only education will adversely impact his son's academic and social
12 development. His son is frustrated by continual isolation from his academic community
13 and absence from school athletics. Even though Westlake Village has very few
14 COVID-19 positive cases, because it is in Los Angeles County which is on the state's
15 watch list, this private school is being prevented from operating in compliance with
16 COVID safety guidelines and in accordance with the desires of the school, teachers,
17 parents, and students.

18 15. Plaintiff Christine Ruiz is Hispanic and lives in Los Angeles County. She
19 has two sons who attend public school in the county, one of whom is Plaintiff Z. R.,
20 referred to herein by his initials. Both boys have been diagnosed with autism. Her 15-
21 year-old son, Z. R., attends high school, in moderate to severe special education classes.
22 Under normal circumstances, he has an entire team of special needs educated,
23 credentialed staff working hands on with him during the entire school day pursuant to
24 an Individual Education Program ("IEP") mandated by law. As of March 16, 2020, he
25 has received no services as mandated by his IEP. While the school offered a Zoom
26 meeting, this did not work. Her younger son is in junior high school. He has been
27 placed in mild to moderate special education classes. The online class only lasted about
28 30 minutes a day, and he did not learn anything by clicking a few links and watching a

1 video. Her son is a hands-on learner. As a result of the school transitioning to online-
2 only education and not providing the request IEP services, Ruiz has had to hire an
3 educational tutor to assist her sons.

4 16. Plaintiff Z. R. is a minor and, as such, is referred to herein by his initials.
5 Z. R. is the 15-year-old son of Christine Ruiz who currently attends high school. Z. R.
6 is Hispanic and takes moderate to severe special education classes as a result of his
7 autism.

8 17. Defendant Gavin Newsom (“Newsom”) is made a party to this Action in
9 his official capacity as the Governor of California. The California Constitution vests the
10 “supreme executive power of the State” in the Governor, who “shall see that the law is
11 faithfully executed.” Cal. Const. Art. V, § 1. Governor Newsom signed Executive Order
12 N-60-20 (the “Executive Order”) on May 4, 2020. *See, e.g., Ex Parte Young*, 209 U.S.
13 123 (1908).

14 18. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in his
15 official capacity as the Attorney General of California. Under California law, Becerra is
16 the chief law enforcement officer in the State. Cal. Const. Art. V, § 13.

17 19. Defendant Sonia Y. Angell, MD, MPH (“Dr. Angell”) is made a party to
18 this Action in her official capacity as the Director and State Public Health Officer. Dr.
19 Angell is sued herein in her official capacity to the extent that she is responsible for
20 providing official government guidance to the various industries that are allowed to
21 operate.

22 20. Defendant Tony Thurmond, (“Thurmond”) is made a party to this Action
23 in his official capacity as State Superintendent of Public Instruction and Director of
24 Education. Thurmond is responsible for enforcing education law and regulations in
25 California.

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27 ///

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FACTUAL ALLEGATIONS

21. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19.¹

22. On or about March 19, 2020, California Governor Newsom issued Executive Order N-33-20 in which he ordered “all residents are directed to immediate heed the current State public health directives.”²

23. On or about May 4, 2020, California Governor Newsom issued Executive Order N-60-20 in which he ordered “All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.” Ex. 1.

24. On July 17, 2020 Newsom announced a framework to reopening schools.³

25. Under his plan, reopening hinges on not being on the county monitoring list for two weeks.⁴

26. “Schools and school districts may reopen for in-person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days.”⁵

27. The plan also includes a waiver procedure:

¹ Available as of the date of this filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

² Available as of the date of filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>.

³ Available as of the date of filing: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁴ Available as of the date of filing: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁵ *Id.*

1 “A waiver of this criteria may be granted by the local health officer for
 2 elementary schools to open for in-person instruction. A waiver may only be
 3 granted if one is requested by the superintendent (or equivalent for charter
 4 or private schools), in consultation with labor, parent and community
 5 organizations. Local health officers must review local community
 6 epidemiological data, consider other public health interventions, and
 7 consult with CDPH when considering a waiver request.”⁶

8 28. California is the only state in the U.S. that is mandating at the state level
 9 that school districts not hold in-person classes, affecting millions of students, rather
 10 than leave that decision to the individual school district.⁷

11 29. California Department of Public Health (CDPH) has provided guidance to
 12 similarly situated industries, namely camps⁸ and childcare⁹, allowing them to remain
 13 open, but guidance for schools¹⁰ reveal that schools are subject to more stringent
 14 standards that defy reason.

15 30. Currently, there are 32 counties on the watchlist.¹¹

16 31. There are currently 5.9 million students K-12 in California.¹²

17 ⁶ *Id.*

18 ⁷ Available as of the date of filing: <https://thehill.com/homenews/state-watch/508105-heres-your-states-plan-for-reopening-schools>.

19 ⁸ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

20 ⁹ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-childcare-en.pdf>.

21 ¹⁰ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>.

22 ¹¹ As of July 20, 2020, the following counties are on the watchlist: Alameda, Colusa,
 23 Contra Costa, Fresno, Glenn, Imperial, Kings, Los Angeles, Madera, Marin, Merced,
 24 Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino,
 25 San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, San Francisco,
 26 Solano, Sonoma, Stanislaus, Sutter, Tulare, Yolo, Yuba, and Ventura. Available as of
 27 the date of filing: <https://covid19.ca.gov/roadmap-counties/#track-data>.

28 ¹² Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

32. As of July 14, 2020, there are 8,433 Child Care centers opened in the state of California and a total of 24,915 licensed Family Child Care Homes for a total of 33,348 total facilities.¹³

Table 1: Total Number of Open Child Care Centers and Family Child Care Homes Statewide and by County (Data Retrieved: 7/14/2020)

County	Total Number of Open Facilities	Total Number of Open Facilities	Total Number of Open Facilities
	Child Care Centers	Family Child Care Homes	All
Statewide	8,433	24,915	33,348

The U.S. Department of Education Is Encouraging Schools to Open

33. During a July 8 briefing conducted by the Vice President and the coronavirus task force, the United States Secretary of Education, Betsy DeVos, stated “[t]here were a number of schools and districts across the country that did an awesome job of transitioning this spring. And there were a lot in which I and state school leaders were disappointed in that they didn't figure out how to continue to serve their students. Too many of them just gave up. The Center for Reinventing Public Education [CRPE] said that only 10 percent across the board provided any kind of real curriculum and instruction program.”¹⁴

34. The United States Department of Education spent approximately \$8.3 billion on California K-12 schools for the 2019-2020 school year.¹⁵

35. Not providing education for America’s children is not a choice. “It would fail America’s students, and it would fail taxpayers who pay high taxes for their education.”¹⁶

¹³ Available as of the date of filing: <https://cdss.ca.gov/Portals/9/Additional-Resources/Research-and-Data/DSSDS/ChildCare-7-19.pdf>.

¹⁴ Available as of the date of filing: <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-coronavirus-task-force-july-8-2020/>.

¹⁵ Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹⁶ *Id.*

36. Devos also quotes The American Academy of Pediatrics, “Keeping schools closed ‘places children and adolescents at considerable risk of morbidity and, in some cases, mortality.’” The Pediatrics guidance concluded that everyone “should start with a goal of having students physically present in school.” “Fully open” and “fully operational” means that students need a full school year or more, and it’s expected it will look different depending on where you are.”¹⁷ “Ultimately, it’s not a matter of ‘if’ schools should reopen, it’s simply a matter of ‘how.’ They must fully open, and they must be fully operational.”¹⁸

37. CRPE found many disparities among schools.¹⁹ In a new report involving a nationally representative sample of 477 school systems, statistical weights were applied to provide a nationally representative sample of U.S. school districts. CRPE was able to compare remote education in districts in different types of communities and with different student characteristics. The original cohort of districts followed showed increasing clarity and expectations for instruction, tracking student engagement, and progress monitoring. CRPE found a “sobering story... just one in three districts expect teachers to provide instruction, track student engagement, or monitor academic progress for all students... Far too many districts are leaving learning to chance during the coronavirus closures.”²⁰

38. CRPE also notes, “[e]xperience tells us that low expectations for instruction bode poorly for the students who faced the greatest challenges: those in low-income households, those with disabilities, those who speak a language other than English at home.”²¹

¹⁷ *Id.*; full report available as of the date of filing:

<https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

¹⁸ *Id.*

¹⁹ Available as of the day of filing: <https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic>.

²⁰ *Id.*

²¹ *Id.*

39. “Tracking student progress by collecting work for review, assessing students’ progress toward academic benchmarks, or grading their work is the best way to gauge if students are continuing to learn in their remote settings. It may also be our only way to get a sense of gaps in students’ learning that may emerge before the fall, when districts may be able to assess where students stand. Again, we found worrisome trends in the expectations districts set. Just 42 percent expect teachers to collect student work, grade it, and include it in final course grades for at least some students (typically those in middle and upper grades).”²²

40. The CRPE found a rural-urban divide. “This rural-urban divide in expectations is stark—far more so than the gap in instruction between districts with high concentrations of students who qualify for free or reduced-price lunch. When we divide the sample into quartiles based on the district’s concentration of economically disadvantaged students, we do not see a clear divide between the districts with the highest and lowest quartiles in terms of expectations for instruction, tracking student engagement, or progress monitoring.”²³

41. “More affluent school districts are more likely to require live video instruction from teachers. While expectations around synchronous, or real-time, teaching are uncommon across the board (expected in 21.8 percent of districts), only 14.5 percent of school districts with the highest concentration of students receiving free or reduced-price lunch expect teachers to provide live instruction. The most affluent 25 percent of districts in our sample are twice as likely to expect real-time teaching.”²⁴

42. School closings also disproportionately affects minorities, as the NAACP notes.²⁵

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Available as of the day of filing: <https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/>

43. “For students of color at all levels across the country, school closings create problems even more urgent than the interruption of their educations. Schools also serve as a community nexus for food and housing. Many Black students are eligible for the federal Free or Reduced-Price Lunch Program (FRPL). Fall 2016 data from the National Center on Education Statistics show that for high-poverty schools where more than 75% of students are eligible for FRPL, Blacks students accounted for 44% of those attending. At schools where 50-75% percent of students are eligible for FRLP, Black students made up 30% of the student population. For students who rely on their schools as a reliable source of daily meals, school closings leave a critical gap. The Secretary of Agriculture is granted waiver authority with respect to the student lunch law (under the Meals Act), including regarding nutritional content. This is a double-edged sword. It is important for the Secretary to be able to move quickly to get meals to students, including outside the school and in individual settings. Yet even here some guardrails must remain in place. We cannot go back to the days when ketchup counted as a vegetable for school lunches.”²⁶

**American Academy of Pediatrics Recommends Students
Physically Present in Schools**

44. In late June, the American Academy of Pediatrics (“AAP”) “strongly” recommended that “the coming school year should start with a goal of having students physical present in school.”²⁷

45. The AAP noted the health benefits that would otherwise be lost such as “child . . . development,” “social and emotional skills,” “reliable nutrition,” physical/speech and mental health therapy,” and “opportunities for physical activity.”²⁸

²⁶ *Id.*

²⁷ American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for School Reentry*, 3d para. (Last Updated June 25, 2020), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

²⁸ *Id.* at 1st para.

46. The AAP also noted that the lack of “in-person learning” could disproportionately affect minorities and those of less socioeconomic means.²⁹

Studies Show that Open Schools Present Minimal Risk

47. According to California’s own published reports, not a single minor in the state of California has died as a result of COVID-19.³⁰

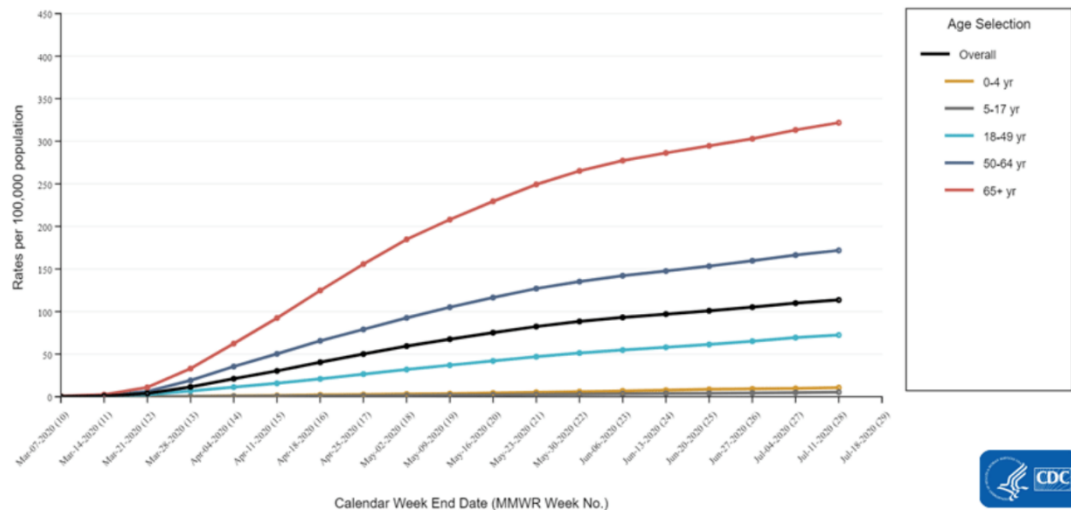
Total Deaths by Age

0-17

0.0%

Laboratory-Confirmed COVID-19-Associated Hospitalizations

Preliminary cumulative rates as of Jul 11, 2020



48. The CDC reports that children between the ages of 5 -17 are hospitalized at a rate of 5.3 per 100,000 compared to a national average of 113.6.³¹

49. On March 30, 2020, the Australian Research Council released a study that looked at the early data from China, Singapore, South Korea, Japan, and Iran. The study concluded that while “SARS-CoV-2 can cause mild disease in children, the data

²⁹ *Id.*

³⁰ Available as of the date of filing: <https://update.covid19.ca.gov>.

³¹ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#hospitalizations>

1 available to date suggests that children have not played a substantive role in the intra-
2 household transmission of SARS-CoV-2.³²

3 50. On April 26, 2020, another Australian study found *no* evidence of children
4 infecting teachers.³³ The study concluded that the “spread of COVID-19 within NSW
5 (New South Wales) schools has been very limited.”³⁴ This study also found that unlike
6 other respiratory viruses, children are not the primary drivers of the spread of COVID-
7 19.³⁵

8 51. On May 18, 2020, during a video conference of ministers of education
9 with the Council of the European Union, it was reported that since the reopening of
10 schools in 22 member states, there had been no increase in infections of COVID-19
11 among students, teachers and parents.³⁶

12 52. On May 28, 2020, a study was released showing that there was no
13 evidence of secondary transmission of COVID-19 from children attending school in
14 Ireland.³⁷

15 53. On June 23, 2020, the Institute Pasteur after studying 1,340 people linked
16 to primary schools in France released a study in which they found that infected children
17 did not spread the virus to other children or to teachers or other school staff.³⁸

18
19
20 ³² Available as of the date of filing:

<https://www.medrxiv.org/content/10.1101/2020.03.26.20044826v1>.

21 ³³ Available as of the date of filing: [http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20Apr](http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20April%202020.pdf)
22 [il%202020.pdf](http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20April%202020.pdf), p. 4.

23 ³⁴ *Id.*

24 ³⁵ *Id.*

25 ³⁶ Available as of the date of filing: <https://www.washingtonexaminer.com/news/22-eu-member-states-have-not-seen-a-spike-in-coronavirus-cases-in-schools-after-reopening>.

26 ³⁷ Available as of the date of filing:

27 https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.

28 ³⁸ Available as of the date of filing: <https://www.pasteur.fr/fr/file/35404/download>.

1 54. On July 7, 2020, the Public Health Agency of Sweden published a study
2 titled “Covid-19 in schoolchildren”.³⁹ This study found:

- 3 a. Closing of schools had no measurable effect on the number of cases of
4 COVID-19 among children;
- 5 b. Children are not a major risk group of the COVID-19 disease and seem to
6 play a less important role from the transmission point of view, although
7 more active surveillance and special studies such as school and household
8 transmission studies are warranted; and
- 9 c. The negative effects of closing schools must be weighed against the
10 possible positive indirect effects it might have on the mitigation of the
11 COVID-19 pandemic.

12 55. July 8, 2020, Prevent Epidemics published a report by the former head of
13 the Centers for Disease Control and Prevention. In this report titled “Reopening
14 America’s Schools: A Public Health Approach” they found that the evidence “suggests
15 that children may play a smaller role in transmission of COVID-19 than adults.”⁴⁰

16 56. On July 15, 2020, a study of 2,000 German school children was released
17 that concluded that schools and young people do not play a significant role in the
18 transmission of the coronavirus.⁴¹ This study found that schools in Germany did not
19 become hotspots after they were reopened.⁴²

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21 ³⁹ Available as of the date of filing:

22 <https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf>.

23 ⁴⁰ Available as of the date of filing: https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf, p. 6.

24 ⁴¹ U.S. News article available as of the date of filing at:

25 <https://www.washingtonexaminer.com/news/german-study-no-evidence-coronavirus-spreads-in-schools>. Summary of study available in German as of the date of filing:
26 <https://tu-dresden.de/med/mf/die-fakultaet/newsuebersicht/immunisierungsgrad-geringer-als-erwartet-schulen-haben-sich-nicht-zu-hotspots-entwickelt>.

27 ⁴² *Id.*
28

Studies Show that the Digital Divide Harms Students

57. Another study noted “there are many reasons to believe the COVID-19 impacts might be larger for children in poverty and children of color,” citing (1) the disproportionately higher rate of COVID-19 infections and deaths and worse effect of the economic downturn on African American and Hispanic parents, and (2) the “digital divide in technology and internet access by race/ethnicity and socioeconomic status.”⁴³

58. This digital divide is supported by surveys, such as one that showed that: (1) 41% of respondents stated that “not having a computer or tablet or enough available devices” was a “top barrier” to distance learning, while only 37% said that their child’s school had lent mobile technology devices; and (2) 71% of African American families and 69% of families with a household income of less than \$50,000 stating that lending mobile technology devices would be very helpful for families like theirs.⁴⁴ This survey comports with the “evidence that, even when teachers are making themselves and their instructional materials available virtually, many students lack the means to access online.”⁴⁵

59. A Brown University study estimated those negative impacts on children to be a loss of 63-68% of the learning gains in reading relative to a typical school year and a loss of 37-50% in learning gains in math.⁴⁶

60. In some grades, students may come back close to a “full year behind in math.”⁴⁷

⁴³ Kuhfeld *et al.* (May 2020) *Projecting the potential impacts of COVID-19 school closures on academic achievement*, p. 25 Annenberg Institute at Brown University, <https://doi.org/10.26300/cdrv-yw05>.

⁴⁴ The Education Trust-West, *California Parent Poll: COVID-19 and School Closures* (Accessed on June 19, 2020), available at: <https://west.edtrust.org/ca-parent-poll-covid-19-and-school-closures/>.

⁴⁵ Kuhfeld, *Projecting the potential impacts of COVID-19 school closures on academic achievement*, p. 10.

⁴⁶ *Id.* p. 23.

⁴⁷ *Id.*

61. The fact that this “digital divide” is a factor in the disproportionate effect of school shutdowns is even more troubling when data and anecdotal evidence show that remote learning encourages decreased teacher interaction with students.⁴⁸

62. Less than two weeks after the school shutdown on March 16, 2020, the Los Angeles School District officials admitted that 15,000 students are completely unaccounted for and more than 40,000 had not been in daily contact with their teachers.⁴⁹

63. Even among students from families with lower economic means who are provided with tablets and wifi hotspots, it has been reported that parents who are technically challenged have been unable to help their children get online. Teachers report children who are unable to respond online because they are babysitting their siblings, also home from school, while parents work to keep the family housed. Even the most diligent of teachers cannot provide extra attention to a struggling student in a class as they might in person.

Student’s Futures are Already Affected

64. FAFSA (Free Application for Federal Student Aid) and college applications are down.⁵⁰ This certainly does not align with goals for college and preparing for future.

Special Education Students are Disadvantaged by Distance Learning

65. Under federal law, students with disabilities are guaranteed a Free,

⁴⁸ *Id.* at 10 “There are concerning signs that many teachers have had no contact at all with a significant portion of students . . . only 39% of teachers reported interacting with their students at least once a day, and most teacher-student communication occurred over email”, and absenteeism.

⁴⁹ Howard Blume, *15,000 L.A. high school students are AWOL online, 40,000 fail to check in daily amid coronavirus closures*, LOS ANGELES TIMES, (March 30, 2020) Available at: <https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent>.

⁵⁰ Available as of the date of filing: <https://www.fastweb.com/student-news/articles/coronavirus-impacts-fafsa-applications-college-enrollment>.

1 Appropriate Public Education (FAPE), as incorporated through the IDEA ACT 34
 2 C.F.R. § 300.101 and Title III of the Americans with Disabilities Act of 1990 (“ADA”),
 3 § 504 of the Rehabilitation Act of 1973.⁵¹

4 66. The federal government allocates approximately \$1.2 billion for California
 5 for special education each year.⁵²

6 67. Students with disabilities have been especially vulnerable to distance
 7 learning, as it is common for a student’s individualized education program (IEP) to
 8 have individualized instruction, like a one-on-one aide, for example. When school are
 9 closed, it is difficult, and sometimes impossible to implement a student’s IEP. Not
 10 following an IEP can cause grave consequences such as regression.

11 68. Many parents of special needs children in California have reported that
 12 their children received none, or nearly none, of the individualized instruction
 13 guaranteed by law. Frustrated instructors simply gave up when faced with technology
 14 challenges, while others didn’t try at all, and many school districts made zero provision
 15 for delivering these federally mandated services to children, despite the federal funding
 16 provided to the state for them.

17 69. While not solely unique to students with disabilities, socialization in
 18 schools is critical for special needs children.

19 **Distance-Only Schools Pose Child Safety Concerns**

20 70. As mandatory reporters, teachers who have daily contact with children are
 21 in the best position to notice and report suspected child abuse.

22 71. Nationwide, “stay at home” does not mean “safe at home” as a report from
 23 RAINN (Rape, Abuse, & Incest National Network) describes. “Many minors are now
 24 quarantined at home with their abuser. Meanwhile, these kids are cut off from their
 25 safety net — the teachers, coaches, and friends’ parents who are most likely to notice

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 27 ⁵¹ 20 U.S.C.A. § 1412; *see* 42 U.S.C.A. § 12132; *see* 29 USCA § 794.

28 ⁵² Available as of the date of filing:

<https://lao.ca.gov/Publications/Report/4110#Introduction>.

1 and report suspected abuse....As a result, abuse reports to many state authorities have
 2 declined — not because there is less abuse taking place, but because children have less
 3 contact with adults outside the home who could potentially spot and report abuse.
 4 Sadly, it is likely that the risk of children being sexually abused will increase as shelter-
 5 in-place orders continue — one more tragic consequence of the public health crisis the
 6 country currently faces.”⁵³

7 72. Child abuse reports have also declined, but hospitals are reporting higher
 8 numbers – this is concerning because abuse is not being detected in time (i.e., before an
 9 abuse incident requiring hospitalization). In San Diego, during the months of April and
 10 May, 24 children were reported as being treated for abuse symptoms which is double
 11 what they normally see in the two-month period. Other locations have seen an increase,
 12 including Jacksonville, Florida (8 abusive head trauma cases in March and April instead
 13 of 3) and Fort Worth, Texas (9 severe cases at a hospital since March, when they usually
 14 only have 6 in the whole year).

15 **One California School District’s Effort to Prepare to Open**

16 73. As an elected member of the Palos Verdes Peninsula Unified School District
 17 (“PVPUSD”) which is located in Los Angeles County, plaintiff Brach was active in the
 18 process of preparing the school district in reopening the schools.

19 74. Brach was involved in preparing a “Return to School” survey.

20 75. This survey found that over 60% of parents in the district believed that there
 21 was not enough face-to-face teaching time during the initial shutdown.

22 76. Over 60% of parents also preferred that their children attend school in a
 23 normal in-person setting rather than return to the virtual learning program.

24 77. Among teachers, over 60% of the teachers were comfortable with returning
 25 to teach school.

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 27
 28 ⁵³ Available as of the date of filing: <https://www.rainn.org/news/first-time-ever-minors-make-half-visitors-national-sexual-assault-hotline>

1 78. The survey also showed that due to financial constraints, if the school did
2 not return to in-person setting, over 7% of parents of TK – 5th grade children and over
3 19% of parents of parents of children between 6th - 12th grade would have to leave their
4 children home without supervision.

5 79. PVPUSD established a reopening committee that included staff, medical
6 professionals and parents.

7 80. PVPUSD was prepared to implement screening including providing a digital
8 app so parents could answer questions each morning regarding symptoms, and the school
9 was prepared to take students' temperature to verify the app's data.

10 81. PVPUSD also was prepared to implement the following mitigation strategy:

- 11 a. Staggered arrival times;
- 12 b. Designated entrance and exit routes;
- 13 c. Purchase no touch thermometers and handle the logistics of temp taking to
14 align with the number of thermometers;
- 15 d. Procure masks including N95 masks for nurses and cloth masks for students;
- 16 e. Provide water filling stations as no ability to use drinking fountains;
- 17 f. Provide grab/go meals for lunch;
- 18 g. Plexiglas for serving and cashier stations;
- 19 h. Investigation of HVAC system to support air circulation if windows had to
20 be closed;
- 21 i. Order signage for directional guides and handwashing reminders;
- 22 j. Handwashing stations with foot pedal;
- 23 k. Install touch free sanitizing;
- 24 l. Instituted protocols for high touch areas.

25 82. PVPUSD was ready to work with the teachers, parents, and students to
26 provide options. The 60% of teachers and parents who wanted in-person learning were
27 going to be able to choose that option while the other remainder could continue their
28 learning with virtual study.

Newsom's Doomsday Predictions Have Not Proven True

83. Governor Newsom's rationale for Executive Order N-33-20, his original shelter in place order was to "bend the curve."⁵⁴ He stated that "[i]n some parts of our state, our case rate is doubling every four days," and that "[t]he point of the stay at home order is to make those numbers moot."⁵⁵ The Governor added that one goal was to slowdown transmission enough to reduce the strain it might place on hospital resources.⁵⁶

84. California only accounts for five point three percent (5.3%) of the nation's COVID-19 deaths while containing twelve percent (12%) of the nation's populace.⁵⁷

85. Governor Newsom cited a model showing that as of March 19, 2020, 56 percent of Californians, or more than 25 million people, could be infected over the next eight weeks.⁵⁸

86. Contrastingly, several infectious disease experts, including Professor of Epidemiology John P.A. Ioannidis of Stanford University, called this an extreme, worst-case scenario that was unlikely to happen – and they turned out to be correct.⁵⁹

87. Upon information and belief, another piece of flawed data that drove California's and Santa Clara County's original, onerous shelter-in-place orders was an

⁵⁴ March 19, 2020 press briefing at 35:17-36:00, available as of the date of filing at <https://www.youtube.com/watch?v=8OeyeK8-S5o>.

⁵⁵ *Id.*

⁵⁶ *Id.* at 5:42-8:09.

⁵⁷ According to the CDC, California has 6,823 of the United States' 128,035 COVID-19 deaths. Available as of the date of filing at <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>. According to the U.S. Census, California has 39,512,223 of the United States' 328,239,523 people. Available as of date of filing at <https://www.census.gov/quickfacts/fact/table/CA,US/PST045219>.

⁵⁸ *Id.* at 5:00-6:00.

⁵⁹ *Newsom: 56 % of Californians Could Get Coronavirus If Nothing Is Done*, San Francisco Chronicle, March 19, 2020, available as of May 3, 2020 at: https://webcache.googleusercontent.com/search?q=cache:sokxG9_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us.

1 incorrect assumption that the R_0 of COVID-19 was 5.7.

2 88. The “R-naught” is the rate at which people can be infected, or more
3 precisely the rate of reproduction of the virus as measured by infected human hosts.⁶⁰

4 89. Upon information and belief, part of the data that the Governor depended
5 on for his claim—of 25 million infections in California within eight weeks—during his
6 March 19, 2020 announcement was the initial rate of infection in Wuhan, the
7 originating epicenter of COVID-19. Then and there, the numbers apparently showed a
8 R_0 of 5.7.⁶¹

9 90. However, now, the R_0 of COVID-19 without mitigation efforts is
10 understood to be approximately 2.2-2.7.⁶² With mitigation efforts, the R_0 of COVID-19
11 has been drive further down.

12 91. More egregiously, the COVID-19 death rate projections model on which
13 Governor Newsom relied for implementing a state of emergency and mass quarantine
14 of healthy Californians, turned out to be grossly flawed.⁶³

15 92. Governor Newsom’s inexplicable restrictions on school reopening is not
16 based in scientific facts, and is completely arbitrary especially in light of the fact that
17 California allows all of the functional components of schools allowed in camps and
18 childcare. More fundamentally, the school closing “plan” is no plan at all, and ignores
19 the state’s legal duties to California’s children.

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25 ⁶⁰ <https://www.nytimes.com/2020/04/23/world/europe/coronavirus-R0-explainer.html>.

26 ⁶¹ Available as of the date of filing: https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article.

27 ⁶² *Id.*

28 ⁶³ Available as of the date of filing: <https://www.statnews.com/2020/04/17/influenial-covid-19-model-uses-flawed-methods-shouldnt-guide-policies-critics-say/>.

CLAIMS

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of the Equal Protection Clause

Arbitrary School Closures

(By All Plaintiffs Against All Defendants)

93. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

94. The equal protection doctrine prohibits “governmental classifications that affect some groups of citizens differently than others.” *Engquist v. Or. Dep’t. of Agric.*, 553 U.S. 591, 601 (2008) (citations omitted). The touchstone of this analysis is whether a state creates disparity “between classes of individuals whose situations are arguably indistinguishable.” *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

95. The framework for reopening schools facially, and as-applied, arbitrarily treats Plaintiffs’ children (and other minors attending public and private schools) differently from those in nearby school districts; those in childcare; and those attending summer camps, even though all such children and their families are all similarly situated.

96. The risk of exposure or transmission within in any particular county is substantially the same whether children are at school, daycare, or at camp, yet only schools are subject to arbitrarily mandated closures. Children at summer camp, daycare, and in school will be in the presence of other children, in an enclosed space, overseen by an older person(s) not comprised of the child’s family unit, for an extended period, and industry guidance issued for schools, camps, and daycare, contains the same or essentially the same protocols for wearing face coverings, physically distancing, hygiene, cleaning, arrival/departure procedures, sharing, checking for signs and symptoms and notification procedures if a child or staff member becomes ill.

97. Defendants’ mandates arbitrarily restrict access to schools based on the location of the school. Children residing in any particular county, including those

1 counties in which Defendants have forcibly shut down in-person instruction, may still
2 attend private school in nearby counties, despite the differing levels of risk or exposure
3 to the virus, further revealing the arbitrary nature of Defendants' treatment of Plaintiffs
4 and all others who rely on the public school system.

5 98. There is no rational basis—much less any compelling reason—for
6 allowing Defendants' arbitrary treatment of schools, which are vital to children's
7 development, and are subject to more severe restrictions and potentially outright
8 closure. Moreover, apt and less restrictive alternatives to Defendants' closure regime
9 exist, such as requiring schools to *enable* distanced learning over the internet, without
10 imposing Defendants' overbearing, one-size-fits-all regime.

11 99. Defendants intentionally, discriminatorily, and arbitrarily imposed
12 restrictions on the reopening of schools in violation of Plaintiffs' right to equal
13 protection under the law.

14 100. Plaintiffs have no adequate remedy at law and will suffer serious and
15 irreparable harm to their and/or their children's constitutional rights unless Defendants
16 are enjoined from implementing and enforcing the State Order and associated guidance
17 documents which restrict the reopening of schools in a manner that violates the Equal
18 Protection Clause.

19 101. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
20 declaratory relief and temporary, preliminary, and permanent injunctive relief
21 invalidating and restraining enforcement of the State Order and any associated guidance
22 documents.

23 102. Plaintiffs found it necessary to engage the services of private counsel to
24 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
25 attorneys' fees pursuant to 42 U.S.C. § 1988.

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SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Due Process

Deprivation of Liberty Without Procedural Due Process of Law

(By All Plaintiffs against All Defendants)

103. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein

104. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV. Plaintiffs and their children have a liberty interest in their right to equal access to basic minimum education and in their rights secured by the California Constitution and state law, which includes the right to an education, Cal. Const. art. IX, § 1 (“[a] general diffusion of knowledge and intelligence [is] . . . essential to the preservation of the rights and liberties of the people....”); *O’Connell v. Superior Court*, 141 Cal. App. 4th 1452, 1482 (2006) (students possess a constitutional right to “equal access to a public education system that will teach them the skills they need to succeed as productive members of modern society.”); *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992) (“education is a “uniquely fundamental personal interest in California”); *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971) (“the right to an education in our public schools is a fundamental interest ...”) and (2) their right to contract freely, without impairment by the State, with private schools for the education of their children. U.S. Const., art. I, § 10; Cal. Const. art. I, § 9.

105. Defendants deprive Plaintiffs and/or their children of these rights and liberties without due process of law, in violation of the Fourteenth Amendment to the U.S. Constitution, by (1) mandating distanced-learning in most circumstances, which effectively provides no or unequal access to education; and by (2) substantially impairing Plaintiffs’ ability to contractually obligate schools to complete the in-person instruction of their children that the state refuses to provide.

106. The State Order and Defendants’ enforcement thereof violate Plaintiffs’

1 procedural due process rights because (1) Defendants lack any legal authority to issue
2 or enforce the State Order and associate guidance, and therefore deprive Plaintiffs of
3 liberties without any process whatsoever, and (2) Defendants fail to specify standards or
4 protocols applicable to requests for a waiver from compliance with Defendants' orders.

5 107. Defendants have no authority under either the California Constitution nor
6 any law adopted by the legislature to deprive Plaintiffs or their children of their right to
7 receive an education or to be free of the State's substantial impairment of contracts—
8 indeed, rights are themselves protected by the California Constitution, U.S.
9 Constitution, and fundamental law;

10 108. California law makes clear that "No state agency shall issue . . . any
11 guideline . . . unless the guideline . . . has been adopted as a regulation filed with the
12 Secretary of State" Cal. Gov. Code § 11340.5(a).

13 109. Nowhere in the California Emergency Services Act, does it give the
14 Governor the authority to suspend the constitutional rights of Californians or to suspend
15 California statutes. Instead, Cal. Gov. Code §§ 8567, 8571, and 8627 only permit the
16 governor to suspend "regulations" and that these orders must be in writing. However,
17 the Governor has misused his Emergency Powers to mandate that any violation of the
18 State public health directives results in a fine not to exceed \$1,000 or by imprisonment
19 not to exceed six months. Cal. Gov. Code §8665.

20 110. In California, a regulation that has not been adopted in compliance with the
21 Administrative Procedure Act is deemed an Underground Regulation and is invalid. *See*
22 *Modesto City Schools v. Education Audits Appeal Panel*, 123 Cal.App.4th 1365, 1381
23 (2004). California is one of the few states that requires rulemaking procedure for the
24 adoption of guidance documents. California Practice Guide: Administrative Law 25:45,
25 by Rutter Group.

26 111. Defendant Sonia Y. Angell is not an elected official. However, Defendant
27 Newsom has effectively given Defendant Angell the ability to govern the state of
28 California by guidance shutting down businesses and schools, in the latter case with one

1 stroke of the pen dooming millions of California children to no meaningful education,
 2 inadequate education, no provision of special needs instruction, and a myriad of health
 3 and safety risks.

4 112. Governor Newsom has been impermissibly delegating executive authority
 5 to the Public Health Agency, who in turn has been issuing directives, under the guise of
 6 law, with criminal penalties associated for not following order.

7 113. The non-descript waiver process referenced in materials issued by the
 8 California Department of Public Health is vague and subject to arbitrary enforcement
 9 and implementation: “A waiver may only be granted if one is requested by the
 10 superintendent (or equivalent for charter or private schools), in consultation with labor,
 11 parent and community organizations. Local health officers must review local
 12 community epidemiological data, consider other public health interventions, and
 13 consult with CDPH when considering a waiver request.”⁶⁴ Defendants provide no
 14 standards by which local health officers are to assess, approve, or reject such waiver
 15 requests. What does “in consultation with” mean? Californians are left to guess.

16 114. As such, Plaintiffs and the public lack any meaningful opportunity to seek
 17 redress of injuries caused by Defendants’ mandates or by which they may seek to
 18 reopen schools based on evidence of changing circumstances, recent research, or the
 19 availability of healthcare or health practices to mitigate risks associated with the virus.

20 115. Plaintiffs have no adequate remedy at law and will suffer serious and
 21 irreparable harm to their constitutional rights unless Defendants are enjoined from
 22 implementing and enforcing the State Order and associated guidance.

23 116. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
 24 declaratory relief and temporary, preliminary, and permanent injunctive relief
 25 invalidating and restraining enforcement of the State Order and associated guidance.

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 27 ⁶⁴ Available as of date of filing:

28 <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

117. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Due Process

Deprivation of Substantive Due Process of Law

(By All Plaintiffs against All Defendants)

118. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein

119. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV. Plaintiffs and their children have a liberty interest in their right to equal access to basic minimum education and in their rights secured by the California Constitution and state law, which includes the right to an education, Cal. Const. art. IX, § 1 (“[a] general diffusion of knowledge and intelligence [is] . . . essential to the preservation of the rights and liberties of the people....”); *O’Connell v. Superior Court*, 141 Cal. App. 4th 1452, 1482 (2006) (students possess a constitutional right to “equal access to a public education system that will teach them the skills they need to succeed as productive members of modern society.”); *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992) (“education is a “uniquely fundamental personal interest in California”); *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971) (“the right to an education in our public schools is a fundamental interest ...”) and (2) their right to contract freely, without impairment by the State, with private schools for the education of their children. U.S. Const., art. I, § 10; Cal. Const. art. I, § 9.

120. Defendants deprive Plaintiffs and their children of these rights and liberties without due process of law, in violation of the Fourteenth Amendment to the U.S. Constitution, by (1) mandating distanced-learning in most circumstances, which effectively provides no or unequal access to education; and by (2) substantially

1 impairing Plaintiffs' ability to contractually obligate private schools to complete the in-
2 person instruction of their children that the state refuses to provide.

3 121. The State Order and Defendants' enforcement thereof violate Plaintiff's
4 substantive due process rights as follows:

5 a. fundamental law and the California Constitution entitles Plaintiffs
6 and their children equal access to a basic minimum education.

7 b. the U.S. Constitution entitles Plaintiffs to be free of substantial
8 impairment from the state of their ability to obligate educational institutions to instruct
9 their children by operation of contract law;

10 c. Defendants lack any legitimate, rational, or compelling interest for
11 depriving Plaintiffs' children of their right to an education.

12 d. even if such a legitimate interest existed, the State Order and
13 associated guidance is neither rationally related nor narrowly tailored to further any
14 such interest.

15 122. Plaintiffs have no adequate remedy at law and will suffer serious and
16 irreparable harm to their constitutional rights unless Defendants are enjoined from
17 implementing and enforcing the State Order and associated guidance.

18 123. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
19 declaratory relief and temporary, preliminary, and permanent injunctive relief
20 invalidating and restraining enforcement of the State Order and associated guidance.

21 124. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
23 attorneys' fees pursuant to 42 U.S.C. § 1988.

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FOURTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Title VI of Civil Rights Act of 1964

Disparate Impact on Racial Minorities

(By Christine Ruiz and Z. R. Against All Defendants)

125. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

126. Federal law conveys to Plaintiffs the right to be free from enforcement of facially discriminatory laws, facially neutral laws adopted with discriminatory intent or purpose, and facially neutral laws causing a disparate impact on racial minorities with regard to federally funded public programs, including California's public schools. 42 U.S.C. 2000d, *et seq.* (Title VI of the Civil Rights Act of 1964). Section 1983, in turn, creates a private right of action against the deprivation of such federal rights against officials acting under color of state law, despite there being no private right of action under a disparate impact theory pursuant to Title VI itself. *See* 42 U.S.C. § 1983; *Alexander v. Sandoval*, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting) (“[l]itigants who in the future wish to enforce the Title VI [disparate impact] regulations against state actors in all likelihood must only reference § 1983 to obtain relief.”)

127. Mandatory distance learning facially, and as-applied here, creates a negative, disparate impact on racial minorities, including Plaintiff Christine Ruiz and her son, Z. R., who are Hispanic. Public policy research has confirmed that racial minorities rely more heavily on educational opportunities for gaining equal socioeconomic footing when compared to their non-minority counterparts, occasionally resulting in an increased need for educational services.⁶⁵ Racial minorities are therefore disproportionately required to devote greater resources to provide themselves and their

⁶⁵ See, e.g., <https://calmatters.org/explainers/achievement-gap-california-explainer-schools-education-disparities-explained/>; <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money>.

1 children with the same educational opportunities available to their counterparts – this
2 phenomenon is known as the “education gap.”

3 128. Defendants have acted arbitrarily and with deliberate indifference toward
4 the unduly harsh effects their school restrictions have on Plaintiffs Ruiz and Z. R. and
5 all others racial minorities who must devote additional or unique resources to
6 implement meaningful at-home instruction when compared with non-minorities.

7 129. Plaintiffs have no adequate remedy at law and will suffer serious and
8 irreparable harm to their constitutional rights unless Defendants are enjoined from
9 implementing and enforcing their broad prohibitions on in-person education in
10 California.

11 130. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
12 declaratory relief and temporary, preliminary, and permanent injunctive relief
13 invalidating and restraining enforcement of the State Order.

14 131. Plaintiffs found it necessary to engage the services of private counsel to
15 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
16 attorneys’ fees pursuant to 42 U.S.C. § 1988.

17 **FIFTH CLAIM FOR RELIEF**

18 **42 U.S.C. § 1983 – Violation of Federal Disability Rights** 19 **Failure to Provide Equal Educational Access to Disabled Students** 20 **(By Plaintiffs Christine Ruiz and Z. R. against All Defendants)**

21 132. Plaintiffs incorporate herein by reference each and every allegation
22 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23 133. Federal law provides Plaintiffs Ruiz and Z. R., along with all other
24 disabled families and children in California the right to free appropriate public
25 education, individualized education plans conferring meaningful educational benefit,
26 appropriate evaluation, and the right to be free from discrimination on the basis of any
27 disability, including through the exclusion from or deprivation of equal access to the
28

1 educational opportunities. *See* 20 U.S.C. § 1400, *et seq.* (Individuals with Disabilities
 2 Education Act (“IDEA”)); 42 U.S.C.A. § 12131, *et seq.*, (Title II of the Americans with
 3 Disabilities Act of 1990 (“ADA”)); 29 U.S.C. § 794, *et seq.*, (Section 504 of the
 4 Rehabilitation Act of 1973).

5 134. Defendants’ arbitrarily imposed restrictions on the reopening of schools,
 6 including the forced closure of many public and private schools, deprives Plaintiffs
 7 Ruiz and Z. R. of these rights, which are secured by the above-cited federal laws.

8 135. Defendants act knowingly, recklessly, and with deliberate indifference to
 9 the rights of Plaintiffs Ruiz and Z. R., and their children, and all other disabled children,
 10 by forcibly restricting most private and public schools in California from providing
 11 meaningful educational opportunities commensurate with their obligations under
 12 federal law.

13 136. Plaintiffs Ruiz and Z. R. have no adequate remedy at law and will suffer
 14 serious and irreparable harm in the form of the deprivation of educational access and
 15 other educational and non-discrimination rights secured by federal law, unless
 16 Defendants are enjoined from implementing and enforcing the school closure.

17 137. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
 18 declaratory relief and temporary, preliminary, and permanent injunctive relief
 19 invalidating and restraining enforcement of the State Order and any associated
 20 guidance.

21 138. Plaintiffs Ruiz and Z. R. found it necessary to engage the services of
 22 private counsel to vindicate their rights under the law. They are therefore entitled to an
 23 award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

24 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment
 25 against Defendants as follows:

- 26 • An order and judgment declaring that the State Order and the associated
- 27 guidance, facially and as-applied to Plaintiffs, violates the Equal Protection
- 28 and Due Process Clauses of the Fourteenth Amendment to the U.S.

1 Constitution; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et*
2 *seq.*); the Individuals with Disabilities Education Act (20 U.S.C. § 1400, *et*
3 *seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §
4 12131, *et seq.*); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
5 § 794, *et seq.*), and that Plaintiffs' children should be allowed in-person
6 instruction without delay;

- 7 • An order temporarily, preliminarily, and permanently enjoining and
8 prohibiting Defendants from enforcing the State Order or otherwise
9 interfering with Plaintiffs' constitutional rights and federal guarantees;
- 10 • For attorneys' fees and costs;
- 11 • Such other and further relief as the Court deems appropriate and just.

12 Date: July 21, 2020

DHILLON LAW GROUP INC.

13
14 By: /s/ Harmeet K. Dhillon

Harmeet K. Dhillon

Mark P. Meuser

Gregory R. Michael

17 Attorneys for Plaintiffs
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17
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19 *Attorneys for Plaintiffs*

20
21 **UNITED STATES DISTRICT COURT FOR**
22 **THE CENTRAL DISTRICT OF CALIFORNIA**

23 **MATTHEW BRACH**, an individual;
24 **JESSE PETRILLA**, an individual;
25 **LACEE BEAULIEU**, an individual;
26 **ERICA SEPHTON**, an individual;
27 **KENNETH FLEMING**, an individual;
28 **JOHN ZIEGLER**, an individual;
ALISON WALSH, an individual;

Case No.: 2:20-cv-06472 DDP (AFMx)

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Judge: Hon. Dean D. Pregerson

1 **ROGER HACKETT**, an individual;
2 **CHRISTINE RUIZ**, an individual;
3 **Z.R.**, a minor; **MARIANNA BEMA**, an
4 individual; **ASHLEY RAMIREZ**, an
5 individual; **TIFFANY MITROWKE**,
6 an individual; **ADE ONIBOKUN**, an
7 individual; and **BRIAN HAWKINS**, an
8 individual;

9 Plaintiffs,
10 v.

11 **GAVIN NEWSOM**, in his official
12 capacity as the Governor of California;
13 **XAVIER BECERRA**, in his official
14 capacity as the Attorney General of
15 California; **SONIA Y. ANGELL**, in
16 her official capacity as the State Public
17 Health Officer and Department of
18 Public Health Director; and **TONY**
19 **THURMOND**, in his official capacity
20 as State Superintendent of Public
21 Instruction and Director of Education

22 Defendants.

Plaintiffs Matthew Brach, Jesse Petrilla, Lacey Beaulieu, Erica Sephton, Kenneth Fleming, John Ziegler, Alison Walsh, Roger Hackett, Christine Ruiz, her minor child, referred to by his initials, Z.R., Marianna Bema, Ashley Ramirez, Tiffany Mitrowke, Ade Onibokun, and Brian Hawkins, by their attorneys, Dhillon Law Group, Inc., for their claims against Defendants Gavin Newsom, in his official capacity as the Governor of California; Xavier Becerra, in his official capacity as the Attorney General of California; Sonia Y. Angell, in her official capacity as the State Public Health Officer and Department of Public Health Director; Tony Thurmond, in his official capacity as State Superintendent of Public Instruction and Director of Education, allege and show the Court as follows (this “Complaint”).

1. Defendants have ushered in a new wave of COVID-19 restrictions, this time barring in-person schooling for most of California’s children. In Defendants’ rush to enact these new restrictions, they have placed special interests ahead of the wellbeing

1 of the children, and children's fundamental right to receive a basic minimum education.
 2 Defendants' arbitrary bar on in-person schooling effectively deprives Plaintiffs'
 3 children, and millions of other children across California, of the opportunity for a
 4 decent education and the attendant hope for a brighter future. The state's exclusion from
 5 in-person schooling also contradicts the recommendations of experts from across the
 6 political spectrum and across numerous disciplines, who argue that schools must re-
 7 open for in-person instruction this year to avoid further harm to California's children.

8 2. This Action presents facial challenges to the Governor of California's May
 9 4, 2020 Executive Order N-60-20 ("State Order"), attached here as **Exhibit 1**, which
 10 requires Californians to obey all State Public Health directives and orders, including the
 11 State's July 17, 2020 "COVID-19 Industry Guidance: School and School-Based
 12 Programs," attached here as **Exhibit 2**.

13 3. This Action is brought pursuant to 42 U.S.C. § 1983, on the grounds that
 14 the State Order and associated guidance and directives, and Defendants' enforcement
 15 thereof, violate Plaintiffs' constitutionally and federally protected rights, including
 16 specifically: (1) the right to substantive due process (U.S. Const. amend. XIV); (2) the
 17 right to equal protection, free from arbitrary treatment by the State (U.S. Const. amend.
 18 XIV); (3) the right to be free from federally funded state action resulting in a disparate
 19 impact on racial minorities (Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d,
 20 *et seq.*); and (4) the right to equal and meaningful access to education, free from
 21 arbitrary state action resulting in a disparate impact on those with disabilities
 22 (Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; Title II of the
 23 Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.*; and Section 504 of
 24 the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*)).

25 4. With the school year commencing in a little over two weeks from the date
 26 of this filing, time is of the essence, and the Court should not hesitate to ensure that
 27 Plaintiffs' fundamental rights in securing a basic minimum education for their children
 28 are preserved and protected from Defendants' arbitrary actions.

JURISDICTION AND VENUE

5. This action arises under 42 U.S.C. § 1983 in relation to Defendants' deprivation of Plaintiffs' rights as secured by the U.S. Constitution and federal law. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. § 1988.

6. The Central District of California is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which Defendants maintain offices, exercise their authority in their official capacities, and will enforce the State Order; and it is the District in which substantially all of the events giving rise to the claims occurred.

PARTIES

7. Plaintiff Matthew Brach is a resident of Rancho Palos Verdes, California. He is suing in his individual capacity and not as an elected member of the Board of Education for the Palos Verdes Peninsula Unified School District. He is the father of two children. His sixteen-year-old son and thirteen-year-old daughter are students in the Palos Verdes Peninsula Unified School District. His son is entering his senior year and will suffer academically as a result of the denial of personal interaction with teachers and positive academic role models. His son's learning style requires him to be able to ask questions of and interact with his teachers and to learn collaboratively with peers. His daughter is already suffering emotionally from being isolated from her learning community.

8. Plaintiff Jesse Petrilla is a resident of Mission Viejo, California. He has a son who is about to enter first grade. Last school year, when his son was in kindergarten and transitioned from in-classroom to distance learning, Petrilla noticed a significant decline in his son's discipline and engagement. His son's enthusiasm for learning declined, and his son became restless. Petrilla's wife has been forced to take time off

1 from work in order to oversee her son's education. The Petrillas are concerned about
2 the negative effects that this prolonged absence from the social aspects of structured
3 education will have on the future development of their son.

4 9. Plaintiff Lacey Beaulieu is a resident of La Jolla, California. She has two
5 children, a daughter who is entering the ninth grade at a private school and a son who is
6 about to enter fifth grade in the San Diego Unified School District. One of her family's
7 biggest challenges with distance learning was trying to balance screen time. Her son's
8 doctor has recommended that he not spend more than two hours a day in front of
9 computer screens. With distance learning, this instruction has been almost impossible to
10 honor. She is concerned that if her son is going to keep up academically, this could
11 come at a cost of brain development issues as a result of him spending too much time in
12 front of computer screens. She found it unrealistic to expect her son to follow the
13 daily/weekly schedule on his own. If she was tied up with work, her son was unable to
14 proceed with his daily lesson plans. While her daughter had more interaction with her
15 teachers, because of the lack of labs, she was unable to properly perform science
16 experiments. Beaulieu believes that the increased screen time has had a negative effect
17 on both of her children. She has noticed that they have difficulty with sleep schedules,
18 both are depressed, and their discipline in completing school assignments has
19 decreased. The enforced deprivation of personal contact with their peers has also
20 affected these children negatively.

21 10. Plaintiff Erica Sephton is a resident of Murrieta, California. She has a
22 daughter who is about to enter transitional kindergarten at Saint Jeanne de Lestonnac
23 Catholic school in Temecula. Sephton understands that her daughter needs social
24 interaction with her fellow classmates, something that she cannot get at home doing
25 distance learning. Sephton is aware of the risks of COVID-19 and believes that these
26 minor risks for children do not outweigh the harm that her daughter is suffering by
27 being deprived of her in-person education. While the school, the teachers and the
28 students are ready to resume school instruction in the classroom with proper

1 precautions, Sephton believes that they are being held back because of positive test
2 results in other parts of the county and not because of any substantial risk in her
3 community. She does not understand why her daughter is allowed to spend all day in a
4 childcare facility, but cannot spend the same period of time in a private school,
5 learning.

6 11. Plaintiff Kenneth Fleming is the father of a public high school senior in
7 Long Beach, California. His daughter has maintained straight A's on her report card for
8 the last three years. She is a student athlete with ambition to earn a sports scholarship to
9 attend her dream school. Plaintiff Fleming is concerned that online-only education,
10 which has not been awarding letter grades to students, adversely impacts his daughter's
11 opportunity to compete for a college scholarship. He also believes that online-only
12 education does not assist his daughter either athletically or academically in preparing
13 for college.

14 12. Plaintiff John Ziegler is a resident of Camarillo, California and is the father
15 of an eight-year-old girl enrolled in public school. When her school moved from in-
16 person instruction to an online platform during the Spring 2020 semester, her
17 educational development suffered. She fell behind in her academic progress. As a result
18 of the denial of in-person educational instruction, Plaintiff Ziegler's wife is left with no
19 choice but to forgo her employment to stay home with their daughter.

20 13. Plaintiff Alison Walsh is the mother of two children who were in the
21 Capistrano Unified School District during the 2019-2020 school year. When CUSD
22 moved to an online platform in the 2020 spring semester, her children's education
23 suffered. Her children's school did not offer her children any live instruction. Their
24 teachers merely sent work packets to the students to complete independently. In
25 preparation for the 2020-2021 academic year, Plaintiff Walsh enrolled her children in
26 private school to ensure that her children could receive academic instruction. Now with
27 Defendants' guidance, even the private school is prohibited from providing in-person
28 education.

1 14. Plaintiff Roger Hackett lives in Ventura County and has a son who will
2 attend a private middle school in Westlake Village, California. His son's school has
3 made significant preparations for safe in-person instruction pursuant to the CDC and
4 local guidelines. This school is willing to offer both in-person and distance learning
5 options based on the preference of the parents, and is ready to safely reopen in-school
6 classes and non-contact athletics starting August 12. Plaintiff Hackett's concern is that
7 online-only education will adversely impact his son's academic and social
8 development. His son is frustrated by continual isolation from his academic community
9 and absence from school athletics. Even though Westlake Village has very few
10 COVID-19 positive cases, because it is in Los Angeles County, which is on the state's
11 watch list, this private school is being prevented from operating in compliance with
12 COVID safety guidelines and in accordance with the desires of the school, teachers,
13 parents, and students.

14 15. Plaintiff Christine Ruiz is Hispanic and lives in Los Angeles County. She
15 has two sons who attend public school in the county, one of whom is Plaintiff Z. R.,
16 referred to by his initials herein. Both boys have been diagnosed with autism. Her 15-
17 year-old son, Z. R., attends high school, in moderate to severe special education classes.
18 Under normal circumstances, he has an entire team of special needs-educated,
19 credentialed staff working hands-on with him during the entire school day pursuant to
20 an Individual Education Program ("IEP") mandated by law. As of March 16, 2020, he
21 has received none of the services required by his IEP. While the school offered a Zoom
22 meeting, this did not work. Her younger son is in junior high school. He has been
23 placed in mild to moderate special education classes. The online class only lasted about
24 30 minutes a day, and he did not learn anything by clicking a few links and watching a
25 video. Her son is a hands-on learner. As a result of the school transitioning to online-
26 only education and not providing the required IEP services, Ruiz has had to hire an
27 educational tutor to assist her sons.

1 16. Plaintiff Z. R. is a minor and, as such, is referred to by his initials herein.
2 Z. R. is the 15-year-old son of Christine Ruiz who currently attends high school. Z. R.
3 is Hispanic and takes moderate to severe special education classes as a result of his
4 autism.

5 17. Plaintiff Marianne Bema is a resident of Los Angeles County, California.
6 She is originally from Cameroon, Africa and is a single mother of three school aged-
7 sons. It is hard for her boys to pay attention and learn solely online. Even though she
8 speaks several languages, there is a small language barrier and it is best for her children
9 to be taught by a trained, English-speaking teacher. Plaintiff Bema also has spotty
10 internet connection at her home, and has noted that the online classes are not secure,
11 and were sometimes hacked into by third-parties.

12 18. Plaintiff Ashley Ramirez has three children who attend their local public
13 school. Ramirez and one of her sons have both tested positive for COVID-19 and
14 successfully recovered. Her children participate in the free or reduced lunch program at
15 school, which greatly helps their family's financial situation. Plaintiff Ramirez tries to
16 limit screen time for her sons, and notes that the schools' distance learning scheme
17 seems to be promoting unhealthy amounts of screen time. Her oldest son has an IEP and
18 he basically "shut down" and cannot effectively participate in an online-only education.
19 Plaintiff Ramirez wonders why the schools are not allowed to reopen, when day care
20 and camps are open for children.

21 19. Plaintiff Tiffany Mitrowke is a resident of San Diego, California. She is
22 the single mother of a seven-year-old boy who attends public school. Her son has been
23 negatively affected educationally and emotionally by the school closures. She hears her
24 son crying in the shower because he cannot go to school and feels isolated. When her
25 son's school went online, the teachers provided no meaningful instruction and merely
26 sent homework packets to the students; additionally, no one from the school even called
27 to check to see how her son was fairing. She has also reached out to the school with
28 questions concerning the next school year but the school has been unresponsive.

1 Plaintiff Mitrowke has researched hiring a private tutor to teach her child if the schools
2 do not reopen but it is cost-prohibitive for her family.

3 20. Plaintiff Adebukola Onibokum is a resident of Santa Clara County,
4 California. He is a neurosurgeon by profession with two young children. His children
5 attend private, parochial school and the school has applied for a waiver from the
6 Governor's order so that the school can provide in-person learning. Plaintiff Onibokum
7 believes that the quality and depth of online learning is of lesser degree and not
8 comparable to an in-person education, and he supports opening California schools.
9 Plaintiff Onibokum's children attended camp this summer and returned much happier
10 as a result of the vital human interaction that has been absent for children during the
11 shutdown.

12 21. Plaintiff Brian Hawkins is resident of San Jacinto, Riverside County,
13 California. He is an African-American full-time pastor. He has two children, including
14 a son who has an Individualized Education Program (hereinafter "IEP"). His son has
15 ADHD and cannot learn via an online format. His son has also been deprived of his
16 special aide who normally helps him (in-person) throughout the entire school day. His
17 daughter, usually a talkative and very social young girl, reports that she is "angry" at
18 missed learning opportunities such as "learning to write cursive." As a pastor, Plaintiff
19 Hawkins has counseled many individuals who have been depressed and suicidal as a
20 result of COVID-19.

21 22. Defendant Gavin Newsom ("Newsom") is made a party to this Action in
22 his official capacity as the Governor of California. The California Constitution vests the
23 "supreme executive power of the State" in the Governor, who "shall see that the law is
24 faithfully executed." Cal. Const. Art. V, § 1. Governor Newsom signed Executive Order
25 N-60-20 (the "Executive Order") on May 4, 2020. *See, e.g., Ex Parte Young*, 209 U.S.
26 123 (1908).

27 ///

28 ///

23. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in his official capacity as the Attorney General of California. Under California law, Becerra is the chief law enforcement officer in the State. Cal. Const. Art. V, § 13.

24. Defendant Sonia Y. Angell, MD, MPH (“Dr. Angell”) is made a party to this Action in her official capacity as the Director and State Public Health Officer. Dr. Angell is sued herein in her official capacity to the extent that she is responsible for providing official government guidance to the various industries that are allowed to operate.

25. Defendant Tony Thurmond (“Thurmond”) is made a party to this Action in his official capacity as State Superintendent of Public Instruction and Director of Education. Thurmond is responsible for enforcing education law and regulations in California.

FACTUAL ALLEGATIONS

26. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19.¹

27. On or about March 19, 2020, California Governor Newsom issued Executive Order N-33-20 in which he ordered “all residents are directed to immediately heed the current State public health directives.”²

28. On or about May 4, 2020, California Governor Newsom issued Executive Order N-60-20 in which he ordered “All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.” Ex. 1.

¹ Available as of the date of this filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

² Available as of the date of filing: <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>.

29. On July 17, 2020 Newsom announced a framework to reopening schools.³

30. Under his plan, schools and school districts are allowed to reopen for in-person instruction *only* “if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days.”⁴

31. California is the only state in the U.S. that is mandating at the state level that school districts not hold in-person classes, rather than leaving that decision to the individual school districts.⁵

32. California Department of Public Health (CDPH) has provided guidance to similarly situated industries, namely camps⁶ and childcare facilities,⁷ allowing them to remain open, but schools are subject to more stringent standards that defy reason.⁸

33. In fact, at the same time that classrooms are being closed for students, these same classrooms are being used to provide child care.⁹

34. Currently, there are 37 counties on the watch list.¹⁰ A county is put on the watch list if for any one of five benchmarks for three consecutive days. These five

³ Available as of the date of filing:

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁴ Available as of the date of filing:

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

⁵ Available as of the date of filing: <https://thehill.com/homenews/state-watch/508105-heres-your-states-plan-for-reopening-schools>.

⁶ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

⁷ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>.

⁸ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-schools.pdf>.

⁹ Available as of the date of filing:

<https://apnews.com/53c43bebfcb6c89aadd2511b8ff8c9f9>.

¹⁰ As of July 28, 2020, the following counties are on the watchlist: Alameda, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Los Angeles, Madera, Marin, Merced, Mono, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San

benchmarks include: 1) 100 cases per 100,000 people over a two-week period; 2) more than 25 cases per 100,000 people with positive test rates of more than 8%; 3) an increase in the number of patients hospitalized of more than 10% over a three-day average; 4) ICU bed availability below 20%; and 5) ventilator availability below 25%. To get off the watch list, a county must not trigger any of the five thresholds for three consecutive days.¹¹ However, in order for schools to open, the county must remain off the watch list for 14 days.

35. There are currently 5.9 million students K-12 in California.¹²

36. As of July 14, 2020, there are 8,433 Child Care centers opened in the state of California and a total of 24,915 licensed Family Child Care Homes for a total of 33,348 total facilities.¹³

Table 1: Total Number of Open Child Care Centers and Family Child Care Homes Statewide and by County (Data Retrieved: 7/14/2020)

County	Total Number of Open Facilities	Total Number of Open Facilities	Total Number of Open Facilities
	Child Care Centers	Family Child Care Homes	All
Statewide	8,433	24,915	33,348

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Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tulare, Ventura, Yolo, and Yuba. Available as of the date of filing:

<https://covid19.ca.gov/roadmap-counties/#track-data>.

¹¹ Available as of the date of filing:

<https://www.sfchronicle.com/bayarea/article/California-s-watch-list-What-it-monitors-and-15430008.php>.

¹² Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹³ Available as of the date of filing: <https://cdss.ca.gov/Portals/9/Additional-Resources/Research-and-Data/DSSDS/ChildCare-7-19.pdf>.

**The U.S. Department of Education and Centers for Disease Control
Are Encouraging Schools to Open**

37. The United States Department of Education spent approximately \$8.3 billion on California K-12 schools for the 2019-2020 school year.¹⁴

38. During a July 8 briefing conducted by the Vice President and the coronavirus task force, the United States Secretary of Education, Betsy DeVos, stated that “[t]here were a number of schools and districts across the country that did an awesome job of transitioning this spring. And there were a lot in which I and state school leaders were disappointed in that they didn’t figure out how to continue to serve their students. Too many of them just gave up. The Center for Reinventing Public Education [CRPE] said that only 10 percent across the board provided any kind of real curriculum and instruction program.”¹⁵

39. Devos also quoted The American Academy of Pediatrics, “Keeping schools closed ‘places children and adolescents at considerable risk of morbidity and, in some cases, mortality.’” The Pediatrics’ guidance concluded that everyone “should start with a goal of having students physically present in school.” “Fully open” and “fully operational” means that students need a full school year or more, and it’s expected it will look different depending on where you are.”¹⁶ “Ultimately, it’s not a matter of ‘if’ schools should reopen, it’s simply a matter of ‘how.’ They must fully open, and they must be fully operational.”¹⁷

¹⁴ Available as of the date of filing: <https://lao.ca.gov/Education/EdBudget/Details/331>.

¹⁵ Available as of the date of filing: <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-coronavirus-task-force-july-8-2020/>.

¹⁶ *Id.*; full report available as of the date of filing: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

¹⁷ *Id.*

40. CRPE found many disparities among schools.¹⁸ In a new report involving a national representative sample of 477 school systems, statistical weights were applied to provide a national representative sample of U.S. school districts. CRPE compared distance learning in districts with different types of communities and different student populations. CRPE found a “sobering story... just one in three districts expect teachers to provide instruction, track student engagement, or monitor academic progress for all students... Far too many districts are leaving learning to chance during the coronavirus closures.”¹⁹

41. As CRPE noted, “[e]xperience tells us that low expectations for instruction bode poorly for the students who faced the greatest challenges: those in low-income households, those with disabilities, those who speak a language other than English at home.”²⁰

42. Although “[t]racking student progress by collecting work for review, assessing students’ progress toward academic benchmarks, or grading their work is the best way to gauge if students are continuing to learn in their remote settings”—and may also be the “only way to get a sense of gaps in students’ learning that may emerge before the fall”—CRPE “found worrisome trends in the expectations districts set. Just 42 percent expect[ed] teachers to collect student work, grade it, and include it in final course grades for at least some students (typically those in middle and upper grades).”²¹

43. The CRPE found a “stark” rural-urban divide “in expectations”—“far more so than the gap in instruction between districts with high concentrations of students who qualify for free or reduced-price lunch.”²²

¹⁸ Available as of the day of filing: <https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

44. “More affluent school districts [were] more likely to require live video instruction from teachers. While expectations around synchronous, or real-time, teaching are uncommon across the board (expected in 21.8 percent of districts), only 14.5 percent of school districts with the highest concentration of students receiving free or reduced-price lunch expect[ed] teachers to provide live instruction. The most affluent 25 percent of districts” in the CRPE sample were “twice as likely to expect real-time teaching.”²³ In short, school districts with concentrations of students from low-income families woefully failed to provide meaningful instruction once schools closed in the spring.

45. School closings also disproportionately affects minorities, as the NAACP notes:²⁴ “For students of color at all levels across the country, school closings create problems even more urgent than the interruption of their educations. Schools also serve as a community nexus for food and housing. Many Black students are eligible for the federal Free or Reduced-Price Lunch Program (FRPL). Fall 2016 data from the National Center on Education Statistics show that for high-poverty schools where more than 75% of students are eligible for FRPL, Black students accounted for 44% of those attending. At schools where 50-75% percent of students are eligible for FRLP, Black students made up 30% of the student population. For students who rely on their schools as a reliable source of daily meals, school closings leave a critical gap.”²⁵

46. The CDC explained that “[s]chools play a critical role in supporting the whole child, not just their academic achievement,” including the “development of social and emotional skills,” and that a safe, connected environment such as school reduces students’ depression, anxiety, and thoughts of suicide.²⁶

²³ *Id.*

²⁴ Available as of the day of filing: <https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/>.

²⁵ *Id.*

²⁶ *The Importance of Reopening America’s Schools this Fall*, Centers for Disease Control and Prevention (July 23, 2020), *available at*

47. The CDC also noted that “more than 30 million children participate in the National School Lunch Program and nearly 15 million participate in the School Breakfast Program.”²⁷

**American Academy of Pediatrics Recommends Students
Physically Present in Schools**

48. In late June, the American Academy of Pediatrics (“AAP”) “strongly” recommended that “the coming school year should start with a goal of having students physically present in school.”²⁸

49. The AAP noted the health benefits that would otherwise be lost, such as “child . . . development,” “social and emotional skills,” “reliable nutrition,” physical/speech and mental health therapy,” and “opportunities for physical activity.”²⁹

50. The AAP also noted that the lack of “in-person learning” could disproportionately affect minorities and those of less socioeconomic means.³⁰

51. The AAP also explained that “[l]ong time away from school and associated interruption of supportive services often results in isolation, making it difficult for schools to identify and address important learning deficits as well as child and adolescent physical or sexual abuse, substance use, depression, and suicidal ideation.”³¹

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<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

²⁷ *Id.*

²⁸ American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for School Reentry*, 3d para. (Last Updated June 25, 2020), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

²⁹ *Id.* at 1st para.

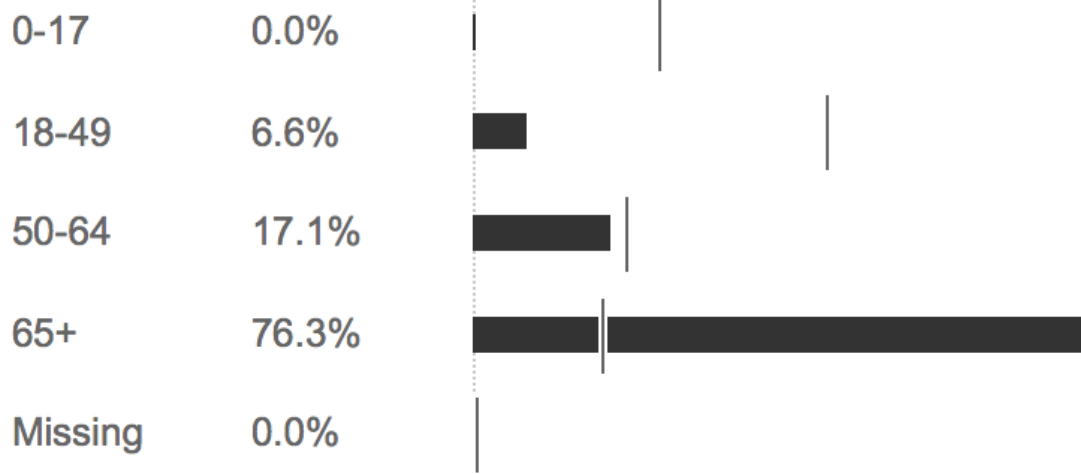
³⁰ *Id.*

³¹ *Id.*

Studies Show that Open Schools Present Minimal Risk

52. According to California's own published reports, *not a single minor* in the state of California has died as a result of COVID-19.³² "No child under age 18 in the state of California has died due to infection from the coronavirus since tracking began on February 1, 2020...[u]nlike the seasonal flu, which kills approximately 200 children per year nationally."³³ This is consistent with national statistics, which indicate that children under 18 account for 0% of nationwide-deaths from COVID-19.

Total Deaths by Age

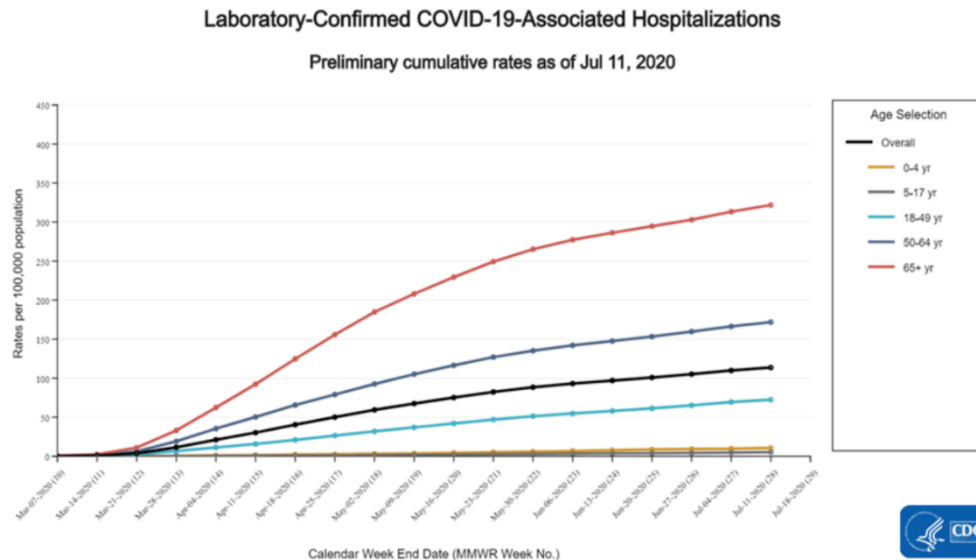


53. The CDC reports that children between the ages of 5–17 are hospitalized at a rate of 5.3 per 100,000 compared to a national average of 113.6.³⁴

³² Available as of the date of filing: <https://update.covid19.ca.gov>.

³³ McDonald Decl. in support of Motion for Preliminary Injunction at ¶ 5.

³⁴ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#hospitalizations>



54. On March 30, 2020, the Australian Research Council released a study that looked at the early data from China, Singapore, South Korea, Japan, and Iran. The study concluded that while “SARS-CoV-2 can cause mild disease in children, the data available to date suggests that children have not played a substantive role in the intra-household transmission of SARS-CoV-2.”³⁵

55. On April 3, 2020, the Ministry of Health for British Columbia found that “COVID-19 virus has a very low infection rate in children estimated at 1-5% worldwide.”³⁶

56. On April 26, 2020, another Australian study found *no* evidence of children infecting teachers.³⁷ The study concluded that the “spread of COVID-19 within NSW (New South Wales) schools has been very limited.”³⁸ This study also found that unlike

³⁵ Available as of the date of filing:

<https://www.medrxiv.org/content/10.1101/2020.03.26.20044826v1>.

³⁶ Available as of the date of filing: <http://www.bccdc.ca/Health-Professionals-Site/Documents/Caring-for-children.pdf>.

³⁷ Available as of the date of filing: http://ncirs.org.au/sites/default/files/2020-04/NCIRS%20NSW%20Schools%20COVID_Summary_FINAL%20public_26%20April%202020.pdf, p. 4.

³⁸ *Id.*

1 other respiratory viruses, children are not the primary drivers of the spread of COVID-
2 19.³⁹

3 57. On May 18, 2020, during a video conference of ministers of education
4 with the Council of the European Union, it was reported that since the reopening of
5 schools in 22 member states, there had been *no increase* in infections of COVID-19
6 among students, teachers and parents.⁴⁰

7 58. On May 28, 2020, a study was released showing that there was no
8 evidence of secondary transmission of COVID-19 from children attending school in
9 Ireland.⁴¹

10 59. On June 23, 2020, the Institute Pasteur after studying 1,340 people linked
11 to primary schools in France released a study in which they found that infected children
12 did not spread the virus to other children or to teachers or other school staff.⁴²

13 60. On July 7, 2020, the Public Health Agency of Sweden published a study
14 titled “Covid-19 in schoolchildren”.⁴³ This study found:

- 15 a. Closing of schools had no measurable effect on the number of cases of
16 COVID-19 among children;
- 17 b. Children are not a major risk group of the COVID-19 disease and seem to
18 play a less important role from the transmission point of view, although
19 more active surveillance and special studies such as school and household
20 transmission studies are warranted; and

21
22 ³⁹ *Id.*

23 ⁴⁰ Available as of the date of filing: <https://www.washingtonexaminer.com/news/22-eu-member-states-have-not-seen-a-spike-in-coronavirus-cases-in-schools-after-reopening>.

24 ⁴¹ Available as of the date of filing:
25 https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.

26 ⁴² Available as of the date of filing: <https://www.pasteur.fr/fr/file/35404/download>.

27 ⁴³ Available as of the date of filing:
28 <https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf>.

c. The negative effects of closing schools must be weighed against the possible positive indirect effects it might have on the mitigation of the COVID-19 pandemic.

61. On July 8, 2020, Prevent Epidemics published a report by the former Head of the Centers for Disease Control and Prevention. In this report titled “Reopening America’s Schools: A Public Health Approach” they found that the evidence “suggests that children may play a smaller role in transmission of COVID-19 than adults.”⁴⁴

62. On July 15, 2020, a study of 2,000 German school children was released that concluded that schools and young people do not play a significant role in the transmission of the coronavirus.⁴⁵ This study found that schools in Germany did not become hotspots after they were reopened.⁴⁶

63. On July 15, 2020, the National Academies of Sciences, Engineering, and Medicine prepared a report in which they weighed the health risks of reopening K-12 schools against the educational risks of providing no in-person instruction and they came to the conclusion that:

Districts should weigh the relative health risks of reopening against the educational risks of providing no in-person instruction in Fall 2020. Given the importance of in-person interaction for learning and development, districts should prioritize reopening with an emphasis on providing full-time, in-person instruction in grades K-5 and for students with special needs who would be best served by in-person instruction.⁴⁷

⁴⁴ Available as of the date of filing: https://preventepidemics.org/wp-content/uploads/2020/07/Reopening-Americas-Schools_07-08-2020-Final.pdf, p. 6.

⁴⁵ Available as of the date of filing: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7271745/>.

⁴⁶ *Id.*

⁴⁷ Available on page 75 as of the date of filing: <https://www.nap.edu/read/25858/chapter/1>.

64. On July 21, 2020, a leading epidemiologist reported to the media that there is *no known case* of a teacher catching coronavirus from pupils.⁴⁸

65. On July 23, 2020, the CDC updated its report titled The Importance of Reopening America's Schools this Fall.⁴⁹ This report found:

Death rates among school-aged children are much lower than among adults. At the same time, the harms attributed to closed schools on the social, emotional, and behavioral health, economic well-being, and academic achievement of children, in both the short- and long-term, are well-known and significant.

66. The CDC also published a report on the age distribution of transmission to new cases in South Korea, which found that less than 1% of new transmission detected in the study were attributed to children aged 0 to 10 years; similarly, less than 1% of new transmissions were from children aged 11 to 20 years.

67. Presently, there are 22 countries that have their schools open without social distancing, mask wearing, and other measures, yet these countries have not experienced an increase in COVID-19 cases or spread of the virus among children.

68. These countries have also not seen transmission of the virus between children and their parents or elderly grandparents.

69. Quite the contrary, one July 2020 study from the University of Dresden concluded that, in fact, children appeared to act as a barrier to transmission.

Studies Show that the Digital Divide Harms Students

70. A study from Brown University has explained that "there are many reasons to believe the COVID-19 impacts might be larger for children in poverty and children of color," noting (1) the disproportionately higher rate of COVID-19 infections and

⁴⁸ Available as of the date of filing: <https://www.thetimes.co.uk/article/no-known-case-of-teacher-catching-coronavirus-from-pupils-says-scientist-3zk5g2x6z>.

⁴⁹ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

1 deaths and worse effect of the economic downturn on African American and Hispanic
 2 parents, and (2) the “digital divide in technology and internet access by race/ethnicity
 3 and socioeconomic status.”⁵⁰

4 71. Studies have shown that “Blacks and Latinos are substantially less likely to
 5 have a computer at home than are white, non-Latinos,” with some estimates showing
 6 that “70.4 percent of whites have access to a home computer” while “only 41.3 percent
 7 of blacks and 38.8 percent of Latinos have access to a home computer.”⁵¹

8 72. This digital divide is supported by other surveys, one of which reported
 9 that: (1) 41% of respondents stated that “not having a computer or tablet or enough
 10 available devices” was a “top barrier” to distance learning, while only 37% said that
 11 their child’s school had lent mobile technology devices; and (2) 71% of African
 12 American families and 69% of families with a household income of less than \$50,000
 13 stated that lending mobile technology devices would be very helpful for families like
 14 theirs.⁵² This survey comports with the “evidence that, even when teachers are making
 15 themselves and their instructional materials available virtually, many students lack the
 16 means to access online material from home.”⁵³

17 73. The Brown University study estimated those negative impacts on children
 18 to be a loss of 63-68% of the learning gains in reading relative to a typical school year
 19 and a loss of 37-50% in learning gains in math.⁵⁴

21 ⁵⁰ Kuhfeld *et al.* (May 2020) *Projecting the potential impacts of COVID-19 school*
 22 *closures on academic achievement*, p. 25 Annenberg Institute at Brown University,
 23 <https://doi.org/10.26300/cdrv-yw05>.

24 ⁵¹ Robert W. Fairlie, *Race and the Digital Divide*, UC Santa Cruz: Department of
 25 Economics, UCSC, at 2 (2014), available at <https://escholarship.org/uc/item/48h8h99w>.

26 ⁵² The Education Trust-West, *California Parent Poll: COVID-19 and School Closures*
 27 (Accessed on June 19, 2020), available at: <https://west.edtrust.org/ca-parent-poll-covid-19-and-school-closures/>.

28 ⁵³ Kuhfeld, *Projecting the potential impacts of COVID-19 school closures on academic achievement*, p. 10.

⁵⁴ *Id.* p. 23.

1 74. In some grades, students may come back close to a “full year behind in
2 math.”⁵⁵

3 75. There is also evidence showing that remote learning leads to decreased
4 teacher interaction with students.⁵⁶

5 76. Another study showed that that, even for children receiving average-
6 quality online learning in the fall of 2020, students would lose “three to four months of
7 learning” by January 2021. And the study predicted that Blacks and Latinos would
8 suffer a 15 to 20 percent greater loss in educational gains than other students.⁵⁷

9 77. Less than two weeks after the school shutdown on March 16, 2020, the Los
10 Angeles School District officials admitted that 15,000 students were completely
11 unaccounted for and more than 40,000 had not been in daily contact with their
12 teachers.⁵⁸

13 78. A study conducted by the Los Angeles Unified School District (LAUSD)
14 found that between March 16 and May 22, 2020, “on an average day only about 36% of
15 middle and high school students participated online,” while “[a]bout 25% logged on or
16 viewed work only” “[a]nd about 40% were absent.” The study also found that Black
17 and Latino students showed participation rates between 10 and 20 percentage points
18 lower than white and Asian peers.” And “English learners, students with disabilities,
19

20 ⁵⁵ *Id.*

21 ⁵⁶ *Id.* at 10 “There are concerning signs that many teachers have had no contact at all
22 with a significant portion of students . . . only 39% of teachers reported interacting with
23 their students at least once a day, and most teacher-student communication occurred
24 over email”, and absenteeism.

25 ⁵⁷ Emma Dorn, et al., *COVID-19 and student learning in the United States: The hurt*
26 *could last a lifetime*, McKinsey & Company (June 1, 2020), available at
27 [https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime)
28 [learning-in-the-united-states-the-hurt-could-last-a-lifetime](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime).

⁵⁸ Howard Blume, *15,000 L.A. high school students are AWOL online, 40,000 fail to*
check in daily amid coronavirus closures, LOS ANGELES TIMES, (March 30, 2020)
Available at: [https://www.latimes.com/california/story/2020-03-30/coronavirus-los-](https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent)
[angeles-schools-15000-high-school-students-absent](https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent).

1 homeless students and those in the foster-care system had lower rates of online
2 participation.”⁵⁹

3 79. Even among students from families with lower economic means who are
4 provided with tablets and wifi hotspots, it has been reported that parents who are
5 technologically challenged have been unable to help their children get online. Teachers
6 report students who are unable to respond online because they are babysitting their
7 siblings, who are also home from school, while parents work to keep the family housed.
8 Even the most diligent teacher cannot provide the extra attention to a struggling student
9 that he or she would provide in-person, while using only online resources.

10 **Special Education Students are Disadvantaged by Distance Learning**

11 80. Under federal law, students with disabilities are guaranteed a Free,
12 Appropriate Public Education (FAPE), as incorporated through the IDEA ACT 34
13 C.F.R. § 300.101 and Title III of the Americans with Disabilities Act of 1990 (“ADA”),
14 § 504 of the Rehabilitation Act of 1973.⁶⁰

15 81. The federal government allocates approximately \$1.2 billion to California
16 for special education each year.⁶¹

17 82. Many parents of special needs children in California have reported that
18 their children received none, or nearly none, of the individualized instruction
19 guaranteed by law when schools closed in the spring. Frustrated instructors simply gave
20 up when faced with technology challenges, while others didn’t even try, and many
21 school districts made zero provision for delivering these federally mandated services to
22 children, despite the federal funding the state received that was conditioned upon
23

24 ⁵⁹ *Report reveals disparities among Black, Latino LAUSD students in online learning*
25 *amid COVID-19 pandemic*, ABC 7 Eyewitness News (July 17, 2020), available at
26 <https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/>.

27 ⁶⁰ 20 U.S.C.A. § 1412; *see* 42 U.S.C.A. § 12132; *see* 29 USCA § 794.

28 ⁶¹ Available as of the date of filing:

<https://lao.ca.gov/Publications/Report/4110#Introduction>.

1 providing these services. Accordingly, children with disabilities were especially
2 harmed by the school closures during the spring.

3 83. Moreover, even if schools were to make better efforts in the fall, many
4 individualized education programs (IEPs) simply *cannot* be implemented in a distance-
5 learning environment. For example, many IEPs require individualized instruction, such
6 as a one-on-one aide. And not following an IEP can have grave consequences, such as
7 regression.

8 84. While not unique to students with disabilities, socialization in schools is
9 critical for special needs children.

10 85. The CDC's July 23, 2020, report on the Importance of Reopening
11 America's Schools this Fall found that

12 The lack of in-person educational options
13 disproportionately harms low-income and minority
14 children and those living with disabilities. These
15 students are far less likely to have access to private
16 instruction and care and far more likely to rely on key
17 school-supported resources like food programs, special
18 education services, counseling, and after-school
19 programs to meet basic developmental needs.⁶²

18 **Distance-Only Schools Pose Child Safety Concerns**

19 86. As mandatory reporters, teachers who have daily contact with children are
20 in the best position to notice and report suspected child abuse.

21 87. Nationwide, "stay at home" does not mean "safe at home" as a report from
22 RAINN (Rape, Abuse, & Incest National Network) describes. "Many minors are now
23 quarantined at home with their abuser. Meanwhile, these kids are cut off from their
24 safety net — the teachers, coaches, and friends' parents who are most likely to notice
25 and report suspected abuse.... As a result, abuse reports to many state authorities have
26

27 ⁶² Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.
28

declined — not because there is less abuse taking place, but because children have less contact with adults outside the home who could potentially spot and report abuse. Sadly, it is likely that the risk of children being sexually abused will increase as shelter-in-place orders continue — one more tragic consequence of the public health crisis the country currently faces.”⁶³

88. The CDC reports that teachers and educational staff report more than one-fifth of all child-abuse cases, that during school closures “there has been a sharp decline in reports of suspected maltreatment,” and hospitals have seen an increase in hospitalizations of children suffering from abuse.⁶⁴

89. Although child abuse reports have declined, hospitals are reporting higher numbers of physically abused children – this indicates that abuse is not being detected in time (i.e., before an abuse incident requiring hospitalization). In San Diego, during the months of April and May, 24 children were treated for abuse symptoms, which is double the normal rate. Other locations have seen an increase, including Jacksonville, Florida (8 abusive head trauma cases in March and April instead of 3) and Fort Worth, Texas (9 severe cases at a hospital since March, when they usually have only 6 in the whole year).

One California School District’s Effort to Prepare to Open

90. As an elected member of the Palos Verdes Peninsula Unified School District (“PVPUSD”), which is located in Los Angeles County, plaintiff Brach was active in the process of preparing the district for school reopenings in the fall.

91. Brach was involved in preparing a “Return to School” survey.

92. This survey found that over 60% of parents in the district believed that there was not enough face-to-face teaching time during the initial shutdown.

93. Over 60% of parents also preferred that their children attend school in a normal in-person setting rather than return to the virtual learning program.

⁶³ Available as of the date of filing: <https://www.rainn.org/news/first-time-ever-minors-make-half-visitors-national-sexual-assault-hotline>.

⁶⁴ *The Importance of Reopening America’s Schools*, *supra*.

1 94. Over 60% of the teachers were comfortable with returning to teach school.

2 95. The survey also showed that due to financial constraints, if the school did
3 not return to in-person learning, over 7% of parents of TK – 5th grade children and over
4 19% of parents of children between 6th – 12th grade would have to leave their children
5 home without supervision.

6 96. PVPUSD established a reopening committee that included staff, medical
7 professionals and parents.

8 97. PVPUSD was prepared to implement screening including providing a digital
9 app so parents could answer questions each morning regarding symptoms, and the school
10 was prepared to take students' temperature to verify the app's data.

11 98. PVPUSD also was prepared to implement the following mitigation strategy:

- 12 a. Staggered arrival times;
- 13 b. Designated entrance and exit routes;
- 14 c. Purchase no touch thermometers;
- 15 d. Procure N95 masks for nurses and cloth masks for students;
- 16 e. Provide water filling stations to avoid use of drinking fountains;
- 17 f. Provide grab/go meals for lunch;
- 18 g. Plexiglas for serving and cashier stations;
- 19 h. Investigation of HVAC system to support air circulation if windows had to
20 be closed;
- 21 i. Order signage for directional guides and handwashing reminders;
- 22 j. Handwashing stations with foot pedal;
- 23 k. Install touch free sanitizing;
- 24 l. Institute protocols for high touch areas.

25 99. PVPUSD was ready to work with the teachers, parents, and students to
26 provide options. The 60% of teachers and parents who wanted in-person learning could
27 have chosen that option, while the remainder could continue their learning with virtual
28 study. The Governor's new guidance upended these plans by requiring all schools in the

1 county to close, regardless of the efforts made to reopen safely, and the choices of parents,
2 teachers, and children.

3 **Newsom's Doomsday Predictions Have Not Proven True**

4 100. Governor Newsom's rationale for Executive Order N-33-20, his original
5 shelter in place order, was to "bend the curve."⁶⁵ He stated that "[i]n some parts of our
6 state, our case rate is doubling every four days," and that "[t]he point of the stay at
7 home order is to make those numbers moot."⁶⁶ The Governor added that one goal was
8 to slowdown transmission enough to reduce the strain it might place on hospital
9 resources.⁶⁷

10 101. Governor Newsom cited a model showing that as of March 19, 2020, 56
11 percent of Californians, or more than 25 million people, could be infected over the next
12 eight weeks.⁶⁸

13 102. Several infectious disease experts, including Professor of Epidemiology
14 John P.A. Ioannidis of Stanford University, called this an extreme, worst-case scenario
15 that was unlikely to happen.⁶⁹ They turned out to be correct.

16 103. Upon information and belief, another piece of flawed data that drove
17 California's and Santa Clara County's original, onerous shelter-in-place orders was an
18 incorrect assumption that the R_0 of COVID-19 was 5.7.

19 104. The "R-naught" is the rate at which people can be infected, or more
20

21
22 ⁶⁵ March 19, 2020 press briefing at 35:17-36:00, available as of the date of filing at
<https://www.youtube.com/watch?v=8OeyeK8-S5o>.

23 ⁶⁶ *Id.*

24 ⁶⁷ *Id.* at 5:42-8:09.

25 ⁶⁸ *Id.* at 5:00-6:00.

26 ⁶⁹ *Newsom: 56 % of Californians Could Get Coronavirus If Nothing Is Done*, San
27 Francisco Chronicle, March 19, 2020, available as of May 3, 2020 at:
https://webcache.googleusercontent.com/search?q=cache:sokxG9_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us.
28

precisely the rate of reproduction of the virus as measured by infected human hosts.⁷⁰

105. Upon information and belief, part of the data that the Governor depended on for his claim that 25 million Californians would be infected within eight weeks was the initial rate of infection in Wuhan, the originating epicenter of COVID-19, where the numbers apparently showed a R_0 of 5.7.⁷¹

106. However, scientists now believe that the R_0 of COVID-19 without mitigation efforts is approximately 2.2-2.7.⁷² With mitigation efforts, the R_0 of COVID-19 has been driven down even further.

107. More egregiously, the COVID-19 death rate projections model on which Governor Newsom relied for implementing a state of emergency and mass quarantine of healthy Californians, turned out to be grossly flawed.⁷³ California has thus far accounted for five point three percent (5.3%) of the nation's COVID-19 deaths while containing twelve percent (12%) of the nation's populace.⁷⁴

108. Governor Newsom's inexplicable restrictions on school reopening are not based on any scientific data and are completely arbitrary, especially in light of the fact that California allows camps and childcare facilities to remain open. More fundamentally, the school closing "plan," which is no plan at all, ignores the state's legal duties to California's children.

⁷⁰ <https://www.nytimes.com/2020/04/23/world/europe/coronavirus-R0-explainer.html>.

⁷¹ Available as of the date of filing: https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article.

⁷² *Id.*

⁷³ Available as of the date of filing: <https://www.statnews.com/2020/04/17/influential-covid-19-model-uses-flawed-methods-shouldnt-guide-policies-critics-say/>.

⁷⁴ According to the CDC, California has 6,823 of the United States' 128,035 COVID-19 deaths. Available as of the date of filing at <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>. According to the U.S. Census, California has 39,512,223 of the United States' 328,239,523 people. Available as of date of filing at <https://www.census.gov/quickfacts/fact/table/CA,US/PST045219>.

1 **CLAIMS**

2 **FIRST CLAIM FOR RELIEF**

3 **42 U.S.C. § 1983 – Violation of Due Process under the Fourteenth Amendment**
 4 **Deprivation of Substantive Due Process**
 5 **(By All Plaintiffs Against All Defendants)**

6 109. Plaintiffs incorporate herein by reference each and every allegation
 7 contained in the preceding paragraphs of this Complaint as though fully set forth herein

8 110. The Due Process Clause of the Fourteenth Amendment provides that no
 9 state shall “deprive any person of life, liberty, or property, without due process of law.”
 10 U.S. Const. amend XIV. In particular, “the Due Process Clause specially protects those
 11 fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s
 12 history and tradition, and implicit in the concept of ordered liberty, such that neither
 13 liberty nor justice would exist if they were sacrificed.” *Glucksberg*, 521 U.S. at 720–21
 14 (internal citations and quotation marks omitted). Plaintiffs and their children have a
 15 fundamental right to a basic, minimum education.

16 111. Defendants have deprived Plaintiffs and their children of this right in
 17 violation of the Fourteenth Amendment to the U.S. Constitution, by effectively
 18 precluding children from receiving a basic minimum education because (1) many
 19 students have no or limited access to the internet; (2) of those who do have digital
 20 access their educations will be significantly impaired; and (3) truancy will run rampant.

21 112. The U.S. Constitution entitles Plaintiffs to be free from any burden to a
 22 fundamental right unless the infringement is narrowly tailored to serve a compelling
 23 state interest.

24 113. Defendants lack any compelling, or even rational, interest for burdening
 25 Plaintiffs’ children of their fundamental right to a basic minimum education. The
 26 weight of the evidence shows that children’s transmission and infection rates cannot
 27 justify school closures. Defendants further ignore that the evidence of mortality risk and
 28 severe adverse health outcome risk to children from COVID-19 disease is virtually non-

1 existent.

2 114. Risk to teachers may be managed just as risk to other essential workers is
3 managed in California – by offering choices and providing protection. The challenges
4 posed by the situation pale in comparison to the harm being inflicted on California’s
5 families through the deprivations of their constitutional rights.

6 115. Nor are the Defendants’ actions narrowly tailored. If children can study
7 and learn in-person, even on a limited basis while in school, but are forced to “learn”
8 through a means in which they realistically cannot access, then the policy is not
9 narrowly tailored. Moreover, as seen elsewhere, many other States have provided
10 options to attend school, including deploying “hybrid” models of mixed virtual and in-
11 person learning to reduce student contact. While remote instruction may play a role in
12 the various counties’ approaches, there is no reason to adopt a one-size-fits-all model
13 for the State, and Defendants’ insistence on such an approach fails any form of
14 heightened scrutiny.

15 116. Plaintiffs have no adequate remedy at law and will suffer serious and
16 irreparable harm to their constitutional rights unless Defendants are enjoined from
17 implementing and enforcing the Governor’s Order and associated guidance.

18 117. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
19 declaratory relief and temporary, preliminary, and permanent injunctive relief
20 invalidating and restraining enforcement of the State Order and associated guidance.

21 118. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.

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SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of the Equal Protection Clause

under the Fourteenth Amendment

Arbitrary School Closures

(By All Plaintiffs Against All Defendants)

119. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

120. The equal protection doctrine prohibits “governmental classifications that affect some groups of citizens differently than others.” *Engquist v. Or. Dep’t. of Agric.*, 553 U.S. 591, 601 (2008) (citations omitted). The touchstone of this analysis is whether a state creates disparity “between classes of individuals whose situations are arguably indistinguishable.” *Ross v. Moffitt*, 417 U.S. 600, 609 (1974).

121. The framework for reopening schools arbitrarily treats Plaintiffs’ children (and other minors attending public and private schools) differently from those in nearby school districts; from those in childcare; and from those attending summer camps, even though all such children and their families are similarly situated.

122. The risk of exposure or transmission within in any particular county is substantially the same whether children are at school, daycare, or at camp. Children at summer camp, daycare, and in school will be in the presence of other children, in an enclosed or semi-enclosed space, overseen by an older person(s) not comprised of the child’s family unit, for an extended period, and industry guidance issued for schools, camps, and daycare, contains the same or essentially the same protocols for wearing face coverings, physically distancing, hygiene, cleaning, arrival/departure procedures, sharing, checking for signs and symptoms and notification procedures if a child or staff member becomes ill. Yet only schools are subject to the Governor’s mandated closure orders.

123. Defendants’ actions arbitrarily restrict access to schools based on the location of the school. Children residing in any particular county, including those

1 counties in which Defendants have forcibly shut down in-person instruction, may still
2 attend private school in nearby counties, despite the state's assignment of differing
3 levels of risk or exposure to the virus.

4 124. There is no rational basis—much less any compelling reason—for
5 Defendants' arbitrary treatment of schools, which are vital to children's development
6 but subject to more severe restrictions and potentially outright closure. Moreover, to the
7 extent the state has a compelling interest in ensuring that parents, children, and teachers
8 afraid of contracting COVID-19 are not forced to return to school this fall, less
9 restrictive alternatives to Defendants' closure regime exist, such as requiring schools to
10 *enable* distanced learning over the internet. Nor is Defendants' overbearing, one-size-
11 fits-all regime narrowly tailored to prevent to the spread of COVID-19 in schools. As
12 the example from the Palos Verdes Peninsula Unified School District illustrates, there
13 are a number of steps schools can take to protect their students while still providing
14 effective in-person education.

15 125. Defendants' intentional, discriminatory, and arbitrary imposition of state-
16 wide restrictions on school reopening violate Plaintiffs' right to equal protection under
17 the law.

18 126. Plaintiffs have no adequate remedy at law and will suffer serious and
19 irreparable harm to their and/or their children's constitutional rights unless Defendants
20 are enjoined from implementing and enforcing the Governor's Order and associated
21 guidance documents which restrict the reopening of schools in a manner that violates
22 the Equal Protection Clause.

23 127. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
24 declaratory relief and temporary, preliminary, and permanent injunctive relief
25 invalidating and restraining enforcement of the Governor's Order and any associated
26 guidance documents.

27 128. Plaintiffs found it necessary to engage the services of private counsel to
28 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of

attorneys' fees pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Title VI of Civil Rights Act of 1964

Disparate Impact on Racial Minorities

(By Christine Ruiz, Z. R., Brian Hawkins, Marianna Bema, Ashley Ramirez,
Tiffany Mitrowke, and Ade Onibokun Against All Defendants)

129. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

130. Federal law conveys to Plaintiffs the right to be free from enforcement of facially discriminatory laws, facially neutral laws adopted with discriminatory intent or purpose, and facially neutral laws causing a disparate impact on racial minorities with regard to federally funded public programs, including California's public schools. 42 U.S.C. 2000d, *et seq.* (Title VI of the Civil Rights Act of 1964); 28 C.F.R. § 42.104(b)(2). Section 1983, in turn, creates a private right of action against the deprivation of such federal rights against officials acting under color of state law, despite there being no private right of action under a disparate impact theory pursuant to Title VI itself. *See* 42 U.S.C. § 1983; *Alexander v. Sandoval*, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting) (“[l]itigants who in the future wish to enforce the Title VI [disparate impact] regulations against state actors in all likelihood must only reference § 1983 to obtain relief.”)

131. Mandatory distance learning has a negative, disparate impact on racial minorities. Distance learning is more difficult for many minority students, who tend to have less access to technology. Additionally, schools serving primarily minority students have provided demonstrably less effective distance learning than other schools. And the order applies to counties with disproportionately greater minority populations than those not on the county monitoring list.

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132. Defendants have acted arbitrarily and with deliberate indifference toward the unduly harsh effects their school restrictions have on racial minorities who have less access to technology, are provided less effective distance-learning, and are more heavily impacted by the orders.

133. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights under Title VI and its implementing regulations unless Defendants are enjoined from implementing and enforcing their broad prohibitions on in-person education in California.

134. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Governor's Order.

135. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

FOURTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of Federal Disability Rights Statutes;

**Failure to Provide Appropriate and Equal Educational to Disabled Students
(By Plaintiffs Christine Ruiz, Z. R., Brian Hawkins, Marianna Bema, and Ashley
Ramirez against All Defendants)**

136. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

137. Federal law provides all disabled children in California the right to a free appropriate public education, individualized education plans conferring educational benefit, appropriate identification and evaluation, and the right to be free from discrimination on the basis of any disability, including through the exclusion from or deprivation of equal access to the educational opportunities. *See* 20 U.S.C. § 1400, *et seq.* (Individuals with Disabilities Education Act (“IDEA”)); 42 U.S.C.A. § 12131, *et*

1 *seq.*, (Title II of the Americans with Disabilities Act of 1990 (“ADA”)); 29 U.S.C. §
2 794, *et seq.*, (Section 504 of the Rehabilitation Act of 1973).

3 138. Defendants’ arbitrarily imposed restrictions on the reopening of schools,
4 including the forced closure of many public and private schools and the imposition of
5 online-only learning, deprives disabled children in California of these rights, which are
6 secured by the above-cited federal laws.

7 139. Defendants acted knowingly, recklessly, and with deliberate indifference
8 to the rights of disabled children in California by forcibly preventing most private and
9 public schools in California from providing disabled students with specialized
10 instruction and related services commensurate with the schools’ obligations under
11 federal law, as well as from providing disabled students equal access to education as
12 required by federal law.

13 140. Plaintiffs have no adequate remedy at law and will suffer serious and
14 irreparable harm in the form of the deprivation of educational opportunities, related
15 services, and other educational and non-discrimination rights secured by federal law,
16 unless Defendants are enjoined from implementing and enforcing the school closure.

17 141. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
18 declaratory relief and temporary, preliminary, and permanent injunctive relief
19 invalidating and restraining enforcement of the state orders and any associated
20 guidance.

21 142. Plaintiffs found it necessary to engage the services of private counsel to
22 vindicate their rights under the law. They are therefore entitled to an award of
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.

24 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment
25 against Defendants as follows:

- 26 • An order and judgment declaring that the Governor’s Order and the associated
27 guidance, facially and as-applied to Plaintiffs, violates the Equal Protection
28 and Due Process Clauses of the Fourteenth Amendment to the U.S.

1 Constitution; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et*
 2 *seq.*); the Individuals with Disabilities Education Act (20 U.S.C. § 1400, *et*
 3 *seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §
 4 12131, *et seq.*); and/or Section 504 of the Rehabilitation Act of 1973 (29
 5 U.S.C. § 794, *et seq.*), and that Plaintiffs' children should be allowed in-
 6 person instruction without delay;

- 7 • An order temporarily, preliminarily, and permanently enjoining and
- 8 prohibiting Defendants from enforcing the State Order or otherwise
- 9 interfering with Plaintiffs' constitutional rights and federal guarantees;
- 10 • For attorneys' fees and costs;
- 11 • Such other and further relief as the Court deems appropriate and just.

12
 13 Date: July 29, 2020

DHILLON LAW GROUP INC.

14
 15 By: /s/ Harmeet K. Dhillon

16 Harmeet K. Dhillon

17 Mark P. Meuser

18 Gregory R. Michael

19 Michael Yoder (pro hac vice pending)

20 EIMER STAHL LLP

21 Robert Dunn

22 Ryan J. Walsh (pro hac vice pending)

23 John K. Adams (pro hac vice pending)

24 Amy C. Miller (pro hac vice pending)

25
 26 Attorneys for Plaintiffs
 27
 28

EXHIBIT 1

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-60-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, which directed all California residents to immediately heed current State public health directives; and

WHEREAS State public health directives, available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>, have ordered all California residents stay home except for essential needs, as defined in State public health directives; and

WHEREAS COVID-19 continues to menace public health throughout California; and

WHEREAS the extent to which COVID-19 menaces public health throughout California is expected to continue to evolve, and may vary from place to place within the State; and

WHEREAS California law promotes the preservation of public health by providing for local health officers—appointed by county boards of supervisors and other local authorities—in addition to providing for statewide authority by a State Public Health Officer; and

WHEREAS these local health officers, working in consultation with county boards of supervisors and other local authorities, are well positioned to understand the local needs of their communities; and

WHEREAS local governments are encouraged to coordinate with federally recognized California tribes located within or immediately adjacent to the external geographical boundaries of such local government jurisdiction; and

WHEREAS the global COVID-19 pandemic threatens the entire State, and coordination between state and local public health officials is therefore, and will continue to be, necessary to curb the spread of COVID-19 throughout the State; and

WHEREAS State public health officials have worked, and will continue to work, in consultation with their federal, state, and tribal government partners; and

WHEREAS the State Public Health Officer has articulated a four-stage framework—which includes provisions for the reopening of lower-risk businesses and spaces (“Stage Two”), to be followed by the reopening of higher-risk businesses and spaces (“Stage Three”)—to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19; and

WHEREAS the threat posed by COVID-19 is dynamic and ever-changing, and the State's response to COVID-19 (including implementation of the four-stage framework) should likewise retain the ability to be dynamic and flexible; and

WHEREAS to preserve this flexibility, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665; and also in accordance with the authority vested in the State Public Health Officer by the laws of the State of California, including but not limited to Health and Safety Code sections 120125, 120130, 120135, 120140, 120145, 120150, 120175, and 131080; do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.
- 2) As the State moves to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), the State Public Health Officer is directed to establish criteria and procedures—as set forth in this Paragraph 2—to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

In particular, the State Public Health Officer is directed to establish criteria to determine whether and how, in light of the extent to which the public health is menaced by COVID-19 from place to place within the State, local health officers may (during the relevant stages of reopening) issue directives to establish and implement public health measures less restrictive than any public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

The State Public Health Officer is further directed to establish procedures through which local health officers may (during the relevant stages of reopening) certify that, if their respective jurisdictions are subject to proposed public health measures (which they shall specify to the extent such specification may be required by the State Public Health Officer) that are less restrictive than public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer, the public health will not be menaced. The State Public Health Officer shall additionally establish procedures to permit, in a manner consistent with public health and

safety, local health officers who submit such certifications to establish and implement such less restrictive public health measures within their respective jurisdictions.

The State Public Health Officer may, from time to time and as she deems necessary to respond to the dynamic threat posed by COVID-19, revise the criteria and procedures set forth in this Paragraph 2. Nothing related to the establishment or implementation of such criteria or procedures, or any other aspect of this Order, shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq. Nothing in this Paragraph 2 shall limit the authority of the State Public Health Officer to take any action she deems necessary to protect public health in the face of the threat posed by COVID-19, including (but not limited to) any necessary revision to the four-stage framework previously articulated by the State Public Health Officer.

- 3) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of May 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT 2



COVID-19 INDUSTRY GUIDANCE: Schools and School- Based Programs

Release date: **July 17, 2020**

All guidance should be implemented only with county health officer approval following their review of local epidemiological data including cases per 100,000 population, rate of test positivity, and local preparedness to support a health care surge, vulnerable populations, contact tracing, and testing.



OVERVIEW

Communities across the state are preparing for the forthcoming school year. To assist with that planning process, the following guidelines and considerations are intended to help school and community leaders plan and prepare to resume in-person instruction.

This guidance is interim and subject to updates. These guidelines and considerations are based on the best available public health data at this time, international best practices currently employed, and the practical realities of managing school operations; as new data and practices emerge. Additionally, the guidelines and considerations do not reflect the full scope of issues that school communities will need to address, which range from day-to-day site-based logistics to the social and emotional well-being of students and staff.

California public schools (traditional and charter), private schools (including nonpublic nonsectarian schools), school districts, and county offices of education, herein referred to as schools, will determine the most appropriate instructional model, taking into account the needs of their students and staff, and their available infrastructure. This guidance is not intended to prevent a school from adopting a distance learning, hybrid, or mixed-delivery instructional model to ensure safety. Schools are not required to seek out or receive approval from a state or local public health officer prior to adopting a distance-learning model.

Implementation of this guidance will depend on local public health conditions, including those listed [here](#). Communities meeting those criteria, such as lower incidence of COVID-19 and adequate preparedness, may implement the guidance described below as part of a phased reopening. All decisions about following this guidance should be made in collaboration with local health officials and other authorities.

Implementation of this guidance should be tailored for each setting, including adequate consideration of instructional programs operating at each school site and the needs of students and families. School leaders should engage relevant stakeholders—including families, staff and labor partners in the school community—to formulate and implement plans that consider the following:

- **Student, Family and Staff Population:** Who are the student, family and staff populations who will be impacted by or can serve as partners in implementing any of the following measures?
- **Ability to Implement or Adhere to Measures:** Do staff, students and families have the tools, information, resources and ability to successfully adhere to or implement the new measures?
- **Negative or Unintended Consequences:** Are there any negative or unintended consequences to staff, students or families of implementing the measures and how can those consequences be mitigated?

This guidance is not intended to revoke or repeal any worker rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing safety and health-related regulatory requirements such as those of Cal/OSHA. Stay current on changes to public health guidance and state/local orders, as the COVID-19 situation continues.



1. General Measures

- Establish and continue communication with local and State authorities to determine current disease levels and control measures in your community. For example:
 - Review and refer to, if applicable, the relevant county variance documentation. Documentation can be found [here](#).
 - Consult with your county health officer, or designated 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.
 - Regularly review updated guidance from state agencies, including the [California Department of Public Health](#) and [California Department of Education](#).
- Establish a written, worksite-specific COVID-19 prevention plan 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.
 - Identify contact information for the local health department where the school is located for communicating information about COVID-19 outbreaks among students or staff.
 - Incorporate the [CDPH Guidance](#) for the Use of Face Coverings, into the School Site Specific Plan that includes a policy for handling exemptions.
 - Train and communicate with workers and worker representatives on the plan. Make the written plan available and accessible to workers and worker representatives.
 - Regularly evaluate the workplace for compliance with the plan and document and correct deficiencies identified.
 - Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
 - Implement the necessary processes and protocols when a workplace has an outbreak, in accordance with [CDPH guidelines](#).
 - 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. See Section 10 for more detail.

- Adhere to these guidelines. Failure to do so could result in workplace illnesses that may cause classrooms or the entire school to be temporarily closed or limited.
- Evaluate whether and to what extent external community organizations can safely utilize the site and campus resources. Ensure external community organizations that use the facilities also follow this guidance.
- Develop a plan for the possibility of repeated closures of classes, groups or entire facilities when persons associated with the facility or in the community become ill with COVID-19. See Section 10 below.
- Develop a plan to further support students with access and functional needs who may be at increased risk of becoming infected or having unrecognized illness due to COVID-19. For example, review existing student health plans to identify students who may need additional accommodations, develop a process for engaging families for potentially unknown concerns that may need to be accommodated or identify additional preparations for classroom and non-classroom environments as needed. Groups who might be at increased risk of becoming infected or having unrecognized illness include the following:
 - Individuals who have limited mobility or require prolonged and close contact with others, such as direct support providers and family members;
 - Individuals who have trouble understanding information or practicing preventive measures, such as hand washing and physical distancing; and
 - Individuals who may not be able to communicate symptoms of illness.
- Schools should review the [CDPH Guidance for the Use of Face Coverings](#) and any applicable local health department guidance and incorporate face-covering use for students and workers into their COVID-19 prevention plan. Some flexibility may be needed for younger children consistent with child development recommendations. See Section 3 for more information.



2. Promote Healthy 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 inside 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, for lower grade levels, use bathroom time 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 hand sanitizers are more toxic when ingested or absorbed in 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 a site and near classrooms to minimize movement and congregations 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.

- Information contained in the [CDPH Guidance](#) for the Use of Face Coverings should be provided to staff and families, which discusses the circumstances in which face coverings must be worn and the exemptions, as well as any policies, work rules, and practices the employer has adopted to ensure the use of face coverings.
- Employers must provide and ensure staff use face coverings in accordance with CDPH guidelines and all required protective equipment.
- The California Governor's Office of Emergency Services (CalOES) and the Department of Public Health (CDPH) are and will be working to support procurement and distribution of face coverings and personal protective equipment. Additional information can be found [here](#).
- Strongly recommend 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.
- Nothing in this guidance should be interpreted as restricting access to appropriate educational services.



3. Face Coverings

Face coverings must be used in accordance with [CDPH guidelines](#) unless a person is exempt as explained in the guidelines, particularly in indoor environments, on school buses, and areas where physical distancing alone is not sufficient to prevent disease transmission.

- Teach and reinforce use of [face coverings](#), or in limited instances, face shields.
- 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

Age	Face Covering Requirement
Under 2 years old	No
2 years old – 2 nd grade	Strongly encouraged**
3 rd grade – High School	Yes, unless exempt

**Face coverings are strongly encouraged for young children between two years old and second grade, if they can be worn properly. A face shield is an acceptable alternative for children in this cohort who cannot wear them properly.

- Persons younger than two years old, anyone who has trouble breathing, anyone who is unconscious or incapacitated, and anyone who is otherwise unable to remove the face covering without assistance are exempt from wearing a face covering.
- A cloth face covering or face shield should be removed for meals, snacks, naptime, or outdoor recreation, or when it needs to be replaced. When a cloth face covering is temporarily removed, it should be placed in a clean paper bag (marked with the student's name and date) until it needs to be put on again.
- 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. Schools should 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.

STAFF

- All staff must use face coverings in accordance with [CDPH guidelines](#) unless Cal/OSHA standards require respiratory protection.
- In limited situations where a face coverings cannot be used for pedagogical or developmental reasons, (i.e. 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. 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.



4. Ensure Teacher and Staff Safety

- Ensuring staff maintain physical distancing 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 virtual learning or independent study context.
- Conduct all staff meetings, professional development training and education, and other activities involving staff with physical distancing measures in place, or virtually, where physical distancing is a challenge.
- Minimize the use of and congregation of adults in staff rooms, break rooms, and other settings.
- Implement procedures for daily symptom monitoring for staff.



5. Intensify Cleaning, Disinfection, and Ventilation

- 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.
- Staff should [clean and disinfect](#) frequently-touched surfaces at school and on school buses at least daily and, as practicable, these surfaces should be cleaned and disinfected frequently throughout the day by trained custodial staff.
- Buses should be thoroughly cleaned and disinfected daily and after transporting any individual who is exhibiting symptoms of COVID-19. Drivers should be provided disinfectant wipes and disposable gloves to

support disinfection of frequently touched surfaces during the day.

- Frequently touched surfaces in the school include, but are not limited to:
 - Door handles
 - Light switches
 - Sink handles
 - Bathroom surfaces
 - Tables
 - Student Desks
 - Chairs
- Limit use and sharing of objects and equipment, such as toys, games, art supplies and playground equipment to the extent practicable. When shared use is allowed, clean and disinfect between uses.
- When choosing disinfecting products, 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 disinfecting, 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 asthma.
 - 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 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 children's reach and stored in a space with restricted access.
 - Establish a cleaning and disinfecting 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 cleaning, air out the space before children arrive; plan to do thorough cleaning when children are not present. If using air conditioning, use the setting that brings in outside air. Replace and check air filters and filtration systems to ensure optimal air quality.
 - If opening windows poses a safety or health risk (e.g., by allowing pollen in or exacerbating asthma symptoms) to persons using the facility, consider alternatives. For example, maximize central air filtration for HVAC systems (targeted filter rating of at least MERV 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.
- [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.



6. 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.
- 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 as 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 with others as much as practicable.
- Implement health screenings of students and staff upon arrival at school (see Section 9).

- Ensure each bus is equipped with extra unused face coverings on school buses for students who may have inadvertently failed to bring one.

Classroom Space

- To reduce possibilities for infection, students must remain in the same space and in cohorts as small and consistent as practicable, including for recess and lunch. Keep the same students and teacher or staff with each group, to the greatest extent practicable.
- Prioritize the use and maximization of outdoor space for activities where practicable.
- Minimize movement of students and teachers or staff as much as practicable. For example, consider ways to keep teachers with one group of students for the whole day. In secondary schools or in situations where students have individualized schedules, plan for ways to reduce mixing among cohorts and to minimize contact.
- Maximize space between seating and desks. Distance teacher and other staff desks at least six feet away from student desks. Consider ways to establish separation of students through other means if practicable, such as, six feet between desks, where practicable, partitions between desks, markings on classroom floors to promote distancing or arranging desks in a way that minimizes face-to-face contact.
- 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.
- Activities where there is increased likelihood for transmission from contaminated exhaled droplets such as band and choir practice and performances are not permitted.
- Activities that involve singing must only take place outdoors.
- Implement procedures for turning in assignments to minimize contact.
- Consider using 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.
- Limit communal activities where practicable. Alternatively, stagger use, properly space occupants and disinfect 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 create guidelines on the floor that students can follow to enable physical distancing while passing. In addition, schools can consider eliminating the use of lockers and moving to block scheduling, which supports the creation of cohort groups and reduces changes of classrooms.
- 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 cohort groups, ensure physical distancing, and consider assigned seating. 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 class.



7. Limit Sharing

- Keep each child's belongings separated and in individually labeled storage containers, cubbies or areas. Ensure belongings are taken home each day to be cleaned.
- Ensure adequate supplies to minimize sharing of high-touch materials (art supplies, equipment, etc.) to the extent practicable or limit use of supplies and equipment to one group of children at a time and clean and disinfect between uses.
- Avoid sharing electronic devices, clothing, toys, books and other games or learning aids as much as practicable. Where sharing occurs, clean and disinfect between uses.



8. Train All Staff and Educate Families

- Train all staff and provide educational materials to families in the following safety actions:
 - Enhanced sanitation practices
 - Physical distancing guidelines and their importance
 - [Proper use, removal, and washing of face coverings](#)
 - Screening practices
 - How COVID-19 is spread
 - COVID-19 specific [symptom](#) identification
 - Preventing the spread of COVID-19 if you are sick, including the importance of not coming to work if staff members have symptoms, or if they or someone they live with has been diagnosed with COVID-19.
 - For workers, COVID-19 specific [symptom](#) identification and when to seek medical attention
 - The employer's plan and procedures to follow when children or adults become sick at school.
 - The employer's plan and procedures to protect workers from COVID-19 illness.
- Consider conducting the training and education virtually, or, if in-person, ensure a minimum of six-foot distancing is maintained.



9. Check for Signs and Symptoms

- Prevent discrimination against students who (or whose families) were or are diagnosed with COVID-19 or who are perceived to be a COVID-19 risk.
- 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 screening and other procedures for all staff and students entering the facility.

- Conduct visual wellness checks of all students or establish procedures for parents to monitor at home. If checking temperatures, use a no-touch thermometer.
- Ask all individuals if they or anyone in their home is exhibiting [COVID-19 symptoms](#).
- Make available and encourage use of hand-washing stations or hand sanitizer.
- 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, as required under FERPA and state law related to privacy of educational records. Additional guidance can be found [here](#). As noted in Section 11 below, the staff liaison can serve a coordinating role to ensure prompt and responsible notification.
- If a student is exhibiting symptoms of COVID-19, staff should communicate with the parent/caregiver and refer to the student's health history form and/or emergency card.
- Monitor staff and students throughout the day for signs of illness; send home students and staff with a fever of 100.4 degrees or higher, cough or other [COVID-19 symptoms](#).
- Policies should not penalize students and families for missing class.



10. Plan for When a Staff Member, Child or Visitor Becomes Sick

- Work with school administrators, nurses and other healthcare providers to identify an isolation room or area to separate anyone who exhibits symptoms of COVID-19.
- Any students or staff exhibiting symptoms should immediately be required to wear a face covering and be required to wait in an isolation area until they can be transported home or to a healthcare facility, as soon as practicable.
- Establish procedures to arrange for safe transport home or to a healthcare facility, as appropriate, when an individual is exhibiting COVID-19 symptoms:
 - Fever
 - Cough

- Shortness of breath or difficulty breathing
 - Chills
 - Repeated shaking with chills
 - Fatigue
 - Muscle pain
 - Headache
 - Sore throat
 - Congestion or runny nose
 - Nausea or vomiting
 - Diarrhea
 - New loss of taste or smell
- For serious injury or illness, call 9-1-1 without delay. Seek medical attention if COVID-19 symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
 - Notify local health officials immediately of any positive case of COVID-19, and exposed staff and families as relevant while maintaining confidentiality as required by state and federal laws. Additional guidance can be found [here](#).
 - Close off areas used by any individual suspected of being infected with the virus that causes COVID-19 and do not use before cleaning and disinfection. To reduce risk of exposure, wait 24 hours before you [clean and disinfect](#). If it is not possible to wait 24 hours, wait as long as practicable. Ensure a [safe and correct application](#) of disinfectants using personal protective equipment and ventilation recommended for cleaning. Keep disinfectant products away from students.
 - Advise sick staff members and students not to return until they have met CDC criteria to discontinue [home isolation](#), including at least 3 days with no fever, symptoms have improved and at least 10 days since symptoms first appeared.
 - Ensure that students, including students with disabilities, have access to instruction when out of class, as required by federal and state law.
 - Schools should offer distance learning based on the unique circumstances of each student who would be put at-risk by an in-person instructional model. For example, students with a health condition,

students with family members with a health condition, students who cohabitate or regularly interact with high-risk individuals, or are otherwise identified as “at-risk” by the parents or guardian, are students whose circumstances merit coffering distances learning.

- Implement the necessary processes and protocols when a school has an outbreak, in accordance with [CDPH guidelines](#).
- Investigate the COVID-19 illness and exposures and determine if any work-related factors could have contributed to risk of infection. Update protocols as needed to prevent further cases.
- Update protocols as needed to prevent further cases. See the CDPH guidelines, [Responding to COVID-19 in the Workplace](#), which are incorporated into this guidance and contain detailed recommendations for establishing a plan to identify cases, communicating with workers and other exposed persons, and conducting and assisting with contact tracing.



11. Maintain Healthy Operations

- Monitor staff absenteeism and have a roster of trained back-up staff where available.
- Monitor the types of illnesses and symptoms among your students and staff to help isolate them promptly as needed.
- Designate a staff liaison or liaisons to be responsible for responding to COVID-19 concerns. Workers should know who they are and how to contact them. The liaison should be trained to coordinate the documentation and tracking of possible exposure, in order to notify local health officials, staff and families in a prompt and responsible manner.
- Maintain communication systems that allow staff and families to self-report symptoms and receive prompt notifications of exposures 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 local health departments if routine testing is being considered by a local educational agency. The role of providing routine systematic testing of staff or students for COVID-19 (e.g., PCR swab testing for acute infection, or presence of antibodies in serum after infection) is currently unclear.
- 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 virtual learning or independent stud



12. Considerations for Reopening and Partial or Total Closures

California schools have been closed for in-person instruction since mid-March 2020 due to the COVID-19 pandemic. School closures to in-person instruction were part of a broader set of recommendations intended to reduce transmission of SARS-CoV-2, the virus that causes COVID-19. For more detailed direction on measures to be taken when a student, teacher, or staff member has symptoms or is diagnosed with COVID-19, please see the [COVID-19 and Reopening Framework for K-12 Schools in California](#).

- Check State and local orders and health department notices daily about transmission in the area or closures and adjust operations accordingly.
- When a student, teacher or staff member tests positive for COVID-19 and had exposed others at the school, refer to the [CDPH Framework for K-12 Schools](#), and implement the following steps:
 - In consultation with the local public health department, the appropriate school official may decide whether school closure versus cleaning and quarantine of exposed persons or other intervention is warranted, including the length of time necessary, based on the risk level within the specific community as determined by the local public health officer.
 - Close off the classroom or office where the patient was based and do not use these areas until after cleaning and disinfection. Wait at least 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait as long as possible.
 - Additional areas of the school visited by the COVID-19 positive individual may also need to be closed temporarily for cleaning and disinfection.
 - Implement communication plans for exposure at school and potential school closures to include outreach to students, parents, teachers, staff and the community.
 - Include information for staff regarding labor laws, information regarding Disability Insurance, Paid Family Leave and Unemployment Insurance, as applicable to schools. See additional [information on government programs supporting sick leave and worker's compensation for COVID-19](#), including worker's sick leave rights under [the Families First Coronavirus Response Act](#) and employee's rights to workers' compensation benefits and

presumption of the work-relatedness of COVID-19 pursuant to the [Governor's Executive Order N-62-20](#), while that Order is in effect.

- Provide guidance to parents, teachers and staff reminding them of the importance of community physical distancing measures while a school is closed, including discouraging students or staff from gathering elsewhere.
- Develop a plan for continuity of education. Consider in that plan how to also continue nutrition and other services provided in the regular school setting to establish alternate mechanisms for these services to continue.
- Maintain regular communications with the local public health department.



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**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, et al.

Plaintiffs,
v.

GAVIN NEWSOM, et al.

Defendants.

Case No.: 2:20-cv-06472 DDP (AFMx)

**EX PARTE APPLICATION TO
FILE AN OVERSIZE BRIEF**

Judge: Hon. Dean D. Pregerson

1 Plaintiffs respectfully move, for leave to file an oversized brief in the above-
2 captioned case containing 40 pages. Attached as Exhibit 1 is a true and correct copy of
3 the proposed oversized brief. As the basis for this motion, Plaintiffs provide to this
4 Court that the complexity and importance of the issues presented (including momentous
5 constitutional questions and claims under at least five federal statutes), the significance
6 of this case for millions of families and students across California, as well as the
7 significant number of Plaintiffs and critical expert declarations warrant the requested
8 relief.

9 On July 21, 2020, ten Plaintiffs filed a complaint for declaratory and injunctive
10 relief as a result of defendants prohibiting schools from having in-classroom instruction
11 in 37 counties. On July 29, 2020, Plaintiffs amended their complaint to add five
12 additional Plaintiffs.

13 Due to the seriousness and significance of the issues involved, namely, COVID-
14 19 and its health effects on children and the general population, require significant and
15 thus lengthy scientific analysis. Plaintiffs have prepared a Motion for Preliminary
16 Injunctive Relief and in support of this motion have obtained declarations from 20
17 expert witnesses. These experts include professors, scientists, doctors, psychologists,
18 economist, teachers, tutors, and school board members. In addition, Plaintiffs have
19 sought to brief thoroughly a number of their claims, which raise extremely important
20 questions under the Constitution and several federal statutes.

21 Plaintiffs have worked diligently to stay within the confines of this Court's
22 Standing Order; however, the circumstances of the case make it impossible for
23 Plaintiffs to comply with the otherwise applicable 25-page limit.

24 25 **CONCLUSION**

26 For the reasons stated above, this Court should grant leave for the Plaintiffs to
27 file an oversized Brief of no more than 40 pages.

1 Date: July 29, 2020

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19 **ORDER**

20
21 **IT IS SO ORDERED**

22 The Court GRANTS Plaintiffs' request to file an oversize brief consisting of no
23 more than 40 pages.
24

25 Dated: _____

26 _____
27 The Honorable Dean D. Pregerson

28 United States District Judge

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, an individual,
et al.,

Plaintiffs,
v.

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

Defendants.

Case Number: 2:20-CV-06472-DDP-AFM

**MEMORANDUM OF POINTS AND
AUTHORITY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. Dean D. Pregerson

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14 **REGULATIONS**

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15	28 C.F.R. § 42.104(b)(2).....	30
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

With the stroke of a pen, Governor Gavin Newsom has closed all public schools, charter schools, and private schools in 37 of California's 58 counties, consigning *millions* of students and their families to another semester (and perhaps even a year or more) of so-called "distance learning," which has proven to be an utter failure. The Governor's one-size-fits-all approach has upended the carefully tailored plans that teachers and administrators have developed to reopen schools this fall safely and effectively.

The effects of this ham-handed policy are as predictable as they are tragic. Thousands of students will essentially drop out of school, whether because they lack the technological resources to engage with "online learning" or because their parents cannot assist them. Thousands more will fall behind academically despite their efforts to remain engaged, because teachers cannot provide the individualized attention they need. And for some students, the forced seclusion will have even more dire consequences, including domestic abuse, depression, hunger, and suicide. The order will also inflict collateral damage on families, as parents are forced to quit their jobs or scale back their hours to supervise their children's "distance learning." While affluent families can likely avoid the worst of these problems by hiring tutors, forming educational "pods" with other families, or home schooling, the "distance learning" regime will inflict massive harm on students and parents from disadvantaged backgrounds, many of whom are Black and Latino, as well as those with learning disabilities and special needs. Experts estimate that the Governor's decision could set the state's most vulnerable students back a year or more, and some may never recover.

Given these enormous state-wide disruptions, one would expect the order to be based on scientific evidence showing that opening schools poses an unacceptable risk of spreading COVID-19. But it is not. On the contrary, the scientific data has proven that the risks of COVID-19 to school-age children are

1 negligible, as explained in the numerous expert declarations submitted by some of
2 the nation's leading epidemiologists and physicians. Indeed, *not one person* under
3 the age of 18 has died of COVID-19 in California. The disease ravaging our
4 nation's elderly is far less deadly to children than seasonal influenza. Scientists
5 have also discovered that children hardly ever transmit the virus to adults. The
6 CDC recently published a report based on data from South Korea, which found that
7 less than 2% of new transmissions detected were attributed to those between 0 to
8 20 years old. Less than 1% of new transmissions were attributed to those under 10,
9 the population most in need of in-person education. The CDC has thus urged the
10 nation's schools to resume in-person education this fall. Dozens of other countries
11 have already reopened their schools without social distancing, mask wearing, or
12 other protective measures—yet none of these countries has reported an increase in
13 new cases resulting from student-to-student or student-to-teacher contact. In short,
14 the Governor's drastic and devastating moratorium on in-person education is
15 completely at odds with everything we now know about COVID-19.

16 At best, the Governor's order is irrational; at worst, it is downright
17 dangerous. This Court should issue a preliminary injunction because the
18 Governor's order violates the Fourteenth Amendment of the United States
19 Constitution, which protects Californians' fundamental (or, at least, quasi-
20 fundamental) right to a basic minimum education and forbids states from enforcing
21 laws—especially laws purporting to shutter school-house doors—that are utterly
22 irrational. The order also violates the Constitution's guarantee of equal protection
23 because while it bars in-person education at schools in counties on the state's
24 monitoring list (there are currently 37 such counties) it allows in-person education
25 at schools in every other county. Whatever level of scrutiny applies to this unequal
26 treatment, the order fails it, because barring in-person education has no rational
27 relationship to the state's interest in slowing the spread of COVID-19. Nor is it
28 narrowly tailored to further any compelling state interest related to public health.
The order also tramples the rights provided by Title VI of the Civil Rights Act of

1 1964 and other federal laws, which guarantee access to education for students with
2 disabilities and prohibit state action having a disparate impact on racial minorities,
3 as closing schools certainly will.

4 The remaining preliminary-injunction factors overwhelmingly favor
5 Plaintiffs, who represent a diverse, cross-section of the millions of families and
6 students most harmed by the Governor's order. For example, Plaintiff Jess Petrilla
7 noticed a significant decline in his kindergarten son's discipline and engagement
8 after his school transitioned to distance learning. His wife was forced to take time
9 off work to oversee her son's education, and the Petrillas are concerned that their
10 son is going to fall farther behind academically if school is not opened in the fall.
11 Plaintiff Christine Ruiz has two sons in public school who have been diagnosed
12 with autism. Her 15-year old son has an Individual Education Program ("IEP")
13 mandated by law, but he received none of the services required by the IEP when
14 schools closed in March. Given the individualized attention required by the IEP,
15 the school is unlikely to provide any of those services this fall if the Governor's
16 ban on in-person education is upheld. Plaintiff Marianne Bema, originally from
17 Cameroon, is a single mother of three school-aged children. Ms. Bema lacks a solid
18 internet connection and faces a language barrier that makes it difficult for her
19 provide the support her children need in the absence of in-person schooling. She is
20 concerned that her children will not progress academically this year if their school
21 remains shuttered. Similar struggles are shared by all of the Plaintiffs, and by
22 millions of other California families.

23 The interests of the public demand that the order be enjoined and that the
24 choice regarding whether and how to open schools safely be returned to the
25 counties, which are more than up to the task of balancing public health against the
26 need to educate our children.

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RELEVANT FACTUAL BACKGROUND

I. Governor Newsom Shuttters California's Schools in the Spring, Causing Extreme Hardship for All Students, but Especially for Poor, Minority, and Disabled Students

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19.¹ On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which provided that “all residents are directed to immediately heed the current State public health directives.”² The state public health directive, in turn, required “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors ...”. *Id.* The public health directive provided that its directives “shall stay in effect until further notice.” *Id.* On or about May 4, 2020, Governor Newsom issued Executive Order N-60-20 in which he ordered “All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.” *Id.* Governor Newsom’s Order directly conflicts with substantial evidence that closing schools is *more* dangerous to students than allowing students to return to school this fall.

The World Health Organization (WHO) and US Centers for Disease Control (CDC) have each issued guidance on school opening emphasize that school opening decisions should be based on the “Current understanding about COVID-19 transmission and severity in children”, the “Local situation and epidemiology of COVID-19 where the school(s) are located,” and the “School setting and ability to maintain COVID-19 prevention and control measure”. Bhattacharya Decl. ¶¶16-18. The WHO guidance explicitly recommends the consideration of “what harm might

¹ Executive Dept. of the State of California, Executive Order N-33-20, March 19, 2020, available as of the date of filing: <https://www.gov.ca.gov/wp-content/uploads/2020/04/N-54-20-COVID-19-text-4.22.20.pdf>.

² Executive Dept. of the State of California, Executive Order N-33-20, March 19, 2020, available as of the date of filing: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

1 occur due to school closure (e.g. risk of non-return to school, widening disparity in
2 educational attainment, limited access to meals, domestic violence aggravated by
3 economic uncertainties etc.), and the need to maintain schools at least partially open
4 for children whose caregivers are ‘key workers’ for the country.” *Id.* Likewise, the
5 CDC guidance suggests keeping schools open even if there is moderate community
6 spread of SARS-CoV-2 infection, with school closures limited only to communities
7 with “substantial” community spread. *Id.* ¶18.

8 The CDC estimate of the population-wide death rate of COVID-19 is 0.26%.
9 Lyons-Weiler Decl. ¶4. But the vast majority of this risk is in the elderly and in
10 people whose overall health has been significantly deteriorated prior to infection
11 (e.g., individuals with pre-existing chronic pulmonary illness, whose death rate is
12 6.3%, cardiovascular illness (10.5%), high blood pressure (6%), adults with diabetes
13 (7.3%), and cancer (5.6%)). *Id.* Even these rates—which are from the earliest reports
14 in the outbreak, from Wuhan City in Hubei Province, China—are massively inflated
15 because they are only symptomatic case fatality rates, not infection case fatality rates.
16 *Id.*

17 Unlike pneumonia from influenza viruses, in which the risk of the death to
18 children is increased, COVID-19 death rates are effectively zero for children aged 0-
19 10 and adolescents ages 11-20. *Id.* ¶6. Early data from South Korea, for example,
20 reported zero deaths for children aged 0 to 20 – the same rate indicated by data from
21 Italy. The CDC reports a total of 226 COVID-19 deaths in persons under 24 across
22 the US, out of a total of 26,808 deaths for that age group over the same time period
23 from all causes. Thus, COVID-19 currently accounts for 0.84% of all deaths in
24 people aged 0 to 24 year. *Id.* This does not come close to meeting the criterion used
25 to classify infectious diseases as an “epidemic” (between 6 and 7%). *Id.* By
26 comparison, influenza and pneumonia not attributed to COVID-19 led to 966 deaths
27 over the same time period in persons aged 0 to 24. *Id.* Despite this evidence, the
28 Governor’s stay-at-home order requires all California schools to close their doors

1 only provide online learning; a woefully inadequate form of “education”, especially
2 for minority and disabled students.

3 “[R]eopening of schools is necessary to prevent children’s brain development
4 from being significantly inhibited. Addison Decl. ¶5. “Developing brains need guided
5 stimulation for effective neural pathways to be established [as] [t]hese pathways
6 [known as ‘synapses’] are communication sites where neurons pass nerve impulses
7 among themselves.” *Id.* ¶7. “This process facilitates learning [and] [e]xperiences that
8 are provided through the back and forth interactions among teachers, students, and
9 peers determine whether these synapses are strengthened or weakened. *Id.* If these
10 experiences are inconsistent or interrupted, synaptic pruning will occur and impede
11 ultimate development. Forcing children to stare at computer screens for extended
12 periods of time has detrimental effects on children’s brains; so much so that
13 prolonged screen time produces imaging results similar to the brains of people on
14 cocaine and alcohol. Sutton Decl. ¶8.

15 Digital learning overall has proven to be far less effective than in-person
16 learning. A study by Stanford University found that “white, non-poverty, non-
17 “English Language Learner” and non-special education students who were subject to
18 virtual learning were behind their in-person peers to an extent that reflected an
19 equivalent of 180 fewer days of instruction in math and 72 fewer days of instruction
20 in reading.” Keech Decl. ¶ 16 (emphasis omitted). Another study by Brown
21 University projected that, as a result of spring shut downs, students likely would
22 achieve only “63-68% of the learning gains in reading relative to a typical school
23 year” and only “37-50% of the learning gains in math.” Megan Kuhfeld, *et al.*,
24 *Projecting the potential impacts of COVID-19 school closures on academic*
25 *achievement*, Brown University EdWorkingPaper No. 20-226, at 2, 23 (May 2020).³
26 A study by McKinsey & Company showed that, even for children receiving average-
27 quality online learning in the fall of 2020, students would lose “three to four months
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³ Available as of the date of filing:

<https://www.edworkingpapers.com/sites/default/files/ai20-226-v2.pdf>.

1 of learning” by January 2021. Emma Dorn, et al., *COVID-19 and student learning in*
2 *the United States: The hurt could last a lifetime*, McKinsey & Company (June 1,
3 2020).⁴

4 This disadvantage is even starker for minority students, who tend to suffer
5 from the “digital divide” and from a lack of access to childcare. The digital divide
6 refers to the lack of access to technology that affects minority populations. *See*
7 Robert W. Fairlie, *Race and the Digital Divide*, UC Santa Cruz: Department of
8 Economics, UCSC, at 2 (2014).⁵ Studies show that “Blacks and Latinos are
9 substantially less likely to have a computer at home than are white, non-Latinos,”
10 with some estimates showing that “70.4 percent of whites have access to a home
11 computer” while “only 41.3 percent of blacks and 38.8 percent of Latinos have access
12 to a home computer.” *Id.* at 4–5. And low-income families “have trouble finding,
13 accessing, and affording” childcare. *Coronavirus Impact on Students and Education*
14 *Systems*, NAACP (last visited July 28, 2020).⁶ Indeed, the McKinsey study predicted
15 that Blacks and Latinos would suffer a 15 to 20 percent greater loss in educational
16 gains than other students. Dorn, *supra*. The CDC reports that students with
17 disabilities also “had significant difficulties with remote learning.” *The Importance of*
18 *Reopening America’s Schools this Fall*, Centers for Disease Control and Prevention
19 (July 23, 2020).⁷

20 The problems of remote education—especially for poor, minority, and disabled
21 children—surfaced almost immediately upon California schools’ transition to online-
22 only learning. Less than two weeks after the school shutdown on March 16, 2020,
23 Los Angeles School District officials admitted that 15,000 high-school students were

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25 ⁴ Available as of the date of filing: [https://www.mckinsey.com/industries/public-](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime)
26 [sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime)
27 [last-a-lifetime](https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime).

28 ⁵ Available as of the date of filing: <https://escholarship.org/uc/item/48h8h99w>.

⁶ Available as of the date of filing: [https://naacp.org/coronavirus/coronavirus-impact-](https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/)
[on-students-and-education-systems/](https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/).

⁷ Available as of the date of filing: [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html)
[ncov/community/schools-childcare/reopening-schools.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html).

1 completely unaccounted for and more than 40,000 had not been in daily contact with
2 their teachers. Howard Blume, *15,000 L.A. high school students are AWOL online,*
3 *40,000 fail to check in daily amid coronavirus closures*, Los Angeles Times (March
4 30, 2020).⁸ As one teacher explained, during the lockdown, her fifth grade online
5 math class, consisting primarily of poor and minority students, had only a 10%
6 attendance rating. Keech Decl. ¶¶ 7, 15. Another explained that, even high-achieving,
7 affluent students, “struggled with online learning at home” and “missed the important
8 social interactions with their friends.” Gerst Decl. ¶ 5. Yet another saw her students’
9 online participation rate start at only 42% at the beginning of the closure and drop to
10 a mere 2% by the end of the school year. Cunningham Decl. ¶ 5.

11 Later studies showed even more starkly how much students suffered
12 academically from online-only learning. A July 7 study conducted by the Los
13 Angeles Unified School District (LAUSD) showed that, between March 16 and May
14 22, 2020, “on an average day only about 36% of middle and high school students
15 participated online,” while “[a]bout 25% logged on or viewed work only” “[a]nd
16 about 40% were absent.” *Report reveals disparities among Black, Latino LAUSD*
17 *students in online learning amid COVID-19 pandemic*, ABC 7 Eyewitness News
18 (July 17, 2020).⁹ A survey of parents in the Palos Verde Unified School District
19 showed that over 60% of parents reported that the amount of “face-to-face” teaching
20 during the shutdown was “not enough.” Brach Decl. ¶ 15.

21 Minority and disabled students suffered even more from online-only learning.
22 The July 7 study by the LAUSD found that “Black and Latino students showed
23 participation rates between 10 and 20 percentage points lower than white and Asian
24 peers.” ABC 7, *supra*. And “English learners, students with disabilities, homeless
25 students and those in the foster-care system had lower rates of online participation.”
26 *Id.* As one special-education teacher explained, of the 795,000 disabled students in

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28 ⁸ Available as of the date of filing: <https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent>.

⁹ Available as of the date of filing: <https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/>.

1 California's schools, "[w]hen school campuses are closed and education is moved
2 entirely online, many of the guarantees and tenets afforded to special needs children
3 under the Individuals with Disabilities Education Act ('IDEA') collapse." Walker
4 Decl. ¶¶ 4–5. Indeed, "[m]any students with special needs . . . have a myriad of health
5 needs that require services," including assistance with "eating, balancing, etc.," which
6 "simply cannot be provided virtually." *Id.* ¶ 7; *see also* Reardon Decl. ¶ 10 ("Autistic
7 children require a tremendous amount of direct support," including for "their
8 developmental, speech, occupational therapy, behavior (i.e., social skills), and
9 academic needs."). "One survey found that 4 out of 10 families reported that they
10 were not receiving any special education support at all," and only "1 in 5 families
11 reported that they are receiving all the services their children are entitled to on their
12 [Individualized Education Program]." Walker Decl. ¶ 9.

13 Beyond these overwhelming difficulties, a complete lack of access to schools
14 caused students—especially poor, minority, and disabled students—to suffer myriad
15 other traumas. As the CDC explained, "[s]chools play a critical role in supporting the
16 whole child, not just their academic achievement," including the "development of
17 social and emotional skills." *The Importance of Reopening America's Schools, supra.*
18 "Psychological, social, and emotional development requires children to both spend
19 time away from parents and with peers, in structured settings, such as school."
20 McDonald Decl. ¶ 7. "Peer relationships provide a unique context in which children
21 learn a range of critical social emotional skills, such as empathy, cooperation, and
22 problem-solving strategies." Lyons-Weiler Decl. ¶ 25. And the safe, connected
23 environment many students experience at school reduces students' depression,
24 anxiety, and thoughts of suicide, *The Importance of Reopening America's Schools,*
25 *supra*, while "extended periods of confinement" increase these problems, McDonald
26 Decl. ¶ 7; *see also* Lyons-Weiler Decl. ¶ 29 ("we may also expect to observe
27 increased incidence of acting-out behaviors as children try to cope with the
28 psychosocial effects not only of isolation but also fear of the unknown"). Indeed, one
psychiatrist has seen children "with cognitive developmental delays like autism"

1 “regress[] in years” from the closures, “and many have become violent towards
2 themselves and their parents.” McDonald Decl. ¶ 7. One teach reported that “[m]any
3 of her students expressed ... a marked increase in feelings of depression, isolation,
4 and anxiety.” Cunningham Decl. ¶ 8. For two students, the impact was so severe that
5 “they were having difficulty getting out of bed in the morning.” *Id.* Plaintiff
6 Mitrowke’s 7-year-old son is so emotionally affected by the closures that she
7 frequently hears him cry in the shower because he misses his friends, and he
8 continues to suffer daily from the isolation. Mitrowke Decl. ¶¶2,5–6. Boiled down to
9 its essence, the Governor’s mandate will harm children by denying them of the
10 necessary social interactions required to develop emotionally, psychologically, and
11 spiritually. Giap Decl. ¶3.

12 Additionally, as the American Academy of Pediatrics explained, “[l]engthy
13 time away from school and associated interruption of supportive services often
14 results in isolation, making it difficult for schools to identify and address important
15 learning deficits as well as child and adolescent physical or sexual abuse, substance
16 use, depression, and suicidal ideation.” *COVID-19 Planning Considerations:
17 Guidance for School Re-entry*, American Academy of Pediatrics (last visited July 28,
18 2020) (hereinafter AAP Guidance);¹⁰ *see also* Victory Decl. ¶ 6 (“children’s hearing
19 and vision problems are typically identified at school”). Indeed, teachers and staff
20 report more than one-fifth of all child-abuse cases. *The Importance of Reopening
21 America’s Schools*, *supra*. During the school closures, “there has been a sharp decline
22 in reports of suspected maltreatment.” *Id.*; *see also* Victory Decl. ¶ 6 (30% drop in
23 nationwide abuse reports). However, hospitals have seen an *increase* in
24 hospitalizations of children suffering physical abuse. *The Importance of Reopening
25 America’s Schools*, *supra*. And according to the Rape, Abuse & Incest National
26 Network (RAINN), once shelter-in-place orders were implemented “half the victims
27 receiving help from the National Sexual Assault Hotline were minors.” *For the First*
28

¹⁰ Available as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

1 *Time Ever, Minors Make Up Half of Visitors to National Sexual Assault Hotline,*
2 RAINN (April 16, 2020). “Many minors are now quarantined at home with their
3 abuser” while being “cut off from their safety net – the teachers, coaches, and
4 friends’ parents who are most likely to notice and report suspected abuse.” *Id.*

5 Finally, students have been cut off from an important source of food and
6 physical activity. The CDC reports that “more than 30 million children participate in
7 the National School Lunch Program and nearly 15 million participate in the School
8 Breakfast Program.” *The Importance of Reopening America’s Schools, supra.* And
9 the AAP explains that “[b]eyond the educational impact and social impact of school
10 closures, there has been substantial impact on food security and physical activity for
11 children and families.” AAP Guidance.

12 **II. The Data Show that Children Are Unlikely to Spread the Coronavirus**
13 **or Suffer Adverse Results from COVID-19, and Many European**
14 **Schools Reopened Without Causing a Resurgence of Coronavirus**

15 Despite the enormous consequences of the COVID-19 pandemic, “the direct
16 daily toll from infection has generally decreased throughout the United States,”
17 including “in the state of California.” Atlas Decl. at ¶ 8. In California, “the stated
18 goal of societal lockdown—avoiding hospital overcrowding in in-patient and ICU
19 bed occupancy—has been accomplished. Indeed, as of July 24, 2020, the latest data,
20 the hospital bed occupancy by COVID-19 patients in California is only about 11
21 percent.” *Id.* “[E]xtensive evidence,” moreover, “all suggest that the overall fatality
22 rate is far lower than early estimates, likely below 0.1 to 0.4%.” *Id.* ¶ 9. The most
23 recent studies “indicate that the fatality rate for those under age 70 is 0.04%, less than
24 or equal to seasonal influenza.” *Id.*

25 Of particular importance and relevance here, “younger, healthier people have
26 *virtually zero* risk of death from [COVID-19].” *Id.* ¶ 11. “No child under age 18 in
27 the state of California has died due to infection from the coronavirus since tracking
28 began on February 1, 2020...[u]nlike the seasonal flu, which kills approximately 200
children per year nationally.” McDonald Decl. at ¶ 5. “[L]iterally, zero deaths[] have

1 occurred in people under 18,” while “0.01 percent of deaths occurred in people under
2 25 years of age” and “only 6.8% of deaths have occurred in people under 49 years of
3 age.” Atlas Decl. ¶ 11. These rates are the same around the world, including from
4 “South Korea [that has] reported zero deaths for children 0 to 20—the same rate
5 indicated by data from Italy.” Lyons-Weiler Decl. ¶ 6. It is not just fatalities that are
6 eluding younger people. “Younger, healthier people likewise have virtually no risk of
7 serious illness from COVID-19.” Atlas Decl. ¶ 11. This is a crucial consideration
8 here because “teaching is generally a relatively young profession”—more than “[h]alf
9 of K-12 teachers are 41 or younger” and “81% are under 55.” *Id.* ¶ 17; Victory Decl.
10 ¶ 9.

11 “Scientists now believe children may be largely immune to SARS-CoV-2
12 infection.” Lyons-Weiler Decl. ¶ 7. For this reason, “[c]hildren are essentially at zero
13 risk of contracting COVID-19 or becoming ill from the virus if schools were to
14 reopen.” Victory Decl. ¶ 4. The “data reported in a May JAMA Pediatrics study flatly
15 stated that ‘children are at far greater risk of critical illness from influenza than from
16 COVID-19.’” Atlas Decl. ¶ 12 (citing study). Even the “CDC concluded that children
17 who become infected are [] ‘far less likely to suffer severe symptoms.’” *Id.* ¶ 13
18 (citing July 2020 CDC study). Underscoring this low risk, “Dr. Anthony Fauci ... has
19 reported that children are unlikely to be among the first individuals to receive any
20 COVID-19 vaccine found to be safe and effective” while also “suggest[ing] that it
21 would be appropriate to re-open schools.” Lyons-Weiler Decl. ¶ 9.

22 Transmission rates among children and their supervisors are also nominal.
23 “[C]hildren are unlikely to be a vector” of COVID 19, Victory Decl. ¶ 5, meaning
24 they “do not pose a severe risk of transmission to adults.” Lyons-Weiler Decl. ¶ 4.
25 “Scientific studies from all over the world [] suggest that COVID-19 transmission
26 among children in schools is low.” Atlas Decl. ¶ 15. For example, the “CDC has
27 published a report on the age distribution of transmission to new cases in South
28 Korea, which found that less than 1% of new transmission detected in the study were
attributed to children aged 0 to 10 years; similarly, less than 1% of new transmissions

1 were from children aged 11 to 20 years.” Lyons-Weiler Decl. at ¶ 14. Presently, there
2 are “22 countries that have their schools open without social distancing, mask
3 wearing, and other measures, yet these countries have not experienced an increase in
4 COVID-19 cases or spread of the virus among children.” Victory Decl. ¶ 8;
5 McDonald Decl. ¶ 6. Importantly, “these countries have not seen transmission of the
6 virus between children and their parents or elderly grandparents.” Victory Decl. ¶ 8.
7 On the contrary, one July 2020 study from the University of Dresden concluded that
8 “children appeared to act as a barrier to transmission.” McDonald Decl. ¶ 6. Thus, it
9 is “abundantly clear that children under twelve years of age are not transmitting in
10 schools.” Lyons-Weiler Decl. ¶ 23.

11 **III. In Light of This Evidence, School Districts in California Began**
12 **Preparing to Reopen Safely for the 2020-21 School Year.**

13 In light of the obvious deficiencies of remote learning and the low risk of
14 coronavirus infection among children, teachers have diligently prepared since spring
15 to return to schools. In Palos Verdes, for example, home to approximately 11,000
16 students, the school district established a reopening committee comprised of 40 staff
17 members, 45 medical professionals, 30 elementary parents, and 39 high school
18 parents. Brach Decl. ¶¶ 5, 10. This district also purchased and implemented a
19 personal protective equipment and mitigation strategy, including such tactics as
20 staggered time arrivals, designated entrance and exit routes, masks or face shields for
21 teachers and students, and hand sanitizing stations. *Id.* ¶ 12; *see also* Reardon Decl. ¶¶
22 8–9 (describing Capistrano Unified School District encompassing 48,000 students
23 plans to reopen). These mitigation strategies are consistent with “commonly accepted
24 public health definitions of safe operating that minimize [health] risks” in schools.
25 Kaufman Decl. ¶ 16. A survey in Palos Verdes also found that an “overwhelming
26 amount (65%) of parents” supported returning the students to school. Brach ¶ 13.
27 Parents who had taken off from work to watch over their children had planned to
28 return to work both because of the benefits “in-person instruction” provides and the
“financial[]” toll missing work has imposed. Hackett Decl. ¶ 8; Petrilla Decl. ¶¶ 8–9;

1 Beaulieu Decl. ¶ 6. Parents of disabled children who took time from work especially
2 looked forward to schools reopening, because “disabilities [] make it extremely
3 difficult” to learn at home without special assistance afforded by in-person
4 instruction. Gavin Decl. ¶¶ 9–10; *see* Walker Decl. ¶10 (“Schools are the best venues
5 to provide students with their legally mandated special services.”).

6 **IV. The California Department of Public Health Orders All Schools to**
7 **Remain Closed, Except for Schools in a Small Number of Counties**

8 On July 17, 2020 Newsom announced a framework for reopening schools.
9 Atlas Decl. ¶7. Under his plan, reopening hinges on not being on the county
10 monitoring list for two weeks. *Id.* (“Schools and school districts may reopen for in-
11 person instruction at any time if they are located in a local health jurisdiction (LHJ)
12 that has not been on the county monitoring list within the prior 14 days.”).¹¹ “The
13 state places a county on this list if it meets at least one of six criteria related to the
14 number of COVID-19 PCR tests conducted or positivity rate, number of cases and
15 growth in cases, growth in hospitalizations, or inadequate hospital ICU or ventilator
16 capacity.” *See COVID-19 Update Guidance: Child Care Programs and Providers*,
17 Cal. Dep’t of Pub. Health (July 17, 2020);¹² *see also* Bhattacharya Decl. ¶20.
18 However, “[n]one of these criteria are related to the risks to children or to teachers
19 that arise from reopening schools for in-person teaching.” *Id.*
20
21
22

23 ¹¹ The plan also includes the following waiver procedure, which permits a local health
24 officer to waive the reopening limitations if a waiver “is requested by the
25 superintendent (or equivalent for charter or private schools.” *COVID-19 and*
26 *Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021*
27 *School Year*, State of Cal., Dept. of Pub. Health, (July 17, 2020). The health officer
28 must “consult with CDPH when considering a waiver request.” *Id.* available at:
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

¹² Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>.

1 The most important evidence on childhood spread of the disease comes from a
2 study conducted in Iceland and published in the New England Journal of Medicine.¹³
3 The data for this study comes from Iceland’s systematic screening of its population to
4 check for the virus. The study reports on both a population-representative sample and
5 a sample of people who were tested because of the presence of symptoms consistent
6 with COVID-19 infection. The study team isolated SARS-CoV-2 virus samples from
7 every positive case, sequenced the genome of the virus for every case, and tracked
8 the mutation patterns in the virus. This analysis, along with contact tracing data,
9 allowed the study team to identify who passed the virus to whom. From this analysis,
10 the senior author of the study, Dr. Kari Stefansson, concluded¹⁰ that “[E]ven if
11 children do get infected, they are less likely to transmit the disease to others than
12 adults. We have not found a single instance of a child infecting parents. There is
13 amazing diversity in the way in which we react to the virus.”

14 Nor is it true “that there is no way to safely operate as a school in a county that
15 meets the state’s criteria for placement in the ‘monitoring list.’” Kaufman Decl. ¶ 16.
16 Indeed, other, similar operations are permitted in counties on the monitoring list,
17 including childcare facilities and day camps. *See COVID-19 Update Guidance: Child*
18 *Care Programs and Providers*, Cal. Dep’t of Pub. Health (July 17, 2020);¹⁴ *COVID-*
19 *19 Interim Guidance: Day Camps*, Cal. Dep’t of Pub. Health (July 17, 2020).¹⁵

20 California is the only state in the U.S. that is mandating at the state level that
21 school districts not hold in-person classes, affecting millions of students, rather than
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25
26 ¹³ Daniel F. Gudbjartsson, Ph.D., Agnar Helgason, Ph.D., et al., *Spread of SARS-CoV-*
27 *2 in the Icelandic Population*, The New England Journal of Medicine,
<https://www.nejm.org/doi/full/10.1056/NEJMoa2006100> (June 11, 2020).

28 ¹⁴ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>.

¹⁵ Available as of the date of filing: <https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

1 leave that decision to the individual school district. There are currently 5.9 million
2 students K-12 in California.¹⁶

3 **V. Plaintiffs Have Been and Will Continue to be Harmed by the**
4 **Governor’s Mandatory School Closures**

5 Plaintiffs are a student and several parents of students adversely impacted by
6 the school closures. Ms. Sephton, for example, has two children, one of whom is a
7 toddler and the other a four-year-old. Sephton Decl. ¶¶ 2–3. Since she must take care
8 of her toddler during the day, “distance learning mode is really no education at all”
9 for her oldest child. *Id.* ¶ 5. Ms. Walsh faces a similar situation with two children.
10 “[W]hen the school was shut down and education was moved to distance learning,
11 what was provided was not learning in any sense of the word.” Walsh Decl. ¶ 4. Ms.
12 Ruiz is the mother of two sons who have special needs. “Since school was shut
13 down,” her son has “not been provided with any of his services that are required by
14 his [individualized education program].” Ruiz Decl. ¶ 5. Moreover, like many other
15 similarly situated children, “[d]ue to his disabilities, ZOOM classes are a useless
16 form of education.” *Id.* ¶ 6. Even children without special needs are dropping basic
17 skills as Mr. Ziegler attests. “As a result of [his] daughter’s school moving to
18 distance-learning, [he] witnessed [his] daughter ... fall[] behind in schooling.”
19 Ziegler Decl. ¶ 3. Ms. Beaulieu experienced the same. For her, it was “extremely
20 concerning that [her] son received no Zoom instruction at all from his math teacher
21 the entire time that the school was closed.” Beaulieu Decl. ¶ 8. In addition to
22 academic shortfalls, unnecessary distance learning has caused “behavioral issues” for
23 Mr. Petrilla’s young boy. Petrilla Decl. ¶ 6. Mr. Fleming’s daughter “has worked
24 tirelessly to ... attend her dream college” but may now miss out because of the
25 negative impact on her grades and lost scholarship opportunities. Fleming Decl. ¶ 11.

26 All of this is unnecessary because, as explained by Mr. Hackett, some schools
27 “are going above and beyond” by making “huge investments of effort and money to
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¹⁶ Available as of the date of filing:
<https://lao.ca.gov/Education/EdBudget/Details/331>.

1 comply with the CDC and health directives” to ensure a safe learning environment.
2 Hackett Decl. ¶ 6. This is especially true for Mr. Brach who is a member of the Board
3 of Palos Verdes Unified School District. In addition to witnessing his daughter’s
4 “mental health issues” as a result of “isolation,” he has participated with other board
5 members in equipping Palos Verde Unified School District with the necessary
6 “mitigation strategies” to open safely and effectively. Brach Decl. ¶¶ 7, 12. There is
7 therefore no legitimate reason for his daughter and many others like her to be
8 excluded from in-person instruction.

9 California is the *only* state in America with state-level mandates prohibiting
10 school districts from hold in-person classes. Atlas Decl. ¶7. Governor Newsom’s Order
11 impacts millions of students, from kindergarten through high school, yet the State has
12 absolutely no scientific basis for closing schools this fall. *Id.*; *see also*, Bhattacharya
13 Decl. ¶15.

14 **LEGAL STANDARD**

15 “A plaintiff seeking a preliminary injunction must establish that he is likely to
16 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
17 preliminary relief, that the balance of equities tips in his favor, and that an injunction
18 is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
19 (2008) (citations omitted). Plaintiffs need not show that they will prevail at trial, but
20 only that they are “likely” to prevail. *See id.*; *Leiva-Perez v. Holder*, 640 F.3d 962,
21 966 (9th Cir. 2011). Alternatively, under the so-called sliding scale approach, as long
22 as the plaintiff demonstrates the requisite likelihood of irreparable harm and shows
23 that an injunction is in the public interest, a preliminary injunction can still issue so
24 long as serious questions going to the merits are raised and the balance of hardships
25 tips sharply in the plaintiffs favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
26 1127, 1134–35 (9th Cir. 2011). A “serious question” is one on which the movant “has
27 a fair chance of success on the merits.” *Sierra On-Line, Inc. v. Phoenix Software,*
28 *Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984) (internal quotation marks and citation
omitted).

ARGUMENT

**I. THERE IS A STRONG LIKELIHOOD THAT PLAINTIFFS WILL
SUCCEED ON THE MERITS**

**A. Defendants’ Order Banning In-Person Instruction at Every School
on the State’s Monitoring List Violate the Fourteenth Amendment’s
Due Process and Equal Protection Clauses.**

To determine whether a government act violates the substantive component of the Due Process Clause or the Equal Protection Clause, courts begin “by determining the proper level of scrutiny to apply for review.” *Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1141 (9th Cir. 2011). “[Courts] apply strict scrutiny if the governmental enactment ‘targets a suspect class or burdens the exercise of a fundamental right.’” *Id.* An act passes strict scrutiny only if it “is narrowly tailored to serve a compelling governmental interest.” *Id.* “If the [act] does not concern a suspect or semi-suspect class or a fundamental right, [courts] apply rational basis review and simply ask whether the ordinance is rationally-related to a legitimate governmental interest.” *Id.* (citation omitted)

**1. The Order Infringe Californians’ Fundamental Right to Education,
Failing Strict Scrutiny**

**a. The School Closure Order Implicates Substantive Due
Process**

The Due Process Clause protects substantive rights not expressly enumerated within the Bill of Rights. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2587 (2015); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973). In particular, “the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Glucksberg*, 521 U.S. at 720–21 (internal citations and quotation marks omitted). Courts must “exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect”; “[h]istory and

1 tradition guide and discipline this inquiry but do not set its outer boundaries.”

2 *Obergefell*, 135 S. Ct. at 2598 (quoting *Poe v. Ullman*, 367 U.S. 497, 542 (1961)
3 (Harlan, J., dissenting)).

4 **b. The Fundamental Importance of Education is Deeply**
5 **Rooted in Our History and Jurisprudence**

6 Historical analysis confirms that, although the Supreme Court has not (yet) so
7 held, the right to a basic education is “deeply rooted in this Nation’s history and
8 tradition,” stretching back at least as far as ratification of the Fourteenth Amendment.
9 Indeed, more than three-quarters of States recognized an affirmative right to public
10 school education in 1868, the year that the Fourteenth Amendment was ratified.
11 Steven G. Calabresi & Michael W. Perl, *Originalism and Brown v. Board of*
12 *Education*, 2014 Mich. St. L. Rev. 429, 449–63 (cataloging State constitutional
13 provisions as of 1868). In particular, 30 states (*i.e.*, 81% of the states at the time) had
14 a constitution that “said explicitly that the state legislature ‘shall’ (*i.e.*, it has the
15 ‘duty’ and therefore it ‘must’) establish a system of free public schools.” Calabresi &
16 Perl, 2014 Mich. St. L. Rev. at 451–54 (listing these 30 states and quoting their
17 constitutional provisions). Another three states’ constitutions “arguably conferred a
18 right to a free public education,” whereas only four “states’ constitutions in 1868 did
19 not specifically mention education or the establishment of a system of free public
20 schools.” *Id.* at 455–60. It is thus “as clear as day that there was a[] . . . consensus of
21 three-quarters of the states in 1868 that recognized that children have a fundamental
22 right to a free public school education.” *Id.* at 460; compare *McDonald v. City of*
23 *Chicago*, 561 U.S. 742, 777–78 (2010) (plurality opinion) (reviewing same sources).

24 That proportion is significant because “Article V of the federal Constitution
25 requires a three-quarters consensus of the states to amend the Constitution.” *Id.* at
26 443. So, “an Article V consensus of three-quarters of the states in 1868 should be
27 sufficient for establishing that a right is ‘fundamental,’ since it would be sufficient for
28 approval of a constitutional amendment.” *Id.* at 444. In other words, commonplace
state constitutional recognition at the time of ratification “objectively” establishes the
fundamental nature of this right. *Glucksberg*, 521 U.S. at 720–21. It also

1 distinguishes it from other important social benefits that a supermajority of states had
2 not committed to provide by 1868.

3 It is also clear that State-provided or -permitted education is “implicit in the
4 concept of ordered liberty, such that neither liberty nor justice would exist if they
5 were sacrificed.” *Glucksberg*, 521 U.S. at 720–21 (internal quotation marks omitted).
6 To begin with, the foundation of American liberty is our *written* Constitution, under
7 which laws must be published in *writing* before they may be executed to constrain
8 liberty. *See* U.S. Const. art. I §§ 9–10 (prohibiting the enactment of any “ex post
9 facto law” by Congress or state legislatures). Thus, texts lie at the heart of our
10 ordered liberty—and neither liberty nor justice as those concepts are conceived in the
11 American tradition would exist without a shared capacity to decode our governing
12 texts through basic literacy and other skills instilled through in-person schooling.

13 Basic learning is also a prerequisite for the activities that form the basis of
14 citizenship in our republic. For example, reading, writing, and math skills are critical
15 to participation in the political process, including “knowledgeable and informed
16 voting,” comprehending ballot initiatives, and engaging in political speech and
17 discourse. *See also Citizens United v. FEC*, 558 U.S. 310, 339–40 (2010); *Bd. of*
18 *Educ. v. Pico*, 457 U.S. 853, 866–67 (1982) (“[T]he Constitution protects the right to
19 receive information and ideas.” (internal quotation marks omitted)). Literacy skills
20 are also necessary to engage in activities of citizenship, such as enlisting in military
21 service, obtaining government entitlements, and “comply[ing] with mandatory
22 government requirements such as filing tax forms or selective service registration.”
23 And lack of basic reading and writing skills precludes individuals from
24 constitutionally protected access to the justice system. *Id.*; *see also, e.g., Griffin v.*
25 *Illinois*, 351 U.S. 12, 19–20 (1956); *Boddie v. Connecticut*, 401 U.S. 371, 382–83
26 (1971).

27 The necessity of education to ordered liberty explains why public, state-
28 provided learning has such deep roots in our nation’s history. In the words of
Professors Calabresi and Perl, “[a]t a minimum, children must be taught to read so

1 they can read the laws for themselves—a task that many of the Framers would have
2 thought was fundamental.” Calabresi & Perl, 2014 Mich. State L. Rev. at 552.
3 Indeed, education has been singled out for unique treatment among state activities.
4 For a century, every single state has had compulsory education laws. Friedman &
5 Solow, 81 Geo. Wash. L. Rev. at 127 (“By 1918, education was compulsory in every
6 state of the union.”). In other words, children throughout California and the nation are
7 compelled to attend school full time (or be home-schooled) under penalty of fines and
8 jail time. *See* Gershon M. Ratner, A New Legal Duty for Urban Public Schools:
9 Effective Education in Basic Skills, 63 Tex. L. Rev. 777, 823 (1985).

10 History and practice make clear that this deprivation of the liberty that children
11 and their families otherwise would have to pursue activities of their own choosing is
12 justified by the unique importance of education. As the Supreme Court explained in
13 *Brown v. Board of Education*, “education is [] the most important function of state
14 and local governments,” as demonstrated by our “[c]ompulsory school attendance
15 laws and the great expenditures for education.” 347 U.S. at 493; *see also Meyer v.*
16 *Nebraska*, 262 U.S. 390, 400 (1923) (“The American people have always regarded
17 education and acquisition of knowledge as matters of supreme importance which
18 should be diligently promoted.”). Indeed, so crucial is education to ordered liberty
19 that courts require that procedural due process be afforded not when children are
20 confined to school—but when children are expelled or suspended from school, and
21 thus deprived of their interest in a state-sponsored education. *Goss v. Lopez*, 419 U.S.
22 565, 579 (1975) (“[S]tudents facing suspension and the consequent interference with
23 a protected property interest must be given some kind of notice and afforded some
24 kind of hearing...to avoid unfair or mistaken exclusion from the educational process,
25 with all of its unfortunate consequences.”).

26 And while, of course, the Supreme Court has not yet squarely held that there is
27 a fundamental right to education, it has sent powerful signals that it is willing to do so
28 in the right case. Rejecting a constitutional challenge to a state’s school-financing
system, the Court in *San Antonio Independent School District v. Rodriguez*, 411 U.S.

1 1 (1973), nonetheless made explicit that the case before it did *not* present the question
2 of whether there is a fundamental right to “some identifiable quantum of education”
3 sufficient to provide children with the “basic minimal skills necessary for the
4 enjoyment of the rights of speech and of full participation in the political process.” *Id.*
5 at 36–37. And the Court underscored that if a “class of ‘poor’ people” were
6 “absolutely precluded from receiving an education[, t]hat case would present a far
7 more compelling set of circumstances for judicial assistance than the case before” it.
8 *Id.* at 25 n.60. Later, the Court wrote that “[a]s *Rodriguez* and *Plyler* indicate, this
9 Court has not yet definitively settled the question[] whether a minimally adequate
10 education is a fundamental right.” *Papasan v. Allain*, 478 U.S. 265, 285 (1986);
11 *accord Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 466 n.1 (1988) (Marshall, J.,
12 dissenting) (noting that the issue “remains open today”).

13 **c. Barring Access to Schools Has Devastating Consequences.**

14 Prohibiting access to schools burdens a fundamental right to adequate
15 education. In *Plyer v. Doe*, under Texas law, immigrant children who could not
16 establish that they had been legally admitted into the United States were denied a free
17 education in public schools and could attend only if they could afford to “pay a ‘full
18 tuition fee’ in order to enroll.” 457 U.S. 202, 206 & n.2 (1982). Because many could
19 not afford to pay tuition, the law amounted in practice to the “exclusion” by the state
20 of “children from its public schools.” *Id.* at 208. In the Court’s words, “[b]y denying
21 these children a basic education, we deny them the ability to live within the structure
22 of our civic institutions, and foreclose any realistic possibility that they will
23 contribute in even the smallest way to the progress of our nation.” This result could
24 not be reconciled with the Constitution.

25 Like Texas in *Plyer*, California here is functionally excluding Plaintiffs—
26 including minority children and families of limited economic means—from the
27 opportunity to attain an education. Even worse, unlike in *Plyer*, the schoolhouse
28 doors are not even open to Plaintiffs. California hopes that digital learning will
provide an equivalent basic minimum education, but this is fantasy with no basis in

1 any evidence. Quite the contrary, the evidence shows that distance learning will
2 effectively preclude children from receiving a basic minimum education because (1)
3 many students have no access to the internet, (2) of those who do have digital access
4 their educations will be significantly impaired, and (3) truancy will run rampant. *See*
5 *supra* pp. 5-11, 15 (describing evidence showing extreme hardship from online
6 learning that excludes children from an education).

7 For example, as extensively documented in the supporting declarations, when
8 school moved online in the spring, classroom participation evaporated. Cunningham
9 Decl. ¶ 5. “At the beginning of distance learning in March, I had 42% participation
10 by my students; by the end, I had 4 total students participate, or 2%.” *Id.* The reason:
11 “Many of my students lacked sufficient access to wifi and computers to be able to
12 participate in distance learning.” *Id.* This is particularly true in low-income families
13 and communities of color. “Nearly 50% of low-income families and 42% of families
14 of color lack sufficient devices at home to access distance learning.” Megan Kuhfeld,
15 *et al.*, *Project the potential impacts of COVID-19 school closures on academic*
16 *achievement*, ANNENBERG INSTITUTE AT BROWN UNIVERSITY, at 10 (May 2020).¹⁷

17 These are not uncommon occurrences. “[T]he closing of schools this last
18 spring and the conversion from in-class teaching to online instruction turned out to be
19 an educational failure. Up to one-third of high school students in the Los Angeles
20 schools system never checked in with their teachers once.” Dr. Hamilton Decl. ¶ 6;
21 *see also* Keech Decl. ¶ 14 (“[A]ny model of live daily virtual remote instruction ... is
22 so lacking” that it “largely fails to meet [students’] basic educational needs.”).

23 Nor are the results surprising. Stanford University comprehensively studied the
24 impact of virtual learning models and concluded that student were behind their in-
25 person peers to an extent reflecting 180 fewer days of instruction in math and 72
26 fewer days of instruction in reading. *Id.* (attaching study). This study comports with
27 another recent analysis from Brown University in which the researchers concluded
28 that “many teachers have had no contact at all with a significant portion of students

¹⁷ Available as of the day of filing: <https://www.edworkingpapers.com/ai20-226>.

1 ... only 39% of teachers reported interacting with their students at last once a day,
2 and most teacher-student communication occurred over email.” Megan Kuhfeld,
3 *supra* p. 12, at 9. And this says nothing of those children requiring special education.
4 “When school campuses are closed and education is moved entirely online, many of
5 the guarantees and key tenants afforded to special needs children” under normal
6 circumstances “collapse.” Walker Decl. ¶ 5; *see also* Reardon Decl. ¶ 10 (“A
7 prolonged shutdown of schools will have significant negative consequences for
8 children with special needs and handicapping conditions.”).

9 These declarations and more show what common sense immediately grasps.
10 Moving in-person instruction to an unaccountable virtual platform that many students
11 cannot even access functionally forecloses access to a basic minimum education. By
12 denying Plaintiffs access to schools that offer an opportunity to an education,
13 Defendants have effectively consigned Plaintiffs and others at their schools to life in
14 a permanent underclass. Like the students in *Plyler*, Plaintiffs are subject to the
15 “enduring disability” for lack of education and “[t]he inestimable toll of that
16 deprivation on [their] social[,] economic, intellectual, and psychological well-being”
17 that will affect them “each and every day” of their lives.” 457 U.S. at 221–22. The
18 State, in sum, has burdened a constitutional right.

19 **d. The School Closure Order is Not Narrowly Tailored**

20 Because the State is burdening a fundamental right, this Court must apply a
21 heightened form of scrutiny. *Plyler*, 457 U.S. at 217–18, 223–24. Unlike other
22 governmental acts that are permissible if they “bear[] some fair relationship to a
23 legitimate public purpose,” *id.* when the State burdens a “substantive component” of
24 the Fourteenth Amendment, as here, then the act is unconstitutional “unless the
25 infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*,
26 507 U.S. 292, 301–02 (1993). For reasons stated above, namely that the weight of
27 studies shows that children transmission and infection rates cannot justify school
28 closures, the government cannot satisfy that test here. *See supra* pp. 11-14
(describing evidence that children are unlikely to spread or suffer adverse results

1 from the coronavirus). The order ignore “the evidence that the mortality risk and
2 severe adverse health outcome risk to children from COVID-19 disease is small or
3 negligible.” Bhattacharya Decl. ¶ 20. And they ignore “the fact that children are
4 exceedingly unlikely to pass the virus on to adults.” Bhattacharya Decl. ¶ 20, 24,
5 Atlas Decl. ¶ 17-18, 29; and Cincchetti Decl. ¶ 8, 24, 26.

6 More to it, distance learning—when in-person learning is readily available and
7 safe—is no substitute to providing a basic minimum education. Foremost, and as
8 noted, many students lack sufficient means to access digital learning. This is
9 especially true in low-income families and communities of color. *See supra* Kughfeld
10 at 10. If these same students can study and learn in-person, even on a limited basis
11 while in school, but are forced to “learn” through a means in which they realistically
12 cannot access, then the policy is not narrowly tailored. Moreover, numerous studies
13 show that both the quality and quantity of the education declines precipitously when
14 forcibly and haphazardly moved online. Consider first the significant involvement of
15 parents in this environment. “No credible scientist, learning expert, teacher, or parent
16 believes that children aged 5 to 10 years can meaningfully engage in online learning
17 without considerable parental involvement, which many families with low incomes
18 are unable to provides because parents must work outside the home.” Dimitri A.
19 Christakis, MD, MPH, *School Reopening—The Pandemic Issue That is Not Getting*
20 *Its Due*, JAMA PEDIATRICS (May 13, 2020).¹⁸

21 Consider also the social and emotional struggle of children trying to learn on
22 their own. Many students have “expressed ... a marked increase in feelings of
23 depression, isolation, and anxiety” as a result of the “school clotures.” Cunningham
24 Decl. ¶ 8. And the “students most greatly impacted by the shutdown [are] not the
25 middle and upper class students, but the lower income and minority students who
26 already suffer from an ever-widening achievement gap.” *Id.* For this reason and
27 others, child psychologists have sounded the alarm on the mental health risks of
28

¹⁸ Available as of the date of filing:
<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2766113>.

1 locking down school. Just last month, more than 120 specialists in psychology,
2 mental health, and neuroscience concluded that school closures are a “national
3 disaster” because the “impact of the lockdown on learning is incredibly harmful,
4 creating a huge attainment gap, and the most vulnerable and marginalized in society
5 ... are likely to be most affected by this.” Professor Ellen Townsend, *et al.*, *Open*
6 *letter to Gavin Williamson Secretary of State for Education concerning the neglect of*
7 *children and adolescents in government policy during the UK lockdown*.¹⁹

8 Studies demonstrate why children need to be physically present in schools.
9 Late last month the American Academy of Pediatrics “strongly” recommended that
10 “the coming school year should start with a goal of having students physically
11 present in school.” American Academy of Pediatrics, *COVID-19 Planning*
12 *Considerations: Guidance for School Reentry*, ¶ 3 (June 25, 2020).²⁰ This same
13 Academy noted the health benefits that would otherwise be lost, such as “child . . .
14 development,” “social and emotional skills,” “reliable nutrition,” physical/speech and
15 mental health therapy,” and “opportunities for physical activity” if children are
16 unnecessarily forced to attend school virtually. *Id.* ¶ 1. This comports with a
17 recommendation released last week by the Centers for Disease Control. The CDC
18 detailed crucial characteristics that would be lost if in-person schooling is not held,
19 including “development of social and emotional skills,” “a safe environment for
20 learning,” “nutritional needs,” and “physical activity.” *The Importance of Reopening*
21 *America’s Schools this Fall*, CDC (July 23, 2020).²¹

22 All these significant harms and burdens are avoidable. As seen elsewhere,
23 many other states have provided options to attend school, including deploying
24 “hybrid” models of mixed virtual and in-person learning to reduce student contact.

25
26 ¹⁹ Available as of the date of filing: <https://drive.google.com/file/d/1zytNGOtnySo-YnyU7iazJUVQ0fS2PC1Z/view>.

27 ²⁰ Available as of the date of filing: [https://services.aap.org/en/pages/2019-novel-](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)
28 [coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)
[return-to-in-person-education-in-schools/](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/).

²¹ Available as of the date of filing: [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html)
[ncov/community/schools-childcare/reopening-schools.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html).

1 See, e.g., Gabby Birenbaum and James Bikales, *Here's your state's plan for*
2 *reopening schools*, THE HILL (July 20, 2020).²² At the very least, other States allow
3 their school districts or counties to deploy specific plans to address both their student
4 population's varying needs and that particular community's COVID-19 case levels.
5 More importantly, these localized plans allow schools to prioritize in-person
6 education for those who are most vulnerable. While remote instruction may play a
7 role in the various counties' approaches, there is no reason to adopt a one-size-fits-all
8 model for the State, and Defendants' insistence on such an approach fails strict
9 scrutiny. Because the State cannot possibly show that an all-out exclusion to basic
10 minimum education is narrowly tailored to protect a compelling government interest,
11 such a prohibition on accessing schools would fail.

12 **2. Regardless of the Level of Scrutiny, the Order Violate Equal** 13 **Protection**

14 "The Equal Protection Clause of the Fourteenth Amendment commands that no
15 State shall "deny to any person within its jurisdiction the equal protection of the
16 laws," which is essentially a direction that all persons similarly situated should be
17 treated alike." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1063 (9th Cir.
18 2014) (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439
19 (1985)). Where the government unequally infringes on a fundamental right, courts
20 apply strict scrutiny. *City of Cleburne*, 473 U.S. at 440. Rational basis review applies
21 when the government enacts discriminatory social or economic legislation. *Id.* The
22 Supreme Court has also suggested that discrimination affecting "quasi"-fundamental
23 rights will trigger "intermediate" scrutiny. *Plyler v. Doe*, 457 U.S. 202, 230 (1982)
24 (applying intermediate scrutiny when evaluating claims for equal access to education
25 brought by immigrant children unlawfully present in Texas).

26 Here, the Governor's order and guidance prohibit schools in some counties
27 from holding in-person classes while allowing schools in other counties to return to
28

²² Available as of the date of filing: <https://thehill.com/homenews/state-watch/508105-heres-your-states-plan-for-reopening-schools>.

1 the classroom. The dividing line is whether a school is located within a county on the
2 state's monitoring list. Thus, while students in Shasta County can resume in-person
3 learning this fall, similarly situated students in Los Angeles County, Yolo County,
4 and 30 other counties cannot. The Governor's unequal treatment of students in
5 California cannot survive review under any level of scrutiny.

6 **a. California's Children have a Fundamental Right to Education**

7 As Plaintiffs have already explained, education is a fundamental right enjoyed
8 by every child in California. The Governor's decision to deprive some students of in-
9 person education, but not others, thus infringes on fundamental rights. The Order are
10 thus subject to strict scrutiny, which they cannot survive because even assuming that
11 the state has a compelling interest in slowing the spread of COVID-19, the
12 Governor's actions here are not the least restrictive means of furthering that goal.
13 Indeed, as the declarations filed in this case confirm, closing schools does *nothing* to
14 advance that goal because children are not at risk from the virus and they do not play
15 a significant role in transmitting it to others. *See, e.g.,* Dr. Atlas Decl., Dr.
16 Bhattacharya Decl., Barke Decl., Dr. Victory Decl., Dr. Lyons-Weiler Decl. In other
17 words, the state's interest in arresting the spread of COVID-19 could be advanced
18 just as effectively without closing a single school. Because the Order is not the least
19 restrictive means of advancing the state's asserted interest—while depriving millions
20 of students of their fundamental right to education—the Court should enjoin
21 Defendants from enforcing them.

22 **b. The Right to Education is Subject to Heightened Scrutiny**

23 Even if education is not a “fundamental” right, it is at least a “quasi”
24 fundamental right subject to intermediate scrutiny. It is well settled that, under *Plyler*
25 *v. Doe*, “infringements on certain ‘quasi-fundamental’ rights, like access to public
26 education, also mandate a heightened level of scrutiny.” *United States v. Harding*,
27 971 F.2d 410, 412 n.1 (9th Cir. 1992). Specifically, such infringements are invalid
28 unless they further an important government interest and do so by means that are
substantially related to that interest.

1 The Order undoubtedly infringe the right to a basic education. Like the law
2 *Plyler*, the Order will “impose[] a lifetime hardship on a discrete class of children
3 not accountable for their disabling status. The stigma of illiteracy will mark them for
4 the rest of their lives.” 457 U.S. at 223. “By denying these children a basic
5 education,” the Order threatens to “deny them the ability to live within the structure
6 of our civic institutions” and diminish the “possibility that they will contribute . . . to
7 the progress of our Nation.” *Id.* at 223–24.

8 Because the order fail even rational-basis review, for the reasons given below,
9 *see infra*, they *a fortiori* flunk intermediate scrutiny as well.

10 **c. The School Closure Order Fails Even Rational Basis Scrutiny**

11 In any event, the Order’s discriminatory treatment of school children across the
12 state is not even “rationally related” to the state’s interest in combatting COVID-19.
13 *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). As an initial matter,
14 whether a county is on the monitoring list has *nothing* to do with the prevalence of
15 COVID-19 at schools, or even among children. Instead, a county is placed on the
16 monitoring list based on overall case rates and hospitalization rates. The order simply
17 assumes that it is more dangerous to conduct in-person classes in counties where
18 COVID-19 continues to spread among the general population than in other counties.
19 But that assumption could not “*reasonably* be conceived to be true by the
20 [Governor]” for several reasons. *Vance v. Bradley*, 440 U.S. 93, 111 (1979). *First*, as
21 Plaintiffs have explained, the scientific evidence overwhelmingly confirms that
22 children are not at risk of being sickened or killed by COVID-19. *See ante* at 7-11.
23 Indeed, according to the state’s data, *not one* minor in California has died from
24 COVID-19 since the virus began spreading in January and February. *See ante* at 17.
25 Children also account for a vanishingly small percentage of total hospitalizations.
26 McDonald Decl. ¶5. Children in hard-hit areas such as Los Angeles are thus just as
27 unaffected by the virus as children in rural parts of the state. And because children do
28 not play a significant role in transmitting the virus to adults, Lyons-Weiler Decl. ¶23,
teachers in Orange County are just as safe as teachers in any other county. Indeed,

1 they are significantly safer than essential workers in many other professions who
2 have daily contact with large numbers of adults.

3 *Second*, even the Governor apparently does not believe that allowing children
4 to congregate in classrooms presents a grave danger of contagion, because he has
5 allowed thousands of daycare facilities and camps to reopen, even in counties on the
6 monitoring list.²³ There is no reasonable basis for believing that daycare centers and
7 camps are safe but elementary schools are not. Although “a government need not
8 provide a perfectly logical solution to regulatory problems, it cannot hope to
9 survive *rational* basis review by resorting to irrationality.” *Merrifield v. Lockyer*, 547
10 F.3d 978, 991 (9th Cir. 2008). But the Order is the height of irrationality. In the name
11 of stopping the spread of COVID-19, they prohibit gatherings by the one population
12 cohort that *does not spread* virus. And to prevent hospitals from being overwhelmed,
13 they target the one group of people that is hardly ever sickened from COVID-19.
14 Although the state undoubtedly has broad police powers with which to address public
15 health concerns, it cannot enact a discriminatory regulatory regime that lacks any
16 rational connection to the stated goal—as it has done here, with devastating effect.

17 **B. Defendants’ Order Violate Title VI’s Implementing Regulations**
18 **Because It Disparately Burden Racial Minorities**

19 Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the
20 United States shall, on the ground of race, color, or national origin, be excluded from
21 participation in, be denied the benefits of, or be subjected to discrimination under any
22 program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. And,
23 under Title VI regulations, Defendants may not enforce laws causing a disparate
24 impact on racial minorities with regard to federally funded public programs,
25 including California’s schools. 28 C.F.R. § 42.104(b)(2).²⁴ “The basis for a successful
26 _____

27 ²³ See *fn* 14-15.

28 ²⁴ Section 1983 creates a private right of action against the deprivation of federal
rights against officials acting under color of state law. See 42 U.S.C. § 1983;
Alexander v. Sandoval, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting) (“[l]itigants
who in the future wish to enforce the Title VI [disparate impact] regulations against

1 disparate impact claim involves a comparison between two groups—those affected
2 and those unaffected by the facially neutral policy.” *Darensburg v. Metro. Transp.*
3 *Comm’n*, 636 F.3d 511, 519–20 (9th Cir. 2011). “An appropriate statistical measure
4 must therefore take into account the correct population base and its racial makeup.”
5 *Id.*

6 As explained further below, although virtually all students here will be
7 “affected” by the Governor’s order, it will inflict *especially* devastating harm on
8 those students whose socioeconomic circumstances do not allow for distance learning
9 *at all* or who are enrolled in schools whose distance-teaching efforts have proven
10 wholly inadequate. Magnifying both discriminatory effects is that the order applies
11 predominantly to counties comprising higher percentages of racial minorities than the
12 counties that are *not* on the Governor’s watch list and therefore not subject to the
13 closure order.

14 Impoverished, vulnerable families in California are disproportionately
15 minorities.²⁵ While these low-income families struggle with distance learning, many
16 also do not receive the services required by their IEPs and are burdened by the
17 additional costs to obtain private assistance or instruction. (*See* Ruiz Decl. ¶¶2, 5, 6, 9,
18 10,; *see also* Hawkins Decl. ¶¶3, 10, 11; Bema Decl. ¶¶4, 6, 8, 9, 12; Ramirez Decl. ¶¶5,
19 6, 7, 8, 15).

20 _____
21 state actors in all likelihood must only reference § 1983 to obtain relief.”). Plaintiffs
22 rely on § 1983 here, although they recognize that Ninth Circuit precedent suggests that
23 that statute cannot be used by private parties to vindicate a disparate-impact claim
24 under Title VI’s regulations. *See Save Our Valley v. Sound Transit*, 335 F.3d 932 (9th
25 Cir. 2003). If necessary, however, Plaintiffs will argue on appeal that *Save Our Valley*
26 was incorrectly decided and should be overruled, which would put the Ninth Circuit
27 on the correct side of an circuit conflict. *See, e.g., White v. Engler*, 188 F. Supp. 2d
28 730, 743 (E.D. Mich. 2001) (discussing Sixth Circuit precedent).

²⁵ *See* Just the Facts: Poverty in California, Public Policy Institute of California, July
2020, <https://www.ppic.org/publication/poverty-in-california/> (“22.9% of Latinos
lived in poverty, compared to 18.% of African Americans, 15.9% of Asian
Americans/Pacific Islanders, and 12.8% of whites. Though the Latino poverty rate
has fallen from 30.9% in 2011, Latinos remain disproportionately poor—comprising
51.4% of poor Californians but only 39.6% of the state population.”).

1 Plaintiffs Christine Ruiz and her son Z.R. have experienced this firsthand, as
2 Ruiz has had to devote additional resources to hire an outside tutor due to her sons'
3 IEP plans being neglected by the school. The State Order will continue to deprive
4 Plaintiff Z.R. of an equal educational opportunity as distance learning leaves his IEP
5 needs unfulfilled and keeps racial minorities, like the Plaintiffs, at a significant
6 disadvantage from accessing equal educational opportunity.

7 **C. Defendants' Order Violate Federal Laws Requiring Equal**
8 **Educational Access for Disabled Students**

9 **1. The Order Violate the Individuals with Disabilities Education Act**

10 The Individuals with Disabilities Education Act (IDEA) requires States to
11 provide disabled students with programming to meet their many needs. A State that
12 receives federal funding under the IDEA "must provide a free appropriate public
13 education—a FAPE, for short—to all eligible children." *Endrew F. ex rel. Joseph F.*
14 *v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 993 (2017) (citing 20 U.S.C.
15 § 1412(a)(1)). "A FAPE, as the Act defines it, includes both 'special education' and
16 'related services.'" *Id.* at 994 (citing 20 U.S.C. § 1401(9)). "'Special education' is
17 'specially designed instruction ... to meet the unique needs of a child with a
18 disability'; 'related services' are the support services 'required to assist a child ... to
19 benefit from' that instruction." *Id.* (citing 20 U.S.C. §§ 1401(26), (29)). The
20 instruction and services provided by school districts must meet each student's
21 "academic, social, health, emotional, communicative, physical and vocational needs."
22 *Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009).
23 To meet these needs, a school district's services include "'developmental, corrective,
24 and other supportive services,' such as 'psychological services, physical and
25 occupational therapy, recreation ... [and] social work services.'" *Id.* (citing 20
26 U.S.C. § 1401(26)).²⁶

27
28 ²⁶ Additionally, "[e]very school district has an affirmative, ongoing duty known as a
'child find' obligation," which requires the district "to actively and systemically seek
out, identify, locate, and evaluate children with disabilities in that district who may be
in need of special education and related services." *Garcia v. Capistrano Unified Sch.*

1 Providing the IDEA’s mandatory “special education” and “related services”
2 requires in-person education for many, if not all, disabled students. To begin, students
3 with disabilities suffer “significant[ly]” from the lack of in-person instruction. *See*
4 *COVID-19 Planning Considerations: Guidance for School Reentry*, American
5 Academy of Pediatrics (Last Updated June 25, 2020),²⁷ Additionally, disabled
6 students require more services than simply in-person instruction, including services
7 from specialists such as occupational therapists, behavior specialists, and counselors.
8 *See* 20 U.S.C. § 1401(26); *e.g.*, *Price v. Commonwealth Charter Academy – Cyber*
9 *School*, 2019 WL 4346014, at *3, *5 (E.D. Penn. Sept 12, 2019); *K.B. on behalf of*
10 *S.B. v. Katonah Lewisboro Union Free Sch. Dist.*, 2019 WL 5553292, at *2
11 (S.D.N.Y. Oct. 28, 2019). Indeed, “[e]ducation for [] students with disabilities often
12 differs dramatically from ‘conventional’ [] education.” *E.R.K. ex rel. R.K. v. Hawaii*
13 *Dep’t of Educ.*, 728 F.3d 982, 990 (9th Cir. 2013) (citing *Park ex rel. Park v.*
14 *Anaheim Union Sch. Dist.*, 464 F.3d 1025, 1030–31 (9th Cir. 2006) (disabled high
15 school student’s special education included “buttoning, zipping and toilet training”)).
16 To meet these needs, and the requirements of the IDEA, school districts must be able
17 to provide at least some in-person services.

18 In addition to these general requirements, “[a] State covered by the IDEA must
19 provide [each] disabled child with [] special education and related services ‘in
20 conformity with the [child’s] individualized education program,’ or IEP.” *Endrew F.*,
21 137 S. Ct. at 994 (citing 20 U.S.C. § 1401(9)(D)). An IEP must be “reasonably
22 calculated to enable a child to make progress appropriate in light of the child’s
23 circumstances,” which progress must be “markedly more . . . than *de minimis*.” *Id.* at
24 999–1000 (citation omitted). And “a material failure” by the school “to implement an
25 IEP violates the IDEA.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d

26
27 *Dist.*, No. SACV162111DOCDFMX, 2019 WL 8884143, at *16 (C.D. Cal. Sept. 27,
28 2019) (citing 20 U.S.C. § 1412(a)(3)(A)).

²⁷ <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

1 811, 822 (9th Cir. 2007) (emphasis omitted). “A material failure occurs when there is
2 more than a minor discrepancy between the services a school provides to a disabled
3 child and the services required by the child's IEP.” *Id.*

4 Defendants’ Order prohibiting all in-person instruction violate the IDEA.
5 Under the Order, all schools remain closed. *See* Executive Order N-60-20; *COVID-19*
6 *and Reopening In-Person Learning Framework for K- 12 Schools in California,*
7 *2020-2021 School Year*, California Dep’t of Pub. Health (July 17, 2020) (hereinafter
8 “CDPH Framework”).²⁸ Schools “may reopen for in-person instruction” only if “they
9 are located in a local health jurisdiction (LHJ) that has not been on the county
10 monitoring list within the prior 14 days.” CDPH Framework (footnote omitted). This
11 list currently contains 37 of California’s 58 counties. *County Monitoring List, County*
12 *Variance info.*²⁹ And while local health officers may grant waivers to elementary
13 schools, allowing them to reopen even if the county is on the monitoring list, this
14 waiver exception applies only to elementary schools and requires consultation with
15 CDPH. Moreover, evidence suggests that the criteria to obtain a waiver is nearly
16 impossible to satisfy. Cicchetti Decl. ¶14.

17 Most counties are performing the required number of tests. *Id.* Four counties
18 had fewer than the CDPH criteria of 150 tests performed per 100,000 people based on
19 a 7-day average with a 7-day lag. *Id.* Nevertheless, three passed at least one of the
20 “Case Rate” criteria based on less than 100 per 100,000 over 14 days, or less than a
21 25-case rate and positivity less than 8%. *Id.* The other 54 counties exceeded the
22 number of tests per day criteria but could not satisfy the case level criteria for re-
23 opening. *Id.* There were 23 counties with case rates that exceeded both the CDPH
24 threshold elevated case rate criteria. *Id.* There were another 14 counties that did not
25

26
27 ²⁸ Available as of the date of filing:

28 <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>.

²⁹ Available as of the date of filing: <https://covid19.ca.gov/roadmap-counties/#track-data>.

1 CDPH's case rate per 100,000 (14 day) criteria. *Id.* These 37 counties could not seek
2 a variance. Others would need to file a variance to re-open. *Id.*

3 Thus, the regulations and near impossibility of obtaining a waiver cause a
4 significant portion of California's schools will be unable to provide any in-person
5 services to their students with disabilities. This complete failure to provide services to
6 students with disabilities violates the IDEA.³⁰

7 Moreover, failure to provide any in-person services will cause uncounted
8 "material failure[s]" to implement the IEPs of disabled students. *See Van Duyn*, 502
9 F.3d at 822. Without the physical presence of a teacher, who knows, sees that child on
10 a daily basis, and cares for that child, the children are unable to be adequately protected
11 from domestic abuse because the teacher is unable to see the signs of abuse via Zoom,
12 that is if the child even has been attending the remote teaching sessions. Golden Decl.
13 ¶7.

14 Plaintiff Ruiz's experience exemplifies these violations. She notes the
15 difficulties that distance learning causes her sons and that her sons' IEPs cannot be
16 followed, effectively resulting in no education whatsoever. As she states in her
17 Declaration, Zoom learning is "useless" for her younger special needs child, as he
18 cannot sit still and cannot follow commands given online. Additionally, his school
19 provided him with a link to watch videos lasting a half hour per day. This de minimis
20 "service" does not fulfill his IEP. Plaintiff Ruiz also has concerns for her middle son,
21 who has severe autism, and has hands-on support of his individualized education
22 team, dedicated to him the entire school day. Both of her sons have IEPs that specify
23 precisely what is needed to provide appropriate education and since school was shut
24 down, neither child has been provided with any services required by each child's IEP.
25 This record provides no reason to believe that the state will suddenly begin providing
26 statutorily mandated special needs services in the fall.

27 ///

28 _____
³⁰ Moreover, the school districts will be unable to adequately seek out and identify
children with disabilities, 20 U.S.C. § 1412(a)(3)(A), if school officials do not have
regular, in-person contacts with those children.

2. The Order Violate the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

Both the Americans with Disabilities Act (ADA) and the Rehabilitation Act require that public programs provide the same benefits to persons with disabilities provided to those without. “Section 12132 of the ADA precludes (1) exclusion from/denial of benefits of public services, as well as (2) discrimination by a public entity.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir. 1996). This statute “was expressly modeled after § 504 of the Rehabilitation Act.” *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), *as amended on denial of reh’g* (Oct. 11, 2001). “To establish a prima facie case of disability discrimination under the ADA, a plaintiff must prove” four elements. *E.R.K.*, 728 F.3d at 992. Plaintiff must prove that “(1) he is an individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public entity’s services, programs, or activities; (3) he was either excluded from participation in or denied the benefits of the public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of [his] disability.” *Id.* (citation omitted). And to establish a violation of the Rehabilitation Act, the plaintiff must prove these same elements and “must also prove that the relevant program receives federal financial assistance.” *Id.* And any plaintiff “who requires an accommodation to meet a program’s essential eligibility requirements can establish the ‘otherwise qualified’ element of the prima facie case only by producing ‘evidence of the existence of a reasonable accommodation’” *Id.*

Here, Plaintiffs have proven a prima facie case of discrimination under the ADA and Section 504. California receives federal funding for education, including under the IDEA to provide special education to disabled students.³¹ Plaintiff Z.R. is an individual with a disability who is otherwise qualified to receive an education and can do so with a reasonable accommodation. Ruiz Decl. ¶¶ 4-15. Given the inability

³¹ Available as of the date of filing: <https://www.cde.ca.gov/sp/se/as/leagrnts.asp>

1 of schools to provide in-person education under the Order, Z.R. has been denied the
2 benefits of a public education. *See* pp. 34-35. And this denial is due to his disability:
3 without his disability, Z.R. would be able to participate more fully in remote learning.
4 *See supra* pp. 34-35.

5 **3. Plaintiffs Were Not Required to Exhaust Administrative Remedies**
6 **Before Raising Claims Under the IDEA, ADA, or Rehabilitation**
7 **Act.**

8 While a plaintiff must generally exhaust administrative remedies before
9 bringing claims under the IDEA or seeking “adequate education for disabled youth”
10 under other laws, *Doe By & Through Brockhuis v. Arizona Dep’t of Educ.*, 111 F.3d
11 678, 680–81, 685 (9th Cir. 1997) (citing 20 U.S.C. § 1415(e)(2), (f)), this
12 requirement is subject to numerous exceptions. First, exhaustion is not required when
13 “it would be futile to use the due process procedures.” *Hoelt v. Tucson Unified Sch.*
14 *Dist.*, 967 F.2d 1298, 1303–04 (9th Cir. 1992) (citation omitted). Second, exhaustion
15 is not required when the challenged policy is one “of general applicability that is
16 contrary to the law,” *id.* (citation omitted), which occurs when the claim involves the
17 administrative “procedures themselves, or requires restructuring of the education
18 system itself.” *Doe By & Through Brockhuis*, 111 F.3d at 682. Third, exhaustion is
19 not required when “it is improbable that adequate relief can be obtained by pursuing
20 administrative remedies (e.g. the hearing officer lacks the authority to grant the relief
21 sought).” *Hoelt*, 967 F.2d at 1303–04 (citation omitted). Finally, exhaustion is not
22 required when “exhaustion would cause severe or irreparable harm.” *D.E. v. Cent.*
23 *Dauphin Sch. Dist.*, 765 F.3d 260, 275 (3d Cir. 2014); *see also Meridian Joint Sch.*
24 *Dist. No. 2 v. D.A.*, 792 F.3d 1054, 1068–69 (9th Cir. 2015) (explaining that
25 exhaustion is not required when right sought to be vindicated is “time-sensitive”).
26 When considering whether an exception applies, courts focus on “whether pursuit of
27 administrative remedies will further the general purposes of exhaustion,” which are to
28 “allow[] for the exercise of discretion and educational expertise by state and local
agencies, afford[] full exploration of technical educational issues, further[]
development of a complete factual record, and promote[] judicial efficiency by

1 giving these agencies the first opportunity to correct shortcomings in their
2 educational programs for disabled children.” *Hoelt*, 967 F.2d at 1302–03.

3 Plaintiffs were not required to exhaust administrative remedies for four
4 independently sufficient reasons. First, “it would be futile to use the due process
5 procedures.” *Hoelt*, 967 F.2d at 1303–04. The issues created by the Order cannot be
6 solved by filing complaints with school districts, as the districts have no authority to
7 override the Governor’s Order. For the same reason, “it is improbable that adequate
8 relief can be obtained by pursuing administrative remedies.” *Id.* Third, the claim here
9 is systemic, *id.*: the Executive Order prohibits schools from providing any in-person
10 education whatsoever. *See Handberry v. Thompson*, 446 F.3d 335, 344 (2d Cir. 2006)
11 (holding that plaintiffs did not need to exhaust administrative remedies when alleging
12 an “absence of any services whatsoever”). Finally, “exhaustion would cause severe or
13 irreparable harm.” *D.E.*, 765 F.3d at 275. Indeed, so likely and impending is
14 irreparable harm that Plaintiffs have asked for an immediate injunction of the Order.
15 *See infra* pp. 38-39. And exhausting administrative remedies here would serve none
16 of the purposes of exhaustion, as the challenge to the Order is not fact-bound, but
17 rather involves a legal challenge to a statewide order affecting every student in the
18 State of California.

19 **II. PLAINTIFFS AND THEIR CHILDREN FACE IMMINENT**
20 **IRREPARABLE HARM ABSENT IMMEDIATE INJUNCTIVE**
21 **RELIEF**

22 “Irreparable harm is traditionally defined as harm for which there is no
23 adequate legal remedy, such as an award of damages. *See Rent-A-Ctr., Inc. v.*
24 *Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).
25 Because intangible injuries generally lack an adequate legal remedy, “intangible
26 injuries [may] qualify as irreparable harm.” *Arizona Dream Act Coalition v. Brewer*,
27 757 F. 3d 1053, 1068 (9th Cir. 2014). The deprivation of a constitutionally protected
28 right such as those protected by the Fourteenth Amendment’s Equal Protection and
Due Process Clauses inexorably creates irreparable harm. *See Elrod v. Burns* 427
U.S. 347, 373 (1976).

1 Notably absent in distance learning is socialization, one-on-one aides and
2 hands-on teacher supports, that are crucial to assisting students with disabilities and
3 absolutely critical to success. Students with special needs are not the only children
4 affected- several Plaintiffs have observed worrisome negative behaviors from lack of
5 socialization in school. Several families have opted to leave school settings with
6 inhumane requirements for children and do the best they can at starting their own
7 alternative education. Sutton Decl. ¶6. This may prove equal to, better than, or worse
8 than prior education provided, but nonetheless imposes breaking of social bonds and
9 economic restrictions on families who counted on the educational system to teach
10 children while adults work. *Id.* The uprooted children suffer; and the school system
11 undergoes a shockwave. *Id.*

12 Plaintiff Brach is concerned for his daughter's emotional state. Plaintiff Petrilla
13 has noticed a sharp decline in his son's enthusiasm for learning. Plaintiff Ziegler's
14 daughter is worried that she might not obtain college scholarship funds for college.
15 Other Plaintiffs have articulated similar concerns based in their experiences.

16 "The irreparable nature of Plaintiffs' injury is heightened by Plaintiffs' young
17 age and fragile socioeconomic position. Setbacks early in their careers are likely to
18 haunt Plaintiffs for the rest of their lives. Thus, "a delay, even if only a few months,
19 pending trial represents ... productive time irretrievably lost" to these young
20 Plaintiffs. *Chalk*, 840 F.2d at 710. Plaintiffs' entire careers may be constrained by
21 professional opportunities they are denied today." *Brewer* at 1068.

22 **III. THE REMAINING FACTORS WEIGH IN FAVOR OF GRANTING** 23 **INJUNCTIVE RELIEF**

24 Where the government is the opposing party, balancing of the harm and the
25 public interest merge. *See Nken*, 556 U.S. at 435. Thus, the Court asks whether any
26 significant "public consequences" would result from issuing the preliminary
27 injunction. *Winter*, 555 U.S. at 24. "[I]t is always in the public interest to prevent the
28 violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002
(9th Cir. 2012) (*quoting Elrod*, 427 U.S. at 373). "Faced with ... preventable human

1 suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of
2 hardships tips decidedly in plaintiffs' favor." *Hernandez v. Sessions*, 872 F.3d 976,
3 996 (9th Cir. 2017) (*quoting Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

4 **CONCLUSION**

5 Plaintiffs' Motion for a Preliminary Injunction should be granted.

6 Respectfully submitted,

7 Date: July 29, 2020

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**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, et al.

Plaintiffs,
v.

GAVIN NEWSOM, et al.

Defendants.

Case No.: 2:20-cv-06472 SVW (AFMx)

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND FOR
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Judge: Hon. Stephen V. Wilson

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Matthew Brach, Jesse Petrilla, Lacey Beaulieu, Erica Sephton, Kenneth Fleming, John Ziegler, Alison Walsh, Robert Hackett, Christine Ruiz, Z.R., Marianna Bema, Ashley Ramirez, Tiffany Mitrowke, Ade Onibokun, and Brian Hawkins, by and through counsel, will and hereby do apply to this Court pursuant to Fed. R. Civ. P. 65(b) and Local Rule 65-1 for a temporary restraining order against Defendants Gavin Newsom, in his official capacity as Governor of California; Xavier Becerra, in his official capacity as Attorney General of California; Sonia Y. Angell, in her official capacity as the State Public Health Officer and Department of Public Health Director; and Tony Thurmond, in his official capacity as State Superintendent of Public Instruction and Director of Education (“Defendants”), and for the issuance of an order to show cause why a preliminary injunction should not issue, as follows:

1. Defendants, as well as their agents, employees, and successors in office, shall be restrained and enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any portion of the California Department of Public Health COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year, issued July 17, 2020, to the extent it prevents any school district, charter school, or private school from immediately resuming in-person education.

2. Defendants shall show cause, at a time and place to be directed by the Court, why a preliminary injunction should not issue requiring Defendants to act as described in above; the temporary restraining order shall remain effective until such time as the Court has ruled on whether a preliminary injunction should issue.

This Application is made on the grounds that Plaintiffs are likely to succeed on the merits of this case, they will suffer irreparable harm without injunctive relief, the balance of equities tips sharply in their favor, and the relief sought is in the public interest.

1 Good cause exists to issue the requested Order to preserve Plaintiffs' rights under
2 the Constitution of the United States and to avoid irreparable harm to those rights. This
3 Application is supported by the accompanying Memorandum of Points and Authorities,
4 by the declarations of 20 expert witnesses, Plaintiffs, and their counsel, Harmeet K.
5 Dhillon, and all exhibits attached thereto, and by such further argument and evidence
6 that may be adduced at any hearing on this matter or of which the Court may take
7 judicial notice.

8 The First Amended Complaint in this action was filed on July 29, 2020; this
9 Application followed. All papers relating to this Application will be delivered by email
10 to the Defendants' counsel shortly after they are filed.

11
12 Respectfully submitted,
13 Date: August 2, 2020 DHILLON LAW GROUP INC.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, an individual,
et al.,

Plaintiffs,
v.

GAVIN NEWSOM, in his official ca-
pacity as the Governor of California, *et*
al.,

Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND FOR
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Judge: Hon. Stephen V. Wilson
Courtroom: 10A

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INTRODUCTION

With the stroke of a pen, Governor Gavin Newsom has closed all public schools, charter schools, and private schools in 38 of California's 58 counties, consigning *millions* of students and their families to another semester (and perhaps a year) of so-called "distance learning," which has proven an utter failure. The Governor's one-size-fits-all approach has upended the carefully tailored plans that teachers and administrators have developed to reopen schools this fall safely and effectively.

The effects of this ham-handed policy are as predictable as they are tragic. Hundreds of thousands of students will essentially drop out of school, whether because they lack the technological resources to engage with "online learning" or because their parents cannot assist them. Countless more will fall behind academically despite their efforts to remain engaged, because teachers cannot provide the individualized attention they need. And for some students, the consequences of this forced seclusion will be even more dire, including domestic abuse, depression, hunger, and suicide. The order will also inflict collateral damage on families, as parents quit their jobs to supervise their children's "distance learning." While affluent families can likely avoid the worst of these problems by hiring tutors, forming educational "pods" with other families, or home schooling, the "distance learning" regime will devastate students from disadvantaged backgrounds, many of whom are Black and Latino, as well as those with learning disabilities and special needs. Experts estimate that the Governor's decision could set the state's most vulnerable students back a year or more, and some may never recover.

One would expect such an enormously disruptive order to be based on overwhelming scientific evidence. But it is not. On the contrary, the scientific data clearly shows that the risks of COVID-19 to school-age children are negligible, as the numerous expert declarations submitted by some of the nation's leading epidemiologists and physicians explain. Indeed, *only one person* under the age of 18 has died of COVID-19 in California. Scientists have also discovered that children hardly ever transmit the virus to adults. A recent CDC report, based on exhaustive data from

1 South Korea—the country with the most success tracking and tracing the virus’s
2 spread—found that less than 2% of new transmissions were attributed to those be-
3 tween 0 to 20 years old. Less than 1% of new transmissions were attributed to those
4 under 10, the population most in need of in-person education. The CDC has thus
5 urged the nation’s schools to resume in-person education this Fall. Dozens of other
6 countries have reopened their schools without social distancing, mask wearing, or
7 other protective measures—yet none of these countries has reported an increase in
8 new cases resulting from student-to-teacher contact. In short, the Governor’s mora-
9 torium on in-person education is completely at odds with everything we now know
10 about COVID-19.

11 This Court should issue a TRO and preliminary injunction because the order
12 violates the Fourteenth Amendment of the United States Constitution, which protects
13 Californians’ fundamental right to a basic minimum education and forbids states
14 from enforcing laws—especially laws purporting to shutter school-house doors—
15 that are utterly irrational. The order also violates the Constitution’s guarantee of
16 equal protection because while it bars in-person education at schools in counties on
17 the state’s monitoring list (there are currently 38 such counties¹) it allows in-person
18 education at schools in every other county. Whatever level of scrutiny applies to this
19 unequal treatment, the order fails it, because barring in-person education has no ra-
20 tional relationship to the state’s interest in slowing the spread of COVID-19. The
21 order also tramples the rights provided by Title VI of the Civil Rights Act of 1964
22 and other federal laws, which guarantee access to education for students with disa-
23 bilities and prohibit state action having a disparate impact on racial minorities, as
24 closing schools certainly will.

25 The remaining preliminary-injunction factors overwhelmingly favor Plain-
26 tiffs, who represent a diverse, cross-section of the millions of families and students
27 most harmed by the Governor’s order. Nearly every public school district in the state
28 will have begun the Fall term by August 25. And more than half of public schools,

¹ See County variance info, <https://covid19.ca.gov/roadmap-counties/#track-data>

1 and many private schools, are scheduled to resume classes *this week or next*. Chil-
2 dren suffer irreparable harm every day that the state deprives them of their right to
3 quality, in-person education, and the public has no interest in keeping schools closed
4 this Fall because in-person learning does not meaningfully increase the risk of
5 spreading COVID-19. This is thus the rare case warranting immediate judicial inter-
6 vention.

7 To be clear, granting emergency relief in this case will *not* force any teacher
8 to return to the classroom or compel any parent to send their child to school, but it
9 *will* allow schools and school districts to resume in-person education when and how
10 they deem prudent. Accordingly, Plaintiffs respectfully ask this Court to grant a tem-
11 porary restraining order barring Defendants and all other state agents from enforcing
12 the Governor’s order, and to set a hearing on Plaintiffs’ motion for preliminary in-
13 junction “at the earliest possible time.” Fed. R. Civ. P. 65(b)(3).²

14 RELEVANT FACTUAL BACKGROUND

15 **I. Governor Newsom Shuttters California’s Schools in the Spring, Causing** 16 **Extreme Hardship for All Students, but Especially for Poor, Minority,** 17 **and Disabled Students**

18 On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency
19 as a result of the threat of COVID-19.³ On March 19, 2020, he issued Executive Order
20 N-33-20, which provided that “all residents are directed to immediately heed the cur-
21 rent State public health directives.”⁴ The state public health directive, in turn, required
22
23

24 ² If the Court denies the TRO, Plaintiffs request that the hearing on the motion for pre-
25 liminary injunction be scheduled as soon as possible, and no later than August 24,
26 2020. *See* Local Rule 65-1.

27 ³ Executive Dept. of the State of California, Executive Order N-33-20, March 19,
28 2020, available as of the date of filing: [https://www.gov.ca.gov/wp-content/up-
loads/2020/04/N-54-20-COVID-19-text-4.22.20.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/04/N-54-20-COVID-19-text-4.22.20.pdf).

⁴ Executive Dept. of the State of California, Executive Order N-33-20, March 19,
2020, available as of the date of filing: [https://covid19.ca.gov/img/Executive-Order-
N-33-20.pdf](https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf).

1 “all individuals living in the State of California to stay home or at their place of resi-
2 dence except as needed to maintain continuity of operations of the federal critical in-
3 frastructure sectors[.]” *Id.* As a result, schools across the state closed their doors and
4 transitioned to so-called “distance learning.”

5 The problems of remote education—especially for poor, minority, and disabled
6 children—surfaced almost immediately. Less than two weeks after the school shut-
7 down on March 16, 2020, Los Angeles School District officials admitted that 15,000
8 high-school students were completely unaccounted for and more than 40,000 had not
9 been in daily contact with their teachers.⁵ As one teacher explained, her fifth grade
10 online math class, consisting primarily of poor and minority students, had only a 10%
11 attendance rating. Keech Decl. ¶¶ 7, 15. Another explained that, even high-achieving,
12 affluent students, “struggled with online learning at home” and “missed the important
13 social interactions with their friends.” Gerst Decl. ¶ 5. Yet another saw her students’
14 online participation rate start at only 42% at the beginning of the closure and drop to a
15 mere 2% by the end of the school year. Cunningham Decl. ¶ 5.

16 Later studies showed even more starkly how much students suffered academi-
17 cally from online-only learning. A July 7 study conducted by the Los Angeles Unified
18 School District (LAUSD) showed that, between March 16 and May 22, 2020, “on an
19 average day only about 36% of middle and high school students participated online,”
20 while “[a]bout 25% logged on or viewed work only” “[a]nd about 40% were absent.”⁶
21 A survey of parents in the Palos Verde Unified School District showed that over 60%
22 of parents reported that the amount of “face-to-face” teaching during the shutdown was
23 “not enough.” Brach Decl. ¶ 15.

24
25 ⁵ Howard Blume, *15,000 L.A. high school students are AWOL online, 40,000 fail to*
26 *check in daily amid coronavirus closures*, Los Angeles Times (March 30, 2020),
27 available as of the date of filing: <https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent>.

28 ⁶ *Report reveals disparities among Black, Latino LAUSD students in online learning amid COVID-19 pandemic*, ABC 7 Eyewitness News (July 17, 2020) (hereinafter “ABC 7”), available as of the date of filing: <https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/>.

1 A study by Stanford University found that “white, non-poverty, non-“English
2 Language Learner” and non-special education students who were subject to virtual
3 learning were behind their in-person peers to an extent that reflected an equivalent of
4 180 fewer days of instruction in math and 72 fewer days of instruction in reading.”
5 Keech Decl. ¶ 16 (emphasis omitted). Another study by Brown University projected
6 that, as a result of spring shut downs, students likely would achieve only “63-68% of
7 the learning gains in reading relative to a typical school year” and only “37-50% of the
8 learning gains in math.”⁷

9 Minority and disabled students suffered even more from online-only learning.
10 The July 7 study by the LAUSD found that “Black and Latino students showed partic-
11 ipation rates between 10 and 20 percentage points lower than white and Asian peers.”
12 *ABC 7, supra*. And “English learners, students with disabilities, homeless students and
13 those in the foster-care system had lower rates of online participation.” *Id.* As one spe-
14 cial-education teacher explained, there are 795,000 disabled students in California’s
15 schools, and “[w]hen school campuses are closed and education is moved entirely
16 online, many of the guarantees and tenets afforded to special needs children under the
17 Individuals with Disabilities Education Act (‘IDEA’) collapse.” Walker Decl. ¶¶ 4–5.
18 Indeed, “[m]any students with special needs . . . have a myriad of health needs that
19 require services,” which “simply cannot be provided virtually.” *Id.* ¶ 7; *see also* Rear-
20 don Decl. ¶ 10 (“Autistic children require a tremendous amount of direct support,”
21 including for “their developmental, speech, occupational therapy, behavior (i.e., social
22 skills), and academic needs.”). “One survey found that 4 out of 10 families reported
23 that they were not receiving any special education support at all,” and only “1 in 5
24 families reported that they are receiving all the services their children are entitled to on
25 their IEP.” Walker Decl. ¶ 9. The CDC reports that students with disabilities “had sig-
26 nificant difficulties with remote learning.” *The Importance of Reopening America’s*

27
28 ⁷ Megan Kuhfeld, *et al.*, *Projecting the potential impacts of COVID-19 school
closures on academic achievement*, Brown University EdWorkingPaper No. 20-226,
at 2, 23 (May 2020), available as of the date of filing:
<https://www.edworkingpapers.com/sites/default/files/ai20-226-v2.pdf>.

1 *Schools this Fall, supra*; see also Gavin Decl. Gavin Decl. ¶¶ 9–10 (“disabilities []
2 make it extremely difficult” to learn at home without special assistance afforded by in-
3 person instruction).

4 Beyond these overwhelming difficulties, a complete lack of access to schools
5 caused students—especially poor, minority, and disabled students—to suffer myriad
6 other traumas. As the CDC explained, “[s]chools play a critical role in supporting the
7 whole child, not just their academic achievement,” including the “development of so-
8 cial and emotional skills.”⁸ “Psychological, social, and emotional development re-
9 quires children to both spend time away from parents and with peers, in structured
10 settings, such as school.” McDonald Decl. ¶ 7. “Peer relationships provide a unique
11 context in which children learn a range of critical social emotional skills, such as em-
12 pathy, cooperation, and problem-solving strategies.” Lyons-Weiler Decl. ¶ 25. And the
13 safe, connected environment many students experience at school reduces students’ de-
14 pression, anxiety, and thoughts of suicide, *The Importance of Reopening America’s*
15 *Schools, supra*, while “extended periods of confinement” increase these problems,
16 McDonald Decl. ¶ 7; see also Lyons-Weiler Decl. ¶ 29. Indeed, one psychiatrist has
17 seen children “with cognitive developmental delays like autism” “regress[] in years”
18 from the closures, “and many have become violent towards themselves and their par-
19 ents.” McDonald Decl. ¶ 7. One teacher reported that “[m]any of her students expressed
20 ... a marked increase in feelings of depression, isolation, and anxiety.” Cunningham
21 Decl. ¶ 8. Plaintiff Mitrowke’s 7-year-old son was so emotionally affected by the clo-
22 sures he frequently cries in the shower because he misses his friends, and he continues
23 to suffer daily from the isolation. Mitrowke Decl. ¶¶ 2, 5–6.

24 In sum, school closures in the Spring harmed children by denying them the social
25 interactions they need to develop emotionally, psychologically, and spiritually. Giap
26 Decl. ¶ 3.

27
28 ⁸ *The Importance of Reopening America’s Schools this Fall*, Centers for Disease
Control and Prevention (July 23, 2020), available as of the date of filing:
[https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-
schools.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html).

II. Experts Agree that Continued “Distance Learning” this Fall Will have Disastrous Consequences for Children

There is nearly universal agreement that barring in-person learning this Fall will exacerbate the harm done in the Spring. As an initial matter, forcing children to stare at computer screens for extended periods of time has detrimental effects on children’s brains; so much so that prolonged screen time produces imaging results similar to the brains of people on cocaine and alcohol. Sutton Decl. ¶ 8. Reopening schools is thus necessary to prevent children’s brain development from being significantly inhibited. Addison Decl. ¶ 5. And apart from the cognitive setbacks, digital learning has proven to be far less effective than in-person learning. A study by McKinsey & Company concluded that children who receive average-quality online learning this Fall—which many will *not* receive—will lose “three to four months of learning” by January 2021.⁹

This disadvantage will be even starker for minority students, who tend to suffer from the “digital divide”—*i.e.* lack of access to technology—and from a lack of access to childcare.¹⁰ Studies show that “Blacks and Latinos are substantially less likely to have a computer at home than are white, non-Latinos,” with some estimates showing that “70.4 percent of whites have access to a home computer,” while “only 41.3 percent of blacks and 38.8 percent of Latinos have access to a home computer.” *Id.* at 4–5.¹¹ And low-income families “have trouble finding, accessing, and affording” childcare.¹²

⁹ Emma Dorn, et al., *COVID-19 and student learning in the United States: The hurt could last a lifetime*, McKinsey & Company (June 1, 2020), available as of the date of filing: <https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>.

¹⁰ See Robert W. Fairlie, *Race and the Digital Divide*, UC Santa Cruz: Department of Economics, UCSC, at 2 (2014), available as of the date of filing: <https://escholarship.org/uc/item/48h8h99w>.

¹¹ See also Daniel Wu, *Coronavirus shutdowns expose low-income Bay Area students’ struggle to get online*, The Mercury News (Aug. 3, 2020) (“one-quarter of California students lack adequate access to the internet” a “majority of them are Black, Latinx or Native American”), available at <https://www.mercurynews.com/2020/08/03/coronavirus-shutdowns-expose-low-income-students-struggle-to-get-online/>

¹² *Coronavirus Impact on Students and Education Systems*, NAACP (last visited July 28, 2020), available as of the date of filing: <https://naacp.org/coronavirus/coronavirus-impact-on-students-and-education-systems/>.

1 Indeed, the McKinsey study predicted that Blacks and Latinos would suffer a 15 to 20
2 percent greater loss in educational gains than other students. Dorn, *supra*.

3 Moreover, as the American Academy of Pediatrics has explained, “[l]engthy
4 time away from school and associated interruption of supportive services often results
5 in isolation, making it difficult for schools to identify and address important learning
6 deficits as well as child and adolescent physical or sexual abuse, substance use, depres-
7 sion, and suicidal ideation.”¹³ See also Victory Decl. ¶ 6 (“children’s hearing and vision
8 problems are typically identified at school”). Indeed, teachers and staff report more
9 than one-fifth of all child-abuse cases. *The Importance of Reopening America’s*
10 *Schools, supra*. During the school closures, “there has been a sharp decline in reports
11 of suspected maltreatment.” *Id.*; see also Victory Decl. ¶ 6 (30% drop in nationwide
12 abuse reports). However, hospitals have seen an *increase* in hospitalizations of children
13 suffering physical abuse. *The Importance of Reopening America’s Schools, supra*. And
14 according to the Rape, Abuse & Incest National Network (RAINN), once shelter-in-
15 place orders were implemented “half the victims receiving help from the National Sex-
16 ual Assault Hotline were minors.”¹⁴ “Many minors are now quarantined at home with
17 their abuser” while being “cut off from their safety net – the teachers, coaches, and
18 friends’ parents who are most likely to notice and report suspected abuse.” *Id.*

19 Finally, many students will be cut off from an important source of food and
20 physical activity. The CDC reports that “more than 30 million children participate in
21 the National School Lunch Program and nearly 15 million participate in the School
22 Breakfast Program.” *The Importance of Reopening America’s Schools, supra*; see also
23 *AAP Guidance, supra* (“Beyond the educational impact and social impact of school
24 closures, there has been substantial impact on food security and physical activity for
25

26 ¹³ *COVID-19 Planning Considerations: Guidance for School Re-entry*, American
27 Academy of Pediatrics (last visited July 28, 2020) (hereinafter *AAP Guidance*), availa-
28 ble as of the date of filing: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

¹⁴ *For the First Time Ever, Minors Make Up Half of Visitors to National Sexual Assault Hotline*, RAINN (April 16, 2020).

1 children and families.”) The state has announced no plans to replace this essential so-
2 cial service for needy children.

3 Given the substantial harms caused by school closures, the World Health Organi-
4 zation (WHO) and US Centers for Disease Control (CDC) have each issued guidance
5 on school opening emphasizing that school opening decisions should be based on the
6 “[c]urrent understanding about COVID-19 transmission and severity in children,” the
7 “[l]ocal situation and epidemiology of COVID-19 where the school(s) are located,”
8 and the “[s]chool setting and ability to maintain COVID-19 prevention and control
9 measure.” Bhattacharya Decl. ¶¶ 16-18. The WHO guidance explicitly recommends
10 the consideration of “what harm might occur due to school closure (e.g. risk of non-
11 return to school, widening disparity in educational attainment, limited access to meals,
12 domestic violence aggravated by economic uncertainties etc.), and the need to maintain
13 schools at least partially open for children whose caregivers are ‘key workers’ for the
14 country.” *Id.* Likewise, the CDC guidance suggests keeping schools open even if there
15 is moderate community spread of SARS-CoV-2 infection, with school closures limited
16 only to communities with “substantial” community spread. *Id.* ¶ 18.

17 **III. The Data Show that Children Are Unlikely to Spread the Coronavirus**
18 **or Suffer Adverse Results from COVID-19, and Many European**
19 **Schools Reopen Without Causing a Resurgence of Coronavirus**

20 The CDC now estimates that the population-wide death rate of COVID-19 is
21 0.26%. Lyons-Weiler Decl. ¶ 4. However, the most recent studies “indicate that the
22 fatality rate for those under age 70 is 0.04%, less than or equal to seasonal influenza.”
23 Atlas Decl. ¶ 9. Of particular relevance here, “younger, healthier people have *virtually*
24 *zero* risk of death from [COVID-19].” *Id.* ¶ 11. In fact, as of July 30, “[n]o child under
25 age 18 in the state of California ha[d] died due to infection from the coronavirus since
26 tracking began on February 1, 2020[.]” McDonald Decl. at ¶ 5.¹⁵ The CDC reports a
27 total of 226 COVID-19 deaths in persons under 24 across the US, out of a total of
28

¹⁵ California reported the first death of a minor from COVID-19—a teenager with “un-
derlying health conditions”—on July 31, 2020. *See* Sophia Bollag, *California reports*
the first death of a teen from COVID-19, THE SACRAMENTO BEE (July 31, 2020).

1 26,808 deaths for that age group over the same period from all causes. Lyons-Weiler
2 Decl. ¶ 6. By comparison, influenza and pneumonia not attributed to COVID-19 led to
3 966 deaths over the same period in persons aged 0 to 24. *Id.*

4 And young, healthy people are not just surviving the virus; they have “virtually
5 no risk of serious illness from COVID-19” either. Atlas Decl. ¶ 11. As the CDC has
6 concluded, “children who become infected are [] ‘far less likely to suffer severe symp-
7 toms.’” *Id.* ¶ 13 (citing July 2020 CDC study); *see also* Victory Decl. ¶ 4 (“Children are
8 essentially at zero risk of contracting COVID-19 or becoming ill from the virus if
9 schools were to reopen.”). In fact, many “[s]cientists now believe children may be
10 largely immune to SARS-CoV-2 infection.” Lyons-Weiler Decl. ¶ 7.

11 Transmission rates among children and their teachers are also nominal. “[C]hil-
12 dren are unlikely to be a vector” of COVID 19, Victory Decl. ¶ 5, meaning they “do
13 not pose a severe risk of transmission to adults.” Lyons-Weiler Decl. ¶ 4. “Scientific
14 studies from all over the world [] suggest that COVID-19 transmission among children
15 in schools is low.” Atlas Decl. ¶ 15. For example, the “CDC has published a report on
16 the age distribution of transmission to new cases in South Korea, which found that less
17 than 1% of new transmission detected in the study were attributed to children aged 0
18 to 10 years; similarly, less than 1% of new transmissions were from children aged 11
19 to 20 years.” Lyons-Weiler Decl. at ¶ 14. The most important evidence on childhood
20 spread of the disease comes from a study conducted in Iceland and published in the
21 New England Journal of Medicine, which concluded that, “even if children do get in-
22 fected, they are less likely to transmit the disease to others than adults.”¹⁶ The research-
23 ers did not find “a single instance of a child infecting parents.” *Id.*

24 Presently, there are “22 countries that have their schools open without social
25 distancing, mask wearing, and other measures, yet these countries have not experi-
26 enced an increase in COVID-19 cases or spread of the virus among children.” Victory
27 Decl. ¶ 8; McDonald Decl. ¶ 6. Even more significantly, “these countries have not seen
28

¹⁶ Daniel F. Gudbjartsson, Ph.D., Agnar Helgason, Ph.D., et al., *Spread of SARS-CoV-2 in the Icelandic Population*, The New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMoa2006100> (June 11, 2020).

1 transmission of the virus between children and their parents or elderly grandparents.”
2 Victory Decl. ¶ 8. On the contrary, one July 2020 study from the University of Dresden
3 concluded that “children appeared to act as a barrier to transmission.” McDonald Decl.
4 ¶ 6. Thus, it is “abundantly clear that children under twelve years of age are not trans-
5 mitting in schools.” Lyons-Weiler Decl. ¶ 23.

6 **IV. Although School Districts in California Begin Preparing to Reopen**
7 **Safely for the 2020-21 School Year, The California Department of Pub-**
8 **lic Health Orders All Schools to Remain Closed, Except for Schools in a**
9 **Small Number of Counties**

10 In light of the obvious deficiencies of remote learning and the low risk of coro-
11 navirus infection among children, teachers have diligently prepared since spring to re-
12 turn to schools. In Palos Verdes, for example, home to approximately 11,000 students,
13 the school district established a reopening committee comprised of 40 staff members,
14 45 medical professionals, 30 elementary parents, and 39 high school parents. Brach
15 Decl. ¶¶ 5, 10. The district purchased personal protective equipment and implemented
16 a mitigation strategy, including such tactics as staggered time arrivals, designated en-
17 trance and exit routes, masks or face shields for teachers and students, and hand sani-
18 tizing stations. *Id.* ¶ 12; *see also* Reardon Decl. ¶¶ 8–9 (describing Capistrano Unified
19 School District encompassing 48,000 students plans to reopen). These mitigation strat-
20 egies are consistent with “commonly accepted public health definitions of safe operat-
21 ing that minimize [health] risks” in schools. Kaufman Decl. ¶ 16. Indeed, many schools
22 “are going above and beyond” by making “huge investments of effort and money to
23 comply with the CDC and health directives” to ensure a safe learning environment.
24 Hackett Decl. ¶ 6.

25 On July 17, 2020, Governor Newsom announced a framework for reopening
26 schools. *See* Ex. 3 to Dhillon Decl. This framework is mandatory under Executive Or-
27 der N-60-20, issued May 4, 2020, which ordered “[a]ll residents ... to continue to
28 obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.” Ex. 1 to Dhillon Decl. Under the Governor’s framework, reopening hinges

1 on not being on the county monitoring list for two weeks. *Id.* (“Schools and school
2 districts may reopen for in-person instruction at any time if they are located in a local
3 health jurisdiction (LHJ) that has not been on the county monitoring list within the
4 prior 14 days.”). “The state places a county on this list if it meets at least one of six
5 criteria related to the number of COVID-19 PCR tests conducted or positivity rate,
6 number of cases and growth in cases, growth in hospitalizations, or inadequate hospital
7 ICU or ventilator capacity.”¹⁷ “None of these criteria are related to the risks to children
8 or to teachers that arise from reopening schools for in-person teaching.” Bhattacharya
9 Decl. ¶ 20.

10 Yet while the Governor has forbidden in-person education, other, similar oper-
11 ations are permitted in counties on the monitoring list, including childcare facilities
12 and day camps.¹⁸ Indeed, many of the school districts barred from providing in-person
13 education are now offering full-time daycare *on school campuses* for several hundred
14 dollars per-month per-child. Petrilla Decl. ¶¶ 13-14; Ex. 16; Dhillon Decl. ¶ 7. Conse-
15 quently, while children are now unable to learn from teachers in the classroom, parents
16 can pay their school district for the privilege of having their children sit in the *very*
17 *same classrooms* with dozens of other children and receive “distance learning support,”
18 whatever that may mean. Ex. 16.

19 **v. Plaintiffs Have Been and Will Continue to be Harmed by the**
20 **Governor’s Mandatory School Closures**

21 Plaintiffs are a student and several parents adversely impacted by the school clo-
22 sures. Ms. Sephton, for example, has two children, one of whom is a toddler and the
23 other a four-year-old. Sephton Decl. ¶¶ 2–3. Since she must take care of her toddler
24 during the day, “distance learning mode is really no education at all” for her oldest
25

26 ¹⁷ See *COVID-19 Update Guidance: Child Care Programs and Providers*, Cal. Dep’t
27 of Pub. Health (July 17, 2020), available as of the date of filing:
28 <https://files.covid19.ca.gov/pdf/guidance-childcare--en.pdf>.

¹⁸ See *COVID-19 Update Guidance, supra*; *COVID-19 Interim Guidance: Day
Camps*, Cal. Dep’t of Pub. Health (July 17, 2020), available as of the date of filing:
<https://files.covid19.ca.gov/pdf/guidance-daycamps.pdf>.

1 child. *Id.* ¶ 5. Ms. Walsh faces a similar situation with her two children. “[W]hen the
2 school was shut down and education was moved to distance learning, what was pro-
3 vided was not learning in any sense of the word.” Walsh Decl. ¶ 4. Ms. Ruiz is the
4 mother of two sons who both have special needs. “Since school was shut down,” her
5 son has “not been provided with any of his services that are required by his [individu-
6 alized education program].” Ruiz Decl. ¶ 5. Moreover, like many other similarly situ-
7 ated children, “[d]ue to his disabilities, Zoom classes are a useless form of education.”
8 *Id.* ¶ 6. Even children without special needs are dropping basic skills as Mr. Ziegler
9 attests. “As a result of [his] daughter’s school moving to distance-learning, [he] wit-
10 nessed [his] daughter ... fall[] behind in schooling.” Ziegler Decl. ¶ 3. Ms. Beaulieu
11 experienced the same. For her, it was “extremely concerning that [her] son received no
12 Zoom instruction at all from his math teacher the entire time that the school was
13 closed.” Beaulieu Decl. ¶ 8. In addition to academic shortfalls, unnecessary distance
14 learning has caused “behavioral issues” for Mr. Petrilla’s young boy. Petrilla Decl. ¶ 6.
15 Mr. Fleming’s daughter “has worked tirelessly to ... attend her dream college” but may
16 now miss out because of the negative impact on her grades and lost scholarship oppor-
17 tunities. Fleming Decl. ¶ 11.

18 As a result of the Governor’s order, California is currently the *only* state in
19 America with state-level mandates prohibiting school districts from holding in-person
20 classes—a decision affecting millions of students, from kindergarten through high
21 school. Atlas Decl. ¶ 7.

22 LEGAL STANDARD

23 A plaintiff seeking a temporary restraining order and/or preliminary injunction
24 “must establish that he is likely to succeed on the merits, that he is likely to suffer
25 irreparable harm in the absence of preliminary relief, that the balance of equities tips
26 in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def.*
27 *Council, Inc.*, 555 U.S. 7, 20 (2008). A plaintiff need not show that he will prevail at
28 trial, but only that he is “likely” to prevail. *Id.*; see also *Leiva-Perez v. Holder*, 640 F.3d
962, 966 (9th Cir. 2011). Under the Ninth Circuit’s sliding-scale approach, as long as

1 the plaintiff demonstrates the requisite likelihood of irreparable harm and shows that
2 an injunction is in the public interest, a preliminary injunction can still issue so long as
3 serious questions going to the merits are raised and the balance of hardships tips sharply
4 in the plaintiff's favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–
5 35 (9th Cir. 2011). A “serious question” is one on which the movant “has a fair chance
6 of success on the merits.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d
7 1415, 1421 (9th Cir. 1984) (internal quotation marks and citation omitted).

8 ARGUMENT

9 I. THERE IS A STRONG LIKELIHOOD THAT PLAINTIFFS WILL 10 SUCCEED ON THE MERITS

11 A. Defendants' Ban on In-Person Instruction at Every School on the 12 State's Monitoring List Violates the Fourteenth Amendment's Due 13 Process and Equal Protection Clauses.

14 To determine whether a government act violates the substantive component of
15 the Due Process Clause or the Equal Protection Clause, courts begin “by determining
16 the proper level of scrutiny to apply for review.” *Wright v. Incline Vill. Gen. Improve-*
17 *ment Dist.*, 665 F.3d 1128, 1141 (9th Cir. 2011). “[Courts] apply strict scrutiny if the
18 governmental enactment ‘targets a suspect class or burdens the exercise of a funda-
19 mental right.’” *Id.* An act passes strict scrutiny only if it “is narrowly tailored to serve a
20 compelling governmental interest.” *Id.* “If the [act] does not concern a suspect or semi-
21 suspect class or a fundamental right, [courts] apply rational basis review and simply
22 ask whether the ordinance is rationally-related to a legitimate governmental inter-
23 est.” *Id.*

24 1. The Order Unlawfully Infringes Californians' Fundamental (Or, At 25 Least, Quasi-Fundamental) Right to Education.

26 The Fourteenth Amendment protects substantive rights not expressly enumer-
27 ated within the Bill of Rights. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2587
28 (2015); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973). In particular, “the Due Process
Clause specially protects those fundamental rights and liberties which are, objectively,

1 deeply rooted in this Nation’s history and tradition, and implicit in the concept of or-
2 dered liberty, such that neither liberty nor justice would exist if they were sacrificed.”
3 *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal citations and quota-
4 tion marks omitted). Courts must “exercise reasoned judgment in identifying interests
5 of the person so fundamental that the State must accord them its respect”; “[h]istory
6 and tradition guide and discipline this inquiry but do not set its outer boundaries.”
7 *Obergefell*, 135 S. Ct. at 2598 (citation omitted).

8 Historical analysis confirms that, although the Supreme Court has not (yet) so
9 held, the right to a basic education is “deeply rooted in this Nation’s history and tradi-
10 tion,” stretching back at least as far as ratification of the Fourteenth Amendment and
11 is therefore a fundamental right. More than three-quarters of States recognized an af-
12 firmative right to public school education in 1868, the year that the Fourteenth Amend-
13 ment was ratified. Steven G. Calabresi & Michael W. Perl, *Originalism and Brown v.*
14 *Board of Education*, 2014 Mich. St. L. Rev. 429, 449–63 (cataloging State constitu-
15 tional provisions as of 1868). In particular, 30 states (*i.e.*, 81% of the states at the time)
16 had a constitution that “said explicitly that the state legislature ‘shall’ (*i.e.*, it has the
17 ‘duty’ and therefore it ‘must’) establish a system of free public schools.” Calabresi &
18 Perl, 2014 Mich. St. L. Rev. at 451–54 (listing these 30 states and quoting their consti-
19 tutional provisions). Another three states’ constitutions “arguably conferred a right to
20 a free public education,” whereas only four “states’ constitutions in 1868 did not spe-
21 cifically mention education or the establishment of a system of free public schools.”
22 *Id.* at 455–60.

23 State-provided or -permitted education is “implicit in the concept of ordered lib-
24 erty, such that neither liberty nor justice would exist if they were sacrificed.” *Glucks-*
25 *berg*, 521 U.S. at 720–21 (internal quotation marks omitted). To begin with, the foun-
26 dation of American liberty is our *written* Constitution, under which laws must be pub-
27 lished in *writing* before they may be executed to constrain liberty. Thus, texts lie at the
28 heart of our ordered liberty. Basic learning is also a prerequisite for the activities that
form the basis of citizenship in our republic, including “knowledgeable and informed

1 voting,” comprehending ballot initiatives, and engaging in political speech and dis-
2 course. *See also Citizens United v. FEC*, 558 U.S. 310, 339–40 (2010); *Bd. of Educ. v.*
3 *Pico*, 457 U.S. 853 (1982) (“[T]he Constitution protects the right to receive information
4 and ideas.” (internal quotation marks omitted)). And lack of basic reading and writing
5 skills precludes individuals from constitutionally protected access to the justice system.
6 *Id.*; *see also, e.g., Griffin v. Illinois*, 351 U.S. 12, 19–20 (1956); *Boddie v. Connecticut*,
7 401 U.S. 371, 382–83 (1971).

8 Finally, even if education is not a “fundamental” right, it is at least a “quasi”
9 fundamental right subject to intermediate scrutiny. It is well settled that, under *Plyler*
10 *v. Doe*, “infringements on certain ‘quasi-fundamental’ rights, like access to public ed-
11 ucation, also mandate a heightened level of scrutiny.” *United States v. Harding*, 971
12 F.2d 410, 412 n.1 (9th Cir. 1992) (emphasis added).

13 The Order undoubtedly infringes the fundamental or quasi-fundamental right to
14 a basic education. Even assuming that the state has a compelling interest in preventing
15 the spread of COVID-19, the Governor’s orders are not narrowly tailored to advance
16 that interest. Like Texas in *Plyer*, California here is functionally excluding Plaintiffs—
17 including minority children and families of limited economic means—from the oppor-
18 tunity to attain an education. But unlike in *Plyer*, the schoolhouse doors are not even
19 open to Plaintiffs. California hopes that digital learning will provide an equivalent basic
20 minimum education, but this is fantasy. The evidence shows that distance learning will
21 effectively preclude children from receiving a basic minimum education because (1)
22 many students have no access to the internet, (2) even those who do will receive a
23 significantly impaired education, and (3) truancy will run rampant. *See supra* pp. 4-9,
24 12-13 (describing evidence showing extreme hardship from online learning that ex-
25 cludes children from an education); *see also* Keech Decl. ¶ 14 (“[A]ny model of live
26 daily virtual remote instruction ... is so lacking” that it “largely fails to meet [students’]
27 basic educational needs.”).

28 For example, as extensively documented in the supporting declarations, when
school moved online this Spring, classroom participation evaporated. *See* Cunningham

Decl. ¶ 5 (“At the beginning of distance learning in March, I had 42% participation by my students; by the end, I had 4 total students participate, or 2%.”). This is because many “students lacked sufficient access to wifi and computers to be able to participate in distance learning.” *Id.* This is particularly true in low-income families and communities of color. “Nearly 50% of low-income families and 42% of families of color lack sufficient devices at home to access distance learning.”¹⁹ As a result, “up to one-third of high school students in the Los Angeles schools system never checked in with their teachers once.” Dr. Hamilton Decl. ¶ 6.

Stanford University comprehensively studied the impact of virtual learning models and concluded that students were behind their in-person peers to an extent reflecting 180 fewer days of instruction in math and 72 fewer days of instruction in reading. *Id.* (attaching study). This study comports with a recent analysis from Brown University, in which the researchers concluded that “many teachers have had no contact at all with a significant portion of students ... only 39% of teachers reported interacting with their students at last once a day, and most teacher-student communication occurred over email.” Megan Kuhfeld, *supra*, at 9. And this is to say nothing of those children requiring special education. “When school campuses are closed and education is moved entirely online, many of the guarantees and key tenants afforded to special needs children” under normal circumstances “collapse.” Walker Decl. ¶ 5; *see also* Reardon Decl. ¶ 10 (“A prolonged shutdown of schools will have significant negative consequences for children with special needs and handicapping conditions.”).

Consider also the social and emotional struggle of children trying to learn on their own. Many students have “expressed ... a marked increase in feelings of depression, isolation, and anxiety” as a result of the “school closures.” Cunningham Decl. ¶ 8. And the “students most greatly impacted by the shutdown [are] not the middle and upper class students, but the lower income and minority students who already suffer

¹⁹ Megan Kuhfeld, *et al.*, *Project the potential impacts of COVID-19 school closures on academic achievement*, ANNENBERG INSTITUTE AT BROWN UNIVERSITY, at 10 (May 2020), available as of the day of filing: <https://www.edworkingpapers.com/ai20-226>.

1 from an ever-widening achievement gap.” *Id.* For this reason and others, child psy-
2 chologists have sounded the alarm on the mental health risks of locking down school.
3 Just last month, more than 120 specialists in psychology, mental health, and neurosci-
4 ence concluded that school closures are a “national disaster” because the “impact of the
5 lockdown on learning is incredibly harmful, creating a huge attainment gap, and the
6 most vulnerable and marginalized in society ... are likely to be most affected by this.”²⁰

7 Studies demonstrate why children need to be physically present in schools. Late
8 last month the American Academy of Pediatrics “strongly” recommended that “the
9 coming school year should start with a goal of having students physically present in
10 school.” *AAP Guidance, supra*, ¶ 3. This same Academy noted the health benefits that
11 would otherwise be lost, such as “child . . . development,” “social and emotional skills,”
12 “reliable nutrition,” physical/speech and mental health therapy,” and “opportunities for
13 physical activity” if children are unnecessarily forced to attend school virtually. *Id.* ¶ 1.
14 This comports with the CDC’s recent report, which detailed crucial characteristics that
15 would be lost if in-person schooling is not held, including “development of social and
16 emotional skills,” “a safe environment for learning,” “nutritional needs,” and “physical
17 activity.” *The Importance of Reopening America’s Schools this Fall, supra*. In short,
18 the order undeniably infringes the fundamental (or quasi-fundamental) right to educa-
19 tion, subjecting it to heightened scrutiny.

20 The order violates Defendants’ due process rights regardless whether it is sub-
21 ject to strict scrutiny or intermediate scrutiny. The Governor’s order, which closes
22 every school in 38 counties, is plainly not the least restrictive means of arresting the
23 spread of COVID-19 because children are neither sickened by the disease nor transmit
24 it. *See supra*, pp. 9-11. Nor has the Governor even attempted to narrowly tailor his
25 response to the purported problem—e.g., the spread of COVID-19 in schools.

26
27
28 ²⁰ Professor Ellen Townsend, *et al.*, *Open letter to Gavin Williamson Secretary of State for Education concerning the neglect of children and adolescents in government policy during the UK lockdown*, available as of the date of filing:
<https://drive.google.com/file/d/1zytNGOtnySo-YnyU7iazJUVQ0fS2PC1Z/view>.

1 **2. The Order Violates the Equal Protection Clause, Even under**
2 **Rational Basis Review.**

3 The Governor’s order prohibits schools in some counties—those on the state’s
4 monitoring list—from holding in-person classes, while allowing schools in other coun-
5 ties to return to the classroom. Thus, while students in Shasta County can resume in -
6 person learning this Fall, similarly situated students in Los Angeles County, Yolo
7 County, and 36 other counties cannot. This unequal treatment, which will only become
8 more pronounced as some counties manage to get off the state’s monitoring list, is not
9 even “rationally related” to the state’s interest in combatting COVID-19. *City of New*
10 *Orleans v. Dukes*, 427 U.S. 297, 303 (1976)

11 To begin, whether a county is on the monitoring list has *nothing* to do with the
12 prevalence of COVID-19 at schools, or even among children. Instead, a county is
13 placed on the monitoring list based on overall case rates and hospitalization rates. The
14 order simply assumes that it is more dangerous to conduct in-person classes in counties
15 where COVID-19 continues to spread among the general population than in other coun-
16 ties. But that assumption could not “*reasonably* be conceived to be true by the [Gov-
17 ernor]” for several reasons. *Vance v. Bradley*, 440 U.S. 93, 111 (1979). *First*, as Plain-
18 tiffs have explained, the scientific evidence confirms that children are not at risk of
19 being sickened or killed by COVID-19. *See ante* at 9-11. Indeed, *only one* minor in
20 California has died from COVID-19 since the virus began spreading in January and
21 February. *See supra*, fn.13. Children also account for a vanishingly small percentage
22 of total hospitalizations. McDonald Decl. ¶5. Children in hard-hit areas such as Los
23 Angeles are thus just as unaffected by the virus as children in rural parts of the state.
24 And because children do not play a significant role in transmitting the virus to adults,
25 Lyons-Weiler Decl. ¶23, teachers in Orange County are just as safe as teachers in any
26 other county. Indeed, they are significantly safer than essential workers in many other
27 professions who have daily contact with large numbers of adults.

28 *Second*, even the Governor apparently does not believe that allowing children to
congregate in classrooms presents a grave danger of contagion, because he has allowed
thousands of daycare facilities and camps to reopen, even in counties on the monitoring

list.²¹ In a bizarre twist, school districts are now offering full-time childcare (for a hefty fee) at the very schools that are now prohibited from providing in-person education. Petrilla Decl. ¶¶13-14; Ex. 16; Dhillon Decl. ¶ 7. There is no reasonable basis for believing that daycare centers and camps are safe but elementary schools are not. Nor is there any reasonable basis to believe that children can safely spend the day at school in “childcare” but cannot safely receive in-person education at that same school. Although “a government need not provide a perfectly logical solution to regulatory problems, it cannot hope to survive *rational* basis review by resorting to irrationality.” *Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008).

In short, the order fails rational basis because in the name of stopping the spread of COVID-19 and preventing hospitals from being overwhelmed, it prohibits gatherings by the one population cohort that does not spread virus and is hardly ever hospitalized by it. Although the state undoubtedly has broad police powers with which to address public health concerns, it cannot enact a discriminatory regulation that lacks any rational connection to the stated goal—as it has done here, with devastating effect.

B. The Order Violates Title VI’s Implementing Regulations Because it Disparately Burdens Racial Minorities

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. And, under Title VI regulations, Defendants may not enforce laws causing a disparate impact on racial minorities with regard to federally funded public programs, including California’s schools. 28 C.F.R. § 42.104(b)(2).²² “The basis for a successful disparate impact

²¹ See *fn* 14-15.

²² Section 1983 creates a private right of action against officials who deprive plaintiffs of federal rights while acting under color of state law. See 42 U.S.C. § 1983. Plaintiffs can thus rely on § 1983 here. See *Alexander v. Sandoval*, 532 U.S. 275, 300 (2001) (Stevens, J., dissenting). Plaintiffs recognize, however, that Ninth Circuit precedent suggests that § 1983 statute cannot be used by private parties to vindicate a disparate-impact claim under Title VI’s regulations. See *Save Our Valley v. Sound Transit*, 335

1 claim involves a comparison between two groups—those affected and those unaffected
2 by the facially neutral policy.” *Darensburg v. Metro. Transp. Comm’n*, 636 F.3d 511,
3 519–20 (9th Cir. 2011). “An appropriate statistical measure must therefore take into
4 account the correct population base and its racial makeup.” *Id.*

5 Although virtually all students here will be “affected” by the Governor’s order,
6 it will inflict *especially* devastating harm on those students whose socioeconomic cir-
7 cumstances do not allow for distance learning *at all* or who are enrolled in schools
8 whose distance-teaching efforts have proven wholly inadequate. Impoverished, vulner-
9 able families in California are disproportionately minorities.²³ In addition to struggling
10 with distance learning, many of these low-income families also do not receive the ser-
11 vices required by their IEPs and are burdened by the additional costs to obtain private
12 assistance or instruction. (See Ruiz Decl. ¶¶2, 5, 6, 9, 10,; *see also* Hawkins Decl. ¶¶3,
13 10, 11; Bema Decl. ¶¶4, 6, 8, 9, 12; Ramirez Decl. ¶¶5, 6, 7, 8, 15).

14 **C. Defendants’ Actions Violate Federal Laws Requiring Equal Educa-**
15 **tional Access for Disabled Students**

16 **1. The Order Violates the Individuals with Disabilities Education Act.**

17 The Individuals with Disabilities Education Act (IDEA) requires States to pro-
18 vide disabled students with programming to meet their many needs. A State that re-
19 ceives federal funding under the IDEA “must provide a free appropriate public educa-
20 tion—a FAPE, for short—to all eligible children.” *Endrew F. ex rel. Joseph F. v. Doug-*
21 *las Cty. Sch. Dist. RE-I*, 137 S. Ct. 988, 993 (2017) (citing 20 U.S.C. § 1412(a)(1)).
22 “A FAPE, as the Act defines it, includes both ‘special education’ and ‘related ser-
23 vices.’” *Id.* at 994 (citing 20 U.S.C. § 1401(9)). “‘Special education’ is ‘specially de-
24 signed instruction ... to meet the unique needs of a child with a disability’; ‘related
25 services’ are the support services ‘required to assist a child ... to benefit from’ that

26 F.3d 932 (9th Cir. 2003). If necessary, Plaintiffs intend to ask the Ninth Circuit to re-
27 consider its position en banc, and thus preserve the argument here.

28 ²³ See Just the Facts: Poverty in California, Public Policy Institute of California, July
2020, <https://www.ppic.org/publication/poverty-in-california/> (“22.9% of Latinos
lived in poverty, compared to 18.% of African Americans, 15.9% of Asian
Americans/Pacific Islanders, and 12.8% of whites.

1 instruction.” *Id.* (citing 20 U.S.C. §§ 1401(26), (29)). The instruction and services pro-
2 vided by school districts must meet each student’s “academic, social, health, emotional,
3 communicative, physical and vocational needs.” *Ashland Sch. Dist. v. Parents of Stu-*
4 *dent E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009). To meet these needs, a school district’s
5 services include “‘developmental, corrective, and other supportive services,’ such as
6 ‘psychological services, physical and occupational therapy, recreation ... [and] social
7 work services.’” *Id.* (citing 20 U.S.C. § 1401(26)).

8 Providing the IDEA’s mandatory “special education” and “related services” re-
9 quires in-person education for nearly all disabled students. To begin, students with dis-
10 abilities suffer “significant[ly]” from the lack of in-person instruction. *See AAP Guid-*
11 *ance, supra*. Additionally, disabled students require more services than simply in-per-
12 son instruction, including services from specialists such as occupational therapists, be-
13 havior specialists, and counselors. *See* 20 U.S.C. § 1401(26); *e.g.*, *Price v. Common-*
14 *wealth Charter Academy – Cyber School*, 2019 WL 4346014, at *3, *5 (E.D. Penn.
15 Sept 12, 2019); *K.B. on behalf of S.B. v. Katonah Lewisboro Union Free Sch. Dist.*,
16 2019 WL 5553292, at *2 (S.D.N.Y. Oct. 28, 2019). Indeed, “[e]ducation for [] students
17 with disabilities often differs dramatically from ‘conventional’ [] education.” *E.R.K.*
18 *ex rel. R.K. v. Hawaii Dep’t of Educ.*, 728 F.3d 982, 990 (9th Cir. 2013) (citation omit-
19 ted). To meet these needs, and the requirements of the IDEA, school districts must be
20 able to provide at least some in-person services.

21 In addition to these general requirements, “[a] State covered by the IDEA must
22 provide [each] disabled child with [] special education and related services ‘in con-
23 formity with the [child’s] individualized education program,’ or IEP.” *Endrew F.*, 137
24 S. Ct. at 994 (citing 20 U.S.C. § 1401(9)(D)). An IEP must be “reasonably calculated
25 to enable a child to make progress appropriate in light of the child’s circumstances[.]”
26 *Id.* at 999–1000 (citation omitted). And “a material failure” by the school “to imple-
27 ment an IEP violates the IDEA.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J,
28 502 F.3d 811, 822 (9th Cir. 2007) (emphasis omitted). “A material failure occurs when

1 there is more than a minor discrepancy between the services a school provides to a
2 disabled child and the services required by the child's IEP.” *Id.*

3 The Governor’s prohibition of all in-person instruction in counties on the state’s
4 monitoring list will make it impossible for schools in the affected counties to imple-
5 ment hundreds of thousands of IEPs, including those of Plaintiffs’ children. Moreover,
6 without the physical presence of teachers who see these children on a daily basis, many
7 children will not be adequately protected from domestic abuse because teachers often
8 cannot see the signs of abuse via Zoom—if the child even attends the remote teaching
9 sessions. Golden Decl. ¶ 7. Although local health officers may grant waivers to ele-
10 mentary schools, this waiver exception applies only to elementary schools and requires
11 consultation with CDPH. Moreover, the criteria to obtain a waiver is nearly impossible
12 to satisfy. Cicchetti Decl. ¶ 14.

13 This complete failure to provide services to students with disabilities violates the
14 IDEA. Moreover, failure to provide any in-person services will cause uncounted “ma-
15 terial failure[s]” to implement the IEPs of disabled students. *See Van Duyn*, 502 F.3d
16 at 822.

17 **2. The Order Violates the Americans with Disabilities Act (ADA) and**
18 **Section 504 of the Rehabilitation Act.**

19 Both the Americans with Disabilities Act (ADA) and the Rehabilitation Act re-
20 quire that public programs provide the same benefits to persons with disabilities pro-
21 vided to those without. “Section 12132 of the ADA precludes (1) exclusion from/denial
22 of benefits of public services, as well as (2) discrimination by a public entity.” *Crowder*
23 *v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir. 1996). This statute “was expressly modeled
24 after § 504 of the Rehabilitation Act.” *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135
25 (9th Cir. 2001), *as amended on denial of reh’g* (Oct. 11, 2001). “To establish a prima
26 facie case of disability discrimination under the ADA, a plaintiff must prove that (1)
27 he is an individual with a disability; (2) he is otherwise qualified to participate in or
28 receive the benefit of some public entity’s services, programs, or activities; (3) he was

1 either excluded from participation in or denied the benefits of the public entity's ser-
2 vices, programs, or activities, or was otherwise discriminated against by the public en-
3 tity; and (4) such exclusion, denial of benefits, or discrimination was by reason of [his]
4 disability.” *E.R.K.*, 728 F.3d at 992 (citation omitted). And to establish a violation of
5 the Rehabilitation Act, the plaintiff must prove these same elements and “must also
6 prove that the relevant program receives federal financial assistance.” *Id.* And any
7 plaintiff “who requires an accommodation to meet a program’s essential eligibility re-
8 quirements can establish the ‘otherwise qualified’ element of the prima facie case only
9 by producing ‘evidence of the existence of a reasonable accommodation’” *Id.*

10 Here, Plaintiffs have demonstrated a reasonably likelihood of proving a prima
11 facie case of discrimination under the ADA and Section 504. California receives fed-
12 eral funding for education, including under the IDEA to provide special education to
13 disabled students.²⁴ Plaintiff Z.R. is an individual with a disability who is otherwise
14 qualified to receive an education and can do so with a reasonable accommodation. Ruiz
15 Decl. ¶¶ 4-15. Given the inability of schools to provide in-person education under the
16 Order, Z.R. has been denied the benefits of a public education. *See pp.* 34-35. And this
17 denial is due to his disability: without his disability, Z.R. would be able to participate
18 more fully in remote learning. *See supra pp.* 34-35.

19 **II. PLAINTIFFS AND THEIR CHILDREN FACE IMMINENT IRREP-** 20 **ARABLE HARM ABSENT IMMEDIATE INJUNCTIVE RELIEF**

21 As Plaintiffs and their experts have explained, if the Governor’s orders are not
22 enjoined, millions of California children will be deprived of an adequate education.
23 Hundreds of thousands will suffer collateral harm, including abuse, depression, and
24 hunger. There is no adequate legal remedy for these “intangible injuries.” *Arizona*
25 *Dream Act Coalition v. Brewer*, 757 F. 3d 1053, 1068 (9th Cir. 2014) (intangible inju-
26 ries “qualify as irreparable harm”). Moreover, deprivation of constitutionally protected
27 rights—including the rights to due process and equal protection—inexorably creates
28 irreparable harm. *See Elrod v. Burns* 427 U.S. 347, 373 (1976).

²⁴ Available as of the date of filing: <https://www.cde.ca.gov/sp/se/as/leagrnts.asp>.

Emergency relief is warranted because schools are scheduled to begin the Fall term in a matter of days or weeks. Nearly every school district in the affected counties is scheduled to begin classes no later than August 25, 2020, and many schools are scheduled to begin even earlier. Dhillon Decl. ¶ 6. Indeed, many private schools, including those attended by children of named Plaintiffs, will resume classes in a matter of days. *Id.* Without a TRO and preliminary injunction, numerous schools will be forced to scrap their plans for in-person schooling and consign students to the failed “distance learning” model. California’s children have already lost more three months of valuable education—they cannot afford to lose any more time in the classroom.

III. THE REMAINING FACTORS WEIGH IN FAVOR OF GRANTING INJUNCTIVE RELIEF

Where the government is the opposing party, the balance of harms and the public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the Governor’s forced school closures violates Plaintiffs’ Fourteenth Amendment rights, and “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod*, 427 U.S. at 373). Moreover, because children are neither at risk from COVID-19 nor a significant source of transmission to adults, no adverse “public consequences” would result from issuing the TRO and preliminary injunction. *Winter*, 555 U.S. at 24 If schools remain closed, however, not only will children suffer, but thousands of parents will be forced to quit their jobs or reduce their hours, harming their families, the businesses where they work, and the entire economy. Faced with such “preventable human suffering,” the Ninth Circuit has had “little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

CONCLUSION

For the foregoing reasons, Plaintiffs’ Application should be granted.

1
2 Date: August 3, 2020

Respectfully submitted,
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IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION – FIRST STREET COURTHOUSE

MATTHEW BRACH, et al.,
 Plaintiffs,
 v.
**GAVIN NEWSOM, in his official
 capacity as the Governor of
 California, et al.,**
 Defendants.

Case No. 2:20-cv-06472 SVW (AFMx)

**MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 OPPOSITION TO APPLICATION
 FOR TEMPORARY
 RESTRAINING ORDER (Dkt. 28)**

Date: August 17, 2020
 Time: 1:30 p.m.
 Courtroom: 10A - Telephonic
 Judge: The Honorable Stephen
 V. Wilson
 Trial Date: Not set
 Action Filed: 7/21/2020

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INTRODUCTION

The State of California, like the rest of the world, is combatting a public health emergency of a magnitude unseen for at least a century. SARS-CoV-2, the novel coronavirus causing the novel coronavirus disease-2019 (COVID-19) that is spreading rapidly throughout the country, has infected more than 4.6 million Americans and killed over 150,000, and those numbers grow on a daily basis. COVID-19 has devastated the lives of its victims and their families. It has imposed significant costs and burdens on Californians who are all making sacrifices in the face of this unprecedented challenge.

Against this backdrop, and facing widespread surges of COVID-19 in many parts of the State, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency and, on March 19, 2020, issued an executive order directing all Californians to heed State public health directives. Since that time the California Department of Public Health has issued multiple public health directives to combat this unprecedented pandemic, including, on July 17, 2020, an emergency order and related guidelines limiting in-person instruction at schools operating in a county on the State's Monitoring List due to high rates of COVID-19.

Plaintiffs, who are parents of children who attend school in California and one student, allege that the Orders and Guidance violate their constitutional and statutory rights. In contending that the order and guidance are not based on scientific data, plaintiffs rely on their inaccurate and outdated beliefs that school-age children do not spread COVID-19, and that opening schools for in-person instruction in counties with high COVID-19 rates poses a negligible health risk. Yet COVID-19 knows no age boundaries. People of all ages, including children, are susceptible to the disease. There is currently no proven vaccine or widely effective treatment. More importantly, a large percentage of people infected with COVID-19 have no symptoms, but can still unknowingly spread it.

1 In the early stages of the pandemic, when scientific knowledge about COVID-
 2 19 was limited, COVID-19 was incorrectly believed to have minimal effect on
 3 children of any age. Although children with COVID-19 do not always exhibit the
 4 same signs and symptoms as adults, it is now the scientific consensus that children
 5 are not only susceptible to the disease, but may experience uniquely severe
 6 complications as a result. In fact, California saw its first pediatric death, of a
 7 teenager, late last month.¹ One of the most well-known of those complications is
 8 multisystem inflammatory syndrome (“MIS-C”), which can cause serious
 9 symptoms for children, including severe inflammation affection multiple organ
 10 systems, and even death. See National Institutes of Health, Special Considerations
 11 in Children (updated Jun. 11, 2020), accessed at
 12 <https://www.covid19treatmentguidelines.nih.gov/special-populations/children/>. It
 13 is now suspected that positive cases and deaths in children related to COVID-19
 14 may have been mis-identified, and “[w]ithout widespread testing, including for
 15 mild symptoms, the true incidence of severe disease in children is unclear.” *Id.*

16 Moreover, because children may spread the virus throughout the community
 17 in the same manner as adults, they must be factored into the community-wide
 18 efforts to control the spread of COVID-19. There are approximately 6.5 million
 19 school-age children in California. Thus, widely reopening schools for in-person
 20 instruction in counties with high rates of COVID-19 would result in a significant
 21 amount of new movement throughout the community of students, parents, and
 22 school employees as they travel to and from school, and a mixing of individuals
 23 from various households, with students and teachers together in groups indoors for
 24 extended periods of time. These results would create substantial new risks of
 25 transmission of COVID-19 in the community.

26 California’s public health officials—trained doctors, scientists and other

27 _____
 28 ¹ See <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-179.aspx> (last
 accessed August 8, 2020).

1 medical professional—are expressly charged with protecting the health and safety
2 of *all* Californians. For that reason, courts have recognized that, as the experts who
3 are accountable for the public welfare, they are entitled to wide discretion in
4 enacting necessary public-health measures, and where those broad limits are not
5 exceeded, they should not be second-guessed by an “‘unelected federal judiciary,’
6 which lacks the background, competence, and expertise to assess public health and
7 is not accountable to the people.” *S. Bay United Pentecostal Church v Newsom*,
8 591 U.S. ___, 140 S. Ct. 1613, 1613-1614 (2020) (Roberts, CJ, concurring) (*South*
9 *Bay III*); see also *Calvary Chapel Dayton Valley v. Sisolak*, 591 U.S. ___, 2020 WL
10 4251360, at *11 (U.S. July 24, 2020) (Kavanaugh, J, dissenting) (“Under the
11 Constitution, state and local governments, not the federal courts, have the primary
12 responsibility for addressing COVID–19 matters such as quarantine requirements,
13 testing plans, mask mandates, phased reopenings, school closures, sports rules,
14 adjustment of voting and election procedures, state court and correctional institution
15 practices, and the like.”).

16 As every federal court to consider this question with respect to California’s
17 orders has concluded, the Governor’s current emergency order and the related
18 public-health orders and guidelines regarding school reopening are a legitimate
19 exercise of the State’s police powers and are entitled to deference by this Court.
20 *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 25 (1905). Even without
21 *Jacobson* deference, Plaintiffs have failed to articulate, let alone substantiate, a
22 cognizable violation of their constitutional rights. Plaintiffs assert that State
23 officials have violated their alleged fundamental right to a basic education under the
24 Fourteenth Amendment’s substantive due process clause, but no such right has been
25 recognized. Even if such a right exists, plaintiffs have not established that there is a
26 fundamental right to an *in-person* education. The challenged state orders and
27 guidance do not stop education all together, but rather call for temporary
28 implementation of distance learning for schools in counties where high rates of

community spread of COVID-19 represent dangers to all citizens. Plaintiffs have also failed to show a likelihood of success on their equal protection claim, and have no likelihood of success on their claims for violation of Title VI of the Civil Rights Act and the federal disability-related statutes because binding precedent forecloses those claims. Nor have Plaintiffs shown that the remaining equitable factors favor a TRO. If anything, the State and its residents would be irreparably harmed by the relief Plaintiffs seek because schools open to in-person instruction will inevitably result in outbreaks in California, which will have a cumulative impact on the spread of the disease, hospitalization rates and increased death rates.

The Court should deny the application for a temporary restraining order.

BACKGROUND

I. COVID-19 AND CALIFORNIA'S RAPID RESPONSE TO CONTAIN IT

COVID-19 is a highly contagious and deadly infectious disease, which can be readily transmitted when people gather in groups outside the home. *See* Decl. of James Watt ("Watt Decl.") ¶¶ 12-13, 18. COVID-19 has infected more than 18 million people and caused the deaths of around 691,000 people worldwide.² In the United States alone, COVID-19 has infected over 4.8 million people and caused the deaths of over 150,000 people nationwide, with over 10,000 in California.³ As of August 7, 2020, there have been 538,416 confirmed COVID-19 cases in the State, Watt Decl. ¶17.)

The novel coronavirus that causes this highly infectious and frequently fatal disease spreads through respiratory droplets that remain in the air or on surfaces, and may be transmitted unwittingly by individuals who exhibit no symptoms.

² *See* World Health Organization, Coronavirus Disease (COVID-19) Situation Report No. 197 (August 4, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/> (last accessed August 4, 2020).

³ *See* Cases in U.S., <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last accessed August 6, 2020) and cases in California, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx> (last accessed Aug. 8, 2020).

1 *South Bay III*, 140 S. Ct. at 1613 (Roberts, C.J., concurring). There is no known
2 cure, no widely effective treatment, and no vaccine. *Id.* Consequently, measures
3 such as physical distancing that limit physical contact are the only widely
4 recognized way to slow the spread. *Gish v. Newsom*, No. EDCV20-755-JGB
5 (KKx), 2020 WL 1979970, at *4 (C.D. Cal. Apr. 23, 2020); Watt Decl. ¶ 16.

6 California responded early and decisively to combat and contain the COVID-
7 19 threat. In early December 2019, the State began working closely with the
8 national Centers for Disease Control and Prevention, the United States Health and
9 Human Services Agency, and local health departments to monitor and plan for
10 spread of COVID-19 to the United States. Request for Judicial Notice (RJN), Ex.
11 A.1. The California Department of Public Health began providing COVID-19
12 related guidance to hospitals, clinics, and other health providers. *Id.*

13 On March 4, 2020, the Governor proclaimed a State of Emergency in
14 California, making additional resources available to combat the emergency and help
15 the State prepare for the broader spread of the disease. RJN, Ex. A.1. On March
16 19, the Governor issued Executive Order N-33-20, the Stay-at-Home Order, which
17 required “all individuals living in the State of California to stay home or at their
18 place of residence except as needed to maintain continuity of operations of the
19 federal critical infrastructure sectors,” *id.*, Ex. C, and the Public Health Officer
20 subsequently designated a list of “Essential Critical Infrastructure Workers” under
21 the Order, *id.*, Ex. C.

22 On April 28, 2020, the Governor announced a “Resilience Roadmap” to guide
23 the gradual and safe reopening of the State. RJN, Ex. D. The Roadmap had four
24 stages: (1) safety and preparation; (2) reopening of lower-risk workplaces and other
25 spaces; (3) reopening of higher-risk workplaces and other spaces; and (4) an end to
26 the Stay-at-Home Order. *Id.*, Ex. D.5. To implement the Roadmap, on May 4,
27 2020, the Governor issued Executive Order N-60-20, providing that all California
28 residents are to continue complying with the Stay-at-Home Order and that the State

1 Public Health Officer shall establish criteria and procedures for qualifying local
2 jurisdictions to move more quickly through Stage 2 of the Roadmap. *Id.*, Ex. E.2-3.

3 On May 7, 2020, based on her review of current data, the State Public Health
4 Officer issued an order moving the State into Stage Two, stating that she would
5 “progressively designate sectors, businesses, establishments, or activities that may
6 reopen with certain modifications, based on public health and safety needs” and at
7 “a pace designed to protect public health and safety.” RJN, Ex. F.2 (¶ 2).

8 Guidance governing the reopening of in-person instruction at schools as part of
9 Stage 2 was initially released on June 5, 2020, see *id.*, Ex. D.8, with other sectors
10 reopening in phases throughout June.

11 In response to the recent surge in COVID-19 positive rates in late June to early
12 July, the State Public Health Officer, on July 13, 2020, issued an order closing,
13 statewide, certain activities that had been permitted to reopen under the Roadmap,
14 and closing additional indoor activities in counties on the state’s County
15 Monitoring List. See RJN, Ex. H.1-2. The Public Health Officer noted that,
16 particularly in counties on the County Monitoring List, “the risks and impacts of
17 disease transmission are even greater.”⁴ The science suggests that for indoor
18 operations the odds of an infected person transmitting the virus are dramatically
19 higher compared to an open-air environment. Thus, for those counties on the list, it
20 is necessary to close indoor operations for additional sectors which promote closed-
21 space mixing of populations beyond households and/or make adherence to physical
22 distancing with face coverings difficult.” *Id.*, Ex. H.2; see also *id.*, Ex. I.3-4
23 (“Guidance on Closure of Sectors in Response to COVID-19”).

24
25 ⁴ The California Department of Public Health uses six indicators to track the level
26 of COVID-19 infection in each California county as well as the preparedness of the
27 county health care system—data that includes the number of new infections per
28 100,000 residents, the test positivity rate, and the change in hospitalization rate,
among others. A county that does not meet the State’s benchmarks is put on the
County Monitoring List. See RJN, Exs. R and S.

On July 17, 2020, the Department of Public Health issued its COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year. RJN, Exs. J, OO. It updated its previously issued School Sector Specific Guidelines to specify that “[s]chools and school districts may reopen for in-person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days.” RJN, Ex. J.1 (emphasis in original). The guidance noted that a waiver of the criteria “may be granted by the local health officer for elementary schools to open for in-person instruction.” *Id.* The waiver request must be made by the superintendent or equivalent for charter and private schools. *Id.*

On August 3, 2020, the Department of Public Health again updated its guidance to schools. RJN, Ex. K. It has also issued an FAQ and additional documents to assist schools who may seek a waiver. See *id.*, Exs. L-P. The materials additionally explain that, “[b]ased on the current best available scientific evidence, COVID-related risks in schools serving elementary-age students (grades TK-6) are lower than and different from the risks to staff and to students in schools serving older students.” Specifically, “there appears to be lower risk of child-to-child or child-to-adult transmission in children under age 12,” and a lower risk of infection and serious illness in younger children. RJN, Exs. L.4, M.1.

II. THE PRESENT ACTION

On July 21, 2020, before the Department of Public Health had time to update its school guidance documents and waiver process, the plaintiff parents and one child filed their complaint against Governor Gavin Newsom, Attorney General Xavier Becerra, Director of the California Department of Public Health, Sonia Angell, and State Superintendent of Public Instruction Tony Thurmond. Pls. Comp., ECF No. 1. On July 29, 2020, Plaintiffs filed the operative First Amended Complaint (Pls. First Am. Compl. (FAC), ECF No. 9), adding additional parent plaintiffs and modifying their claims. Plaintiffs challenge the Governor’s Executive

Order N-60-20 and the State’s COVID-19 Industry Guidance for Schools and School Based Programs (collectively, “Order”), imposing restrictions on in-person education in K-12 grade schools.

Plaintiffs assert four claims: (1) violation of substantive due process under the Fourteenth Amendment; (2) violation of the equal protection clause to the Fourteenth Amendment; (3) violation of Title VI of the Civil Rights Act of 1964 (disparate impact on minorities); and (4) violation of federal disability rights statutes. FAC 31:1-37:23. Plaintiffs pray for a declaration that the Order is unconstitutional, facially and as applied, and that an injunction issue against enforcing it against Plaintiffs. FAC 37:24-38:11 and attached Exs. 1 and 2. They filed Plaintiffs’ Application for a Temporary Restraining Order on August 3, 2020. Pls. App. for Temporary Restraining Order (TRO App.), ECF No. 28.

ARGUMENT

I. LEGAL STANDARD

To obtain a TRO or preliminary injunction, Plaintiffs must show: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm without preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Couns., Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs’ TRO application should be denied because they fail to satisfy these equitable factors that the Court weighs to determine whether to grant the extraordinary relief of a TRO.

II. PLAINTIFFS FAIL TO SATISFY THE EQUITABLE FACTORS FOR A TEMPORARY RESTRAINING ORDER

A. Plaintiffs Have Failed to Demonstrate a Likelihood of Success on the Merits of Their Claims

1. The Challenged Order is a Constitutional Exercise of the Governor’s Emergency Powers to Combat COVID-19

The Supreme Court has long recognized that states have broad authority to respond to public-health emergencies. *Jacobson Mass.*, 197 U.S. at 27. Thus, it

1 has held that “a community has the right to protect itself against an epidemic of
 2 disease which threatens the safety of its members.” *Id.* at 27 (internal quotation
 3 marks omitted); see also *Kansas v. Hendricks*, 521 U.S. 346, 356-57 (1997)
 4 (recognizing the continued vitality of *Jacobson*). Moreover, it is not a court’s role
 5 “to determine which one of two modes [is] likely to be the most effective for the
 6 protection of the public against disease.” *Id.* at 30. To the contrary, because States
 7 often must take swift and decisive action during a health emergency, constitutional
 8 rights may be reasonably restricted “as the safety of the general public may
 9 demand.” *Id.* at 29. Thus, a measure taken to combat a public-health emergency
 10 will be upheld against constitutional challenge unless it has no “real or substantial
 11 relation” to the emergency or “is, beyond all question, a plain, palpable invasion of
 12 rights” secured by the Constitution. *Jacobson*, 197 U.S. at 31.

13 Plaintiffs’ TRO application simply ignores *Jacobson*. See generally TRO. Yet
 14 the Supreme Court recently relied upon *Jacobson* in a challenge to another
 15 Executive Order by Governor Newsom that limited gatherings to address the spread
 16 of COVID-19. Chief Justice Roberts reiterated that the judiciary should accord
 17 wide deference to local officials “actively shaping their response to changing facts
 18 on the ground.” In the Court’s decision denying a church’s application for an
 19 injunction suspending California’s public-health orders for COVID-19, Chief
 20 Justice Roberts wrote that, “The notion that it [was] ‘indisputably clear’ that the
 21 Government’s limitations are unconstitutional seem[ed] quite improbable.” *South*
 22 *Bay III*, 140 S. Ct. 1613-14 (mem) (Roberts, C.J., concurring in denial of
 23 application for injunctive relief). As Chief Roberts further observed, the COVID-
 24 19 pandemic “is a dynamic and fact-intensive matter subject to reasonable
 25 disagreement,” as the situation within California and across the world rapidly
 26 evolves. *Id.* at 1613 (Roberts, C.J., concurring).

27 Numerous federal courts, also applying *Jacobson*, have already concluded that
 28 similar challenges to the State’s public health orders are unlikely to succeed on the

merits. *See, e.g., Best Supplement Guide, LLC v. Newsom, et al.*, No. 2:20-cv-00965-JAM-CKD, 2020 WL 2615022, at *3–7 (E.D. Cal. May 22, 2020) (concluding that the State’s orders are a “constitutional response to an unprecedented pandemic”); *Givens v. Newsom*, __ F. Supp. 3d __, 2020 WL 2307224 (E.D. Ca.. May 8, 2020), at *3–5 (applying *Jacobson* to conclude that the plaintiffs were unlikely to succeed on their challenge to the stay-at-home orders); *Monica Six, et al. v. Newsom, et al.*, __ F. Supp. 3d __, No. 820-cv-00877-JLS-DFM, 2020 WL 2896543 at *1–7 (C.D. Cal. May 22, 2020) (same); *Cross Culture Christian Ctr. v. Newsom*, __ F. Supp. 3d __, No. 2:20-cv-00832-JAM-CKD, 2020 WL 2121111, at *3–5 (E.D. Cal. May 5, 2020) (the State’s orders “bear a real and substantial relation to public health”); *Gish*, 2020 WL 1979970 at *4-5, (C.D. Cal. Apr. 23, 2020) (State’s order did not constitute a “plain and palpable invasion” of plaintiffs’ free exercise of religion because, while plaintiffs “are unable to gather together in-person, they are free to gather virtually or over the phone”).

Furthermore, the Supreme Court has repeatedly recognized state sovereignty in the areas of education and public-health policy. *See United States v. Lopez*, 514 U.S. 549, 564 (1995); *Marshall v. United States*, 414 U.S. 417, 427 (1974); *Jacobson*, 197 U.S. at 23-29. The Court has cautioned that, where other branches of government undertake “to act in areas fraught with medical and scientific uncertainties,” the judiciary should proceed with caution, even where “judges with more direct exposure to the problem might make wiser choices.” *Marshall*, 414 U.S. at 427.⁵

Here, although Plaintiffs argue that it is safe to immediately open schools for children to attend in-person in their counties, see, e.g., FAC ¶¶ 10, 18, 20, 99,

⁵ Justice Kavanaugh recently underscored this point. *See Calvary Chapel Dayton Valley*, 591 U.S. ___, 2020 WL 4251360 (Kavanaugh, J. dissenting). Although Justice Kavanaugh argued in his dissent that *Jacobson* should not govern First Amendment challenges, he accepted that *Jacobson* provides the appropriate, deferential standard for reviewing numerous “COVID-19 matters,” including “school closures.” *Id.* at *11.

1 individual opinions and views do “not affect the validity” of a state policy, “nor
 2 entitle [plaintiffs] to be excepted from its provisions,” *Jacobson*, 197 U.S. at 23.
 3 Plaintiffs cite to research which they argue shows that there are low safety risks in
 4 reopening schools for in-person instruction, irrespective of high COVID-19 levels.
 5 See FAC ¶¶ 37-69. The federal Center for Disease Control and Prevention,
 6 however, recently issued guidance, which analyzed many of the same studies to
 7 which Plaintiffs cite and concluded that schools may be safely reopened in
 8 communities *where community spread is low*. RJN, Ex. DD.4. Unfortunately, that
 9 is not the case in California as a whole, and certainly not in counties on the
 10 Monitoring List, which considers whether case rates are above 100 per 100,000
 11 individuals. Watt Decl. ¶¶ 17, 29; RJN, Exs. R-T.

12 Moreover, there is growing consensus that: children are susceptible to
 13 infection by COVID-19 and transmission; the current positive rate data may not
 14 accurately reflect the actual rate of infection of children and the transmission
 15 between children and adults because testing of children is sparse and children may
 16 have less severe symptoms or be asymptomatic; and opening schools for in-person
 17 instruction increases the risk of COVID-19 transmission within the school and the
 18 broader community, especially since some evidence exists that older children are
 19 able to spread the virus throughout the community in the same manner as adults.
 20 Watt Decl. ¶¶ 18-19, 22-29, 36-38; RJN, No. 24, Exs. M, W, X, Y, AA, BB.
 21 Reopening schools for in-person instruction in communities with high COVID-19
 22 rates is risky, especially for middle and high schools. Watt Decl. ¶¶ 26, 29; RJN,
 23 Exs. DD.2-3, This has been demonstrated in some other countries with high
 24 COVID-19 rates, and in recent in-person school openings in other states.⁶

25
 26 ⁶ RJN, Exs. DD.3, W-BB. For example, in Israel, two weeks after schools
 27 reopened for in-person instruction, COVID-19 outbreaks began sweeping through
 28 schools, including at least 130 cases in one school, with both staff and students
 testing positive for COVID-19. *Id.*, Exs. Y, Z. Similarly, when schools recently
 reopened for in-person instruction in Georgia and Indiana, both states faced
 COVID-19 outbreaks. *Id.*, Exs. BB, CC.

1 Such evidence supports California’s health officials’ constitutional prerogative and
2 discretion to enact public-health policy limiting in-person classes during a
3 widespread and ever-worsening health emergency. *Jacobson*, 197 U.S. at 27.

4 Plaintiffs also fail to show that the harms they allege their children suffered
5 through distance learning in the Spring—such as an excess of screen time, less
6 instruction, insufficient services for students with disabilities, and a disinterest in
7 continuing to participate in school —will befall their children who begin the year
8 with distance learning. All schools in the State must provide instruction to students
9 in the 2020-21 school year, whether by distance learning or in-person instruction.
10 The State has adopted new laws and guidance requiring schools to meet certain
11 thresholds for distance learning and the provision of services to students with
12 special needs. RJN, No., Exs. EE-JJ. The State has also appropriated more than \$5
13 billion in additional funding to public schools for the 2020-21 school year to
14 address learning loss that may have occurred last spring and to provide additional
15 supports and services to improve delivery of education this year, including if
16 distance learning continues. *Id.*, Exs. JJ, NN. Moreover, schools that start the
17 school year with distance learning are permitted to switch to in-person instruction
18 as soon as 14 days after the county has been removed from the Monitoring List, and
19 are not required to wait until the end of a quarter or semester. *Id.*, Ex. L.5. Thus,
20 the distance-learning mandate is not permanent, but is designed to be fluid and
21 directly responsive to a county’s ability to reduce its COVID risk.

22 Nor can plaintiffs show that their alleged harms would outweigh the already
23 proven risks of spread of COVID-19 not only between students and school staff,
24 but also to their families and the broader community, if the State were to
25 immediately allow in-person learning in all schools despite the recent surge in
26 COVID-19 in the State. Watt Decl. ¶¶ 17, 21, 29, 34. Moreover, the State
27 authorized a waiver process through which county public-health officials may
28 permit elementary schools to offer in-person instruction in counties on the

1 Monitoring List because younger children have been found to have a lower risk of
2 child-to-child or child-to-adult transmission and a lower risk of serious infection.
3 RJN, Exs. L.5, M.1-2.

4 Further, even if Plaintiffs were correct that the public-health situation is
5 allegedly better than the State originally anticipated, they “fail to account for the
6 possibility” that this may be true precisely “because of” the public-health orders
7 that are seeking to invalidate. *Monica Six*, __ F. Supp. 3d __, No. 820-cv-00877-
8 JLS-DFM, 2020 WL 2896543 at *8; see FAC ¶¶ 100-02. It is for this reason that
9 the courts have held that it is “the duty of the constituted authorities primarily to
10 keep in view the welfare, comfort, and safety of the many, and not permit the
11 interests of the many to be subordinated to the wishes or convenience of the few.”
12 *Jacobson*, 197 U.S. at 29.

13 The restrictions California has imposed on in-person instruction plainly have a
14 “real” and “substantial relation” to public health and safety. *Jacobson*, 197 U.S. at
15 31. As detailed in the declaration of Dr. James Watt, Chief of the Division of
16 Communicable Diseases at the California Department of Public Health, the
17 COVID-19 virus is highly infectious, and indoor, in-person gatherings create a
18 great danger of transmission of the virus because such gatherings bring large
19 numbers of people together at the same time, in the same place, for an extended
20 period of time. Watt Decl. ¶¶ 22-28. Accordingly, the restrictions on in-person
21 classes in counties on the Monitoring List to protect the health and safety of
22 students, staff, and the surrounding community are not “beyond all question” a
23 “plain, palpable” invasion of the any Fourteenth Amendment right or a violation of
24 any federal statute prohibiting discrimination.

25 Defendants do not discount the challenges and burdens that school closures
26 bring for students, families, and school employees. Indeed, the more than \$5
27 billion investment that the State has made to support schools this year is intended to
28 mitigate those impacts. Certainly, everyone would prefer that the country was not

1 in the midst of an unprecedented pandemic. But we are, and given current
 2 epidemiological trends, schools cannot operate as normal in certain communities
 3 without imperiling public health. Watt. Decl. ¶¶ 30, 42. Thus, the Order falls well
 4 within the scope of the Governor’s emergency authority to combat the current
 5 public health crisis, and is entitled to significant deference by the courts.

6 **2. Even Under Non-Emergency Conditions, Plaintiffs Fail to** 7 **Demonstrate a Likelihood of Success on the Merits**

8 As discussed above, the COVID-19 pandemic presents an unprecedented
 9 health emergency, and the State’s current response by trained officials on the front
 10 lines is entitled to deference. But even if Plaintiffs’ claims are analyzed under
 11 traditional constitutional standards that apply in non-emergency circumstances, the
 12 claims are still unlikely to succeed because the alleged injuries do not represent
 13 cognizable constitutional harms.

14 **a. Plaintiffs’ Claims Are Deficient**

15 **(1) Plaintiffs fail to state a claim for violation of** 16 **substantive due process**

17 Plaintiffs claim the Order deprives their children of their alleged “fundamental
 18 right” to a basic education under the Substantive Due Process Clause of the
 19 Fourteenth Amendment. TRO 14-15. Yet, as Plaintiffs concede, no court has
 20 recognized a fundamental right to a basic education under the Substantive Due
 21 Process Clause. *Id.* at 15:8-11, 16:8.⁷ Thus, they cannot show a likelihood of
 22 success on the merits on this claim warranting a TRO.

23
 24
 25 ⁷ Nor is education a fundamental right for purposes of the Fourteenth
 26 Amendment’s Equal Protection Clause. *See, e.g., San Antonio Indep. Sch. Dist. v.*
 27 *Rodriguez*, 411 U.S. 1 (1973); *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982);
 28 *Papasan v. Allain*, 478 U.S. 265, 284-85 (1986); *Kadrmas v. Dickinson Pub. Sch.*,
 487 U.S. 450, 458 (1988); *see also Bd. of Nat. Res. of State of Wash. v. Brown*, 992
 F.2d 937, 944 (9th Cir. 1993) (finding the applicable standard of review for equal
 protection cases involving education is rational basis review, based on Supreme
 Court precedent).

1 The Fourteenth Amendment’s Due Process Clause “prohibits any state
 2 deprivation of life, liberty, or property without the due process of law.” *Ingraham*
 3 *v. Wright*, 430 U.S. 651, 672 (1977). A party alleging a substantive due process
 4 claim must meet the “threshold requirement—that a challenged state action
 5 implicates a fundamental right” before a court will require more than a “reasonable
 6 relation to a legitimate state interest to justify the action.” *Washington v.*
 7 *Glucksberg*, 521 U.S. 702, 722 (1997). The Due Process Clause is understood as a
 8 “limitation on the State’s power,” and not a guarantee of certain obligations to
 9 individuals by the state. *DeShaney v. Winnebago Cty. Dep’t of Soc. Serv.*, 489 U.S.
 10 189, 195 (1989). Here, Plaintiffs’ allegations fail the threshold test for a
 11 substantive due process violation because there is no “fundamental right” to a basic
 12 minimum education that is protected by the Due Process Clause.⁸

13 Plaintiffs argue that even if there is no recognized fundamental interest in
 14 education warranting strict scrutiny, education claims are “a ‘quasi’ fundamental
 15 right subject to intermediate scrutiny,” pursuant to *Plyler v. Doe*. TRO 16:8-12
 16 (citing *U.S. v. Harding*, 971 F.2d 410, 412 n.1 (9th Cir. 1992)). First, Plaintiffs
 17 appear to be conflating substantive due process claims with equal protection claims.
 18 *Plyler* involved a claim for violation of equal protection, not substantive due
 19 process, as it turned on a classification created by the state law. *See Plyler*, 457
 20 U.S. at 205 (stating the question presented was whether the state law was
 21 “consistent with the Equal Protection Clause of the Fourteenth Amendment”); *id.* at
 22 225 (holding “the discrimination contained in § 21.031 can hardly be considered
 23 rational unless it furthers some substantial goal of the State”). *Harding* also
 24 addressed an equal protection claim and did not involve any claim regarding an

25
 26 ⁸ Plaintiffs nonetheless argue that a fundamental right to a basic education
 27 should be recognized, citing to provisions in state constitutions recognizing an
 28 affirmative right to public school education. TRO at 15:8-22. To the extent
 Plaintiffs are attempting to state a substantive due process claim based on the
 California Constitution, such a claim is barred by the Eleventh Amendment. *See*
Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 98-100 (1984).

1 equal right to a free education. It merely observed that some “quasi-fundamental”
 2 rights mandate a heightened level of scrutiny under the Equal Protection Clause.
 3 *Harding*, 971 F.2d at 411-412. Second, even if *Plyler* did authorize some
 4 heightened level of scrutiny under substantive due process (it did not), it addressed
 5 a law that *completely denied* access to education to undocumented children. *See*
 6 457 U.S. at 224. Here, Plaintiffs cannot credibly argue their children are *completely*
 7 denied access to education, so *Plyler* is inapposite.

8 This argument is fatally flawed for the further reason that this claim is based
 9 on the false premise that, because some schools initially faced challenges adapting
 10 to distance learning at the beginning of a sudden, global pandemic in March,
 11 distance learning in the upcoming school year will preclude students from receiving
 12 a basic education. FAC ¶¶ 110-11. To the contrary, between March 2020 and the
 13 present, the California Department of Education (CDE) has developed substantial
 14 resources and guidance to support school districts’ efforts to improve distance
 15 learning. (RJN, Exs. EE-II, KK.) Pursuant to newly enacted State law, school
 16 districts must submit a Learning Continuity and Attendance Plan for the 2020-2021
 17 school year by September 30, 2020, setting forth plans for both in-person and
 18 distance learning that meet certain thresholds set by the Legislature, including,
 19 among other things, supporting students’ mental health, providing additional
 20 supports for students with disabilities, re-engagement of students absent from
 21 distance learning, and professional development for teachers. *Id.*, Exs. GG-II, NN;
 22 Cal. Ed. Code §43500, et seq. (new requirements for distance learning, including
 23 those pertaining to special education). CDE is also helping schools ensure that
 24 students have access to devices and technology. RJN, Ex. LL, MM. Moreover, the
 25 State budget includes a new, one-time investment of \$5.3 billion for school districts
 26 to support student achievement, including through distance learning, to mitigate
 27 learning loss related to COVID-19. *Id.*, Exs. JJ, NN. Such funds are available for
 28 districts to provide student supports to address barriers to learning, including

1 programs to address student trauma and provide mental health and counseling
2 services, providing meals for students even during distance learning, and providing
3 professional development opportunities to help teachers support pupils in distance-
4 learning contexts. RJN, Exs. II, JJ, NN.

5 At its essence, Plaintiffs' novel position is that there is a fundamental right to
6 in-person school, and that school that is offered remotely is somehow tantamount to
7 no school at all. While in-person instruction is, of course, the generally preferred
8 means of instruction when the State is not in the midst of a public-health crisis
9 borne out of in-person transmission, the evidence simply fails to support the
10 proposition that the distance learning California schools will provide in the
11 upcoming school year amounts to the wholesale denial of an education. By
12 alleging their children's experiences with distance learning in the spring were
13 unsatisfactory or not the most optimal for their children's learning styles, Plaintiffs
14 are essentially asking this Court, rather than the schools, to dictate to how schools
15 must provide an education. See FAC ¶¶ 7-21. But, even when, unlike here,
16 fundamental rights are at issue, courts "have never presumed to possess either the
17 ability or the authority to guarantee to the citizenry the most effective" expression
18 of their fundamental rights. *Rodriguez*, 411 U.S. at 36. Thus, in a recent case
19 before this Court, *Six v. Newsom*, the Court rejected claims similar to those made
20 by Plaintiffs here. *Six*, __ F. Supp. 3d __, No. 820-cv-00877-JLS-DFM, 2020 WL
21 2896543 at *2, 6-7. It denied a plaintiff's allegation that the State stay-at-home
22 orders caused her to lose her school and study community, which she felt would
23 negatively impact her educational progress and college prospects, even where her
24 claim was based on the "fundamental right" to free association. *Id.*

25 In sum, Defendants' actions here do not infringe upon any alleged
26 fundamental right under the Due Process Clause, and are well within the powers of
27 the state to decide policy during an unprecedented public health crisis.
28

(2) Plaintiffs fail to state a claim for violation of the Equal Protection Clause

Plaintiffs argue that the Order also violates the Equal Protection Clause of the Fourteenth Amendment both because it arbitrarily prohibits children in counties on the Monitoring List to hold in-person classes, while allowing schools in other counties to hold in-person classes, and because it does not require day camps and childcare facilities to close. FAC 121; TRO 19-20. But given that the Order is rationally related to the legitimate government interest of protecting public health during a global pandemic, it easily survives rational basis review.

For most governmental actions, courts use the rational basis test to determine whether a classification under the law “bear[s] some fair relationship to a legitimate public purpose” because states “must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived [and] accommodate competing concerns.” *Plyler*, 457 U.S. at 216. Plaintiffs concede that rational basis review applies to their equal protection claim. TRO 19:1-20:10. Under rational basis review, government action “carries with it a presumption of constitutionality that can only be overcome by a clear showing of arbitrariness and irrationality.” *Kadrmas*, 487 U.S. at 451.

As Defendants’ actions do not treat alike groups dissimilarly, Plaintiffs cannot make the threshold showing under rationality review that the State is treating similarly situated individuals differently, or that the Order is arbitrary or irrational. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). Plaintiffs argue that schools are not treated alike under the plan for reopening, improperly comparing schools within one county to schools in another, and schools to daycares and camps. See FAC ¶¶ 32, 121-22. This mischaracterizes the Order, which distinguishes between schools in counties on the County Monitoring List (which is based on epidemiological and other data related to each county’s capacity to manage the pandemic in its communities) and those in counties not on the list, and

1 permits schools to open for in-person instruction if they have not been on the list
2 for 14 days. The criteria for a county to be placed on and removed from the
3 Monitoring List is the same for *all* counties in the State. Thus, the Order
4 distinguishes between schools in counties on the Monitoring List and those not on
5 the list based on the level of COVID-19 cases in the county. Therefore, the
6 counties are not similarly situated due to their different levels of COVID-19
7 transmission, and all counties are being evaluated by the same objective criteria.

8 Moreover, schools are not equivalent to daycares and camps in many
9 significant respects, and thus are not similarly situated. *Cf. Lupert v. California*
10 *State Bar*, 761 F.2d 1325 (9th Cir. 1985) (rejecting Equal Protection claim based on
11 differing requirements for students at accredited and unaccredited law schools in
12 California). In early June, some day camps were allowed to open in a limited
13 capacity. The number of children participating in day camps during the summer
14 months is smaller than the volume of students in K-12 schools in California during
15 the school year. Additionally, day camps are generally structured with smaller
16 group sizes and in a manner that allows more distancing and outdoor activities than
17 traditional school. Finally, day camps were operating throughout the summer and
18 generally close when school resumes, while schools generally close for the summer.
19 Allowing *continued* operation of a sector that has been open versus permitting a
20 sector that has been closed to reopen has vastly different implications and risks,
21 especially given the relatively lower risk generally presented by day camps versus
22 schools. Watt Decl. ¶22.

23 Plaintiffs' comparison to childcare facilities is even more strained, given the
24 significant differences between the settings. First, childcare settings primarily serve
25 children who are younger than school age, and thus present a relatively lower risk
26 of spread for the same reason that elementary schools present a lower risk than
27 middle and high schools. Second, childcare settings are regulated in a way that
28 schools are not. Most notably, state regulations provide a hard cap for adult-to-

1 child ratios in childcare settings that are not applicable to schools, for example, with
2 childcare for infants and toddlers capped at a 4-to-1 and 6-to-1 ratio in family day
3 care settings, *see* 22 C.C.R. § 102416.5, and no more than a 15-to-1 ratio in
4 childcare center settings, *see* 22 C.C.R. § 101216.3. State preschool similarly
5 imposes maximum adult-to-child ratios that vary by age, with the largest being 15-
6 to-1. *See* 5 C.C.R. § 18290. There are no comparable requirements for schools,
7 and the *average* teacher-to-student ratio for public schools in California is 21-to-1,
8 *see* <https://www.ed-data.org/state/CA> (Staff, Demographics, Per Pupil Ratio:
9 Teachers), which is higher than the maximum ratio for childcare settings. As a
10 result, there is a greater likelihood of safely maintaining small group sizes and
11 stable cohorts to reduce the risk of transmission in childcare settings than schools.

12 Under rational basis review, courts have historically deferred to other branches
13 of government in deciding questions of education and public health policy. In
14 *Rodriguez*, the Supreme Court noted that education policy, because of the “very
15 complexity of the problems of financing and managing a statewide public school
16 system,” was an “area in which this Court’s lack of specialized knowledge and
17 experience counsels against premature interference with the informed judgments
18 made at the state and local levels.” 411 U.S. at 42. Defendants, here, are likewise
19 in the best position to weigh and balance competing health and policy imperatives
20 in the face of a rapidly changing public-health crisis, and the differences and
21 relative risks among the various settings in which children from different
22 households mix and interact with adults. Moreover, a state policy or program “may
23 not be condemned simply because it imperfectly effectuates the State’s goals,” and
24 even “the existence of ‘some inequality’ in the manner in which the State’s
25 rationale is achieved is not alone a sufficient basis for striking down the entire
26 system.” *Id.* at 51. To the extent, solely for the sake of argument, that Defendants’
27 reopening plan treats any alike groups differently, that alleged disparate treatment is
28 not “so irrational as to be invidiously discriminatory” in violation of Equal

1 Protection. This is because the reopening plan furthers the not just legitimate—but
 2 crucially important—governmental interest of protecting the public health from a
 3 deadly and highly contagious disease. *Cross-Culture Christian Ctr.*, E.D. Cal. May
 4 5, 2020, No. 2:20-cv-00832-JAM-CKD at *10.

5 **(3) Plaintiffs fail to state a disparate impact claim**
 6 **under Title VI of the Civil Rights Act**

7 Plaintiffs argue that the Order violates Title VI of the Civil Rights Act of 1964
 8 and its regulations because it causes a disparate impact on racial minorities. TRO
 9 20:16-21:4. Specifically, they argue that distance learning will be especially
 10 harmful to students from low-income families who are disproportionately
 11 minorities in California. *Id.* at 21:5-13. However, as Plaintiffs half-heartedly
 12 concede, binding Ninth Circuit precedent forecloses this claim. *See* TRO 20 fn.22
 13 (citing *Save Our Valley v. Sound Transit*, 335 F.3d 932 (9th Cir. 2003) (holding that
 14 Department of Transportation’s disparate impact regulation under Title VI “cannot
 15 create individual rights enforceable through § 1983”)). Because there is no private
 16 right of action under Section 1983 to enforce disparate-impact regulations
 17 promulgated under Title VI of the Civil Rights Act of 1964, this claim fails as a
 18 matter of law.⁹ *See Save Our Valley*, 335 F.3d at 938-39; *see also Guzman v.*
 19 *Shewry*, 552 F.3d 941, 952 (9th Cir. 2009).

20 By claiming a violation of Title VI through a disparate impact theory under
 21 section 1983, Plaintiffs are bound by the Supreme Court holdings that “[t]here is no
 22 private right of action to enforce disparate-impact regulations promulgated under
 23 Title VI”, *Alexander v. Sandoval*, 532 U.S. at 293, and a private litigant may bring
 24 suit under § 1983 only to enforce private rights that Congress has created in “clear
 25 and unambiguous terms.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002). Based
 26 on those rulings, the Ninth Circuit has held that federal rights are created by

27 ⁹ Individuals may sue to enforce a prohibition on *intentional* discrimination
 28 under Title VI. *Alexander v. Sandoval*, 532 U.S. 275, 280-281 (2001). Here,
 plaintiffs brought their Title VI claim based on disparate impact allegations, and
 have not made any allegations to state a claim for intentional discrimination.

1 Congress, and not agencies. *See Save Our Valley v. Sound Transit*, 335 F.3d 932,
 2 938-39 (9th Cir. 2003); *Guzman v. Shewry*, 552 F.3d at 952. Thus, Plaintiffs' claim
 3 fails.

4 **(4) Plaintiffs fail to state a claim for violation of**
 5 **federal disability rights statutes**

6 Plaintiff Z.R. and his mother, and three other parents of students with
 7 disabilities, allege that Defendants discriminated against them in violation of the
 8 Individuals with Disabilities in Education Act (IDEA), the Americans with
 9 Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. FAC 36:16-
 10 37:23. Their claim is defective because they improperly brought it pursuant to
 11 Section 1983 and because they failed to exhaust administrative remedies.

12 Ninth Circuit precedent clearly establishes that a Section 1983 action cannot
 13 be brought for violation of IDEA rights, or for violation of Section 504 or ADA
 14 rights. *Blanchard v. Morton Sch. Dist.*, 509 F.3d 934, 938 (9th Cir. 2007); *Vinson*
 15 *v. Thomas*, 288 F.3d 1145, 1155-1156 (9th Cir. 2002).

16 In addition, this claim is barred because Plaintiffs have failed to exhaust
 17 administrative remedies. The IDEA requires that students with disabilities be
 18 provided a free appropriate public education (FAPE) through an individualized
 19 education plan (IEP). 20 U.S.C. §§ 1412(a)(1), 1414(d) (2006). Before a plaintiff
 20 may challenge the provision of a FAPE in court, she must first exhaust the available
 21 administrative remedy through a special-education due-process hearing.¹⁰ 20
 22 U.S.C. § 1415(l); 20 U.S.C. § 1415(i)(2)(A). When a plaintiff has failed to exhaust
 23 the required administrative remedy, the complaint is subject to dismissal. *Albino v.*
 24 *Baca*, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc). Furthermore, exhaustion of

25 ¹⁰ There are three categories of exceptions to the requirement to exhaust the
 26 due process administrative remedy: (1) it would be futile to go to due process, (2)
 27 the educational agency has adopted a policy or pursued a practice of general
 28 applicability that is contrary to law, or (3) it is improbable that adequate relief can
 be obtained by pursuing administrative remedies. *Doe v. Arizona Dep't of Educ.*,
 111 F.3d 678, 681, 683-684 (9th Cir. 1997) (finding exhaustion not excused on its
 facts); *Hoefl v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992)
 (same). Plaintiffs have not established that any of these exceptions apply here.

1 administrative remedies is required when the gravamen of a complaint seeks redress
 2 for a school's failure to provide a FAPE, "even if not phrased or framed in precisely
 3 that way." *Fry v. Napoleon Community Schools*, 137 S. Ct 743, 755 (2017).

4 Thus, in order to file a federal civil action pursuant to section 504 or the ADA
 5 that seeks relief available under the IDEA, section 1415(l) of the IDEA requires
 6 that a party must first exhaust the IDEA's administrative remedy. *Payne v.*
 7 *Peninsula Sch. Dist.*, 653 F.3d 863, 880 (9th Cir. 2011) (where claim arises as a
 8 result of an alleged denial of a FAPE, whether pled under the IDEA or as disability
 9 discrimination, "exhaustion is clearly required"); *Paul G. v. Monterey Peninsula*
 10 *Unified Sch. Dist.*, 933 F.3d 1096, 1102-1102 (9th Cir. 2019) (gravamen of
 11 plaintiff's Section 504 claim was alleged denial of FAPE, thus plaintiff was barred
 12 from seeking systemic relief against CDE because he failed to obtain a finding from
 13 OAH as to whether he had been denied a FAPE).

14 Z.R. and the Plaintiff parents with children with disabilities seek relief for
 15 alleged denials of FAPE. Specifically, Z.R. and the relevant parents allege in the
 16 FAC and declarations that he/their students have IEPs, and that their schools failed
 17 to provide the services required under their IEPs during distance learning in the
 18 Spring of 2019. FAC ¶¶ 15, 16, 18, 21; Ruiz Decl. ¶¶ 4-6, 8, 11, 12, 15-18;
 19 Hawkins Decl. ¶¶ 4-11; Bema Decl. ¶¶ 12; Ramirez Decl. ¶¶ 8-9. These allegations
 20 assert that their students were denied a FAPE. *See, e.g.*, Ruiz Decl. ¶¶ 8-9 ("It is
 21 mandated that my son receive a free, appropriate public education (FAPE) – this is
 22 the law;" "As a result of this denial of FAPE . . ."). Accordingly, exhausting their
 23 administrative remedies was a mandatory prerequisite to this action. Yet, Plaintiffs
 24 failed to allege in their FAC or their declarations that they pursued the required
 25 administrative remedy at OAH against their school districts, nor did they allege that
 26 they are aggrieved by a final decision of OAH. Because Plaintiffs have failed to
 27 exhaust their administrative remedies, their claim is barred.

B. The Remaining Factors Weigh Heavily Against Issuing a Temporary Restraining Order

Besides failing to demonstrate a likelihood of success on the merits, Plaintiffs also fail to show that they will suffer irreparable harm, that the balance of equities weighs in their favor, or that a TRO is in the public interest. *Winter*, 555 U.S. at 20; *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (“Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge.”).

Plaintiffs argue they will be irreparably harmed if the Court does not enjoin the Order because many schools will be forced to offer distance learning, allegedly depriving children of a constitutionally-protected “adequate education.” TRO 24:21-25:22. However, they have failed to show that they are likely to succeed on the merits on their due process claim. Plaintiffs further argue that children will suffer “intangible injuries” consisting of “abuse, depression, and hunger” if they cannot start the school year with in-person learning. TRO at 24:23-24:26. Yet, the State has taken important steps to mitigate any such harms, including requiring districts to provide students access to meals, and providing funding to offer students mental health services to address trauma. See, e.g., RJN, Exs. GG-JJ, NN.¹¹

As to the remaining factors, Plaintiffs argue that “forced school closures” allegedly violate their “Fourteenth Amendment rights” and it is in the public interest to prevent the violation of a party’s constitutional rights. TRO 25:12-15. But, again, they fail to demonstrate that any fundamental constitutional rights are being harmed from the State’s actions, and their statutory claims are legally barred.

Conversely, the State and the residents of California would be irreparably harmed if the Court were to grant Plaintiffs’ requested injunction by suspending the State’s measures to control the spread of the virus and limit infections in the school

¹¹ Moreover, enjoining the Order would not prevent counties with high rates of COVID-19 from issuing their own county-wide order mandating in-person school closures until the county is removed from the Monitoring List, or prevent schools from deciding not to start the school year with in-person learning.

1 setting. As this Court recognized in the first federal action in California
 2 challenging COVID-19 restrictions, individuals exposed to potential transmission
 3 of the disease without adequate safety measures “face the threat of immediate and
 4 irreparable injury.” *City of Costa Mesa v. United States*, 2020 WL 882000, at *1
 5 (C.D. Cal. Feb. 21, 2020).

6 The State has been working hard to minimize the spread of COVID-19, but
 7 new scientific evidence and surges in many counties across the State in July proved
 8 that California public-health officials’ work was not done. As previously
 9 discussed, the State has set forth a reasonable process based on science and
 10 evidence to permit schools in counties on the Monitoring List to open for in-person
 11 instruction in a safe manner when the COVID-19 surges in their counties subside.
 12 It has also provided for a waiver exception for elementary schools based on the
 13 emerging scientific evidence that COVID-related risks in schools serving
 14 elementary-age students are lower than and different from the risks to staff and to
 15 students in schools serving older students, due to lower risks of transmission and
 16 infection in children under age 12. RJN Exs. L-O. Permitting schools with older
 17 children to open for in-person instruction in counties with high rates of COVID-19
 18 would increase the risk of transmission in counties that already have high
 19 transmission rates and would be overwhelmingly contrary to the public interest.

20 CONCLUSION

21 For the foregoing reasons, the Court should deny Plaintiffs’ TRO application.

22 Dated: August 9, 2020

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MATTHEW BRACH, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

2:20cv06472 SVW (AFMx)

**DECLARATION OF JAMES
WATT, M.D., M.P.H., IN SUPPORT
OF DEFENDANTS' OPPOSITION
TO PLAINTIFFS' APPLICATION
FOR TEMPORARY
RESTRAINING ORDER AND FOR
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Judge: The Honorable Stephen
V. Wilson

Action Filed: 7/21/2020

1 I, JAMES WATT, M.D., M.P.H., declare as follows:

2 1. I am over the age of 18 and a United States citizen. I know the following
3 facts of my own personal knowledge, and if called upon as a witness, I could and
4 would testify competently thereto.

5 **I. EDUCATION AND PROFESSIONAL BACKGROUND**

6 2. I am currently employed as the Chief of the Division of Communicable
7 Diseases at the California Department of Public Health (CDPH).

8 3. My background is in the epidemiology of communicable diseases. I
9 received my bachelor's degree at Stanford University and completed my medical
10 degree at UC San Diego in 1990 with medical specialty training in Pediatrics. I also
11 received a master's degree in Public Health at UC Berkeley in 1995. I hold a
12 California medical license and am Board Certified in Pediatrics.

13 4. During my career, I have published over 60 scientific papers focused on
14 infectious diseases. As a physician scientist, my research has focused on the diverse
15 challenges that we face in preventing infectious diseases, including emerging
16 infections, and vaccine safety and efficacy. I have provided international
17 consultation to address infectious diseases in many regions of the world and have
18 served on CDC and World Health Organization (WHO) advisory panels. I currently
19 hold an academic position at UCSF School of Medicine and at the Johns Hopkins
20 Bloomberg School of Public Health, mentoring students and teaching about
21 communicable disease control. My accomplishments have been recognized
22 through honors and awards including the United States Public Health Service
23 Achievement Medal in 2000, the National Center for Infectious Diseases Honor
24 Award in 2001 and Outstanding Achievement Award from the California
25 Department of Public Health in 2015 and 2016.

26 5. In 1996, I joined the California Department of Health Services (CDHS)
27 as a Public Health Medical Officer II. In 1999, I joined the federal Centers for
28 Disease Control and Prevention (CDC) as an Epidemic Intelligence Service Officer

1 in the Respiratory Diseases Branch. In 2001, I became an Assistant Scientist in the
2 School of Public Health at Johns Hopkins University.

3 6. I joined CDPH as a Public Health Medical Officer in 2006 and became
4 Chief of the Tuberculosis Control Branch in 2008. In 2010, I took on my current
5 position of Chief of the Division of Communicable Diseases. In this position, I am
6 responsible for disease control and prevention of the diverse infectious diseases that
7 affect Californians as well as for the State laboratories that support those efforts. As
8 Division Chief, I also serve as the Co-Director for the California Emerging
9 Infections Program.

10 7. From January 2020 through July 12, 2020, I served as the Acting Deputy
11 Director of the Center for Infectious Diseases and Interim State Epidemiologist at
12 CDPH. As the Acting Deputy Director of the Center for Infectious Diseases and
13 Interim State Epidemiologist at CDPH, I coordinated CDPH's epidemiologic
14 response to disease outbreaks and emerging health threats and have been very
15 involved in CDPH's response to the COVID-19 (SARS-CoV-2) pandemic.

16 8. CDPH is one of sixteen departments and offices within the California
17 Health and Human Services Agency, and its fundamental responsibilities include
18 infectious disease control and prevention, food safety, environmental health,
19 laboratory services, patient safety, emergency preparedness, chronic disease
20 prevention and health promotion, family health, health equity, and vital records and
21 statistics. Our mission is to advance the health and well-being of California's
22 diverse people and communities.

23 9. CDPH's Center for Infectious Diseases protects the people in California
24 from the threat of preventable infectious diseases and assists those living with an
25 infectious disease in securing prompt and appropriate access to healthcare,
26 medications and associated support services.

27 10. As noted, I have been intimately involved with the statewide COVID-19
28 response since January 2020. My role since that time was to oversee analysis of

1 statewide data on COVID-19 cases and trends in disease activity. Since January, I
2 have been working full time for approximately 60-70 hours per week to address the
3 pandemic. I am familiar with the guidance issued by CDPH and the State of
4 California Executive Orders N-33-20 and N-60-20, as well as the ongoing guidance
5 from CDPH regarding school and school-based programs.

6 11. Attached hereto as Exhibit A is a true and correct copy of my curriculum
7 vitae.

8 **II. THE TRANSMISSION OF THE NOVEL CORONAVIRUS AND THE SPREAD OF**
9 **THE COVID-19 PANDEMIC**

10 **A. General**

11 12. People with COVID-19 have reported a wide range of symptoms,
12 ranging from no or mild symptoms to severe illness. COVID-19 can cause severe
13 and long-term health complications, including death. Older adults and people of
14 any age who have serious underlying medical conditions are at higher risk for
15 severe illness from COVID-19. There is no vaccination for COVID-19.

16 13. A large percentage of people infected with SARS-CoV-2, the virus that
17 causes COVID-19, have no symptoms. People who have no symptoms can,
18 however, still spread COVID-19.

19 14. There is widespread consensus among epidemiologists that the virus that
20 causes COVID-19 spreads from person to person mainly through respiratory
21 droplets produced when an infected person—even an asymptomatic one—speaks,
22 coughs, or sneezes. These droplets can land in the mouths or noses of people who
23 are nearby or possibly be inhaled into the lungs.

24 15. Some scientists and studies have suggested that the COVID-19 virus also
25 may be spread through aerosol transmission, that is, through smaller particles
26 emitting from an infected person (such as through speaking, singing and other
27 vocalization) that can travel farther than respiratory droplets. Some studies have
28 also suggested that the virus can be spread through contaminated surfaces, although

1 that risk appears to be lower than person-to-person transmission. Research is
2 ongoing related to the role and importance of these additional transmission
3 pathways.

4 16. COVID-19 can spread quickly. A person with COVID-19, on average,
5 infects approximately two people. Unchecked, COVID-19 spreads exponentially
6 and over 10 transmission cycles, one person could be responsible for 1,024 other
7 people contracting the virus. Physical distancing interventions can be and indeed
8 have been successful in reducing the number of persons infected by each case and
9 changing the exponential pattern of case increases. That is why these interventions
10 are so important for controlling COVID-19 in California. Physical distancing
11 measures include staying home and staying at least six feet away from others when
12 outside the home.

13 17. COVID-19 is currently spreading in the community (community spread)
14 in many affected geographic areas. An area is experiencing community spread
15 when residents are becoming infected with the virus in community settings, and it is
16 not possible to identify the source of exposure in some cases. As of August 7,
17 2020, there have been: (1) 545,787 confirmed COVID-19 cases in the state, (2)
18 5746 hospitalized patients (currently admitted), and (3) 10,189 fatalities.

19 **B. Transmission and Infection of COVID-19 and Children in**
20 **California**

21 18. Research shows that children are susceptible to infection by COVID-19.
22 Although they generally present with less severe symptoms than adults, there have
23 been severe cases in persons under 18, with one recent confirmed COVID-19
24 related death recorded in California. A severe condition called multisystem
25 inflammatory syndrome in children (MIS-C) has been linked to COVID-19, and at
26 least 30 cases in California have been reported of this more severe manifestation of
27 COVID-19, with children often hospitalized and ill for extended periods.
28

1 19. Because children have less severe symptoms, or may more commonly be
2 asymptomatic, they are likely not tested at the same rate as adults. Limited testing
3 would reduce the number of infections identified in children.

4 20. In early June, some day camps and daycare facilities were allowed to
5 open in a limited capacity. The number of children participating in day camps
6 during the summer months is smaller than the volume of students in K-12 schools
7 in California during the school year. Additionally, day camps are generally
8 structured with smaller group sizes and in a manner that allows more distancing and
9 outdoor activities than traditional school.

10 21. When the Department of Public Health issued guidance in June for the
11 various sectors that reopened under the phased reopening plan, the data and trends
12 on positive cases, COVID-related deaths, and other key measures had stabilized.
13 Unfortunately, that was no longer the case in July, and, as explained below,
14 decisions about reopening sectors or activities that have been closed must take into
15 account how that additional activity and mixing will impact the pandemic's spread
16 in communities across the state.

17 **C. The Increased Risk of Transmission Among In-Person**
18 **Gatherings**

19 22. Whenever a group of people from different households gather, there is an
20 increased risk that the COVID-19 virus may be transmitted among the gathering
21 and into the community at large. The risk increases commensurately with the size
22 of the group (other factors being equal), as well as when members of the group are
23 in close proximity to one another. Thus, in-person gatherings pose a heightened
24 risk of transmission of COVID-19.

25 23. The spread of COVID-19 is more likely when people are in close contact
26 or proximity with one another (within about six feet). While keeping six feet of
27 separation between individuals and wearing face coverings can reduce the risk of
28

1 disease transmission, any gathering increases the risk of individual and community
2 transmission. This includes in-person classes in the school setting.

3 24. The risk of transmission also increases when groups of individuals gather
4 in close proximity for extended periods, and when they do so in enclosed (indoor)
5 spaces. Indoor gatherings pose increased risk compared to outdoor gatherings
6 because of reduced airflow and smaller contained spaces for the virus to be
7 concentrated and for people to come into contact with the virus. In the outdoors,
8 wind and air temperatures and ultraviolet light constitute additional factors that can
9 negatively affect the virus and can disperse the virus particles such that contact and
10 inhalation by persons are diminished and infection is less likely to occur.

11 25. The risk of COVID-19 transmission is increased by activities engaged in
12 by groups that increase the likelihood that respiratory droplets will be spread from
13 one person to another person or persons, including speaking, chanting, shouting,
14 and singing in close proximity to others and especially indoors. There have been
15 multiple reports of significant spread of COVID-19 resulting from gatherings
16 involving such activities, including among others, choir practices and services in
17 houses of worship.

18 26. While limited data suggest children, particularly older children, may
19 spread COVID-19, their overall role in spread has not been fully defined.
20 However, in schools, adults intermingle with children, and transmission may
21 happen between adults, between children, from adults to children or from children
22 to adults. It is possible that in the school setting, as in other settings, asymptomatic
23 transmission may occur. Thus, people who gather in groups or near others (other
24 than those with whom they live), will not know whether other individuals who are
25 in close proximity are carrying the virus. By gathering in large groups, and in close
26 proximity to others, individuals put themselves and others at increased risk of
27 transmission, which could be expected to increase the spread of COVID-19 in their
28 communities and in any other communities they visit. This spread could fan out

1 into different parts of the state, jeopardizing the hard work to contain COVID-19
2 that is going on in many communities and placing a further strain on hospitals and
3 other resources across the state.

4 27. While keeping six feet of separation between individuals and wearing
5 face coverings can reduce the risk of disease transmission, any gathering
6 nevertheless increases the risk of individual and community transmission for the
7 reasons explained above.

8 28. Contact that occurs with longer duration increases the opportunity for
9 spreading infection. Brief encounters in grocery stores and during shopping
10 excursions carry a lower risk of person-to-person spread by virtue of their less
11 extended, fleeting nature compared to encounters that occur with in-person school
12 instruction, or gatherings for events that are carried out over a much longer time
13 period.

14 29. In-person classroom instruction thus creates increased public risk of
15 COVID-19 transmission until localities have attained sufficient testing, tracking,
16 hospital capacity, and infection rates that indicate epidemiological stability and an
17 ability to treat outbreaks if they occur. At such a time, there may be modifications
18 that mitigate risk to an acceptable level. As the federal Centers for Disease Control
19 and Prevention recognized in updated guidance issued in July, evidence from
20 around the world suggests that reopening of schools may be safe in communities
21 with low COVID-19 rates. California, however, is currently not low, exceeding
22 100 cases per 100,000 residents in numerous counties across the state.

23 **III. THE STATE'S MEASURES TO CURB THE SPREAD OF COVID-19**

24 30. The purpose of the State's public health measures to combat the COVID-
25 19 pandemic is to protect vulnerable people from infection with the coronavirus
26 that causes COVID-19 and to reduce the spread of the virus in the community. By
27 reducing community spread, we can protect persons at increased risk of severe
28 disease and prevent critical infrastructure, particularly health care facilities, from

1 being overwhelmed. In geographic areas where community spread has been
2 reduced and/or in those areas that are less susceptible to being overwhelmed by a
3 potential community spread and that have demonstrated the ability to test and trace
4 in accordance with relevant guidelines, other health and safety rules may be
5 promulgated to allow more sectors of the economy to operate with appropriate
6 public health modifications. This includes public, private, and parochial schools.

7 31. Governor Gavin Newsom instituted a stay at home order on March 19,
8 2020 to prevent the rapid spread of COVID-19 that was occurring, and to allow the
9 state to build capacity to respond to the crisis. As the data revealed that the spread
10 of COVID-19 was stabilizing, California was able to begin reopening sectors of the
11 economy and activities based on relative risk of activities.

12 32. To reduce the incidence of community spread, the state adopted a staged
13 reopening plan, starting first with opening lower-risk businesses and activities,
14 based on what is known about the transmission of the virus. Such an approach
15 reduces the chance that the state and local capacity that has been developed to
16 respond to outbreaks will be overwhelmed as the state moves to reopening all
17 sectors and activities, with modifications. By contrast, a plan in which the state
18 reopens all businesses at once—as opposed to this progressive plan—would expose
19 the state to severe risk of an escalating outbreak and limit the state’s ability to
20 ensure that testing and medical capacity keeps pace with disease levels.

21 33. This staged reopening can vary between different regions and counties
22 depending on their rates of infection and medical capacity. Regions with low
23 infection rates may move through the various reopening stages more rapidly than
24 regions with higher infection rates. If a region reopens and its infection rate
25 increases, the reopening will be reassessed and possibly slowed, or stopped.

26 34. In July 2020, the case positivity rate and other indicators started
27 increasing again, prompting new orders and directives to pause reopening or, in
28 some cases, roll back the reopening of certain higher risk activities, particularly

1 indoor activities where the risk of transmission is greater. Activities in counties
2 with particularly high rates of transmission, or other data reflecting that the
3 disease's renewed spread could overwhelm the health system, were rolled back.

4 35. While managing a pandemic, public health officials' decisions to reopen
5 new sectors are informed by current conditions and evaluation of the risk of
6 activities in those sectors, in light of the particular activities and in the broader
7 context of how renewing those activities may impact community spread.

8 36. Based on estimates, there are nearly 6.5 million children enrolled in
9 public and private schools in California. Reopening schools for in-person
10 instruction would result in a significant amount of new movement throughout the
11 community of students, parents, and school employees as they travel to school, and
12 a mixing of individuals from various households, with students and teachers
13 together in groups indoors for extended periods of time.

14 37. This movement and mixing would introduce substantial new risks of
15 transmission of COVID-19.

16 38. Because data on the extent to which children spread COVID-19 are
17 evolving, and some evidence exists that older children can transmit the disease,
18 children must be factored into the community-wide efforts to control the spread of
19 COVID-19, protect vulnerable populations, and prevent the overburdening of
20 hospitals. Based on estimates that there are approximately 6.5 million school-age
21 children throughout the state of California. In addition, many adults are involved in
22 teaching children and managing schools. It is for this reason the opening of public,
23 private, and parochial school systems, consisting of transitional kindergarten
24 through 12th grade, must be carefully considered and planned.

25 39. The State's public health measures attempt to identify and impose the
26 least restrictive feasible restrictions available at a given point in time that can be
27 reasonably anticipated (based on the latest data and scientific consensus) to meet
28

1 the State's primary public health purpose, that is, reducing the spread of COVID-
2 19.

3 40. The State's pandemic response was designed to be, and has been, a work
4 in progress that must be adjusted in real time as the data and circumstances change.
5 The course of the pandemic has varied greatly over time, and in different parts of
6 the State, and likely will continue to do so. In accordance with these realities, as
7 the State has obtained more data and scientific understanding has increased, the
8 State has been increasingly able to tailor and target its public health measures,
9 including at a county-by-county level, and to focus more restrictive measures in
10 areas that are currently experiencing elevated rates of infection and hospitalization.

11 41. The State is monitoring the spread of COVID-19 closely in each local
12 county community and has set up a county monitoring list. If a county is on a
13 monitoring list for more than 3 days, it is required to roll back some activities that
14 present higher risk of transmission, as explained in the July 13, 2020 order by the
15 State Public Health Officer. A county will be allowed to re-open its schools if it
16 remains off the monitoring list for 14 days and can institute other safety criteria.

17 42. As the State has obtained additional experience with the course and
18 effects of the COVID-19 pandemic and obtained additional risk-related data, it has
19 engaged in ongoing assessment of relative risk, and has updated its guidance based
20 on its experience and data.

21 43. CDPH guidance also requires that people wear a cloth face covering over
22 their nose and mouth in the community setting, subject to certain exemptions. This
23 is a public health measure people must take to reduce the spread of COVID-19 in
24 addition to, not instead of, physical distancing, frequent hand cleaning, and other
25 everyday preventive actions. A cloth face covering is not necessarily intended to
26 protect the wearer but serves to prevent the spread of virus from the wearer to
27 others. This is especially important when someone is infected but is not aware of
28 their illness and is not self-isolating. CDPH guidance requires a cloth face covering

1 to be worn when people go into public settings. Although wearing a face covering
2 or frequently washing one's hands will not completely prevent the spread of the
3 virus, each of these measures contributes to reducing the risk of transmission.

4 I declare under the penalty of perjury under the laws of the United States that
5 the foregoing is true and correct to my personal knowledge.

6 Executed on August 8th, 2020, in Albany, California.
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EXHIBIT A

CURRICULUM VITAE

Name: James Watt, MD, MPH

Position: Chief, Division of Communicable Disease Control
Center for Infectious Diseases
California Department of Public Health

Address: Building P, 2nd Floor
850 Marina Bay Parkway
Richmond, CA 94804

Voice: (510) 620-3784
FAX: (916) 440-5678
Email: james.watt@cdph.ca.gov

EDUCATION AND TRAINING

1980-84	Stanford University, Stanford, CA	B.S. (Biology) B.A. (German Studies)
1985	Deutsches Primatenzentrum, Goettingen, Germany	Krupp Fellowship
1985-90	University of California, San Diego	M.D.
1990-93	Oakland Children's Hospital, Oakland, CA	Resident (Pediatrics)
1994-95	University of California, Berkeley	M.P.H. (Maternal and Child Health)
1995-96	California Department of Health Services, San Francisco, CA	Resident (Preventive Medicine)

LICENSES, CERTIFICATION

1991-present Medical Licensure, California
1995-present Board Certification, Pediatrics

PRINCIPAL POSITIONS HELD

1996-99	Public Health Medical Officer II Immunization Branch Division of Communicable Disease Control California Department of Health Services
1999-01	Epidemic Intelligence Service Officer Respiratory Diseases Branch Division of Bacterial and Mycotic Diseases National Center for Infectious Disease Centers for Disease Control and Prevention
2001-06	Assistant Scientist Department of International Health School of Public Health Johns Hopkins University

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Curriculum Vitae
James Watt, MD, MPH

2006-07 Public Health Medical Officer III (Epidemiology)
Tuberculosis Control Branch
Division of Communicable Disease Control
Center for Infectious Diseases
California Department of Public Health

2008-10 Chief
Tuberculosis Control Branch
Division of Communicable Disease Control
Center for Infectious Diseases
California Department of Public Health

OTHER POSITIONS HELD CONCURRENTLY

2006-present Associate
Johns Hopkins University
School of Public Health

2009-present Associate Clinical Professor
University of California, San Francisco
School of Medicine

2009-2010 Member representing high incidence jurisdictions
Board of Directors
National Tuberculosis Controllers Association

2008-2010 Executive Committee (ex officio)
California Tuberculosis Controllers Association

2012-present Deputy State Epidemiologist
California Department of Public Health

2015 Acting State Health Officer, California

HONORS AND AWARDS

1984 Phi Beta Kappa, Stanford University
2000 United States Public Health Service Achievement Medal
2001 Honor Award, National Center for Infectious Diseases
2002 Committee recognition award for two outstanding abstracts, International Symposium on
Pneumococci and Pneumococcal Disease
2015 Outstanding Achievement Award, California Department of Public Health
2016 Outstanding Achievement Award, California Department of Public Health

INVITED PRESENTATIONS

INTERNATIONAL

International Symposium on the Global Reduction of Hib Disease; Scottsdale, Arizona, 2002 (invited talk)
Indian Academy of Pediatrics Meeting (Pedicon); Calcutta, 2005 (invited talk)

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International Symposium on Pneumococci and Pneumococcal Disease; Alice Springs, Australia, 2006
(invited talk)

NATIONAL

National Vaccine Advisory Committee Conference on Pneumococcal Disease Prevention in Adults:
Potential Vaccine Strategies; Baltimore, MD, 2003 (invited talk)
5th National Association of Public Health Laboratories Meeting on Essential Mycobacteriology Services;
San Diego, CA, 2008 (invited talk)
Francis J. Curry National Tuberculosis Center National Web Training--Practical Applications of
Genotyping in Tuberculosis Control; San Francisco, CA, 2008 (invited talk)

ADVISORY PANELS

Immunization Partnership, American Academy of Pediatrics/California Department of Health Services
Preventive Medicine Residency Advisory Committee, California Department of Health Services
Cost effectiveness of Hib conjugate vaccine in Egypt, Egyptian Ministry of Health and Population, WHO
Eastern Mediterranean Regional Office, and CDC
A tool for rapidly assessing Hib disease burden, WHO
Standardized interpretation of chest radiographs for the diagnosis of pneumonia, WHO
Research Advisors, Pneumococcal Accelerated Development and Implementation Program
Estimating the burden of *Haemophilus influenzae*, type b in India, Indian Council for Medical Research
Estimating the global burden of Hib and pneumococcal disease, WHO
Development of guidelines for the control of tuberculosis in foreign born persons, CDC
Expert Group to Evaluate Molecular Drug Susceptibility Testing, NTCA

INTERNATIONAL CONSULTATIONS

2001	Estimating Hib disease burden, WHO Africa Regional Office personnel. Harare, Zimbabwe.
2002	Options for Assessing Disease Burden due to Hib in Mongolia, WHO Western Pacific Regional Office, Ulaan Baatar, Mongolia.
2004	Evaluation of Surveillance for Invasive Hib Disease in Mongolia, WHO Western Pacific Regional Office, Ulaan Baatar, Mongolia.
2011-12	Review of evidence on the effectiveness of different Hib conjugate vaccine schedules, WHO Secretariat, Geneva, Switzerland

TEACHING AND MENTORING

JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH

COURSES TAUGHT

Introduction to Quantitative and Qualitative Research for American Indian Health (Summer Institute, 2006,
Principal Instructor. Enrollment of 20).

Collecting, Analyzing and Using Public Health Data in Native American Communities (Summer Institute,
2005, Principal Instructor. Enrollment of 30).

Collecting, Analyzing and Using Public Health Data in Native American Communities (Summer Institute,
2004, Principal Instructor. Enrollment of 36).

STUDENTS MENTORED (Johns Hopkins University)

Aparna Roy (MPH, 2005)

Capstone Project Title: *Incidence of community acquired pneumonia in adults.*

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Cecilia Young Kwak (MPH, 2004)

Capstone Project Title: *The incidence of community acquired pneumonia in adults: a literature review*

Laurel Murrow (medical student, summer internship 2003)

Project Title: *Evaluation of an Active, Laboratory-based Surveillance System for Invasive Bacterial Infections among the Navajo and White Mountain Apache*

Dahlia McGregor, MD (MPH, 2003)

Integrating Experience Title: *Population-based surveillance of invasive pneumococcal disease in Jamaican children: Providing data for cost-benefit analysis of conjugate pneumococcal vaccines*

FELLOWS MENTORED (CDPH)

Jessica Cunningham, MPH (CSTE fellow)

Major Project: Epidemiology of tuberculosis among homeless persons in California.

Darryl Kong, MPH (Cal-EIS fellow)

Major Project: Identification and management of tuberculosis patients co-infected with HIV in California.

Erin Murray, PhD (CDC EIS Officer)

Major Project: Identification of geographic areas with increased incidence of tuberculosis.

Jonathan Nunez, MD (CDC EIS Officer)

Major Project: Analysis of the impact of non-screening of immigrants prior to arrival on imported tuberculosis in the United States

Patrick Ayscue, DVM, PhD (CDC EIS Officer)

Major Project: Analysis of trends in hospitalization for Varicella and Zoster in California

Jacklyn Wong, PhD (CDC EIS Officer)

Increased tuberculosis risk among immigrants arriving to California with abnormal domestic chest radiographs.

Hope Biswas, PhD (CDC EIS Officer)

Major Project: Characteristics associated with delivery of an infant with congenital syphilis and missed opportunities for prevention—California 2012-2014.

Yasser Bakhsh, MD, MPH (CDC EIS Officer)

Current.

FRANCIS J. CURRY NATIONAL TUBERCULOSIS CENTER

COURSES TAUGHT

Tuberculosis Clinical Intensive (February, 2009, Course Faculty).

RESEARCH AND CREATIVE ACTIVITIES

RESEARCH AWARDS AND GRANTS

1. California Emerging Infections Program
(co-director)

1/1/12-present

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Curriculum Vitae
James Watt, MD, MPH

Centers for Disease Control and Prevention

2. Cooperative Agreement for Epidemiology and Laboratory Capacity (principal investigator) 1/1/11-present
Centers for Disease Control and Prevention
3. Determination of HIV status and prevalence of HIV co-infection among tuberculosis cases in California (co-principal investigator) 7/1/09-6/31/10
Centers for Disease Control and Prevention
4. Cooperative Agreement for Tuberculosis Prevention, Control and Elimination in the United States (principal investigator) 1/1/08-12/31/10
Centers for Disease Control and Prevention.
5. Hib Initiative (co-investigator) 9/1/04-7/31/06
Global Alliance for Vaccines and Immunization (GAVI)
Supporting evidence-based decision making about *Haemophilus influenzae*, type b (Hib) vaccine use in developing countries
6. India Hib Disease Burden Project (project lead) 9/1/04-7/31/06
GAVI, USAID, Government of India
Estimating the burden of Hib disease in India to support an evidence-based decision about vaccine use
7. Indirect effects of pneumococcal conjugate vaccine in the community (co-investigator) 1/1/00-12/31/03
Wyeth Lederle Vaccines
8. Epidemiology of pneumococcal pneumonia among Navajo and Apache adults 1/1/01-12/31/04
(co-investigator)
Aventis
9. Safety and Efficacy of Pentavalent (G1, G2, G3, G4 and P1) Human-Bovine Reassortant Rotavirus Vaccine in Healthy Infants (co-investigator) 1/1/01-12/31/04
Merck & Co.
10. Pneumonia Epidemiology in White Mountain Apache Adults (principal investigator) 9/1/03-8/31/04
NIH/NIGM RO1 (under grant U26 94 00012-01)
11. A Phase 3 Study of MEDI-524 (Numax™), an Enhanced Potency Humanized Respiratory Syncytial Virus (RSV) Monoclonal Antibody, for the Prevention of RSV Disease Among Navajo and White Mountain Apache Infants (co-investigator) 1/1/04-7/31/06
MedImmune, Inc.

PUBLICATIONS

1. Kahane SM, **Watt JP**, Newell K, Kellam S, Wight S, Smith NJ, et al. Immunization Levels and Risk Factors for Low Immunization Coverage Among Private Practices. *Pediatrics* 2000;105(6):e73.
2. Hyde TB, Gilbert M, Zell ER, **Watt JP**, Schwartz SB, Thacker WL, et al. Azithromycin prophylaxis during a hospital outbreak of *Mycoplasma pneumoniae* pneumonia. *Journal of Infectious Disease* 2001;183:907-12.

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Curriculum Vitae
James Watt, MD, MPH

3. **Watt JP**, Schuchat A, Erickson K, Honig JE, Gibbs R, Schulkin J Group B Streptococcal Prevention Practices of Obstetrician-Gynecologists. *Obstetrics and Gynecology* 2001;98(1):7-13.
4. Benin AL, O'Brien KL, **Watt JP**, Reid R, Zell ER, Katz S, Donaldson C, Parkinson A, Schuchat A, Santosham M, Whitney CG. Effectiveness of the 23-valent polysaccharide vaccine against invasive pneumococcal disease in Navajo adults. *Journal of Infectious Diseases* 2003;188(1):81-9.
5. **Watt JP**, Levine OS, Santosham M. Global reduction of Hib disease: what are the next steps? Proceedings of the meeting. *Journal of Pediatrics* 2003;143(6 Suppl):S163-87.
6. **Watt JP**, O'Brien KL, Benin AL, Whitney CG, Robinson K, Parkinson AJ, Reid R, Santosham M. Invasive Pneumococcal Disease among Navajo Adults, 1989-1998. *Clinical Infectious Diseases* 2004;38(4):496-501.
7. Feikin DR, Nelson CB, **Watt JP**, Mohsni E, Wenger JD, Levine OS. Rapid Assessment Tool for *Haemophilus influenzae*, type b Disease in Developing Countries. *Emerging Infectious Diseases* 2004;10(7):1270-6.
8. **Watt JP**, O'Brien KL, Katz S, Bronsdon MA, Elliott J, Dallas J, Perilla MP, Reid R, Murrow L, Facklam R, Santosham M, Whitney CG. Nasopharyngeal versus Oropharyngeal Sampling for Detection of Pneumococcal Carriage in Adults. *Journal of Clinical Microbiology* 2004;42(11):4974-6.
9. O'Brien KL, Shaw J, Weatherholtz R, Reid R, **Watt J**, Croll J, Dagan R, Parkinson AJ, Santosham M. Epidemiology of invasive *Streptococcus pneumoniae* among Navajo children in the era before use of conjugate pneumococcal vaccines, 1989-1996. *American Journal of Epidemiology*. 2004;160(3):270-8.
10. Millar EV, O'Brien KL, **Watt JP**, Lingappa J, Pallipamu R, Rosenstein N, Hu D, Reid R, Santosham M. Epidemiology of Invasive *Haemophilus influenzae* Type a Disease among Navajo and White Mountain Apache Children, 1988-2003. *Clinical Infectious Disease*. 2005;40(6):823-30.
11. Benin AL, **Watt JP**, O'Brien KL, Zell E, Donaldson C, Schuchat A, Santosham M. Delivering Pneumococcal Vaccine to a High Risk Population: The Navajo Experience. *Human Vaccines*. 2005;1(2):e2-5.
12. Chandran A, **Watt JP**, Santosham M. Prevention of *Haemophilus influenzae* Type b (Hib) Disease: Past Success and Future Challenges. *Expert Review of Vaccines*. 2005;4(6):819-27.
13. Vesikari T, Matson DO, Dennehy P, Van Damme P, Santosham M, Rodriguez Z, Dallas MJ, Heyse JF, Goveia MG, Black SB, Shinefield HR, Christie CDC, Ylitalo S, Itzler RF, Coia ML, Onorato MT, Adeyi BA, Marshall GS, Gotheffors L, Campens D, Karvonen A, **Watt JP**, O'Brien KL, DiNubile MJ, Clark HF, Boslego JW, Offit, PA, Heaton, PM. Safety and Efficacy of a Pentavalent Human-Bovine (WC3) Reassortant Rotavirus Vaccine. *New England Journal of Medicine*. 2006;354(1):23-33.
14. Millar EV, O'Brien KL, **Watt JP**, Bronsdon MA, Dallas J, Whitney CG, Reid R, Santosham M. Effect of community wide conjugate pneumococcal vaccine use in infancy on nasopharyngeal carriage through 3 years of age: a cross-sectional study in a high-risk population. *Clinical Infectious Disease*. 2006;43(1):8-15.
15. Moisi JC, Levine OS, **Watt JP**. Sensitivity of Surveillance for *Haemophilus influenzae*, type b Meningitis. *Pediatric Infectious Disease Journal*. 2006;25(10):960.
16. **Watt JP**, O'Brien KL, Benin AL, McCoy SI, Donaldson CM, Reid R, Schuchat A, Zell ER, Hochman M, Santosham M, Whitney CG. Risk Factors for Invasive Pneumococcal Disease Among Navajo Adults. *American Journal of Epidemiology*. 2007 Nov 1;166(9):1080-7.

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James Watt, MD, MPH

17. Hochman ME, **Watt JP**, Reid R, O'Brien KL. The Prevalence of End Stage Renal Disease in Native American Adults on the Navajo Reservation. *Kidney International*. 2007;71(9):931-7.
18. Rossi I, Zuber P, Dumolard L, Walker D, **Watt JP**. Introduction of Hib vaccine into national immunization programmes: a descriptive analysis of global trends. *Vaccine*. 2007;25:7075-80.
19. Santosham M, Reid R, Chandran A, Millar EV, **Watt JP**, Weatherholtz R, Donaldson C, Croll J, Moulton LH, Thompson CM, Siber GR, O'Brien KL. Contributions of Native Americans to the global control of infectious diseases. *Vaccine*. 2007;22:2366-74.
20. Menzies R, McIntyre P, Reid R, O'Brien K, Santosham M, **Watt JP**, et al. Vaccine preventable diseases in indigenous populations—International perspectives. *Vaccine*. 2007;25:7281-4.
21. Millar EV, **Watt JP**, Bronsdon MA, Dallas J, Reid R, Santosham M, O'Brien KL. Indirect effect of 7-valent pneumococcal conjugate vaccine (Pnc7-CRM) on pneumococcal colonization among unvaccinated household members. *Clinical Infectious Disease*. 2008;47(8):989-96.
22. Mendsaikhan J, **Watt JP**, Mansoor O, Suvdmaa N, Edmond K, Litt DJ, Nymadawa P, Baoping Y, Altantsetseg D, Slack M. Childhood Bacterial Meningitis in Ulaanbaatar, Mongolia, 2002-2004. *Clinical Infectious Disease*. 2009;48(S2):S141-146
23. Wolfson LJ, O'Brien KL, **Watt JP**, Henkle E, Deloria-Knoll M, McCall N, Lee E, Mulholland K, Levine OS, Cherian T. Methods to estimate the global burden of disease due to *Haemophilus influenzae* type b and *Streptococcus pneumoniae* in children less than 5 years of age. *Lancet*. 2009; published online.
24. O'Brien KL, Wolfson LJ, **Watt JP**, Henkle E, Deloria-Knoll M, McCall N, Lee E, Mulholland K, Levine OS, Cherian T. The global burden of disease due to *Streptococcus pneumoniae* in children less than 5 years of age. *Lancet*. 2009;374:893-902.
25. **Watt JP**, Wolfson LJ, O'Brien KL, Henkle E, Deloria-Knoll M, McCall N, Lee E, Levine OS, Hajjeh R, Mulholland K, Cherian T. The global burden of disease due to *Haemophilus influenzae*, type b in children less than 5 years of age. *Lancet*. 2009;374:903-911.
26. **Watt JP**, Moïsi JC, Donaldson RLA, Reid R, Ferro S, Whitney CG, Santosham, M, O'Brien KL. Measuring the Incidence of Community Acquired Pneumonia in a Native American Community. *Epidemiology and Infection*. 2010; 138:1146-54.
27. **Watt JP**, Moïsi JC, Donaldson RLA, Reid R, Ferro S, Whitney CG, Santosham, M, O'Brien KL. Use of serology and urine antigen detection to estimate the proportion of adult community-acquired pneumonia attributable to *Streptococcus pneumoniae*. *Epidemiology and Infection*. 2010;138:1796-803.
28. Gupta M, Kumar R, Deb AK, Bhattacharya SK, Bose A, John J, Balraj V, Ganguly NK, Kant L, Kapoor AN, **Watt J**, Shearer J, Santosham M. Multi-center surveillance for pneumonia and meningitis in children. *Indian J Med Res*. 2010;131:649-58.
29. Banerjee R, Allen J, Lin SYG, Westenhause J, Desmond E, Schechter GF, Scott C, Raftery A, Mase S, **Watt JP**, Flood J. Rapid Drug Susceptibility Testing with a Molecular Beacon Assay Is Associated with Earlier Diagnosis and Treatment of Multidrug-Resistant Tuberculosis in California. *J Clin Microbiol*. 2010;48(10):3779-81.
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Curriculum Vitae
James Watt, MD, MPH

31. Fitzwater S, **Watt JP**, Levine OS, Santosham M. *Haemophilus influenzae* type B conjugate vaccines: considerations for vaccination schedules and implications for developing countries. *Human Vaccines*. 2010;6:810-8.
32. Lowenthal P, Westenhouse J, Moore M, Posey DL, **Watt JP**, Flood J. Reduced importation of tuberculosis after the implementation of an enhanced pre-immigration screening protocol. *International J Tuberculosis Lung Dis*. 2011;15:761-6.
33. Grant LR, Gentsch JR, Esona MD, **Watt J**, Reid R, Weatherholtz RC, Santosham M, Parashar UD, O'Brien KL. Detection of G3P[3] and G3P[9] rotavirus strains in American Indian children with evidence of gene reassortment between human and animal rotaviruses. *J Med Virol*. 2011;83:1288-99.
34. Pascopella L, DeRiemer K, **Watt JP**, Flood JM. When tuberculosis comes back: Who develops recurrent tuberculosis in California? *PLOS One* 2011;6:e26541
35. Grant LR*, **Watt JP***, Weatherholtz RC, Moulton LH, Reid R, Santosham M, O'Brien, KL. Efficacy of a pentavalent human-bovine reassortant rotavirus vaccine against rotavirus gastroenteritis among American Indian children. *Pediatr Infect Dis J* 2012;31:184-8. *equal contribution
36. Grant L, Vinje J, Parashar U, **Watt J**, Reid R, Weatherholtz R, Santosham M, Gentsch J, O'Brien K. Epidemiologic and Clinical Features of Other Enteric Viruses Associated with Acute Gastroenteritis in American Indian Infants. *J Pediatr* 2012;161:110-5.e1.
37. Winter K, Harriman K, Zipprich J, Schechter R, Talarico J, **Watt JP**, Chavez G. California Pertussis Epidemic, 2010. *J Pediatr* 2012;161:1091-6.
38. Said MA, Johnson HL, Nonyane BA, Deloria-Knoll M, O'Brien KL, AGEDD Adult Pneumococcal Burden Study Team (**Watt JP** study team member). Estimating the burden of pneumococcal pneumonia among adults: a systematic review and meta-analysis of diagnostic techniques. *PLoS One* 2013;8(4):e60273.
39. Kong D, **Watt JP**, Marks S, Flood J. HIV Status Determination Among Tuberculosis Patients From California During 2008. *J Public Health Management Practice* 2013;19:169-77.
40. Grant J, **Watt J**, Moulton L, Weatherholtz R, Reid R, Santosham M, O'Brien K. Lack of non-specific protection against all-cause, non-rotavirus gastroenteritis by vaccination with orally administered rotavirus vaccine. *J Pediatr Gastroent Nutr* 2013; epub ahead of print.
41. Murray EL, Samuel MC, Brodsky J, Akiba CF, King C, Li M, Wollesen M, Gonzales PE, **Watt JP**, Bolan G. *Neisseria gonorrhoeae* Outbreak: Unintended Consequences of Electronic Medical Records and Using an Out-of-State Laboratory—California, July 2009-February 2010. *Sex Trans Dis* 2013;40:556-8.
42. Metcalfe JZ, Porco TC, Westenhouse J, Damesyn M, Facer M, Hill J, Xia Q, **Watt JP**, Hopewell PC, Flood J. Tuberculosis and HIV co-infection, California, USA, 1993–2008. *Emerg Infect Dis* 2013; 19:400-6.
43. Scott S, Altanseseg D, Sodbayer D, Nymadawa P, Bulgan D, Mendsaikhan J, **Watt JP**, Slack M, Carvalho MG, Hajjeh R, Edmond KM. Impact of *Haemophilus influenzae* Type b Conjugate Vaccine in Mongolia: Prospective Population-Based Surveillance, 2002-2010. *J Peds* 2013;163(1 Suppl):S8-11.
44. Núñez JJ, Fritz CL, Knust B, Buttke D, Enge B, Novak MG, Kramer V, Osadebe L, Messenger S,

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Curriculum Vitae
James Watt, MD, MPH

- Albariño CG, Ströher U, Niemela M, Amman BR, Wong D, Manning CR, Nichol ST, Rollin PE, Xia D, **Watt JP**, Vugia DJ. An Outbreak of Hantavirus Infections Among Overnight Visitors to Yosemite National Park, California, USA, 2012. *Emerg Infect Dis* 2014;20(3):386-93.
45. Kong D, **Watt JP**, Marks SM, Flood JM. Timely HIV Diagnosis and HIV/TB Comanagement among California Patients in 2008. *Publ Health Rep* 2014;129:170-7.
46. Ayscue P, Murray E, Uyeki T, Zipprich J, Harriman K, Salibay C, Kang M, Luu A, Glenn-Finer R, **Watt J**, Glaser C, Louie J. Influenza-Associated Intensive-Care Unit Admissions and Deaths—California, September 29, 2013—January 18, 2014. *MMWR* 2014;63(7):143-7.
47. Winter K, Glaser C, Watt J, Harriman K. Pertussis epidemic—California, 2014. *MMWR* 2014;63(48):1129-32.
48. Ayscue P, Van Haren K, Sheriff H, Waubant E, Waldron P, Yagi S, Yen C, Clayton A, Padilla T, Pan C, Reichel J, Harriman K, Watt J, Sejvar J, Nix WA, Feikin D, Glaser C. Acute flaccid paralysis with anterior myelitis—California, June 2012-June 2014. *MMWR* 2014;63(40):903-6.
49. Greninger AL, Naccache SN, Messacar K, Clayton A, Yu G, Somasekar S, Federman S, Stryke D, Anterson C, Yagi S, Messenger S, Wadford D, Xia D, **Watt JP**, Van Haren K, Dominguez SR, Glaser C, Aldrovandi G, Chiu CY. A novel outbreak enterovirus D68 strain associated with acute flaccid myelitis cases in the USA (2012-14): a retrospective cohort study. *Lancet Infect Dis* 2015; epub March 31.
50. Shahkarami M, Yen C, Glaser C, Xia D, **Watt J**, Wadford DA. Laboratory Testing for Middle East Respiratory Syndrome Coronavirus, California, USA, 2013-2014. *Emerg Infect Dis* 2015;21(9):epub.
51. Zipprich J, Winter K, Hacker J, Xia D, **Watt J**, Harriman K. Measles outbreak—California, December 2014-February 2015. *MMWR* 2015;64(6):153-4.
52. Smith EM, Khan MA, Reingold A, **Watt JP**. Group B streptococcus infections of soft tissue and bone in California adults, 1995-2012. *Epidemiol Infect* 2015;143(15):3343-50.
53. Van Haren K, Ayscue P, Waubant E, Clayton A, Sheriff H, Yagi S, Glenn-Finer R, Padilla T, Strober, JB, Aldrovandi G, Wadford DA, Chiu, CY, Xia D, Harriman K, **Watt JP**, Glaser Ca. Acute flaccid myelitis of unknown etiology in California, 2012-2015. *JAMA* 2015; 314(24):2663-71.
54. Langley G, Hao Y, Pondo T, Miller L, Petit, S, Thomas A, Lindegren ML, Farley MM, Dumyati G, Como-Sabetti K, Harrison LH, Baumbach J, **Watt J**, Van Beneden C. The Impact of Obesity and Diabetes on the Risk of Disease and Death due to Invasive Group A *Streptococcus* Infections in Adults. *Clin Infect Dis* 2016;62(7):845-52.
55. Nelson GE, Pondo T, Toews K, Farley MM, Lindegren ML, Lynfield R, Aragon D, Zansky SM, **Watt JP**, Cieslak PR, Angeles K, Harrison LH, Petit S, Beall B, Van Beneden CA. The Epidemiology of Invasive Group A Streptococcal Infection in the United States, Implications for Vaccine Prevention. *Clin Infect Dis* 2016; epub April 22.
56. Barry PM, Kay AW, Flood JM, **Watt J**. Getting to Zero: Tuberculosis Elimination in California. *Curr Epidemiol Rep* 2016;epub March 29.
57. Kozyreva VK, Jospin G, Greninger AL, **Watt JP**, Eisen JA, Chaturvedi V. Recent Outbreaks of Shigellosis in California Caused by Two Distinct Populations of *Shigella sonnei* with either Increased Virulence or Fluoroquinolone Resistance. *mSphere* 2016;1(6); e00344-16.

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Curriculum Vitae
James Watt, MD, MPH

58. Blain AE, Lewis M, Banerjee E, Kudish K, Liko J, McGuire S, Selvage D, **Watt J**, Martin SW, Skoff TH. An Assessment of the Cocooning Strategy for Preventing Infant Pertussis—United States, 2011. *Clin Infect Dis* 2016;63(suppl 4):S221-S226.
59. Skoff TH, Blain AE, **Watt J**, Scherzinger K, McMahon M, Zansky SM, Kudish K, Cieslak PR, Lewis M, Shang N, Martin SW. Impact of the US Maternal Tetanus, Diphtheria, and Acellular Pertussis Vaccination Program on Preventing Pertussis in Infants <2 Months of Age: A Case-Control Evaluation. *Clin Infect Dis* 2017: epub 2017.
60. Wong J, Lowenthal P, Flood J, **Watt J**, Barry PM. Increased tuberculosis risk among immigrants arriving to California with abnormal domestic chest radiographs. *Intl J Tuberculosis Lung Dis* 2018;22(1):73-79
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1/8/2019

Curriculum Vitae
James Watt, MD, MPH

5. Centers for Disease Control and Prevention. Notes from the Field: Hantavirus Pulmonary Syndrome in Visitors to a National Park—Yosemite Valley, California, 2012. *MMWR* 2012;61(46):952. (*co-author*)
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CERTIFICATE OF SERVICE

Case Name: Brach v. Newsom, et al.

No. 2:20cv06472 SVW (AFMx)

I hereby certify that on August 9, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28)
- DECLARATION OF JAMES WATT, M.D., M.P.H., IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE
- REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28); EXHIBITS
- DECLARATION OF DARIN WESSEL IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28)

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 9, 2020, at San Francisco, California.

G. Guardado
Declarant

/s/ G. Guardado
Signature

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official capacity as the Attorney General of
California, Sonia Y. Angell, M.D., in her official
capacity as the State Public Health Officer and
Director of the Department of Public Health and
Tony Thurmond, in his official capacity as State
Superintendent of Public Instruction and Director
of Education

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION – FIRST STREET COURTHOUSE

MATTHEW BRACH, et al.,
 Plaintiffs,
 v.
GAVIN NEWSOM, et al.,
 Defendants.

Case No. 2:20-cv-06472 SVW (AFMx)

**REQUEST FOR JUDICIAL
 NOTICE IN OPPOSITION TO
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER (Dkt. 28);
 EXHIBITS**

Date: August 17, 2020
 Time: 1:30 p.m.
 Courtroom: 10A - Telephonic
 Judge: The Honorable Stephen
 V. Wilson
 Trial Date: Not set
 Action Filed: 7/21/2020

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT defendants Gavin Newsom, in his official capacity as the Governor of California, Xavier Becerra, in his official capacity as the Attorney General of California, Sonia Y. Angell, M.D., in her official capacity as the State Public Health Officer and Director of the Department of Public Health, and Tony Thurmond, in his official capacity as State Superintendent of Public Instruction and Director of Education, hereby request this Court take judicial notice under Federal Rules of Evidence 201, and consistent with California Evidence Code sections 451, subdivisions (b) and (f), 452, subdivisions (c) and (h), and section 453, of the following facts and matter in support of their opposition to the application for a temporary restraining order:

1. Governor Newsom's Coronavirus State of Emergency Proclamation, dated March 4, 2020, attached hereto as Exhibit A.
2. Executive Order N-25-20, attached hereto as Exhibit B;
3. Official Statement regarding Executive Order N-33-20 and Essential Workers, attached hereto as Exhibit C.
4. California's Resilience Roadmap, attached hereto as Exhibit D.
5. Executive Order N-60-20, attached hereto as Exhibit E.
6. Order of the State Public Health Officer, dated May 7, 2020, attached hereto as Exhibit F.
7. Order of the State Public Health Officer, dated March 19, 2020 (the Stay at Home order), attached hereto as Exhibit G.
8. Order of the State Public Health Officer, dated July 13, 2020, attached hereto as Exhibit H.
9. California Department of Public Health, Guidance on Closure of Sectors in Response to COVID-19, dated July 13, 2020, attached hereto as Exhibit I.

1 10. California Department of Public Health, COVID-19 and Reopening In-
2 Person Learning Framework for K-12 Schools in California, 2020-2021 School
3 Year, dated July 17, 2020, attached hereto as Exhibit J.

4 11. California Department of Public Health, COVID-19 Industry Guidance:
5 Schools and School-Based Programs, updated August 3, 2020, attached hereto as
6 Exhibit K.

7 12. California Department of Public Health, Schools Guidance FAQs, dated
8 August 3, 2020, attached hereto as Exhibit L.

9 13. California Department of Public Health, COVID-19 and Reopening of
10 In-Person Learning for Elementary Education Waiver Notice to the California
11 Department of Public Health, dated August 3, 2020, attached hereto as Exhibit M.

12 14. California Department of Public Health, COVID-19 and Reopening In-
13 Person Learning Elementary Education Waiver Process, dated August 3, 2020,
14 attached hereto as Exhibit N.

15 15. California Department of Public Health, Waiver-Letter Template, issued
16 August 3, 2020, attached hereto as Exhibit O.

17 16. California Department of Public Health, Waiver Letter Template Cover
18 Form, issued August 3, 2020, attached hereto as Exhibit P.

19 17. California Department of Public Health, COVID-19 County Monitoring
20 Overview (accessed Aug. 7, 2020), attached hereto as Exhibit Q.

21 18. California Department of Public Health, COVID-19 County Data
22 Monitoring (accessed Aug. 7, 2020), attached hereto as Exhibit R.

23 19. California Department of Public Health, COVID-19 County Data
24 Monitoring, Step 1: Active Data Monitoring (accessed Aug. 8, 2020), attached
25 hereto as Exhibit S.

26 20. California Department of Public Health, COVID-19 County Monitoring
27 Step 2: Targeted Engagement with CDPH (accessed Aug. 8, 2020), attached hereto
28 as Exhibit T.

1 21. California Department of Public Health, COVID-19 County Monitoring
2 Step 3: Reinstitute Community Measures (accessed Aug. 8, 2020), attached hereto
3 as Exhibit U.

4 22. State Officials Announce Latest COVID-19 Facts, July 31, 2020, State
5 confirms first death of a young person related to COVID-19
6 (<https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-179.aspx>, accessed Aug. 8,
7 2020), attached hereto as Exhibit V.

8 23. Christine M. Szablewski, et al., SARS-CoV-2 Transmission and Infection
9 Among Attendees of an Overnight Camp — Georgia, June 2020, 69(31) Centers for
10 Disease Control Morbidity and Mortality Weekly Report, pp. 1023-1025 (Aug. 7,
11 2020) (<https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>, accessed Aug.
12 8, 2020), attached hereto as Exhibit W.

13 24. The Centers for Disease Control study of COVID-19 transmission and
14 infection among attendees of an overnight camp in Georgia reported the following
15 facts and transmission rates: “A total of 597 Georgia residents attended camp A.
16 Median camper age was 12 years (range = 6–19 years), and 53% (182 of 346) were
17 female. The median age of staff members and trainees was 17 years (range = 14–59
18 years), and 59% (148 of 251) were female. Test results were available for 344
19 (58%) attendees; among these, 260 (76%) were positive. The overall attack rate was
20 44% (260 of 597), 51% among those aged 6–10 years, 44% among those aged 11–
21 17 years, and 33% among those aged 18–21 years (Table). Attack rates increased
22 with increasing length of time spent at the camp, with staff members having the
23 highest attack rate (56%). During June 21–27, occupancy of the 31 cabins averaged
24 15 persons per cabin (range = 1–26); median cabin attack rate was 50% (range =
25 22%–70%) among 28 cabins that had one or more cases. Among 136 cases with
26 available symptom data, 36 (26%) patients reported no symptoms; among 100
27 (74%) who reported symptoms, those most commonly reported were subjective or
28 documented fever (65%), headache (61%), and sore throat (46%). [¶] The findings

1 in this report are subject to at least three limitations. First, attack rates presented are
 2 likely an underestimate because cases might have been missed among persons not
 3 tested or whose test results were not reported. Second, given the increasing
 4 incidence of COVID-19 in Georgia in June and July, some cases might have
 5 resulted from transmission occurring before or after camp attendance.^{††} Finally, it
 6 was not possible to assess individual adherence to COVID-19 prevention measures
 7 at camp A, including physical distancing between, and within, cabin cohorts and
 8 use of cloth masks, which were not required for campers.”

9 25. The list of reported school outbreaks of COVID-19 in the United States,
 10 compiled in Santora, *All These Schools Reopened and Then Had COVID-19*
 11 *Outbreaks*, Fatherly, August 7, 2020, accessed via MSN on August 8, 2020,
 12 attached hereto as Exhibit X.

13 26. After reopening schools, Israel ordered schools shut down after
 14 COVID-19 outbreaks. See National Public Radio, *After Reopening Schools, Israel*
 15 *Orders Them to Shut Down After COVID-19 Cases Are Discovered*, June 3, 2020,
 16 attached hereto as Exhibit Y; and see Isabel Kershner, et al., *When Covid Subsided,*
 17 *Israel Reopened Its Schools. It Didn't Go Well*, The New York Times, Aug. 4,
 18 2020, attached hereto as Exhibit Z.

19 27. The recent COVID-19 outbreak at North Paulding High School in
 20 Georgia. See Derek Hawkins, *Nine people test positive for the coronavirus at*
 21 *Georgia school where photos of packed hallways went viral*, The Washington Post,
 22 Aug. 9, 2020, attached hereto as Exhibit AA.

23 28. The COVID-19 outbreak at Greenfield Central Junior High School in
 24 Indiana. See Eliza Shapiro, et al., *A School Reopens, and the Coronavirus Creeps*
 25 *In*, The New York Times, Aug. 1, 2020, attached hereto as Exhibit BB.

26 29. The study, observations and conclusions reached in Young Joon Park, et
 27 al., *Contract Tracing during Coronavirus Disease Outbreak*, South Korea, 2020,
 28

1 Centers for Disease Control Dispatch, vol. 26, no. 10 (early release), attached
2 hereto as Exhibit CC.

3 30. Preparing K-12 School Administrators for a Safe Return to School in Fall
4 2020, Centers for Disease Control and Prevention, updated Aug. 1, 2020, attached
5 hereto as Exhibit DD.

6 31. Stronger Together: A Guidebook for the Safe Reopening of California's
7 Public Schools, California Department of Education, June 2020, attached hereto as
8 Exhibit EE.

9 32. Distance Learning Frequently Asked Questions, California Department
10 of Education, accessed Aug. 9, 2020, attached hereto as Exhibit FF.

11 33. Learning Continuity and Attendance Plan Instructions (2020-21),
12 California Department of Education, Aug. 2020, attached hereto as Exhibit GG.

13 34. Learning Continuity and Attendance Plan Template (2020-21), California
14 Department of Education, Jul. 2020, attached hereto as Exhibit HH.

15 35. California Department of Education Official Letter, 2020 Budget Act and
16 Special Education, July 15, 2020, attached hereto as Exhibit II.

17 36. California State Budget Summary – 2020-2021, K-12 Education, pages
18 31-41, attached hereto as Exhibit JJ.

19 37. California Department of Education, Release #20-63, State
20 Superintendent Tony Thurmond Outlines Ongoing Supports to Strengthen Distance
21 Learning and Announces Timeline for Ethnic Studies Model Curriculum during
22 Virtual Media Check-in, dated July 29, 2020, attached hereto as Exhibit KK.

23 38. California Department of Education, Release #20-65, State
24 Superintendent Tony Thurmond Announces Major Collaboration with Apple and
25 T-Mobile to Connect Students in Need, dated August 5, 2020, attached hereto as
26 Exhibit LL.

27 39. California Department of Education, Release #20-66, State
28 Superintendent Tony Thurmond and Digital Divide Task Force Connect School

1 Leaders to Available Devices as Learning Resumes, dated August 5, 2020, attached
2 hereto as Exhibit MM.

3 40. Excerpts of California Senate Bill No. 98, attached hereto as Exhibit NN.

4 41. Transcript of Governor Newsom's July 17, 2020, Press Conference,
5 attached hereto as Exhibit OO.

6 **AUTHORITY IN SUPPORT**
7 **OF REQUEST FOR JUDICIAL NOTICE**

8 Under Fed. R. Evid. 201, a court may take judicial notice of "matters of public
9 record." (*Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. Cal. 2001)
10 [citation omitted].) This includes the actions of state agencies. "We take judicial
11 notice of the PUC's order because its existence is 'capable of accurate and ready
12 determination by resort to sources whose accuracy cannot reasonably be
13 questioned.'" *W. Radio Services Co. v. Qwest Corp.*, 530 F.3d 1186, 1192 (9th Cir.
14 2008), citing to Fed.R.Evid. 201(b); *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec.*
15 *Co.*, 981 F.2d 429, 435 (9th Cir.1992) (taking judicial notice of the existence of
16 decisions of the California Public Utility Commission on *force majeure* claims).
17 Information and documents on government websites are also subject to judicial
18 notice. See, *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir.
19 2010).

20 Request for Judicial Notice Nos. 1 through 41 and the attached Exhibits A
21 through OO, are also properly subject to judicial notice under Fed. R. Evid.
22 201(b)(2) because each "can be accurately and readily determined from sources
23 whose accuracy cannot reasonably be questioned."

24 Judicial notice of above referenced matter is also consistent with California
25 law. Request for Judicial Notice Nos. 1 through 22 and 31-38 are properly subject
26 to judicial notice under California Evidence Code sections 451, subdivision (b), and
27 452, subdivisions (c) [official acts of executive departments]. Request for Judicial
28

1 Notice Nos. 1 through 41 are properly subject to judicial notice under California
2 Evidence Code section 452, subdivision (h) [facts and propositions not reasonably
3 subject to dispute and capable of immediate and accurate determination by resort to
4 sources of reasonably indisputable accuracy].
5

6 Dated: August 9, 2020

Respectfully submitted,

7 XAVIER BECERRA
8 Attorney General of California
9 JENNIFER G. PERKELL
Supervising Deputy Attorney General

10 /s Darin L. Wessel
11 DARIN L. WESSEL
12 JENNIFER A. BUNSHOFT
13 Deputy Attorneys General
Attorneys for Defendants

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EXHIBIT A

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and



WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

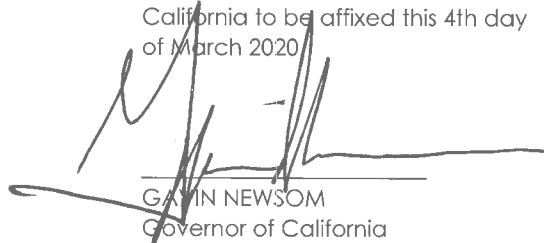
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 4th day
of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



EXHIBIT B

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-25-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus remains a threat, and further efforts to control the spread of the virus to reduce and minimize the risk of infection are needed; and

WHEREAS state and local public health officials may, as they deem necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, thereby constituting a force majeure; and

WHEREAS the Department of Public Health is maintaining up-to-date guidance relating to COVID-19, available to the public at <http://cdph.ca.gov/covid19>; and

WHEREAS the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to minimize the spread and mitigate the effects of COVID-19; and

WHEREAS there is a need to secure numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing positive for or exposed to COVID-19; and

WHEREAS, many individuals who have developmental disabilities and receive services through regional centers funded by the Department of Developmental Services also have chronic medical conditions that make them more susceptible to serious symptoms of COVID-19, and it is critical that they continue to receive their services while also protecting their own health and the general public health; and

WHEREAS individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources such as shelters and food banks; and

WHEREAS in the interest of public health and safety, it is necessary to exercise my authority under the Emergency Services Act, specifically Government Code section 8572, to ensure adequate facilities exist to address the impacts of COVID-19; and



WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571 and 8572, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.
2. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 2627(b)(1) for disability insurance applicants who are unemployed and disabled as a result of the COVID-19, and who are otherwise eligible for disability insurance benefits.
3. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 1253(d) for unemployment insurance applicants who are unemployed as a result of the COVID-19, and who are otherwise eligible for unemployment insurance benefits.
4. Notwithstanding Health and Safety Code section 1797.172(b), during the course of this emergency, the Director of the Emergency Medical Services Authority shall have the authority to implement additions to local optional scopes of practice without first consulting with a committee of local EMS medical directors named by the EMS Medical Directors Association of California.
5. In order to quickly provide relief from interest and penalties, the provisions of the Revenue and Taxation Code that apply to the taxes and fees administered by the Department of Tax and Fee Administration, requiring the filing of a statement under penalty of perjury setting forth the facts for a claim for relief, are suspended for a period of 60 days after the date of this Order for any individuals or businesses who are unable to file a timely tax return or make a timely payment as a result of complying with a state or local public health official's imposition or recommendation of social distancing measures related to COVID-19.
6. The Franchise Tax Board, the Board of Equalization, the Department of Tax and Fee Administration, and the Office of Tax Appeals shall use their administrative powers where appropriate to provide those individuals and businesses impacted by complying with a state or local public health official's imposition or recommendation of social

distancing measures related to COVID-19 with the extensions for filing, payment, audits, billing, notices, assessments, claims for refund, and relief from subsequent penalties and interest.

7. The Governor's Office of Emergency Services shall ensure adequate state staffing during this emergency. Consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors, are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. The Director of the California Department of Human Resources must be notified of any individual employed pursuant to these waivers.
8. The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available—including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State's power to commandeer property – hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period.
9. The certification and licensure requirements of California Code of Regulations, Title 17, section 1079 and Business and Professions Code section 1206.5 are suspended as to all persons who meet the requirements under the Clinical Laboratory Improvement Amendments of section 353 of the Public Health Service Act for high complexity testing and who are performing analysis of samples to test for SARS-CoV-2, the virus that causes COVID-19, in any certified public health laboratory or licensed clinical laboratory.
10. To ensure that individuals with developmental disabilities continue to receive the services and supports mandated by their individual program plans threatened by disruptions caused by COVID-19, the Director of the Department of Developmental Services may issue directives waiving any provision or requirement of the Lanterman Developmental Disabilities Services Act, the California Early Intervention Services Act, and the accompanying regulations of Title 17, Division 2 of the California Code of Regulations. A directive may delegate to the regional centers any authority granted to the Department by law where the Director believes such delegation is necessary to ensure services to individuals with developmental disabilities. The Director shall describe the need justifying the waiver granted in each directive and articulate how the waiver is necessary to protect the public health or safety from the threat of COVID-19 or necessary to ensure that services to individuals with developmental disabilities are not disrupted. Any waiver granted by a directive shall expire 30 days from the date of its issuance. The Director may grant one or more 30-day extensions if the waiver continues to be necessary

to protect health or safety or to ensure delivery of services. The Director shall rescind a waiver once it is no longer necessary to protect public health or safety or ensure delivery of services. Any waivers and extensions granted pursuant to this paragraph shall be posted on the Department's website.

11. Notwithstanding any other provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body or state body, during the period in which state or local public officials impose or recommend measures to promote social distancing, including but not limited to limitations on public events. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended, on the conditions that:

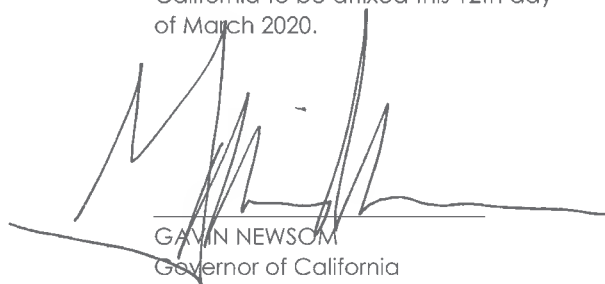
- (i) each state or local body must give advance notice of each public meeting, according to the timeframe otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) consistent with the notice requirement in paragraph (i), each state or local body must notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting, consistent with the public's rights of access and public comment otherwise provided for by the Bagley-Keene Act and the Brown Act, as applicable (including, but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act).

In addition to the mandatory conditions set forth above, all state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 12th day
of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT C

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On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

HEALTHCARE / PUBLIC HEALTH

Sector Profile

The Healthcare and Public Health (HPH) Sector is large, diverse, and open, spanning both the public and private sectors. It includes publicly accessible healthcare facilities, research centers, suppliers, manufacturers, and other physical assets and vast, complex public-private information technology systems required for care delivery and to support the rapid, secure transmission and storage of large amounts of HPH data.

Essential Workforce

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response.
- Health care providers and caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists).
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric, Residential, Rural Health Clinics and Federally Qualified Health Centers, cannabis retailers).
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, [personal care/hygiene products](#), and tissue and paper towel products.

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- Public health / community health workers, including those who compile, model, analyze and communicate public health information.
- Behavioral health workers (including mental and substance use disorder) responsible for coordination, outreach, engagement, and treatment to individuals in need of mental health and/or substance use disorder services.
- Blood and plasma donors and the employees of the organizations that operate and manage related activities.
- Workers that manage health plans, billing, and health information, who cannot practically work remotely.
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely.
- Workers who provide support to vulnerable populations to ensure their health and well-being including family care providers
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely.
- Workers conducting research critical to COVID-19 response.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters.
- Pharmacy employees necessary for filling prescriptions.
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers.
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to behavioral health services to the family members, responders, and survivors of an incident.
- Workers supporting veterinary hospitals and clinics

EMERGENCY SERVICES SECTOR

Sector Profile

The Emergency Services Sector (ESS) is a community of highly-skilled, trained personnel, along with the physical and cyber resources, that provide a wide range of prevention, preparedness, response, and recovery services during both day-to-day operations and incident response. The ESS includes geographically distributed facilities and equipment in both paid and volunteer capacities organized primarily at the federal, state, local, tribal, and territorial levels of government, such as city police departments and fire stations, county sheriff's offices, Department of Defense police and fire departments, and town public works departments. The ESS also includes private sector resources, such

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as industrial fire departments, private security organizations, and private emergency medical services providers.

Essential Workforce - Law Enforcement, Public Safety and First Responders

- Including front line and management, personnel include emergency management, law enforcement, Emergency Management Systems, fire, and corrections, search and rescue, tactical teams including maritime, aviation, and canine units.
- Emergency Medical Technicians
- Public Safety Answering Points and 911 call center employees
- Fusion Center employees
- Fire Mitigation Activities
- Hazardous material responders and hazardous devices teams, from government and the private sector.
- Workers – including contracted vendors -- who maintain digital systems infrastructure supporting law enforcement and emergency service operations.
- Private security, private fire departments, and private emergency medical services personnel.
- County workers responding to abuse and neglect of children, elders and dependent adults.
- [Animal control officers and humane officers](#)

Essential Workforce - Public Works

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, [construction material suppliers](#), traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences.
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste.

FOOD AND AGRICULTURE

Sector Profile

The Food and Agricultural (FA) Sector is composed of complex production, processing, and delivery systems and has the capacity to feed people and animals both within and beyond the boundaries of the United States. Beyond domestic food production, the FA Sector also imports many ingredients and finished products, leading to a complex web of growers, processors, suppliers, transporters, distributors, and consumers. This sectors is critical to maintaining and securing our food supply.

Essential Workforce

- Workers supporting groceries, pharmacies, and other retail that sells food and beverage products, including but not limited to Grocery stores, Corner stores and convenience stores, including liquor stores that sell food, Farmers' markets, Food banks, Farm and produce stands, Supermarkets, Similar food retail establishments, Big box stores that sell groceries and essentials
- Restaurant carry-out and quick serve food operations – including food preparation, carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution (including curbside distribution and deliveries), including warehouse workers, vendor-managed inventory controllers, blockchain managers, distribution
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Workers supporting cannabis retail and dietary supplement retail
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products

- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

ENERGY

Sector Profile

The Energy Sector consists of widely-diverse and geographically-dispersed critical assets and systems that are often interdependent of one another. This critical infrastructure is divided into three interrelated segments or subsectors—electricity, oil, and natural gas—to include the production, refining, storage, and distribution of oil, gas, and electric power, except for hydroelectric and commercial nuclear power facilities and pipelines. The Energy Sector supplies fuels to the transportation industry, electricity to households and businesses, and other sources of energy that are integral to growth and production across the Nation. In turn, it depends on the Nation's transportation, information technology, communications, finance, water, and government infrastructures.

Essential Workforce - Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data
- Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

Essential Workforce - Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services

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- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.

Essential Workforce - Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers
- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

WATER AND WASTEWATER

Sector Profile

The Water and Wastewater Sector is a complex sector composed of drinking water and wastewater infrastructure of varying sizes and ownership types. Multiple governing authorities pertaining to the Water and Wastewater Sector provide for public health, environmental protection, and security measures, among others.

Essential Workforce

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring

- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

TRANSPORTATION AND LOGISTICS

Sector Profile

The Transportation Systems Sector consists of seven key subsectors, or modes:

- Aviation includes aircraft, air traffic control systems, and airports, heliports, and landing strips. Commercial aviation services at civil and joint-use military airports, heliports, and sea plane bases. In addition, the aviation mode includes commercial and recreational aircraft (manned and unmanned) and a wide-variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools.
- Highway and Motor Carrier encompasses roadway, bridges, and tunnels. Vehicles include trucks, including those carrying hazardous materials; other commercial vehicles, including commercial motorcoaches and school buses; vehicle and driver licensing systems; taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies; traffic management systems; AND cyber systems used for operational management.
- Maritime Transportation System consists of coastline, ports, waterways, and intermodal landside connections that allow the various modes of transportation to move people and goods to, from, and on the water.
- Mass Transit and Passenger Rail includes terminals, operational systems, and supporting infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known as subways or metros—light rail, passenger rail, and vanpool/rideshare.
- Pipeline Systems consist of pipelines carrying natural gas hazardous liquids, as well as various chemicals. Above-ground assets, such as compressor stations and pumping stations, are also included.
- Freight Rail consists of major carriers, smaller railroads, active railroad, freight cars, and locomotives.
- Postal and Shipping includes large integrated carriers, regional and local courier services, mail services, mail management firms, and chartered and delivery services.

Essential Workforce

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

COMMUNICATIONS AND INFORMATION TECHNOLOGY

Sector Profile

The Communications Sector provides products and services that support the efficient operation of today's global information-based society. Communication networks enable people around the world to contact one another, access information instantly, and communicate from remote areas. This involves creating a link between a sender (including voice signals) and one or more recipients using technology (e.g., a telephone system or the Internet) to transmit information from one location to another. Technologies are changing at a rapid pace, increasing the number of products, services, service providers, and communication options. The national communications architecture is a complex collection of networks that are owned and operated by individual service providers. Many of this sector's products and services are foundational or necessary for the operations and services provided by other critical infrastructure sectors. The nature of communication networks involve both physical infrastructure (buildings, switches, towers, antennas, etc.) and cyber infrastructure (routing and

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switching software, operational support systems, user applications, etc.), representing a holistic challenge to address the entire physical-cyber infrastructure.

The IT Sector provides products and services that support the efficient operation of today's global information-based society and are integral to the operations and services provided by other critical infrastructure Sectors. The IT Sector is comprised of small and medium businesses, as well as large multinational companies. Unlike many critical infrastructure Sectors composed of finite and easily identifiable physical assets, the IT Sector is a functions-based Sector that comprises not only physical assets but also virtual systems and networks that enable key capabilities and services in both the public and private sectors.

Essential Workforce - Communications:

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

Essential Workforce - Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, and

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information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

Essential Workforce

- Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
- County workers responsible for determining eligibility for safety net benefits
- The Courts, consistent with [guidance](#) released by the California Chief Justice
- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Workers who are critical to facilitating trade in support of the national, state, and local emergency response supply chain
- Workers supporting public and private childcare establishments, pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, provision of school meals, or care and supervision of minors to support essential workforce across all sectors

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- Workers and instructors supporting academies and training facilities and courses for the purpose of graduating students and cadets that comprise the essential workforce for all identified critical sectors
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures, including measures to protect homeless populations.
- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, [construction material sources](#), and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste)
- Commercial Retail Stores, that supply essential sectors, including convenience stores, pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers
- Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing.
- Workers critical to operating Rental Car companies that facilitate continuity of operations for essential workforces, and other essential travel
- Workers that provide or determine eligibility for food, shelter, in-home supportive services, child welfare, adult protective services and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals (including family members)
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services
- Faith based services that are provided through streaming or other technology
- Laundromats and laundry services
- [Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.](#)

CRITICAL MANUFACTURING

Sector Profile

The Critical Manufacturing Sector identifies several industries to serve as the core of the sector: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing Products made by these manufacturing industries are essential to many other critical infrastructure sectors.

Essential Workforce

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- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

HAZARDOUS MATERIALS

Essential Workforce

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

FINANCIAL SERVICES

Sector Profile

The Financial Services Sector includes thousands of depository institutions, providers of investment products, insurance companies, other credit and financing organizations, and the providers of the critical financial utilities and services that support these functions. Financial institutions vary widely in size and presence, ranging from some of the world's largest global companies with thousands of employees and many billions of dollars in assets, to community banks and credit unions with a small number of employees serving individual communities. Whether an individual savings account, financial derivatives, credit extended to a large organization, or investments made to a foreign country, these products allow customers to: Deposit funds and make payments to other parties; Provide credit and liquidity to customers; Invest funds for both long and short periods; Transfer financial risks between customers.

Essential Workforce

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

CHEMICAL

Sector Profile

The Chemical Sector—composed of a complex, global supply chain—converts various raw materials into diverse products that are essential to modern life. Based on the end product produced, the sector can be divided into five main segments, each of which has distinct characteristics, growth dynamics, markets, new developments, and issues: Basic chemicals; Specialty chemicals; Agricultural chemicals; Pharmaceuticals; Consumer products

Essential Workforce

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/ or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

DEFENSE INDUSTRIAL BASE

Sector Profile

The Defense Industrial Base Sector is the worldwide industrial complex that enables research and development, as well as design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts, to meet U.S. military requirements. The Defense Industrial Base partnership consists of Department of Defense components, Defense Industrial Base companies and their subcontractors who perform under contract to the Department of Defense, companies providing

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incidental materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities. Defense Industrial Base companies include domestic and foreign entities, with production assets located in many countries. The sector provides products and services that are essential to mobilize, deploy, and sustain military operations.

Essential Workforce

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

EXHIBIT D

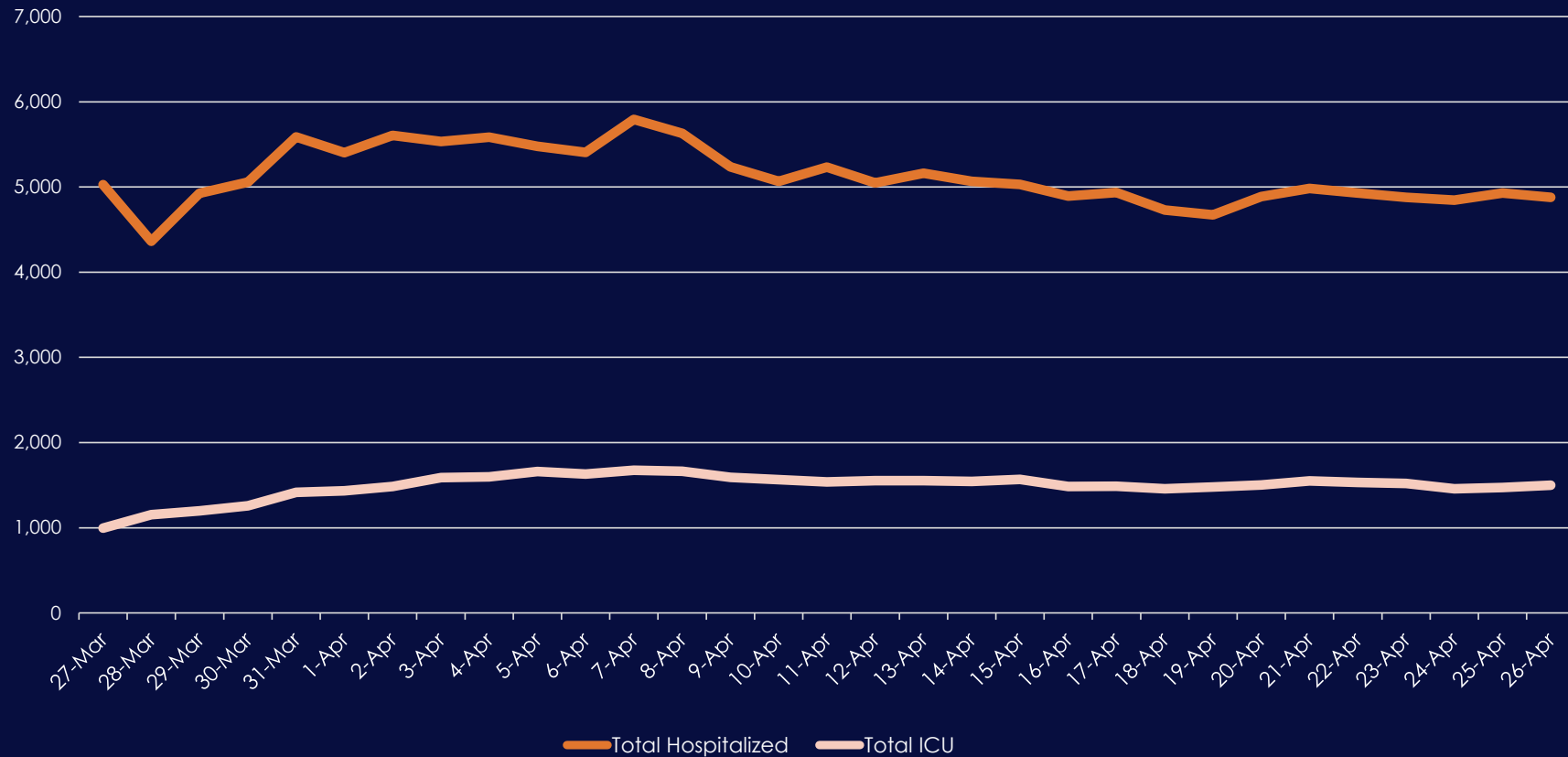


Update on California's Pandemic Roadmap

6 Indicators for Modifying Stay-at-Home Order

- Ability to test, contact trace, isolate, and support the exposed
- Ability to protect those at high risk for COVID-19
- Surge capacity for hospital and health systems
- Therapeutic development to meet the demand
- Ability of businesses, schools, and childcare facilities to support physical distancing
- Determination of when to reinstitute measures like Stay-At-Home

California Hospitalization Trend Lines



Total includes both COVID-19 confirmed positive hospitalizations as well as COVID-19 suspect hospitalizations.

The Basics



COVID-19 is not going away soon.



Modifications to Stay-At-Home Order must be guided by health risk and a commitment to equity.



Taking responsibility is key at all levels – individual, business, and government.

Resilience Roadmap Stages

STAGE 1: Safety and Preparedness

Making essential workforce environment as safe as possible.

STAGE 2: Lower Risk Workplaces

Creating opportunities for lower risk sectors to adapt and re-open.

Modified school programs and childcare re-open.

STAGE 3: Higher Risk Workplaces

Creating opportunities for higher risk sectors to adapt and re-open.

STAGE 4: End of Stay-At-Home Order

Return to expanded workforce in highest risk workplaces.

Requires
Therapeutics.

Stage 1: Safety and Preparedness

This is where we are now.

- **Continue to build out testing, contact tracing, PPE, and hospital surge capacity.**
- **Continue to make essential workplaces as safe as possible.**
 - Physical and work flow adaption
 - Essential workforce safety net
 - Make PPE more widely available
 - Individual behavior changes
- **Prepare sector-by-sector safety guidelines for expanded workforce.**

Stage 2: Lower Risk Workplaces

Gradually opening some lower risk workplaces with ADAPTATIONS:

- Retail (e.g. curbside pickup)
- Manufacturing
- Offices (when telework not possible)
- Opening more public spaces

Expanded Workforce Safety Net:

- Wage replacement so workers can stay home when sick

Stage 2: Lower Risk Workplaces

Schools and Childcare Facilities with Adaptations:

- Summer programs and next school year potentially starting sooner (July/August)
- Childcare facilities to provide more care
- Address learning gaps
- Ensure students and staff are protected
- Allow broader workforce to return to work

Actions needed to get from Stage 1 to Stage 2



Government Actions

- Policies that allow people to stay home when they're sick
- Guidance provided on how to reduce risk



Business Actions

- Wage replacement so workers can stay home when sick
- Implement adaptations to lower-risk workplaces NOW
- Employees continue to work from home when possible



Individual Actions

- Safety precautions – physical distancing, face coverings, etc.
- Avoid all non-essential travel
- Support and care for people who are at high risk

When are we ready for Stage 2?

Key indicator considerations to move to Stage 2:

- Hospitalization and ICU trends stable.
- Hospital surge capacity to meet demand.
- Sufficient PPE supply to meet demand.
- Sufficient testing capacity to meet demand.
- Contact tracing capacity statewide.

Transition to Stage 2 will occur through a statewide modification to the Stay-At-Home Order.

Opportunity for Regional Variations

During Stage 2, counties may choose to relax stricter local orders at their own pace.

Following Stage 2, once a statewide COVID-19 surveillance system is made possible through testing, further regional variations could be supported.

State will consult and collaborate closely with local governments.

Stage 3: Higher Risk Workplaces

Open higher risk environments with adaptations and limits on size of gatherings:

- Personal care (hair and nail salons, gyms)
- Entertainment venues (movie theaters, sports without live audiences)
- In-person religious services (churches, weddings)

Stage 4: End of Stay-At-Home Order

Re-open highest risk workplaces with all indicators satisfied once therapeutics have been developed:

- Concerts
- Convention Centers
- Live audience sports

Be Part of the Solution

Stay Home. Practice Physical Distancing.

We are enlisting all Californians to help inform the development of guidance for sectors across our economy.

This guidance will provide a framework for how to safely re-open.

CALIFORNIA
ALL

**Your Actions
Save Lives**

covid19.ca.gov

EXHIBIT E

EXECUTIVE ORDER N-60-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, which directed all California residents to immediately heed current State public health directives; and

WHEREAS State public health directives, available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>, have ordered all California residents stay home except for essential needs, as defined in State public health directives; and

WHEREAS COVID-19 continues to menace public health throughout California; and

WHEREAS the extent to which COVID-19 menaces public health throughout California is expected to continue to evolve, and may vary from place to place within the State; and

WHEREAS California law promotes the preservation of public health by providing for local health officers—appointed by county boards of supervisors and other local authorities—in addition to providing for statewide authority by a State Public Health Officer; and

WHEREAS these local health officers, working in consultation with county boards of supervisors and other local authorities, are well positioned to understand the local needs of their communities; and

WHEREAS local governments are encouraged to coordinate with federally recognized California tribes located within or immediately adjacent to the external geographical boundaries of such local government jurisdiction; and

WHEREAS the global COVID-19 pandemic threatens the entire State, and coordination between state and local public health officials is therefore, and will continue to be, necessary to curb the spread of COVID-19 throughout the State; and

WHEREAS State public health officials have worked, and will continue to work, in consultation with their federal, state, and tribal government partners; and

WHEREAS the State Public Health Officer has articulated a four-stage framework—which includes provisions for the reopening of lower-risk businesses and spaces (“Stage Two”), to be followed by the reopening of higher-risk businesses and spaces (“Stage Three”)—to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19; and

WHEREAS the threat posed by COVID-19 is dynamic and ever-changing, and the State's response to COVID-19 (including implementation of the four-stage framework) should likewise retain the ability to be dynamic and flexible; and

WHEREAS to preserve this flexibility, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665; and also in accordance with the authority vested in the State Public Health Officer by the laws of the State of California, including but not limited to Health and Safety Code sections 120125, 120130, 120135, 120140, 120145, 120150, 120175, and 131080; do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.
- 2) As the State moves to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), the State Public Health Officer is directed to establish criteria and procedures—as set forth in this Paragraph 2—to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

In particular, the State Public Health Officer is directed to establish criteria to determine whether and how, in light of the extent to which the public health is menaced by COVID-19 from place to place within the State, local health officers may (during the relevant stages of reopening) issue directives to establish and implement public health measures less restrictive than any public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

The State Public Health Officer is further directed to establish procedures through which local health officers may (during the relevant stages of reopening) certify that, if their respective jurisdictions are subject to proposed public health measures (which they shall specify to the extent such specification may be required by the State Public Health Officer) that are less restrictive than public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer, the public health will not be menaced. The State Public Health Officer shall additionally establish procedures to permit, in a manner consistent with public health and

safety, local health officers who submit such certifications to establish and implement such less restrictive public health measures within their respective jurisdictions.

The State Public Health Officer may, from time to time and as she deems necessary to respond to the dynamic threat posed by COVID-19, revise the criteria and procedures set forth in this Paragraph 2. Nothing related to the establishment or implementation of such criteria or procedures, or any other aspect of this Order, shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq. Nothing in this Paragraph 2 shall limit the authority of the State Public Health Officer to take any action she deems necessary to protect public health in the face of the threat posed by COVID-19, including (but not limited to) any necessary revision to the four-stage framework previously articulated by the State Public Health Officer.

- 3) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of May 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT F



ORDER OF THE STATE PUBLIC HEALTH
OFFICER
May 7, 2020

On March 19, 2020, I issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. (See <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.) I then set out California's path forward from this "Stay-at-Home" Order in California's Pandemic Roadmap <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-Update-on-Californias-Pandemic-Roadmap.pdf>. That Roadmap identifies four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay at home order (Stage 4).

Today, COVID-19 continues to present a significant risk to the health of individuals throughout California. There are confirmed cases of the virus in 54 of the 58 counties across the State, and each day over the past two weeks over one thousand new cases have been confirmed in California and dozens of people have lost their lives due to the virus. However, owing to Californians' mitigation efforts, statewide data currently demonstrates stable rates of new infections and hospitalizations, the maintenance of surge capacity, and an improved ability to test, contact trace, isolate, and provide support to individuals exposed to COVID-19. As State Public Health Officer, I have determined that the statewide data now supports the gradual movement of the entire state from Stage 1 to Stage 2 of California's Pandemic Resilience Roadmap.

Gradual movement into Stage 2 is intended to reintroduce activities and sectors in a phased manner and with necessary modifications, in order to protect public health and result in a lower risk for COVID-19 transmission and outbreak in a community. Such deliberate phasing is critical to allowing the State to protect the public, and to mitigate and manage the impact of the re-openings, such that our health care delivery system has the capacity to respond to potential increased demands. Differences across the state in the prevalence of COVID-19, as well as testing rates, containment capability, and hospital capacity, have resulted in differences among local health jurisdictions' ability to safely progress through the various stages. The low and stable data reported by some local health officers in their local health jurisdictions, combined with sufficient COVID-19 preparedness, justifies allowance for some variation in the speed with which some local health jurisdictions will be able to move through the phases of Stage 2.

NOW, THEREFORE, I as State Public Health Officer and Director of the California Department of Public Health, order:

1. All local health jurisdictions in the state may begin gradual movement into Stage 2, as set forth in this Order, effective on May 8, 2020; however, a local health jurisdiction may implement or continue more restrictive public health measures if the jurisdiction's Local Health Officer believes conditions in that jurisdiction warrant it.
2. I will progressively designate sectors, businesses, establishments, or activities that may reopen with certain modifications, based on public health and safety needs, and I will add additional sectors, businesses, establishments, or activities at a pace designed to protect public health and safety. Those sectors, businesses, establishments, or activities that are permitted to open will be designated, along with necessary modifications, at <https://covid19.ca.gov/roadmap/>, as I announce them.
3. To the extent that such sectors are re-opened, Californians may leave their homes to work at, patronize, or otherwise engage with those businesses, establishments, or activities and must, when they do so, continue at all times to practice physical distancing, minimize their time outside of the home, and wash their hands frequently. To prevent further spread of COVID-19 to and within other jurisdictions within the State, Californians should not travel significant distances and should stay close to home. My March 19, 2020, Order otherwise remains in full effect.

4. The California Department of Public Health has set forth criteria to help local health officers assess the capacity of their local health jurisdictions to move through Stage 2. Local health jurisdictions that meet the criteria and follow the process set forth <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx> will be permitted to move through Stage 2 more quickly than the State as a whole and reopen additional low-risk businesses before the rest of the state, if they choose to do so. A list of the sectors, businesses, establishments, or activities, and any necessary modifications, that such a qualifying jurisdiction may choose to reopen will be available at <https://covid19.ca.gov/roadmap-counties/>, and may be expanded if I deem it to be in the interest of public health and safety.

Pursuant to the authority under EO N-60-20, and Health and Safety Code sections 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this Order is to go into effect immediately and shall stay in effect until further notice.

This Order is being issued to protect the public health of Californians as we move as expeditiously to minimize risk to the extent possible throughout the Stages of the Pandemic Resilience Roadmap.



Sonia Y Angell, MD, MPH
State Public Health Officer & Director
California Department of Public Health

EXHIBIT G



ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.


SONIA Y. ANGELL, MD, MPH

3/19/2020
DATE

EXHIBIT H



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

**Statewide Public Health Officer Order,
July 13, 2020**

On March 19, 2020, I issued an [order](#) directing all individuals living in the State of California to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. I then set out California's path forward from this "Stay-at-Home" Order in California's [Pandemic Resilience Roadmap](#). On May 7th, I [announced](#) that statewide data supported the gradual movement of the entire state into Stage 2 of the Pandemic Resilience Roadmap. On May 8th, the Governor outlined a process where counties that met specific criteria could move more quickly than other parts of the state through Stage 2 of modifying the Stay-at-Home order, including certain businesses deemed higher risk.

The statewide data has since demonstrated a significant increase in the spread of COVID-19, resulting in public health conditions that demand measures responsive to those conditions be put into place with haste. On June 28, 2020, the California Department of Public Health (CDPH) issued [guidance](#) setting forth the need to close bars and similar establishments in counties that – due to concerning levels of disease transmission, hospitalizations, or insufficient testing – had been on the County Monitoring List, which includes counties that show concerning levels of disease transmission, hospitalizations, insufficient testing, or other critical epidemiological markers, for 14 days. On July 1, 2020, CDPH issued [guidance](#) specific to counties on the County Monitoring List for three consecutive days, requiring closure of the indoor operations of various sectors, including restaurants, wineries, and certain entertainment venues, as well as all bars indoor and outdoor. Based on my judgment as the State Public Health Officer, it is now necessary to take these steps statewide, to take additional steps for counties on the County Monitoring List, and to continue to monitor and modify the process of reopening.

The current data reflect that community spread of infection is of increasing concern across the state. On July 1, 2020, there were 19 counties on the County Monitoring List. As of July 13, 2020, there are 32 counties on the list, and additional counties may soon be added as data warrants. In addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of these vulnerable populations in these settings can be catastrophic. Higher



levels of community spread also increase the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual.

The Pandemic Resilience Roadmap classifies bars, pubs, breweries, brewpubs, dine-in restaurants, wineries and tasting rooms, family entertainment centers, zoos, museums, and cardrooms as Stage 2 or Stage 3 sectors with high risk of transmission due to a number of features of the businesses and the behaviors that occur within them. Public health studies have shown that the risk of transmission is exacerbated in indoor spaces, particularly when lacking appropriate ventilation. These sectors are settings where groups convene and may mix with others for a prolonged period of time, increasing the risk of escalating the transmission rate of COVID-19. While physical distancing is critical to mitigating exposure, it is more effective at protecting an individual with brief exposures or outdoor exposures. In contrast to indoor spaces, wind and the viral dilution in outdoor spaces can help reduce viral load.

Bars, both indoor and outdoor, have additional risk factors. A bar, foundationally, is a social setting where typically not only small groups convene, but also where groups mix with other groups. Bars also have an added risk imposed by the consumption of alcohol as a primary activity offered in such venues. Alcohol consumption slows brain activity, reduces inhibition, and impairs judgment, factors which contribute to reduced compliance with recommended core personal protective measures, such as the mandatory use of face coverings and maintaining six feet of distance from people in different households, both indoors and outdoors. Louder environments and the cacophony of conversation that are typical in bar settings also require raised voices and greater projection of orally emitted viral droplets.

For counties on the County Monitoring List, the risks and impacts of disease transmission are even greater. The science suggests that for indoor operations the odds of an infected person transmitting the virus are dramatically higher compared to an open-air environment. Thus, for those counties on the list, it is necessary to close indoor operations for additional sectors which promote the closed-space mixing of populations beyond households and/or make adherence to physical distancing with face coverings difficult, including: gyms and fitness centers, places of worship, protests, offices for non-Critical Infrastructure sectors as designated on covid19.ca.gov, personal care services (including nail salons, massage parlors, and tattoo parlors), hair salons and barbershops, and malls.

NOW, THEREFORE, I, as State Public Health Officer and Director of the California Department of Public Health, order all of the following:

Statewide Order Relative to Bars, Pubs, Brewpubs, and Breweries

1. Bars, pubs, brewpubs, and breweries, whether operating indoors or outdoors, shall be closed across the state, unless an exception below applies.

- a. Bars, pubs, brewpubs, and breweries, may operate outdoors if they are offering sit-down, outdoor, dine-in meals. Alcohol can be sold only in the same transaction as a meal. When operating outdoors, they must follow the [dine-in restaurant guidance](#) and should continue to encourage takeout and delivery service whenever possible.
- b. Bars, pubs, brewpubs, and breweries that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals when operating outdoors provided both businesses follow the [dine-in restaurant guidance](#) and alcohol is sold only in the same transaction as a meal.
- c. Venues that are currently authorized to provide off sale beer, wine, and spirits to be consumed off premises and do not offer sit-down, dine-in meals must follow the [guidance for retail operations](#) and offer curbside sales only.
- d. Concert, performance, or entertainment venues must remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance. Establishments that serve full meals must discontinue this type of entertainment until these types of activities are allowed to resume modified or full operation.

2. Indoor operations shall be restricted across the state as specified below:

- a. Dine-in restaurants must close indoor seating to customers. During this closure all dine-in restaurants may continue to utilize outdoor seating and must comply with the [guidance for outdoor dining](#). Restaurants should continue to encourage takeout and delivery service whenever possible.
- b. Wineries and tasting rooms must close indoor services to customers. During this closure all wineries and tasting rooms operating outdoors must comply with the [guidance for restaurants, wineries, and bars](#).
- c. Family entertainment centers and movie theaters must close indoor services and attractions to customers.
 1. Family entertainment centers may continue to provide outdoor services and attractions to customers, and must comply with the guidance for [movie theaters and family entertainment centers](#).

2. Drive-in movie theaters may continue to operate and should follow additional applicable guidance for [drive-in movie theaters](#).
- d. Indoor attractions at zoos and museums must close to visitors.
 1. Zoos and museums may continue to operate outdoor attractions and must follow the [guidance for zoos and museums](#).
- e. Cardrooms must close indoor services to customers and must follow the [guidance for cardrooms](#).

Order for Closure of Additional Indoor Sectors for Counties on Monitoring List

3. Counties that currently appear on CDPH's County Monitoring List and have been on the list for three consecutive days, and counties that subsequently appear for three consecutive days or more while this order remains effective, must close all indoor operations of the following types of businesses/events/activities:

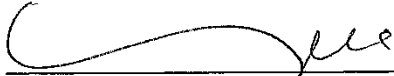
- a. Gyms and Fitness Centers
- b. Places of Worship
- c. Protests
- d. Offices for [Non-Critical Infrastructure Sectors](#)
- e. Personal Care Services (including nail salons, massage parlors, and tattoo parlors)
- f. Hair salons and barbershops
- g. Malls

Terms of Orders

4. This order shall go into effect immediately.
5. These closures shall remain in effect until I determine it is appropriate to modify the order based on public health conditions.
6. Outdoor operations may be conducted under a tent, canopy, or other sun shelter but only as long as no more than one side is closed, allowing sufficient outdoor air movement.
7. I will continue to monitor the epidemiological data and will modify the sectors that may be open both statewide and in counties on the Monitoring List as required by the evolving public health conditions. If I determine that it is appropriate to reopen, close, or modify the operations of any additional sectors, those sectors will be posted at: <https://covid19.ca.gov/roadmap-counties/>.
8. My [guidance](#) mandating the wearing of face coverings and my [guidance](#) prohibiting gatherings continue to apply statewide, except as specifically permitted in other orders or guidance documents. To prevent further spread of COVID-19 to and within other

jurisdictions within the State, Californians should not travel significant distances and should stay close to home.

9. This order is issued pursuant to the authority under EO N-60-20, and Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120150, 120175, 120195 and 131080.

A handwritten signature in black ink, appearing to read 'S. Angell', is written over a horizontal line.

Sonia Y Angell, MD, MPH
State Public Health Officer & Director
California Department of Public Health

EXHIBIT I

8/5/2020

Guidance of Closure of Sectors in Response to COVID-19



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human
Services Agency
**California Department of Public
Health**



GAVIN NEWSOM
Governor

July 13, 2020

AFL 17-__

TO: All Californians

SUBJECT: Guidance on Closure of Sectors in Response to COVID-19

Guidance on Closure of Sectors in Response to COVID-19

July 13, 2020

Summary

COVID-19 transmission rates continue to rise across the state, including increasing numbers of cases in rural counties that had not previously experienced significant infection rates. Despite the closure of certain indoor sectors in counties on the County Monitoring list, those counties continue to demonstrate concerning levels of disease transmission that impact not only the general population but vulnerable populations in the community.

This guidance and the Statewide Public Health Officer Order, dated July 13, 2020:

- Closes, on a statewide basis, indoor operations for certain sectors, and both indoor and outdoor operations for bars and similar establishments, consistent with the June 28 and July 1 restrictions on counties on the County Monitoring List.
- Closes, for counties on the County Monitoring List for three or more consecutive days, indoor operations for additional sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult. Within these sectors, and in the affected counties, those specified businesses that are not able to continue their business through outdoor operations must close that portion of their business effective immediately in order to further mitigate the spread of the virus.

Background

As part of the State's efforts to address COVID-19, the State monitors county specific data to determine whether and how to modify the pace of reopening. Additionally, the State provides technical assistance, support and interventions to counties that have concerning levels of disease transmission, hospitalizations, or insufficient testing. Counties on the County Monitoring List are under active monitoring by the State, and may receive targeted engagement and technical support from CDPH and other agencies and departments including the Business, Consumer Services and Housing Agency, the Department of Industrial Relations and the California Department of Food and Agriculture.

As of July 13, there are 29 counties that have been on the County Monitoring List for three consecutive days:

- Colusa
- Contra Costa
- Fresno
- Glenn
- Imperial
- Kings

8/5/2020

Guidance of Closure of Sectors in Response to COVID-19

- Los Angeles
- Madera
- Marin
- Merced
- Monterey
- Napa
- Orange
- Placer
- Riverside
- Sacramento
- San Benito
- San Bernardino
- San Diego
- San Joaquin
- Santa Barbara
- Solano
- Sonoma
- Stanislaus
- Sutter
- Tulare
- Ventura
- Yolo
- Yuba

Actions Taking Effect Immediately

Given current rates of disease transmission and the increase in hospitalization and ICU utilization, CDPH is:

- Closing, on a statewide basis, consistent with the June 28 and July 1 restrictions on counties on the County Monitoring List, the following sectors:
 - Dine-in Restaurants (indoor)
 - Wineries and Tasting Rooms (indoor)
 - Movie Theater (indoor)
 - Family Entertainment Centers (indoor)
 - Zoos and Museums (indoor)
 - Cardrooms (indoor)
 - Brewpubs, breweries, bars, and pubs (indoor and outdoor), unless an exception below applies:
 1. Bars, pubs, brewpubs, and breweries, may operate outdoors if they are offering sit-down, outdoor, dine-in meals. Alcohol can be sold only in the same transaction as a meal. When operating outdoors, they must follow the dine-in restaurant guidance and should continue to encourage takeout and delivery service whenever possible.
 2. Bars, pubs, brewpubs, and breweries that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals when operating outdoors provided both businesses follow the dine-in restaurant guidance and alcohol is sold only in the same transaction as a meal.
 3. Venues that are currently authorized to provide off sale beer, wine, and spirits to be consumed off premises and do not offer sit-down, dine-in meals must follow the guidance for retail operations and offer curbside sales only.
 4. Concert, performance, or entertainment venues must remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance. Establishments that serve full meals must discontinue this type of entertainment until these types of activities are allowed to resume modified or full operation.
- Closing, for counties on the Monitoring List for three or more consecutive days, additional **indoor** operations for certain sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult. Within those sectors, those that are not able to continue their business through outdoor operations must close that portion of their business effective immediately in order to further mitigate the spread of the virus. This applies to the following sectors/events:
 - Gyms and Fitness Centers
 - Places of Worship

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Guidance of Closure of Sectors in Response to COVID-19

- Indoor Protests
- Offices for Non-Critical Infrastructure Sectors
- Personal Care Services (including nail salons, massage parlors, and tattoo parlors)
- Hair Salons and Barbershops
- Malls

These actions remain in effect until further notice.

All industry or sector guidance documents that have been issued to date, including all infectious control measures outlined in those guidance documents, including the use of face coverings, which is mandated statewide apply in outdoor settings, and thus must be adhered to. Outdoor operations may be conducted under a tent, canopy, or other sun shelter, but only as long as no more than one side is closed, allowing sufficient outdoor air movement.

Justification

The data is clear that community spread of infection is of increasing concern across the state, and continues to grow in those counties on the County Monitoring List. The number of hospitalized patients with COVID has increased between 50-100% in all regions in California, with a state average increase of 77% since June 12. In that same time, the number of counties with case rates over 100 per 100,000 residents has gone from 3 counties to 31 counties, confirming state-wide increased transmission of COVID. While these counties are primarily located in the south and central valley, there are now counties on the monitoring list from all regions of California. Beyond the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic, both in terms of high rates of morbidity and mortality of individual residents, as well as through the high demand such infections would place on the hospital delivery system. We are seeing these increases already in many of the counties. Higher levels of community spread also increase the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual.

California's Pandemic Resiliency Roadmap for reopening is a risk-based framework that guides state and local governments on a path to re-opening activities and industries under strict workplace modifications. The above outlined sectors operating indoors create an environment that increases levels of community mixing of individuals outside of one's own household, increasing the risk of escalating the R-effective, or effective transmission rate, of COVID-19.

As described in the June 28 guidance and July 1 guidance, the sectors required to modify operations statewide under this guidance are sectors where there is increased risk of transmission due to a number of features of the business and the behaviors that occur within them. Because of noted trends in community spread statewide, well beyond those on the monitoring list, it is necessary to expand changes made to sectors in our order of June 28 and July 1 statewide.

Additionally, given the increased level of community transmission, this guidance requires additional sectors to close indoor operations in counties on the County Monitoring List for three or more consecutive days. Counties continue to be added to the county monitoring list and evidence of community transmission persists in these jurisdictions, requiring enhanced intervention through the additional sectors modifications.

The rationale for moving activities outdoors to reduce risk is anchored in the science of disease transmission and recent studies show that transmission is greater in indoor settings due to the release of infectious particles into the air when someone speaks, coughs, sneezes, or sings, which is exacerbated in indoor spaces particularly when lacking appropriate ventilation.

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Physical distancing also protects an individual with brief exposures or outdoor exposures. When distanced, there is not enough time to achieve the infectious viral load when standing six (6) feet apart or where wind and the infinite outdoor space for viral dilution reduces viral load. A study, which still needs to be peer-reviewed, suggests that the odds an infected person transmitting the virus in a closed environment was 18.7 times greater compared to an open-air environment. (1)

In the setting of an increasing body of evidence demonstrating that transmission is decreased when activities are conducted outside, and risk for exposure is increased when mixing beyond those with whom one lives, in an effort to mitigate to potential spread of COVID 19, the state is requiring that additional settings where patrons gather to be served or participate in the businesses' primary activity be moved outdoors.

(1) Nishiura et al. (2020)

Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19)

<https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2>

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EXHIBIT J



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GAVIN NEWSOM
Governor

**COVID-19 and Reopening In-Person Learning
Framework for K-12 Schools in California, 2020-2021 School Year**

July 17, 2020

Overview

California schools have been closed for in-person instruction since mid-March 2020 due to the COVID-19 pandemic. School closures to in-person instruction were part of a broader set of recommendations intended to reduce transmission of SARS-CoV-2, the virus that causes COVID-19. 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. 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 available evidence as well state and local disease trends.

The CA [School Sector Specific Guidelines](#), and the Centers for Disease Control and Prevention [CDC](#) have published additional guidance on school re-entry.

In-Person Re-Opening Criteria

Schools and school districts may reopen for in-person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county¹ monitoring list within the prior 14 days.

If the LHJ has been on the monitoring list within the last 14 days, the school must conduct distance learning only, until their LHJ has been off the monitoring list for at least 14 days.²

¹ School districts in LHJs that are cities are considered to be included as part of the county if the county is on the monitoring list.

² A waiver of this criteria may be granted by the local health officer for elementary schools to open for in-person instruction. A waiver may only be granted if one is requested by the superintendent (or equivalent for charter or private schools), in consultation with labor, parent and community organizations. Local health officers must review local community epidemiological data, consider other public health interventions, and consult with CDPH when considering a waiver request.





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Guidance Once Re-Opened to In-Person Instruction

How should schools think about testing?

Once schools are re-opened to at least some in-person instruction, it is recommended that surveillance testing be implemented based on the local disease trends. If epidemiological data indicates concern for increasing community transmission, schools should increase testing of staff to detect potential cases as lab testing capacity allows.

Who should be tested and how often?

School staff are essential workers, and staff includes teachers, para-professionals, cafeteria workers, janitors, bus drivers, or any other school employee that may have contact with students or other staff. School districts and schools shall test staff periodically, as testing capacity permits and as practicable. Examples of recommended frequency include testing all staff over 2 months, where 25% of staff are tested every 2 weeks, or 50% every month to rotate testing of all staff over time.

What if a school or school district reopens to in-person instruction, but the county is later placed on the county monitoring list?

Schools should begin testing staff, or increase frequency of staff testing but are not required to close.





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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?

	Student or Staff with:	Action	Communication
1.	COVID-19 Symptoms (e.g., fever, cough, loss of taste or smell, difficulty breathing) Symptom Screening: Per CA School Sector Specific Guidelines	<ul style="list-style-type: none"> • Send home • 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 • Quarantine for 14 days from last exposure • Recommend testing (but will not shorten 14-day quarantine) • School/classroom remain open 	<ul style="list-style-type: none"> • Consider school community notification of a known contact
3.	Confirmed COVID-19 case infection	<ul style="list-style-type: none"> • Notify the local public health department • Isolate case and exclude from school for 10 days from symptom onset or test date • Identify contacts (+), quarantine & exclude exposed contacts (likely entire cohort (++)) for 14 days after the last date the case was present at school while infectious • Recommend testing of contacts, prioritize symptomatic contacts (but will not shorten 14-day quarantine) • Disinfection and cleaning of classroom and primary spaces where case spent significant time • School remains open 	<ul style="list-style-type: none"> • School community notification of a known case
4.	Tests negative after symptoms	<ul style="list-style-type: none"> • May return to school 3 days after symptoms resolve • School/classroom remain open 	<ul style="list-style-type: none"> • Consider school community notification if prior awareness of testing





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(†) A contact is defined as a person who is <6 feet from a case for >15 minutes. 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.

(††) A cohort is 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.

Guidance on School Closure

What are the criteria for closing a school?

Individual school closure is recommended based on the number of cases, the percentage of the teacher/students/staff that are positive for COVID-19, and following consultation with the Local Health Officer. Individual school closure may be appropriate when there are multiple cases in multiple cohorts at a school or when at least 5 percent of the total number of teachers/student/staff are cases within a 14-day period, depending on the size and physical layout of the school.

The Local Health Officer may also determine school closure is warranted for other reasons, including results from public health investigation or other local epidemiological data.

If a school is closed for in-person learning, when may it reopen?

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

- Cleaning and disinfection
- Public health investigation
- Consultation with the local public health department

What are the criteria for closing a school district?





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A superintendent should close a school district if 25% or more of schools in a district have closed due to COVID-19 within 14 days, and in consultation with the local public health department.

If a school district is closed, when may it reopen?

Districts may typically reopen after 14 days, in consultation with the local public health department.

State Resources for Case, Contact & Outbreak Investigations

California is committed to supporting local health departments with resources and other technical assistance regarding school case, contact, and outbreak investigations.



EXHIBIT K



COVID-19 INDUSTRY GUIDANCE: Schools and School- Based Programs

Updated: **August 3, 2020**

All guidance should be implemented only with local health officer approval following their review of local epidemiological data including cases per 100,000 population, rate of test positivity, and local preparedness to support a health care surge, vulnerable populations, contact tracing, and testing.



OVERVIEW

Communities across the state are preparing for the forthcoming school year. To assist with that planning process, the following guidelines and considerations are intended to help school and community leaders plan and prepare to resume in-person instruction.

This guidance is interim and subject to updates. These guidelines and considerations are based on the best available public health data at this time, international best practices currently employed, and the practical realities of managing school operations; as new data and practices emerge. Additionally, the guidelines and considerations do not reflect the full scope of issues that school communities will need to address, which range from day-to-day site-based logistics to the social and emotional well-being of students and staff.

California public schools (traditional and charter), private schools (including nonpublic nonsectarian schools), school districts, and county offices of education, herein referred to as schools, will determine the most appropriate instructional model, taking into account the needs of their students and staff, and their available infrastructure. This guidance is not intended to prevent a school from adopting a distance learning, hybrid, or mixed-delivery instructional model to ensure safety. Schools are not required to seek out or receive approval from a state or local public health officer prior to adopting a distance-learning model.

Implementation of this guidance will depend on local public health conditions, including those listed [here](#). Communities meeting those criteria, such as lower incidence of COVID-19 and adequate preparedness, may implement the guidance described below as part of a phased reopening. All decisions about following this guidance should be made in collaboration with local health officials and other authorities.

Implementation of this guidance should be tailored for each setting, including adequate consideration of instructional programs operating at each school site and the needs of students and families. School leaders should engage relevant stakeholders—including families, staff and labor partners in the school community—to formulate and implement plans that consider the following:

- **Student, Family and Staff Population:** Who are the student, family and staff populations who will be impacted by or can serve as partners in implementing any of the following measures?
- **Ability to Implement or Adhere to Measures:** Do staff, students and families have the tools, information, resources and ability to successfully adhere to or implement the new measures?
- **Negative or Unintended Consequences:** Are there any negative or unintended consequences to staff, students or families of implementing the measures and how can those consequences be mitigated?

This guidance is not intended to revoke or repeal any worker rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing safety and health-related regulatory requirements such as those of Cal/OSHA. Stay current on changes to public health guidance and state/local orders, as the COVID-19 situation continues.



1. General Measures

- Establish and continue communication with local and State authorities to determine current disease levels and control measures in your community. For example:
 - Review and refer to, if applicable, the relevant county variance documentation. Documentation can be found [here](#).
 - Consult with your county health officer, or designated 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.
 - Regularly review updated guidance from state agencies, including the [California Department of Public Health](#) and [California Department of Education](#).
- Establish a written, worksite-specific COVID-19 prevention plan 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.
 - Identify contact information for the local health department where the school is located for communicating information about COVID-19 outbreaks among students or staff.
 - Incorporate the [CDPH Guidance](#) for the Use of Face Coverings, into the School Site Specific Plan that includes a policy for handling exemptions.
 - Train and communicate with workers and worker representatives on the plan. Make the written plan available and accessible to workers and worker representatives.
 - Regularly evaluate the workplace for compliance with the plan and document and correct deficiencies identified.
 - Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
 - Implement the necessary processes and protocols when a workplace has an outbreak, in accordance with [CDPH guidelines](#).
 - 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. See Section 10 for more detail.

- Adhere to these guidelines. Failure to do so could result in workplace illnesses that may cause classrooms or the entire school to be temporarily closed or limited.
- Evaluate whether and to what extent external community organizations can safely utilize the site and campus resources. Ensure external community organizations that use the facilities also follow this guidance.
- Develop a plan for the possibility of repeated closures of classes, groups or entire facilities when persons associated with the facility or in the community become ill with COVID-19. See Section 10 below.
- Develop a plan to further support students with access and functional needs who may be at increased risk of becoming infected or having unrecognized illness due to COVID-19. For example, review existing student health plans to identify students who may need additional accommodations, develop a process for engaging families for potentially unknown concerns that may need to be accommodated or identify additional preparations for classroom and non-classroom environments as needed. Groups who might be at increased risk of becoming infected or having unrecognized illness include the following:
 - Individuals who have limited mobility or require prolonged and close contact with others, such as direct support providers and family members;
 - Individuals who have trouble understanding information or practicing preventive measures, such as hand washing and physical distancing; and
 - Individuals who may not be able to communicate symptoms of illness.
- Schools should review the [CDPH Guidance for the Use of Face Coverings](#) and any applicable local health department guidance and incorporate face-covering use for students and workers into their COVID-19 prevention plan. Some flexibility may be needed for younger children consistent with child development recommendations. See Section 3 for more information.



2. Promote Healthy 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 inside 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, for lower grade levels, use bathroom time 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 hand sanitizers are more toxic when ingested or absorbed in 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 a site and near classrooms to minimize movement and congregations 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.

- Information contained in the [CDPH Guidance](#) for the Use of Face Coverings should be provided to staff and families, which discusses the circumstances in which face coverings must be worn and the exemptions, as well as any policies, work rules, and practices the employer has adopted to ensure the use of face coverings.
- Employers must provide and ensure staff use face coverings in accordance with CDPH guidelines and all required protective equipment.
- The California Governor's Office of Emergency Services (CalOES) and the Department of Public Health (CDPH) are and will be working to support procurement and distribution of face coverings and personal protective equipment. Additional information can be found [here](#).
- Strongly recommend 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.
- Nothing in this guidance should be interpreted as restricting access to appropriate educational services.



3. Face Coverings

Face coverings must be used in accordance with [CDPH guidelines](#) unless a person is exempt as explained in the guidelines, particularly in indoor environments, on school buses, and areas where physical distancing alone is not sufficient to prevent disease transmission.

- Teach and reinforce use of [face coverings](#), or in limited instances, face shields.
- 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

Age	Face Covering Requirement
Under 2 years old	No
2 years old – 2 nd grade	Strongly encouraged**
3 rd grade – High School	Yes, unless exempt

**Face coverings are strongly encouraged for young children between two years old and second grade, if they can be worn properly. A face shield is an acceptable alternative for children in this cohort who cannot wear them properly.

- Persons younger than two years old, anyone who has trouble breathing, anyone who is unconscious or incapacitated, and anyone who is otherwise unable to remove the face covering without assistance are exempt from wearing a face covering.
- A cloth face covering or face shield should be removed for meals, snacks, naptime, or outdoor recreation, or when it needs to be replaced. When a cloth face covering is temporarily removed, it should be placed in a clean paper bag (marked with the student's name and date) until it needs to be put on again.
- 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. Schools should 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.

STAFF

- All staff must use face coverings in accordance with [CDPH guidelines](#) unless Cal/OSHA standards require respiratory protection.
- In limited situations where a face coverings cannot be used for pedagogical or developmental reasons, (i.e. 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. 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.



4. Ensure Teacher and Staff Safety

- Ensuring staff maintain physical distancing 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 virtual learning or independent study context.
- Conduct all staff meetings, professional development training and education, and other activities involving staff with physical distancing measures in place, or virtually, where physical distancing is a challenge.
- Minimize the use of and congregation of adults in staff rooms, break rooms, and other settings.
- Implement procedures for daily symptom monitoring for staff.



5. Intensify Cleaning, Disinfection, and Ventilation

- 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.
- Staff should [clean and disinfect](#) frequently-touched surfaces at school and on school buses at least daily and, as practicable, these surfaces should be cleaned and disinfected frequently throughout the day by trained custodial staff.
- Buses should be thoroughly cleaned and disinfected daily and after transporting any individual who is exhibiting symptoms of COVID-19. Drivers should be provided disinfectant wipes and disposable gloves to support disinfection of frequently touched surfaces during the day.

- Frequently touched surfaces in the school include, but are not limited to:
 - Door handles
 - Light switches
 - Sink handles
 - Bathroom surfaces
 - Tables
 - Student Desks
 - Chairs
- Limit use and sharing of objects and equipment, such as toys, games, art supplies and playground equipment to the extent practicable. When shared use is allowed, clean and disinfect between uses.
- When choosing disinfecting products, 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 disinfecting, 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 asthma.
 - 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 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 children's reach and stored in a space with restricted access.
 - Establish a cleaning and disinfecting 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 cleaning, air out the space before children arrive; plan to do thorough cleaning when children are not present. If using air conditioning, use the setting that brings in outside air. Replace and check air filters and filtration systems to ensure optimal air quality.
 - If opening windows poses a safety or health risk (e.g., by allowing pollen in or exacerbating asthma symptoms) to persons using the facility, consider alternatives. For example, maximize central air filtration for HVAC systems (targeted filter rating of at least MERV 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.
- [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.



6. 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.
- 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 as 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 with others as much as practicable.
- Implement health screenings of students and staff upon arrival at school (see Section 9).
- Ensure each bus is equipped with extra unused face coverings on school buses for students who may have inadvertently failed to bring one.

Classroom Space

- To reduce possibilities for infection, students must remain in the same space and in cohorts as small and consistent as practicable, including for recess and lunch. Keep the same students and teacher or staff with each group, to the greatest extent practicable.
- Prioritize the use and maximization of outdoor space for activities where practicable.
- Minimize movement of students and teachers or staff as much as practicable. For example, consider ways to keep teachers with one group of students for the whole day. In secondary schools or in situations where students have individualized schedules, plan for ways to reduce mixing among cohorts and to minimize contact.
- Maximize space between seating and desks. Distance teacher and other staff desks at least six feet away from student desks. Consider ways to establish separation of students through other means if practicable, such as, six feet between desks, where practicable, partitions between desks, markings on classroom floors to promote distancing or arranging desks in a way that minimizes face-to-face contact.
- 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.
- Activities where there is increased likelihood for transmission from contaminated exhaled droplets such as band and choir practice and performances are not permitted.
- Activities that involve singing must only take place outdoors.
- Implement procedures for turning in assignments to minimize contact.
- Consider using 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.
- Limit communal activities where practicable. Alternatively, stagger use, properly space occupants and disinfect 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 create guidelines on the floor that students can follow to enable physical distancing while passing. In addition, schools can consider eliminating the use of lockers and moving to block scheduling, which supports the creation of cohort groups and reduces changes of classrooms.
- 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 cohort groups, ensure physical distancing, and consider assigned seating. 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 class.

Sports and Extra Curricular Activities **(Updated August 3, 2020)**

- Outdoor and indoor sporting events, assemblies, dances, rallies, field trips, and other activities that require close contact or that would promote congregating are not permitted at this time. For example, tournaments, events, or competitions, regardless of whether teams are from the same school or from different schools, counties, or states are not permitted at this time.
- Youth sports and physical education are permitted only when the following can be maintained: (1) physical distancing of at least six feet; and (2) a stable cohort, such as a class, that limits the risks of transmission (see [CDC Guidance on Schools and Cohorting](#)). Activities should take place outside to the maximum extent practicable.

- For sports that cannot be conducted with sufficient distancing or cohorting, only physical conditioning and training is permitted and ONLY where physical distancing can be maintained. Conditioning and training should focus on individual skill building (e.g., running drills and body weight resistance training) and should take place outside, where practicable. Indoor physical conditioning and training is allowed only in counties where gyms and fitness centers are allowed to operate indoors.
- Avoid equipment sharing, and if unavoidable, clean and disinfect shared equipment between use by different people to reduce the risk of COVID-19 spread.
- Consistent with guidance for gyms and fitness facilities, cloth face coverings must be worn during indoor physical conditioning and training or physical education classes (except when showering). Activities that require heavy exertion should be conducted outside in a physically distanced manner without face coverings. Activities conducted inside should be those that do not require heavy exertion and can be done with a face covering. Players should take a break from exercise if any difficulty in breathing is noted and should change their mask or face covering if it becomes wet and sticks to the player's face and obstructs breathing. Masks that restrict airflow under heavy exertion (such as N-95 masks) are not advised for exercise.
- Youth sports programs and schools should provide information to parents or guardians regarding this and related guidance, along with the safety measures that will be in place in these settings with which parents or guardians must comply.
- Activities where there is increased likelihood for transmission from contaminated exhaled droplets such as band and choir practice and performances are not permitted.



7. Limit Sharing

- Keep each child's belongings separated and in individually labeled storage containers, cubbies or areas. Ensure belongings are taken home each day to be cleaned.
- Ensure adequate supplies to minimize sharing of high-touch materials (art supplies, equipment, etc.) to the extent practicable or limit use of supplies and equipment to one group of children at a time and clean and disinfect between uses.
- Avoid sharing electronic devices, clothing, toys, books and other games or learning aids as much as practicable. Where sharing occurs, clean and disinfect between uses.



8. Train All Staff and Educate Families

- Train all staff and provide educational materials to families in the following safety actions:
 - Enhanced sanitation practices
 - Physical distancing guidelines and their importance
 - [Proper use, removal, and washing of face coverings](#)
 - Screening practices
 - How COVID-19 is spread
 - COVID-19 specific [symptom](#) identification
 - Preventing the spread of COVID-19 if you are sick, including the importance of not coming to work if staff members have symptoms, or if they or someone they live with has been diagnosed with COVID-19.
 - For workers, COVID-19 specific [symptom](#) identification and when to seek medical attention
 - The employer's plan and procedures to follow when children or adults become sick at school.
 - The employer's plan and procedures to protect workers from COVID-19 illness.
- Consider conducting the training and education virtually, or, if in-person, ensure a minimum of six-foot distancing is maintained.



9. Check for Signs and Symptoms

- Prevent discrimination against students who (or whose families) were or are diagnosed with COVID-19 or who are perceived to be a COVID-19 risk.
- 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 screening and other procedures for all staff and students entering the facility.

- Conduct visual wellness checks of all students or establish procedures for parents to monitor at home. If checking temperatures, use a no-touch thermometer.
- Ask all individuals if they or anyone in their home is exhibiting [COVID-19 symptoms](#).
- Make available and encourage use of hand-washing stations or hand sanitizer.
- 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, as required under FERPA and state law related to privacy of educational records. Additional guidance can be found [here](#). As noted in Section 11 below, the staff liaison can serve a coordinating role to ensure prompt and responsible notification.
- If a student is exhibiting symptoms of COVID-19, staff should communicate with the parent/caregiver and refer to the student's health history form and/or emergency card.
- Monitor staff and students throughout the day for signs of illness; send home students and staff with a fever of 100.4 degrees or higher, cough or other [COVID-19 symptoms](#).
- Policies should not penalize students and families for missing class.



10. Plan for When a Staff Member, Child or Visitor Becomes Sick

- Work with school administrators, nurses and other healthcare providers to identify an isolation room or area to separate anyone who exhibits symptoms of COVID-19.
- Any students or staff exhibiting symptoms should immediately be required to wear a face covering and be required to wait in an isolation area until they can be transported home or to a healthcare facility, as soon as practicable.
- Establish procedures to arrange for safe transport home or to a healthcare facility, as appropriate, when an individual is exhibiting COVID-19 symptoms:
 - Fever
 - Cough
 - Shortness of breath or difficulty breathing

- Chills
- Repeated shaking with chills
- Fatigue
- Muscle pain
- Headache
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea
- New loss of taste or smell
- For serious injury or illness, call 9-1-1 without delay. Seek medical attention if COVID-19 symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
- Notify local health officials immediately of any positive case of COVID-19, and exposed staff and families as relevant while maintaining confidentiality as required by state and federal laws. Additional guidance can be found [here](#).
- Close off areas used by any individual suspected of being infected with the virus that causes COVID-19 and do not use before cleaning and disinfection. To reduce risk of exposure, wait 24 hours before you [clean and disinfect](#). If it is not possible to wait 24 hours, wait as long as practicable. Ensure a [safe and correct application](#) of disinfectants using personal protective equipment and ventilation recommended for cleaning. Keep disinfectant products away from students.
- Advise sick staff members and students not to return until they have met CDC criteria to discontinue [home isolation](#), including at least 3 days with no fever, symptoms have improved and at least 10 days since symptoms first appeared.
- Ensure that students, including students with disabilities, have access to instruction when out of class, as required by federal and state law.
- Schools should offer distance learning based on the unique circumstances of each student who would be put at-risk by an in-person instructional model. For example, students with a health condition, students with family members with a health condition, students who cohabitate or regularly interact with high-risk individuals, or are otherwise identified as "at-risk" by the parents or guardian, are students whose circumstances merit offering distance learning.

- Implement the necessary processes and protocols when a school has an outbreak, in accordance with [CDPH guidelines](#).
- Investigate the COVID-19 illness and exposures and determine if any work-related factors could have contributed to risk of infection. Update protocols as needed to prevent further cases.
- Update protocols as needed to prevent further cases. See the CDPH guidelines, [Responding to COVID-19 in the Workplace](#), which are incorporated into this guidance and contain detailed recommendations for establishing a plan to identify cases, communicating with workers and other exposed persons, and conducting and assisting with contact tracing.



11. Maintain Healthy Operations

- Monitor staff absenteeism and have a roster of trained back-up staff where available.
- Monitor the types of illnesses and symptoms among your students and staff to help isolate them promptly as needed.
- Designate a staff liaison or liaisons to be responsible for responding to COVID-19 concerns. Workers should know who they are and how to contact them. The liaison should be trained to coordinate the documentation and tracking of possible exposure, in order to notify local health officials, staff and families in a prompt and responsible manner.
- Maintain communication systems that allow staff and families to self-report symptoms and receive prompt notifications of exposures 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 local health departments if routine testing is being considered by a local educational agency. The role of providing routine systematic testing of staff or students for COVID-19 (e.g., PCR swab testing for acute infection, or presence of antibodies in serum after infection) is currently unclear.
- 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 virtual learning or independent study.



12. Considerations for Reopening and Partial or Total Closures

California schools have been closed for in-person instruction since mid-March 2020 due to the COVID-19 pandemic. School closures to in-person instruction were part of a broader set of recommendations intended to reduce transmission of SARS-CoV-2, the virus that causes COVID-19. For more detailed direction on measures to be taken when a student, teacher, or staff member has symptoms or is diagnosed with COVID-19, please see the [COVID-19 and Reopening Framework for K-12 Schools in California](#).

- Check State and local orders and health department notices daily about transmission in the area or closures and adjust operations accordingly.
- When a student, teacher or staff member tests positive for COVID-19 and had exposed others at the school, refer to the [CDPH Framework for K-12 Schools](#), and implement the following steps:
 - In consultation with the local public health department, the appropriate school official should ensure cleaning and quarantine of exposed persons and whether any additional intervention is warranted, including the length of time necessary, based on the risk level within the specific community as determined by the local public health officer.
 - Close off the classroom or office where the patient was based and do not use these areas until after cleaning and disinfection. Wait at least 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait for at least two hours and as long as possible.
 - Additional areas of the school visited by the COVID-19 positive individual may also need to be cleaned and disinfected.
 - Implement communication plans for exposure at school and potential school closures to include outreach to students, parents, teachers, staff and the community.
 - Include information for staff regarding labor laws, information regarding Disability Insurance, Paid Family Leave and Unemployment Insurance, as applicable to schools. See additional [information on government programs supporting sick leave and worker's compensation for COVID-19](#), including worker's sick leave rights under [the Families First Coronavirus Response Act](#) and employee's rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the [Governor's Executive Order N-62-20](#), while that Order is in effect.
 - Provide guidance to parents, teachers and staff reminding them of

the importance of community physical distancing measures while a school is closed, including discouraging students or staff from gathering elsewhere.

- Develop a plan for continuity of education. Consider in that plan how to also continue nutrition and other services provided in the regular school setting to establish alternate mechanisms for these services to continue.
- Maintain regular communications with the local public health department.



EXHIBIT L

8/4/2020

Schools-FAQ



State of California—Health and Human
Services Agency
**California Department of Public
Health**



August 3, 2020

TO: All Californians

SUBJECT: California Department of Public Health Schools Guidance FAQs

General

What schools guidance has CDPH issued?

All CDPH and Cal/OSHA guidance can be found on the [covid19.ca.gov](https://www.covid19.ca.gov) Industry Guidance to Reduce Risk webpage. These include:

- Guidance on Schools and School-Based Programs (PDF)
- COVID-19 and Reopening In-Person Learning: Framework for K-12 Schools in California (PDF)

What is the legal authority for enforcing the CDPH schools guidance?

The Governor has ordered, in multiple executive orders (PDF), that all California residents heed the guidance and directives of the state public health officer. Government Code section 8665 provides that any person who violates or who refuses or willfully neglects to obey an Executive Order shall be guilty of a misdemeanor and on conviction shall be punishable by a fine.

Which schools are subject to CDPH's guidance?

The guidance applies to all public and private schools operating in California. This is a public health directive and the Governor has ordered, in multiple executive orders (PDF), that all California residents heed the guidance and directives of the state public health officer.

Is there a statewide standard on whether or not to open or close schools for in-person instruction?

Education Code section 43504, enacted as part of the 2020-21 Budget, specifies that schools should "offer in-person instruction to the greatest extent possible."

The Framework for K-12 Schools in California (PDF) outlines standards for when schools should open and close for in-person instruction. Within those standards, local public health and school officials should collaborate to make decisions tailored to the circumstances and needs of the community.

If the local health jurisdiction has been on the county monitoring list within the prior 14 days, the school must conduct distance learning only, until their local health jurisdiction has been off the monitoring list for at least 14 days. The framework authorized local health officers to grant a waiver of this criteria, in order for elementary schools to open for in-person instruction under specified conditions. Further details about the waiver process are available in the *COVID-19 and Reopening In-Person Learning Elementary Education Waiver Process* document.

What if the school is in a local health jurisdiction that is not the county?

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School districts in local health jurisdictions that are cities are considered to be included as part of the county if the county is on the monitoring list.

Will teachers, support staff, and administrators be able to return to work physically without students on site while counties are on the monitoring list?

Yes, provided that adults on site engage in physical distancing and wear face coverings. School administrators should also consider precautions outlined in the guidance on office workspaces (PDF).

Do local health officers have to approve modes of instructional learning employed by schools or school districts?

No. Schools are not required to seek or receive approval from a state or local public health officer prior to adopting particular instructional models. However, schools and school districts should work closely with local public health officers to ensure that in-person instruction is conducted in a safe manner consistent with state and local public health guidance.

How should conflicting or inconsistent guidance between federal, state, and local authorities be addressed?

Governmental and non-governmental entities at all levels have issued guidance relating to the safe reopening of schools for in-person instruction. Under the operative executive orders (PDF) and 2020-21 Budget Act, schools must comply with orders and guidance issued by the California Department of Public Health and relevant local public health departments. Schools may comply with guidance from other federal, state, local, and non-governmental sources, to the extent those guidelines are consistent with state and local public health directives.

Testing and Screening

Who should be tested and how often?

As explained in the Framework for K-12 Schools in California, school staff should be tested, including teachers, paraprofessionals, cafeteria workers, janitors, bus drivers, or any other school employee that may have contact with students or other staff. School districts and schools should ensure that staff are tested periodically by their primary care provider or by referring teachers to a community testing site, as testing capacity permits and as practicable. Examples of recommended frequency include all staff being tested over 2 months, where 25% of staff are tested every 2 weeks, or 50% every month to rotate which staff members are tested over time.

Who will pay for the testing of school employees and students?

School employees and students who need testing would either go to their health care provider or a state-operated or other community testing site. The Department of Managed Health Care has filed an emergency regulation to require health plans to pay for COVID-19 testing for all essential workers, including school staff. In addition, tests are available at community testing sites throughout the state.

Does the CDPH guidance encourage an active screening of students, staff, and other individuals entering campus?

Since the original June 5th guidance, CDPH has recommended daily visual wellness and symptoms checks prior to individuals entering campus. In order to facilitate those checks, the California Office of Emergency Services has distributed multiple no-touch thermometers for each school throughout the state to local county offices of education. These checks can happen in a

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variety of ways, including: As the individual enters the building or during morning homeroom. Students can be asked about their symptoms or can complete a short checklist of symptoms and hand it in. Follow-up to those checklists should occur whenever symptoms of COVID-19 are identified.

Positivity, Notification of Positive Cases, and Quarantine

Who will be notified when a person at the school site tests positive or initiates self-quarantine due to confirmed or suspected exposure?

Schools should maintain communication systems that allow staff and families to self-report symptoms and receive prompt notifications of exposures and closures, while maintaining confidentiality, as required by FERPA and state law related to privacy of educational records and other privacy laws. Additional guidance can be found in the March 2020 Student Privacy Policy FERPA & Coronavirus Disease 2019 (COVID-19) FAQs (PDF) from the U.S. Department of Education. In addition, local public health departments will notify the school administration if a case and contact investigation reveals exposure at the school site.

What is the definition of "close contact"? Is there a consistent statewide definition?

Close contact is defined as contact within 6 feet for greater than 15 minutes without a face covering. The CDPH is following the Centers for Disease Control guidance on close contact.

Masks, Face Coverings and Face Shields

The American Academy of Pediatrics does not recommend masks or face coverings for students under middle school age. Why does CDPH have a different recommendation?

CDPH recommends face masks (or face shields for very young children) at age 2 or older, so that those who cannot manage masks can nonetheless be protected. CDPH guidance requires all children in 3rd grade or later to wear masks. Increasing evidence suggests wearing masks or face coverings can significantly decrease COVID-19 disease transmission. Other countries' experiences (e.g., China, Singapore) suggests that virtually all students can be taught to handle face coverings at that age.

Schools should review the CDPH Guidance for the Use of Face Coverings (PDF) and any applicable local health department guidance and incorporate face covering use for students and workers into their COVID-19 prevention plan.

What if an individual cannot wear a face covering?

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 make it difficult for them to properly wearing or handling a mask, or when it would inhibit communication with a person who is hearing impaired.

Schools should develop protocols to provide a face covering to students who inadvertently fail to bring a face covering to school to prevent unnecessary exclusions. The California Office of Emergency Services has distributed appropriate face coverings for each school throughout the state to local county offices of education.

What if a student arrives at school without a face covering, and refuses to wear one provided by the LEA?

If a student refuses, the student must be excluded from on-campus instruction, unless they are exempt, until they are willing to wear a face covering. Students excluded on this basis should be offered other educational opportunities through distance learning. Disposable paper masks are thinner and may be less effective, but may still be used as a face covering to meet the

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requirement.

What is the guidance on face coverings and physical distancing on buses?

Face coverings are required on buses. The guidance acknowledges that a full 6 feet of physical distancing may not be practicable on buses, therefore face coverings are essential. Physical distancing should be maximized to the extent practicable.

Elementary School Waiver Process

What grade levels does the waiver apply to?

Waivers for in-person instruction may be requested for grades TK-6.

Can private schools file for a waiver?

The CDPH guidance provides that both public and private schools in counties on the County Monitoring List may request a waiver to conduct in-person instruction in elementary schools for grades TK-6. The private school-equivalent of a superintendent (in most cases, the head of school) may request a waiver from the local health officer to conduct in-person elementary school instruction, in consultation with labor (as applicable), parent, and community organizations. Local health officers, in turn, should review local community epidemiological data, consider other public health interventions, and consult with CDPH when considering a waiver request.

Why does the waiver only apply to elementary schools and not middle or high schools?

Based on the current best available scientific evidence, COVID-related risks in schools serving elementary-age students (grades TK-6) are lower than and different from the risks to staff and to students in schools serving older students. In particular, there appears to be lower risk of child-to-child or child-to-adult transmission in children under age 12, and the risk of infection and serious illness in elementary school children is particularly low.

What community organizations would schools have to consult with before considering a waiver?

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.

Applicability

Does this guidance allow for sports activities?

The guidance does not permit team competition, but does allow for individual or team physical conditioning and training and physical education where physical distancing can be maintained and ideally outdoors. Indoor physical conditioning and training is allowed only in counties where gyms and fitness centers are allowed to operate indoors. Please see the CDPH *Youth Sports Guidance* for further details.

Does this guidance allow for singing or playing instruments?

No. Activities where there is increased likelihood for transmission from contaminated exhaled droplets—such as singing, yelling, chanting, blowing wind instruments—are not permitted at this time.

Does this guidance apply to childcare programs?

This guidance applies to K-12. Please see separate childcare guidance.

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Do these new guidelines apply to preschool?

Unless there is a local public health order stating otherwise, child care programs can remain open or re-open. There will be some variation for preschool programs that are based on a school campus: if the school campus is closed, then the local school district will decide if the childcare or preschool program can open

Closure Criteria

How should schools calculate the 5% benchmark for closing schools?

The benchmark will generally include the denominator of both students and staff, which should be tracked separately. The CDPH guidance provides that each school site should designate a liaison – the school nurse, if applicable – to help coordinate monitoring and communications to local health officials, as well as the school community. The liaison should monitor and report positive cases, and track whether the school approaches the 5% threshold during a 14-day period.

If a school has opened because its county was not (or is no longer) on the monitoring list, will schools be required to close if the county reenters the monitoring list?

No, the school will not be required to close. Closure requirements are outlined by the CDPH criteria laid out in the COVID-19 and Reopening Framework for K-12 Schools in California (PDF) document.

Once a school starts in distance learning, is it required to remain that way for the entire quarter, semester?

No. Education Code section 43504 specifies that schools should "offer in-person instruction to the greatest extent possible." However, in-person instruction should be conducted only if the conditions are safe for both students and staff. If a school starts in distance learning, school and public health officials should collaborate to prepare to reopen for in-person instruction as soon as practicable.

Other Exemptions

If a school is closed for in-person instruction, is it permissible for a small set of students—such as students with disabilities and other students with special needs—to receive in-person instruction on campus?

More detailed guidance on conditions under which permissible in-person instruction and services for small sets of students, such as those provided pursuant to an individualized education program (IEP), is forthcoming.

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)



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EXHIBIT M



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

**COVID-19 and Reopening of In-Person Learning for Elementary Education
Waiver Notice to the California Department of Public Health (CDPH)**
(for use by Local Health Jurisdictions (LHJs))

August 3, 2020

Note: CDPH recommends that elementary schools within jurisdictions with 14-day case rates more than two times the threshold to be on the County Monitoring List (>200 cases/100,000 population) should not be considered for a waiver to re-open in-person instruction.

Instructions:

- Notice of all school or school district waivers proposed to be granted by a local health officer using this form should be sent to CDPH.
- For technical assistance regarding a waiver application, please contact CDPH.
- **Submit waiver notices and requests for technical assistance at this email address: K6Waiver@cdph.ca.gov.**
- Please do not submit any of your supporting documentation with this form.
- Submission of this document serves as your consultation with CDPH.
- CDPH will acknowledge receipt and follow up if there are any questions or concerns. If you have not received a further response within three business days of submission, you may approve or deny the waiver application consistent with the justification and guidance below.

Date of Application:

LHJ Name:

LHJ Contact:

Public Health Officer (If Not LHJ Contact):

Email:

Phone Number:

Justification: Based on the current best available scientific evidence, COVID-related risks in schools serving elementary-age students (grades TK-6) are lower than and different from the risks to staff and to students in schools serving older students. In particular, there appears to be lower risk of child-to-child or child-to-adult transmission in children under age 12, and the risk of infection and serious illness in elementary school children is particularly low.

CDPH Director's Office, MS 0500 | P.O. Box 997377 | Sacramento,
CA 95899-7377
(916) 558-1700 | (916) 558-1762 (fax)
Internet Address: www.cdph.ca.gov



There are health-related risks for children who are not provided in-person instruction, including lower rates of immunizations, higher rates of undetected child abuse and neglect, and other negative indicators of public health and wellbeing.

Guidance:

- Consistent with state law directing school districts to “offer in-person instruction to the greatest extent possible” (Ed. Code § 43504), local health officers should allow in-person elementary instruction for grades TK-6 to proceed even in counties subject to state monitoring if public health and safety guidance is implemented.
- Elementary in-person instruction must be provided in small, stable cohorts.
- Local health officers may conditionally grant an application with limits on the number of elementary schools allowed to re-open or allow re-opening in phases to monitor for any impact on the community.
- Local health officers in counties on the County Monitoring List within the prior 14 days must consult with CDPH (via submission of this form) before approving a waiver application from a district or school.
- **The local health officer must confirm that they have considered the following:**

Health & Safety

- ☐ Local health guidance, including appropriate mandatory requirements consistent with CDPH guidance
- ☐ Safety plans and availability of appropriate PPE, as recommended by the local health officer and CDPH guidance, for all elementary teachers and staff who will be involved in in-person instruction
- ☐ Availability of public health & school resources for COVID-19 investigation and response

Local Epidemiological Data & Health Care Capacity

- ☐ Current new case rate, testing % positivity trends, and the number and degree of indicators above thresholds to be on the monitoring list
- ☐ Local hospitalization trends and hospital capacity
- ☐ Any other local conditions or data contributing to inclusion on the monitoring list (*e.g.*, out of jurisdiction hospitalizations, enclosed outbreaks, *etc.*)

Testing

- ☐ Availability of testing resources within the community and, as applicable, via employee health plans to provide access to periodic testing to all elementary teachers and staff, with reasonable turn-around times

Other Consideration(s)

- ☐ The extent to which the school, school district, or system of private schools has consulted with relevant labor, community, and parent organizations, as applicable.

☐ _____

Please list below the waiver applicant name(s), school name(s), grade levels served, enrollment numbers, and the local health officer's determination regarding the request:

<u>Waiver Applicant</u>	<u>School Name</u>	<u>Grade Levels</u>	<u>Enrollment</u>	<u>Approved or Denied</u>

EXHIBIT N

8/5/2020

In-Person-Elementary-Waiver-Process



State of California—Health and Human
Services Agency
**California Department of Public
Health**



August 3, 2020

TO: All Californians

SUBJECT: COVID-19 and Reopening In-Person Learning Elementary Education Waiver Process

Overview

California schools have been closed for in-person instruction since mid-March 2020 due to the COVID-19 pandemic. School closures to in-person instruction were part of a broader set of recommendations intended to reduce transmission of SARS-CoV-2, the virus that causes COVID-19. The California Department of Public Health (CDPH) developed the *COVID-19 and Reopening In-Person Learning Framework* (PDF) to support school communities as they decide when and how to implement in-person instruction for the 2020-21 school year.

This framework permitted schools and school districts to reopen for in-person instruction at any time if they are located in a local health jurisdiction (LHJ) that has not been on the county monitoring list within the prior 14 days. If the LHJ has been on the monitoring list within the last 14 days, the school must conduct distance learning only, until their LHJ has been off the monitoring list for at least 14 days.

The framework authorized local health officers (LHO) to grant a waiver of this criteria, in order for elementary schools to open for in-person instruction under specified conditions. Applicants must satisfy all waiver requirements in order to be granted a waiver. Waivers should be granted or denied pursuant to the process outlined below.

Waiver Process

- **CDPH recommends that schools within jurisdictions with 14-day case rates more than two times the threshold to be on the County Monitoring List (>200 cases/100,000 population) should not be considered for a waiver to re-open in-person instruction.**
- Closed elementary schools in counties on the monitoring list within the prior 14 days may not open for in-person instruction until they have received approval of a waiver submitted to the LHO.
- This elementary school waiver is applicable only for grades TK-6, even if the grade configuration at the school includes additional grades.
- A district superintendent, private school principal/head of school, or executive director of a charter school (hereinafter applicant) can apply for a waiver from the LHO to open an elementary school for in-person instruction.
- Applications and all supporting documents must be submitted to the LHO at least 14 days prior to the desired reopening date.
- Prior to applying for the waiver, the applicant (or his/her staff) must (1) consult with labor, parent, and community organizations, and (2) publish elementary school reopening plans on the website of the local educational agency (or equivalent). 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.
- As described in the *CDPH/CalOSHA Guidance for Schools and School-Based Programs* (PDF), elementary school reopening plans must address several topics related to health and safety, in a manner consistent with guidance from CDPH and the local health department. Those topics include:
 - Cleaning and disinfection
 - Small, stable, cohorting
 - Entrance, egress, and movement within the school

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In-Person-Elementary-Waiver-Process

- Face coverings and other essential protective gear
- Health screenings for students and staff
- Healthy hygiene practices
- Identification and tracing of contacts
- Physical distancing
- Staff training and family education
- Testing of students and staff
- Triggers for switching to distance learning
- Communication plans
- When applying for the waiver, the applicant must submit to the LHO a waiver application form, to be provided by the LHO. The application must include evidence of (1) consultation with labor, parent, and community organizations and (2) publication of the elementary school reopening plans on the website of the local educational agency (or equivalent).
 - The applicant 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 applicant must confirm publication of the elementary school reopening plans on the website of the local educational agency (or equivalent).
- If applying on behalf of a school district, the applicant should submit a consolidated application and publish a plan for elementary schools in the district that are seeking to reopen for in-person instruction. If applying for an independent, private, faith-based, or charter school, the applicant should submit an application and publish a plan for each school.
- Upon receipt of a waiver application, the LHO will review and consider the application, supporting materials, and the following:
 - Available scientific evidence regarding COVID-related risks in schools serving elementary-age students, along with the health-related risks for children who are not provided in-person instruction.
 - State law directing public schools to "offer in-person instruction to the greatest extent possible." (Ed. Code § 43504).
 - Whether elementary in-person instruction can be provided in small, stable cohorts.
 - Local health guidance, safety plans, availability of appropriate PPE, and availability of public health and school resources for COVID-19 investigation and response.
 - Current new case rate, testing % positivity trends, and the number and degree of indicators above thresholds to be on the County Monitoring List.
 - Local hospitalization trends and hospital capacity.
 - Any other local conditions or data contributing to inclusion on the County Monitoring List.
 - Availability of testing resources within the community and via employee health plans.
 - The extent to which the applicant has consulted with staff, labor organizations, community, and parent organizations.
- Following review, the LHO will consult with CDPH regarding the determination whether to grant or deny the waiver application. Consultation with CDPH is accomplished by submitting a notice pursuant to CDPH instructions.
 - CDPH will acknowledge receipt of the notice and follow up if there are any questions or concerns. CDPH will provide technical assistance as requested.
 - If the LHO has not received a further response within three business days of submission, the waiver application may be approved or denied consistent with CDPH instructions.
- LHOs may conditionally grant an application with limits on the number of elementary schools allowed to re-open or allow re-opening in phases to monitor for any impact on the community.
- Closed elementary schools in counties on the monitoring list within the prior 14 days may not open for in-person instruction until they have received approval of a waiver submitted to the LHO.

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)



Page Last Updated : August 4, 2020

EXHIBIT O

[Local Public Health Letterhead]

[Date]

Dear District Superintendent, Charter School Director, or Private School Head of School:

On [Date of Monitoring List Placement], the California Department of Public Health (CDPH) placed [Name] County on its monitoring list. On July 17, 2020 Governor Gavin Newsom announced that if a county has been on the monitoring list within the prior 14 days, a school must conduct distance learning only, until the county has been off the monitoring list for at least 14 days.

In counties on the monitoring list, CDPH guidance allows a district superintendent, private school principal/head of school, or executive director of a charter school (hereinafter superintendent) to apply for a waiver from the local health officer to open an elementary school for in-person instruction. This waiver is applicable only for grades TK-6, even if the grade configuration at the school includes additional grades.

When applying for the waiver, the superintendent must submit to the local health officer evidence of (1) consultation with labor and parent organizations and (2) publication of the elementary school reopening plans on the website of the local educational agency (or equivalent).

The local health officer then reviews the application and reopening plan (along with local community epidemiological data), makes a determination whether to grant or deny the waiver, and consults with CDPH regarding that determination. Elementary schools in counties on the monitoring list within the prior 14 days may not open for in-person instruction until they have received approval of a submitted waiver from the local health officer.

In order to apply for a waiver, please complete and submit the attached Application Cover Form. An application must contain:

- Attestation that the superintendent (equivalent or designated staff) has consulted with all parent and labor organizations at each school site for which an application is being submitted. If no labor organization represents the school site staff, then consultation with school site staff is sufficient.
- Confirmation that elementary school reopening plans have been published on the website of the local educational agency (or equivalent). Reopening plans must address the components in the CDPH guidance for schools and school-based programs (which are also listed in the attached Application Cover Form).

Applications and all supporting documents should be submitted to the local health officer at least 14 days prior to the desired reopening date to [Email Address].

Sincerely,

[Name]

[Title]

[Health Organization]

Waiver Application Cover Form

(for use by a Local Education Agency or equivalent)

Please submit one application for each local educational agency or equivalent. If applying on behalf of a school district please submit one application for elementary schools in the district that are seeking to reopen for in-person instruction. If applying for an independent, private, faith-based, or charter school, please submit an application for each school.

Background Information

Name of Applicant (Local Educational Agency or Equivalent): _____

School Type: _____

_____ Traditional Public School

_____ Charter School

_____ Private, Independent, or Faith-Based School

Number of schools: _____

Enrollment: _____

Superintendent (or equivalent) Name: _____

Address: _____

Grades/Number of Students Proposed to be Reopened:

TK K 1st 2nd 3rd 4th 5th 6th

Date of Proposed Reopening: _____

Name of Person Completing Application: _____

Phone Number: _____

Email: _____

Signature: _____

Date: _____

I. Consultation

Please confirm consultation with the following groups:

☐ Labor Organization

Name of Organization(s) and Date(s) Consulted:

☐ Parent and Community Organizations

Name of Organization(s) and Date(s) Consulted:

If no labor organization represents staff at the school, please describe the process for consultation with school staff:

II. Elementary School Reopening Plans

Please confirm that elementary school reopening plan(s) addressing the following, consistent with guidance from the California Department of Public Health and the local health department, have been published on the website of the local educational agency (or equivalent):

☐ **Cleaning and Disinfection:** How shared surfaces will be regularly cleaned and disinfected and how use of shared items will be minimized.

☐ **Cohorting:** How students will be kept in small, stable, groups with fixed membership that stay together for all activities (e.g., instruction, lunch, recess) and minimize/avoid contact with other groups or individuals who are not part of the cohort.

☐ **Entrance, Egress, and Movement Within the School:** How movement of students, staff, and parents will be managed to avoid close contact and/or mixing of cohorts.

- ☐ **Face Coverings and Other Essential Protective Gear:** How CDPH's face covering requirements will be satisfied and enforced.
- ☐ **Health Screenings for Students and Staff:** How students and staff will be screened for symptoms of COVID-19 and how ill students or staff will be separated from others and sent home immediately.
- ☐ **Healthy Hygiene Practices:** The availability of handwashing stations and hand sanitizer, and how their use will be promoted and incorporated into routines.
- ☐ **Identification and Tracing of Contacts:** Actions that staff will take when there is a confirmed case. Confirm that the school(s) have designated staff persons to support contact tracing, such as creation and submission of lists of exposed students and staff to the local health department and notification of exposed persons. Each school must designate a person for the local health department to contact about COVID-19.
- ☐ **Physical Distancing:** How space and routines will be arranged to allow for physical distancing of students and staff.
- ☐ **Staff Training and Family Education:** How staff will be trained and families will be educated on the application and enforcement of the plan.
- ☐ **Testing of Students and Staff:** How school officials will ensure that students and staff who have symptoms of COVID-19 or have been exposed to someone with COVID-19 will be rapidly tested and what instructions they will be given while waiting for test results. Describe how staff will be tested periodically to detect asymptomatic infections.
- ☐ **Triggers for Switching to Distance Learning:** The criteria the superintendent will use to determine when to physically close the school and prohibit in-person instruction.
- ☐ **Communication Plans:** How the superintendent will communicate with students, staff, and parents about cases and exposures at the school, consistent with privacy requirements such as FERPA and HIPAA.

Additional Resources:

CDPH and Cal/OSHA Guidance for Schools and School-Based Programs

<https://files.covid19.ca.gov/pdf/guidance-schools.pdf>

California Department of Education Stronger Together: A Guidebook for the Safe Reopening of California's Public Schools

<https://www.cde.ca.gov/ls/he/hn/strongertogether.asp>

CDPH COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>

EXHIBIT P

[Local Public Health Letterhead]

[Date]

Dear District Superintendent, Charter School Director, or Private School Head of School:

On [Date of Monitoring List Placement], the California Department of Public Health (CDPH) placed [Name] County on its monitoring list. On July 17, 2020 Governor Gavin Newsom announced that if a county has been on the monitoring list within the prior 14 days, a school must conduct distance learning only, until the county has been off the monitoring list for at least 14 days.

In counties on the monitoring list, CDPH guidance allows a district superintendent, private school principal/head of school, or executive director of a charter school (hereinafter superintendent) to apply for a waiver from the local health officer to open an elementary school for in-person instruction. This waiver is applicable only for grades TK-6, even if the grade configuration at the school includes additional grades.

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- Confirmation that elementary school reopening plans have been published on the website of the local educational agency (or equivalent). Reopening plans must address the components in the CDPH guidance for schools and school-based programs (which are also listed in the attached Application Cover Form).

Applications and all supporting documents should be submitted to the local health officer at least 14 days prior to the desired reopening date to [Email Address].

Sincerely,

[Name]

[Title]

[Health Organization]

Waiver Application Cover Form

(for use by a Local Education Agency or equivalent)

Please submit one application for each local educational agency or equivalent. If applying on behalf of a school district please submit one application for elementary schools in the district that are seeking to reopen for in-person instruction. If applying for an independent, private, faith-based, or charter school, please submit an application for each school.

Background Information

Name of Applicant (Local Educational Agency or Equivalent): _____

School Type: _____

_____ Traditional Public School

_____ Charter School

_____ Private, Independent, or Faith-Based School

Number of schools: _____

Enrollment: _____

Superintendent (or equivalent) Name: _____

Address: _____

Grades/Number of Students Proposed to be Reopened:

TK K 1st 2nd 3rd 4th 5th 6th

Date of Proposed Reopening: _____

Name of Person Completing Application: _____

Phone Number: _____

Email: _____

Signature: _____

Date: _____

I. Consultation

Please confirm consultation with the following groups:

☐ Labor Organization

Name of Organization(s) and Date(s) Consulted:

☐ Parent and Community Organizations

Name of Organization(s) and Date(s) Consulted:

If no labor organization represents staff at the school, please describe the process for consultation with school staff:

II. Elementary School Reopening Plans

Please confirm that elementary school reopening plan(s) addressing the following, consistent with guidance from the California Department of Public Health and the local health department, have been published on the website of the local educational agency (or equivalent):

☐ **Cleaning and Disinfection:** How shared surfaces will be regularly cleaned and disinfected and how use of shared items will be minimized.

☐ **Cohorting:** How students will be kept in small, stable, groups with fixed membership that stay together for all activities (e.g., instruction, lunch, recess) and minimize/avoid contact with other groups or individuals who are not part of the cohort.

☐ **Entrance, Egress, and Movement Within the School:** How movement of students, staff, and parents will be managed to avoid close contact and/or mixing of cohorts.

- ☐ **Face Coverings and Other Essential Protective Gear:** How CDPH's face covering requirements will be satisfied and enforced.
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- ☐ **Healthy Hygiene Practices:** The availability of handwashing stations and hand sanitizer, and how their use will be promoted and incorporated into routines.
- ☐ **Identification and Tracing of Contacts:** Actions that staff will take when there is a confirmed case. Confirm that the school(s) have designated staff persons to support contact tracing, such as creation and submission of lists of exposed students and staff to the local health department and notification of exposed persons. Each school must designate a person for the local health department to contact about COVID-19.
- ☐ **Physical Distancing:** How space and routines will be arranged to allow for physical distancing of students and staff.
- ☐ **Staff Training and Family Education:** How staff will be trained and families will be educated on the application and enforcement of the plan.
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- ☐ **Triggers for Switching to Distance Learning:** The criteria the superintendent will use to determine when to physically close the school and prohibit in-person instruction.
- ☐ **Communication Plans:** How the superintendent will communicate with students, staff, and parents about cases and exposures at the school, consistent with privacy requirements such as FERPA and HIPAA.

Additional Resources:

CDPH and Cal/OSHA Guidance for Schools and School-Based Programs

<https://files.covid19.ca.gov/pdf/guidance-schools.pdf>

California Department of Education Stronger Together: A Guidebook for the Safe Reopening of California's Public Schools

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CDPH COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>

EXHIBIT Q

8/7/2020

COVID-19 County Monitoring Overview

COVID-19

County Data Monitoring

Overview

Over the past several months, California has used data and science to drive our response to COVID-19. The county data posted below is intended to give Californians insight into how their county is doing and provide some early indication of developing areas of concern.

It is incumbent upon state and local governments, business sectors, and individuals to work together and take actions that limit the transmission of COVID-19. Only together can we make a difference. Opened sectors should follow state guidance on how to reduce risk to the public, and individuals should continue to practice safety precautions such as wearing face coverings in public, physical distancing of at least six feet, frequent handwashing, and disinfecting surfaces. Those over 65 or those with underlying health conditions should continue to stay at home.

The state and local jurisdictions together have prepared to respond to COVID-19 by increasing testing capacity across the state, developing healthcare surge plans, expanding contact tracing capabilities, securing personal protection equipment (PPE) for essential services and business sectors, and ensuring protection of our most vulnerable populations. Many counties have attested to: 1) stabilization of their data, and 2) increased level of preparedness as they move to open business sectors in their jurisdiction. Many counties with a variance developed their own local containment plans, which were outlined or described in publicly posted **attestations**. The data and metrics here should be viewed as supplemental to the county identified triggers for modifications, included in those attestation plans and not a replacement for metrics used in their containment plans. This data will allow the public to monitor the impact of opening these business sectors and better understand when the local health officer and county officials determine that it is necessary to put new interventions in place.

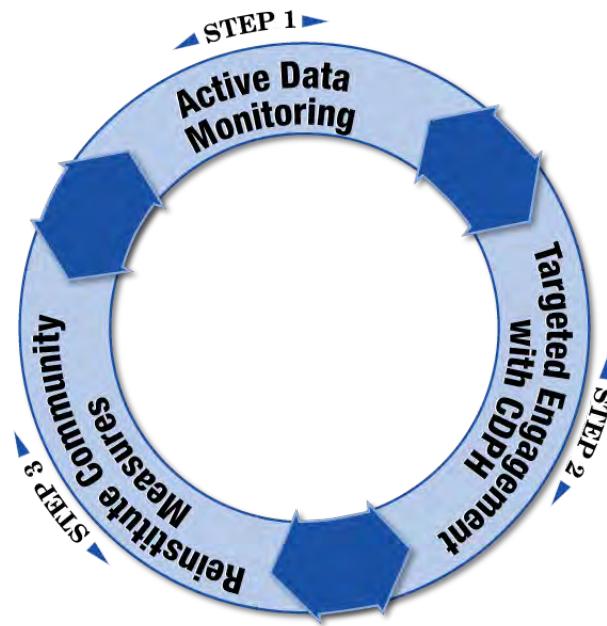
In addition, other factors may cause a county to be placed on the monitoring list such as elevated cases in specific populations, large outbreaks in congregate settings, elevated public interests, and significant resource requests for PPE, contact tracers, or testing capacity. The state will follow a county's flagged data for three days before it is placed on the targeted engagement list. Data that does not meet the state's threshold for that indicator will be bolded in the data table posted on this page.

The partnership and process is comprised of three steps that may cycle back and forth depending on progress.

Click on the steps within the graphic below to see more information:

8/7/2020

COVID-19 County Monitoring Overview



Links:

- [County Data Monitoring Overview](#)
- [County Data Chart](#)
- [Step 1: Active Data Monitoring](#)
- [Step 2: Targeted Engagement with CDPH](#)
- [Step 3: Reinstitute Community Measures](#)

Page Last Updated : August 6, 2020

EXHIBIT R

8/7/2020

COVID19County Data Table

COVID-19

County Data Monitoring

County Data Chart

A description of the data being monitored can be found in the **Understanding the Data Being Monitored** section. County data have been flagged for not meeting the objective set for that indicator. The data chart will be updated and posted daily.

Please note: the metrics described may differ from other state-reported data due to the way each metric is calculated. For example, the case rate in this report uses the earliest date that a person was known to have a confirmed infection rather than the date it was reported to the California Department of Public Health. The testing volume and testing positivity metrics in this report have a 7-day lag in order to account for delays in reporting. Detailed descriptions of how these metrics are calculated can be found in the **Understanding the Data Being Monitored** section.

Elevated disease transmission, increasing hospitalization, and limited hospital capacity metrics are only displayed for counties not meeting threshold criteria.

Update 08/07/2020:

- The transition of the federal requirements for hospital reporting is complete as of 8/6/2020 and is currently displayed in the County Data Monitoring chart.
- Data for case rate and testing positivity will not be displayed while the State is working to address the data lag issues recently identified.
- At this time, movement of counties on or off the list will be on hold until further notice.
- The July 13th State Health Order still applies to counties currently on the monitoring list.

Chart last updated on August 7, 2020.

		Elevated Disease Transmission		Increasing Hospitalization**	Limited Hospital Capacity**
Threshold	<150	Case Rate >100 OR Case Rate >25 AND Positivity >8%		>10% Increase	
County	Avg # tests per day (per 100,000 population) (7 day average with a 7 day lag)	Case rate per 100,000 (14 days)	Testing positivity (%) (7 day average with a 7 day lag)	% ICU beds currently available	% Ventilators currently available
Alameda*	---	---	---	✓	✓
Alpine	---	---	---	---	---
Amador*	---	---	---	✓	✓

8/7/2020

COVID19County Data Table

Butte*	---	---	---	13.2	✓
Calaveras	---	---	---	✓	✓
Colusa*	---	---	---	---	✓
Contra Costa*	---	---	---	✓	✓
Del Norte	---	---	---	✓	✓
El Dorado	---	---	---	✓	✓
Fresno*	---	---	---	8.9	✓
Glenn*	---	---	---	---	
Humboldt	---	---	---	✓	✓
Imperial*	---	---	---	14.3	✓
Inyo	---	---	---	✓	✓
Kern*	---	---	---	✓	✓
Kings*	---	---	---	✓	✓
Lake	---	---	---	✓	✓
Lassen	---	---	---	---	
Los Angeles*	---	---	---	✓	✓
Madera*	---	---	---	3.1	✓
Marin*	---	---	---	✓	✓
Mariposa	---	---	---	---	✓
Mendocino	---	---	---	✓	✓
Merced*	---	---	---	✓	✓
Modoc	---	---	---	---	✓
Mono	---	---	---	✓	✓
Monterey*	---	---	---	✓	✓
Napa*	---	---	---	✓	✓
Nevada	---	---	---	✓	✓
Orange*	---	---	---	✓	✓
Placer*	---	---	---	19.8	✓
Plumas	---	---	---	---	✓
Riverside*	---	---	---	✓	✓
Sacramento*	---	---	---	19.8	✓
San Benito*	---	---	---	0.0	✓
San Bernardino*	---	---	---	✓	✓
San Diego*	---	---	---	✓	✓
San Francisco*	---	---	---	✓	✓

8/7/2020

COVID19County Data Table

San Joaquin*	---	---	---	15.6	✓
San Luis Obispo*	---	---	---	✓	✓
San Mateo*	---	---	---	✓	✓
Santa Barbara*	---	---	---	✓	✓
Santa Clara*	---	---	---	✓	✓
Santa Cruz*	---	---	---	✓	✓
Shasta	---	---	---	✓	✓
Sierra	---	---	---	✓	✓
Siskiyou	---	---	---	✓	✓
Solano*	---	---	---	10.6	✓
Sonoma*	---	---	---	15.7	✓
Stanislaus*	---	---	---	7.0	✓
Sutter*	---	---	---	---	✓
Tehama	---	---	---	✓	✓
Trinity	---	---	---	---	✓
Tulare*	---	---	---	13.5	✓
Tuolumne	---	---	---	✓	✓
Ventura*	---	---	---	✓	✓
Yolo*	---	---	---	✓	✓
Yuba*	---	---	---	✓	✓

*Counties on the County Monitoring List as of 08/07/2020

Links:

- County Data Monitoring Overview
- County Data Chart
- Step 1: Active Data Monitoring
- Step 2: Targeted Engagement with CDPH
- Step 3: Reinstitute Community Measures

Page Last Updated : August 7, 2020

EXHIBIT S

8/8/2020

County Monitoring Data- Step 1

COVID-19

County Data Monitoring

Step 1: Active Data Monitoring

County Data Chart

Understanding the Data Being Monitored

When reviewing the data, a few assumptions should be noted, such as: 1) COVID positive case rates amongst state and federal prison inmates are not included in the case rate; 2) increasing hospitalization and limited hospital capacity data may represent the county accepting patients from neighboring jurisdictions or increase in testing; and, 3) testing data may help explain or provide context for interpreting the elevated disease transmission data. All of these key assumptions and the extent to which a county's data is above the threshold level would factor into CDPH's targeted engagement with local health departments. Data in the county table and link is presented by county, which encompasses the city Pasadena, Long Beach, and Berkeley, who have their own city health departments.

As described above, the data and metrics monitored here should be viewed as supplemental to the triggers for modifications outlined by the county and not a replacement for metrics used in their local containment plans. For disease transmission and increasing hospitalization metrics, the data is provided over a different range of time than what was requested by the state for the variance attestations.

Elevated Disease Transmission (Source: CalRedie):

The 14-day case rate (without prison cases) and 7-day testing positivity rate are used to assess the level of COVID-19 burden in a county. For each measure, the higher the number, the more a county is impacted by COVID-19. However, it is important to look at this data in the context of average number of tests per day, as well as who is being tested. In general, higher number of tests per day indicates more widespread testing for COVID-19 beyond individuals who have symptoms. This means that more individuals who either do not have COVID-19 or have COVID-19 but are asymptomatic will be tested. As a result, as the number of tests per day increases, the case rate may increase (due to the identification of asymptomatic cases) and the testing positivity rate may decrease (due to more testing among individuals who do not have COVID-19).

A county is flagged for elevated disease transmission criteria if:

1) Case rate (per 100,000) >100

OR

2) Case rate (per 100,000) >25 **AND** testing positivity >8.0%

14-day case rate (without prison cases): The total number of cases diagnosed and reported over a 14-day period divided by the number of people living in the county. This number is then multiplied by 100,000. Due to reporting delay, there is a 3-day lag. For example, a case rate calculated on April 1st would correspond to cases occurring from March 15th - March 28th. Although case rates are often calculated using the date they were reported to the health department, this measure uses the episode date. The episode date is the earliest of several dates and corresponds to the earliest date that the case can be known to have had the infection.

7-day testing positivity: The total number of positive polymerase chain reaction (PCR) tests divided by the total number of PCR tests conducted. This number is then multiplied by 100 to get a percentage. Due to reporting delay (which may be different between positive and negative tests), there is a 7-day lag. For example, a case rate calculated on April 1st would correspond to specimens collected between March 18th - March 24th.

Increasing Hospitalizations (Source: California Hospital Association Survey):

8/8/2020

County Monitoring Data- Step 1

Monitoring changes to the number of individuals who are hospitalized for COVID-19 is another way to assess the burden of COVID-19 in a county. If more people are being hospitalized for COVID-19, it is likely that disease transmission is increasing, although increases in hospitalization rates are likely to lag by approximately two weeks. Unlike the case rate or testing positivity rate, the number of people hospitalized for COVID-19 is less likely to be influenced by how much testing is occurring. However, the number of patients currently hospitalized for COVID-19 may be influenced by a number of factors including: how long someone is hospitalized for COVID-19, whether hospitals in a county have accepted patient transfers from other counties, and who is being infected by COVID-19 (people who are older or have certain underlying medical conditions are more likely to require hospitalization).

A county is considered to meet the increasing hospitalization criteria if:

- 1) >10% increase in the average number of confirmed COVID-19 patients hospitalized

Percent change in confirmed COVID-19 patients hospitalized: Calculated by comparing the average number of laboratory confirmed COVID-19 patients hospitalized over the past 3 days to the 3 days prior. For example, a number calculated on April 1st would compare the average number of patients hospitalized on March 29th, 30th, 31st to the average number of confirmed patients hospitalized on March 26th, 27th, and 28th. Counties with an average of <20 laboratory confirmed COVID-19 patients hospitalized over the past 3 days are not considered to meet the increasing hospitalization criteria.

Limited Hospital Capacity (Data Source: California Hospital Association Survey):

If a county is experiencing increased transmission rates and increases in hospitalization, it is important to monitor whether there is sufficient remaining capacity in the health care system to care for patients in the county. In addition to overall hospital capacity, other key indicators of hospital capacity include availability of intensive care unit (ICU) beds and ventilators.

A county is considered to meet the limited hospital capacity if:

- 1) <20% of staffed ICU beds are available

OR

- 2) <25% of ventilators are available

ICU Bed Availability: The total number of available ICU beds divided by the total number of staffed ICU beds. This number is then multiplied by 100 to get a percentage. NICU beds are excluded from this calculation.

Ventilator Availability: The total number of available ventilators divided by the total number of ventilators. This number is then multiplied by 100 to get a percentage.

Links:

- County Data Monitoring Overview
- County Data Chart
- Step 1: Active Data Monitoring
- Step 2: Targeted Engagement with CDPH
- Step 3: Reinstitute Community Measures

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EXHIBIT T

8/8/2020

CountyMonitoringData- Step2

COVID-19

County Data Monitoring

Step 2: Targeted Engagement with CDPH

County Data Chart

In partnership, CDPH will work with Local Health Departments to set up strategy calls and provide technical assistance. The following areas will be discussed:

- Identify the drivers of the changing situation and whether it is increasing confirmed cases, uptick in hospitalizations and ICU patients, outbreaks in congregate settings such as skilled nursing facilities (SNFs) or jails/prisons, or community transmissions in settings such as churches, workplaces, or agriculture, and amongst other specific populations experiencing disease disproportionately.
- Review of the strategies already in place by the Local Health Department and community to address each of the areas of concern, including locally defined plans and protocols published through variance attestations.
- Discuss additional steps that should be taken in various environments such as more aggressive testing strategies, any issues with contact tracing, need for healthcare resources or infection control strategies.
- Discuss issues that may develop as a result of currently identified issues, e.g. additional SNF or community outbreaks leading to a healthcare surge.
- Discuss any gaps in resources and clear articulation of any additional roles for the state and/or local jurisdiction. Resource gaps should include commodities such as personal protective equipment (PPE), testing supplies, or other consumables.
- Review of business sectors that are open and whether any other state agencies may be needed in the discussion given their ownership of the facility or role in regulating that business sector.
- Review of Local Containment Triggers and Consideration of renewing non-pharmaceutical interventions (NPI).

The state will work closely with Local Health Departments to identify action steps and timelines for addressing issues that impact indicators of concern. Counties currently being monitored at this step, the drivers of their situation, and key action steps identified are below:

Resources

› Alameda County

Alameda County (has variance) is experiencing an increase in reported COVID-19 cases in recent weeks, indicating elevated disease transmission. This change is above what we expected as a result of the County's substantial expansion of testing. Likely drivers include: 1) increased interpersonal interactions without face coverings and physical distancing, and 2) ongoing transmission among health care workers, within households, in frontline workplace settings, and in skilled nursing and other congregate living facilities. County has reopened more slowly than the rest of the state and reports they are affected by accelerated reopenings across the region and state, as their residents routinely live, work, and recreate across county boundaries. Key actions to address COVID-19 transmission include: 1) pausing their reopening on June 29; 2) implementing a deeper outreach into impacted communities and workplaces regarding face coverings and physical distancing; 3) continuing case detection (testing); 4) continuing and increasing case investigation and contact tracing

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CountyMonitoringData- Step2

staffing with trusted community partners; 5) increasing support for addressing workplace COVID-19 prevention and response; and 6) coordinating response efforts with the State and regional partners. (Date added to CDM list: July 12, 2020)

► Butte County

Butte County (has variance) is experiencing an increase in reported COVID-19 cases in recent weeks, indicating elevated disease transmission. Likely drivers of this increase include: 1) private gatherings and 2) outbreaks in congregate living facilities. While they have experienced an increase in cases and hospitalizations have increased slightly, the number of COVID patients in ICU have remained low and the hospitals are not concerned about surge at this time. The ICU capacity metric for Butte County shows less than 20%, however the majority of the patients in ICU are non-COVID patients and the hospitals could bring on additional capacity for COVID patients if needed. Actions to address COVID-19 transmission include: 1) testing of all residents and staff in congregate facilities experiencing outbreaks; 2) established regular testing of all staff in skilled nursing facilities; 3) expanding number of contact tracers to continue follow up on each case; 4) development and distribution of flow charts for businesses on "what to do if...."; 5) working closely with the schools to plan for distance or in-person learning; 6) more community outreach and public information: PSAs for TV and radio, regular social media posts, weekly press conferences, information distributed to businesses, signage for businesses to require face coverings. (Date added to CDM List: July 22, 2020)

► Colusa County

Colusa County (has variance) is experiencing elevated disease transmission. Drivers of this include family and community gatherings. Actions to address these concerns include 1) NPI interventions such as encouraging social distancing, use of face coverings and hand hygiene. 2) Increasing case investigators and contact tracing 3) reassign staff to assist investigators and contact tracers 4) provide just in time training to current DHHS bilingual staff so they can immediately begin case investigation and contact tracing. 5) identify bilingual staff that can be reassigned within the County that can assist with translation only, not investigation or tracing 6) utilize the language line to allow non-bilingual staff to case investigate and contact trace 7) daily Facebook posts encouraging individuals to wear face coverings 8) Media campaign to explain the importance of both isolation and quarantine. (Date added to CDM list: July 5, 2020)

► Contra Costa County

Contra Costa County (has variance) is experiencing elevated disease transmission and increasing hospitalization. There is a concerning rise in the number of people hospitalized. This is in parallel to a rise in overall cases. Key actions to address the increase include 1) delaying the opening of additional business and activities in an effort to encourage people to stay home and avoid gatherings, 2) continuing to adhere to the State's guidance on face coverings and enforcement activities, 3) working with communities and community-based organizations to share messaging about face coverings and other prevention techniques along with the importance of testing, and 4) continuing to provide infection prevention expertise to assist skilled nursing facilities and other congregate care facilities on infection control practices and proper use of PPE. (Date added to CDM list: July 5, 2020)

► Fresno County

Fresno County (has variance) is experiencing elevated disease transmission. A driver of this are outbreaks in SNFs and the impact of the Avenal State Prison outbreak on staff who live in surrounding counties, such as Fresno. Key actions to address concerns include 1) continuing to provide Infection Preventionists expertise to assist SNFs on infection control practices; 2) ensure baseline testing of SNF residents and health care workers; 3) ensure adequate and proper use of PPE; and, 4) coordination and communication between CDCR, CDPH, and the Local Health Department to mitigate outbreaks at state prisons with employees who return to live in Fresno County. (Date added to CDM list: June 8, 2020)

► Glenn County

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Glenn County (has variance) is experiencing elevated disease transmission. Drivers of this include an increase in outbreaks and clusters related to 1) household contacts, 2) social gatherings 3) businesses in the county 4) one church gathering and 5) one case that traveled to Mexico. Actions to address these concerns include 1) Working with businesses on health check screenings and NPI enforcement and monitoring 2) Increasing case investigators and contact tracing 3) Increase testing and media campaigning for those that are symptomatic 4) Develop a process to handle incoming cases in a timely and efficient manner. (Date added to CDM list: June 29, 2020)

➤ Imperial County

Imperial County is experiencing elevated disease transmission. Drivers of this include U.S. citizens/residents traveling to or from Mexicali to work and/or seek healthcare and other services, continued need for staffing solutions at hospitals, and outbreak at meat packing facility. Key actions to address concerns include 1) building additional testing capacity, 2) training and onboarding contact tracing staff, 3) transporting patients to hospitals in neighboring counties when hospital capacity is full or limited; and, 4) stand up support for alternative care sites. (Date added to CDM list: June 5, 2020)

➤ Kern County

Kern County (has variance) is experiencing an increase in reported COVID-19 cases during the last few weeks. The county has also significantly increased testing. The likely drivers of elevated disease transmission include: 1) An exponential expansion of testing Kern County residents; 2) Transmission in Skilled Nursing Facilities, prisons and other congregate facilities; 3) Household contacts and social gatherings among separate households. Strategies and actions to address the concerns include: 1) Continuing to implement an aggressive outreach program that strongly encourages disease prevention methods and targeting areas disproportionately impacted; 2) Working with the California Department of Public Health to require significant operational changes within our Skilled Nursing Facilities and positioning our new SNF accountability officer to effectively coordinate Kern County and State efforts; and 3) Coordinating and communicating with State agencies to mitigate disease transmission and outbreaks at State prisons. (Date added to CDM list: July 21, 2020)

➤ Kings County

Kings County (has variance) is experiencing elevated disease transmission, increasing hospitalizations, and limited hospital capacity. Drivers of this include county experiencing outbreaks at Avenal State prison within their jurisdiction, resulting in secondary infection to staff working within the central and satellite kitchens; outbreak at local Adventist Health (AH) admitting COVID positive patients from Tulare, Reedley, and SNF outbreaks. Key actions to address concerns include 1) coordination and communication between local health department, CDPH, and California Department of Corrections and Rehabilitation (CDCR) to mitigate outbreak at Avenal State Prison; 2) order needed resources through the Standardized Emergency Management System such as oxygen concentrators, health care staff, testing kits, and PPEs; and, 3) continue to engage with SNFs on infection control measures. (Date added to CDM list: June 5, 2020)

➤ Los Angeles County

Los Angeles County (has variance) is experiencing the possibility of elevated disease transmission. Drivers of this include having a high case rate that is highly related to high testing capacity and volume countywide, which also includes testing all residents and staff at over 235 SNFs. Key actions to monitor the situation include 1) monitoring positivity rate among those tested to ensure that there isn't a significant increase that may signal more community transmission; 2) continuing to provide Infection Preventionists expertise to assist SNFs and to ensure baseline testing at every SNF that has not reported any positive cases; and, 3) working with the state to ensure supply chain issues related to PPE at SNFs are resolved. (Date added to CDM list: June 5, 2020)

➤ Madera County

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Madera County (has variance) is experiencing elevated disease transmission and limited hospital capacity. Drivers of this include an increase in community spread cases related to 1) social gatherings 2) work exposure 3) person-to-person transmission in large households. Actions to address these concerns include 1) contact tracing 2) local and regional messaging campaigns 3) education and technical assistance with businesses. 4) collaborate with regional hospitals to make plans to transfer if needed 5) Setup Alternate Care Site for patients. (Date added to CDM list: July 4, 2020)

► Marin County

Marin County (has variance) is experiencing elevated disease transmission, increasing hospitalizations, and limited hospital capacity. Drivers of this include county experiencing an outbreak at San Quentin State Prison within their jurisdiction; increased community transmission among essential workers; and outbreaks in congregate settings and Latinx neighborhoods. Key actions to address concerns include 1) coordination and communication between local health department, CDPH, and California Department of Corrections and Rehabilitation (CDCR) to mitigate outbreak at San Quentin State Prison; 2) enhanced infection control practices and testing at residential care facilities for the elderly (RCFE) and skilled nursing facilities (SNF); and 3) partnerships with community-based organizations to increase testing, access to care and supports for vulnerable populations. (Date added to CDM list: July 3, 2020)

► Merced County

Merced County (has variance) is experiencing elevated disease transmission, increasing hospitalizations, and limited hospital capacity. Drivers of this include increased community transmission, increased exposures at work places (including several small outbreaks), and household clusters, particularly in the Latinx/Hispanic community. Action steps to address these concerns include: 1) increased marketing of community testing among priority populations; 2) increasing culturally responsive public messaging and education on the importance personal protection measures including face coverings; and, 3) educational outreach to businesses to convey importance of implementing safety measures in order to prevent future shutdown. (Date added to CDM list: June 29, 2020)

► Mono County

Mono County (has variance) has evidence of increasing disease transmission with recent rapid rise in positive cases and percent positives. The only hospital, Mammoth Hospital, a 17 bed CAH with 2 bed ICU, remains relatively unimpacted. About 95% of their cases have been in the Town of Mammoth Lakes (TOML), the largest town, with much less evidence of community transmission in unincorporated areas. County reports that the Hispanic community is disproportionately affected. Drivers include: 1) cases in the restaurant sector (Two-thirds of cases over the last 4 weeks have occurred in restaurant workers or their contacts), 2) Contact and exposure in tourism sector, 3) informal gatherings. County reports that tourism greatly increases their population and social activity and is believed to increase transmission. Informal gatherings are believed to be a significant source of new infections. Key actions to address these concerns include: 1) setting capacity limits on transient lodging in TOML, 2) active promotion of StaySafeToStayOpen behaviors, 3) enforcement of face covering orders and other applicable to businesses. County is working to increase access to testing although reliance on send-out testing is not optimal. Targeted testing in affected business sectors is ongoing. County's contact tracing staff have been able to meet needs to date. (Date added to the CDM list: July 23, 2020).

► Monterey County

Monterey County (has variance) is experiencing elevated disease transmission. Drivers include 1) community transmission as more individuals leave their homes to work or to seek services, and 2) workplace transmission followed by household transmission. Key actions to slow transmission of COVID-19 include 1) promoting and building additional testing capacity in geographic areas with low testing rates; 2) continuing case and contact investigations; 3) continuing to coordinate with local hospitals, clinics, and skilled nursing facilities to ensure surge response readiness, and; 4) focusing additional outreach and educational messaging in geographic areas and among populations disproportionately affected by COVID-19. (Date added to CDM list: July 2, 2020)

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► Napa County

Napa County (has variance) is experiencing elevated disease transmission. Drivers of this include family and community gatherings, increased community transmission, increased transmission among the Latino population within crowded household settings, and disproportionate impact on agricultural workers. Actions to address these concerns include: 1) NPI interventions such as encouraging social distancing, use of face coverings and hand hygiene; 2) increasing bilingual case investigators and contact tracing staff; 3) education on staying within household bubbles, using traditional and social media and door-hanger campaigns; 4) public education of social distancing and face coverings through radio, Facebook Live, newspaper and social media; 5) testing of all case contacts, surveillance testing of skilled nursing facilities and farmworkers within vineyard management with exposures or outbreaks; 6) formation of an intergovernmental compliance task force to enforce social distancing and face coverings; and 7) engagement of industry groups and community based organizations for vulnerable populations. (Date added to CDM list: July 8, 2020)

► Orange County

Orange County (has variance) is experiencing an increase in hospitalization. Drivers of this include: a) community transmission from gatherings, b) workplace transmission, c) outbreaks in non-medical congregate livings such as assisted living facilities, memory care facilities, etc. Orange County's key action steps to address concerns include: 1) collaborating with cities and the business community to increase public messaging on the importance of social distancing, not gathering, and mandate face covering. 2) increase testing sites and education outreach in communities where positive cases are high; and, aggressive targeted educational outreach to ethnic communities, 3) working with hospital and health systems to monitor and understand hospitalizations and prepare for the surge, 4) implementation of hospital criteria for shifting to Crisis Care Strategies (surge plan activations), 5) prioritizing medical resource distribution to hospitals most burdened with COVID-19 patients. 6) monitoring positivity rate among those tested to ensure that there isn't a significant increase that may signal more community transmission, 7) contracting with community-based organizations to provide outreach to specific ethnic groups; share messaging about face coverings and other prevention techniques along with the importance of testing; provide necessary supports for social determinant of health needs, 8) providing infection prevention expertise to assist skilled nursing facilities and other congregate care facilities on infection control practices and proper use of PPE. (Date added to CDM list: June 29, 2020)

► Placer County

Placer County (has variance) is experiencing increased hospitalizations and limited hospital capacity. Placer County is also experiencing an increasing trend in disease transmission. Drivers of increased disease transmission include large households where staying away from others while ill is difficult, community and extended family gatherings, and indoor work environments where physical distancing is difficult. The rising number of cases of COVID-19 in Placer County as well as in neighboring counties are driving an increase in hospitalizations. Placer County's two largest hospitals lie on the Placer-Sacramento County border and provide care to residents of both counties, as well as other neighboring counties. Key actions to address the situation include 1) Working with community-based organizations to provide guidance and support to residents of large households where isolation is difficult; 2) Public messaging on the importance of not gathering with non-household members; 3) Outreach to the business community regarding the importance of temperature checks, symptom screenings, face coverings for staff and customers, and supporting ill and exposed employees to stay home; and 4) Working with hospitals to review and, if necessary, implement surge plans. (Date added to CDM list: July 9, 2020)

► Riverside County

Riverside County (has variance) is experiencing elevated disease transmission. Drivers of this include: 1) outbreaks at state prisons and skilled nursing facilities (SNFs), 2) potential transmission at public protests with large numbers of people in close proximity without face coverings, 3) in-county patient transfers from Imperial County, 4) patients seeking care from Northern Baja California and traveling along SR-86 corridor into Coachella Valley and 5) general increases in local gatherings. Key action steps to address concerns include: 1) close monitoring of data; 2) increase testing volume at county and state sites; 3) continue SNF outreach and support and implement Quick Response Task Force assistance for high risk facilities; 4) expand contact tracing workforce; 5) increase public messaging on the importance of personal protection

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measures; and 6) coordination and communication between the local health department, CDPH, and California Department of Corrections and Rehabilitation (CDCR) to mitigate outbreaks at state prisons. (Date added to CDM list: June 17, 2020)

➤ Sacramento County

Sacramento County (has variance) has experienced the possibility of increasing hospitalization. Drivers of this include community transmission due to holiday gatherings amongst large families. Key action steps to address concerns include (1) increase of public messaging on the importance of social distancing, not gathering, and mandate face covering, (2) more testing sites and education outreach in communities where positive cases are high, and (3) targeted educational outreach to ethnic communities. (Date added to CDM list: June 24, 2020)

➤ San Benito County

San Benito County (has variance) is experiencing elevated disease transmission. Drivers of this include an increase in outbreaks and clusters related to 1) household contacts, 2) social gatherings and 3) businesses in the county. Actions to address these concerns include: 1) working with businesses on health check screenings and NPI enforcement; 2) monitoring increasing case investigators and contact tracing; 3) increasing testing and media campaigning for those that are symptomatic; and 4) working with external partners to improve efficient case reporting and processing. (Date added to CDM list: July 8, 2020)

➤ San Bernardino County

San Bernardino County (has variance) is experiencing elevated disease transmission and increasing hospitalizations. Drivers of this include: 1) community transmission from gatherings, 2) workplace transmission, 3) transmissions at state prison, state hospital, county jails and academy, and skilled nursing facilities, 4) transfer of patients from Imperial County. Action steps to address these concerns include: 1) expanding community testing and testing among priority populations; 2) coordination and communication between local health department, CDPH, and California Department of Corrections and Rehabilitation (CDCR) to mitigate outbreaks at state prisons; and with CDPH for outbreak mitigation at the State Hospital, 3) providing SNF Taskforce support and Infection Prevention expertise to support SNFs; 4) increasing public messaging and education on the importance personal protection measures including face coverings and personal responsibility; 5) working with labs and employers to increase turn-around time from diagnosis to isolation and initiation of case contacting; and 6) increasing number of contact tracers. (Date added to CDM list: June 21, 2020)

➤ San Diego County

San Diego County (has variance) has an elevated case rate due to widespread COVID-19 disease transmission. County has taken following key actions to mitigate the situation 1) closing restaurants, bar, and breweries to decrease access, exposure, and gatherings; 2) requiring customers of these venues to be seated at socially distanced tables; 3) encouraging outdoor dining, which contributes to a lower risk of infection; 4) encouraging the younger population to use face coverings and practice social distancing through outreach to universities, colleges, transitional age youth, and other community youth organizations; and 5) working with industry associations to conduct education and outreach. County has taken the following key actions to manage the situation 1) continuing to onboard sufficient case investigators and contact tracers to prevent additional community transmission; 2) increasing testing sites to reach vulnerable and younger populations; 3) deploying County strike teams to conduct site assessment at skilled nursing facility (SNFs), non-SNFs/long-term care facilities, and community setting outbreaks; and 4) evaluating and modifying efforts to ensure testing is available throughout the community for all populations. Lastly, county has taken the following key actions to monitor the situation include 1) monitoring the positivity rate among those tested to ensure that there is not a significant increase that may indicate more community transmission; 2) continuing to work with congregate care facilities to implement infection prevention and control measure and assist with education and testing; and 3) continuing to monitor, identify and assess impacts due to local demographics. (Date added to CDM list: July 3, 2020)

San Francisco County

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San Francisco County (has variance) is experiencing a significant increase in SARS-CoV-2 infections and COVID-19 hospitalizations. Since early to mid-June San Francisco case rates, positivity proportion, and hospitalizations have more than tripled. The Latinx community continues to be the most impacted, but infections have increased in other racial/ethnic groups, in low-income neighborhoods, in younger persons, in lower-wage essential workers, and across the city. Although the county currently has a variance, they paused their reopening two weeks ago. County believes drivers of increases in infections are due to multiple causes including (1) increases in economic activity, movement, and mixing, (2) increases in social gatherings, (3) increases in mixing opportunities for persons from different households, (4) limited compliance to indoor worksite requirements for face coverings, physical distancing, hand hygiene, and environment disinfection, and (5) continuing infections in low-income crowded housing and among lower-wage essential workers. We are developing a comprehensive plan to (a) expand community outreach, engagement, and mobilization with an equity focus, (b) expand education, support, and enforcement of worksites to comply with health and safety requirements, (c) expand and prioritize community testing, (d) expand case investigation and contact tracing, and (e) improve our surveillance and epidemiology efforts to identify the strongest risk factors for infection, and to evaluate our containment efforts. County plans to follow state directives and guidance. (Date added to CDM list: July 17, 2020)

► San Joaquin County

San Joaquin County (has variance) is experiencing increasing hospitalization and limited hospital capacity. Drivers of this include 1) community transmission due to gatherings, 2) workplace transmission followed by household transmission; 3) SNF outbreaks; and, 4) increase in widespread testing. Action steps to address concerns include: 1) increase public messaging on the importance of personal protection measures and the risks involved with mass gatherings in multiple languages; 2) continuing to provide Infection Preventionists expertise to assist SNFs on infection control practices, ensure baseline testing and proper use of PPE. (Date added to CDM list: June 7, 2020)

► San Luis Obispo County

San Luis Obispo County (has variance) has an elevated case rate due to widespread COVID-19 disease transmission. Drivers of the increase in cases include: 1) Re-opening of many business sectors that allow for more community mingling; 2) Increases in Community/Family gatherings; 3) Increase in certain community sector perception that the pandemic is not serious. County has taken following key actions to mitigate the situation 1) Increased testing to identify outbreaks and infected persons; 2) Engagement and enforcement to increase distance between patrons of bars and restaurants; 3) Increased social messaging to the public to encourage social distancing, and increase the understanding of the dangers of increased disease transmission; 4) Continuing to onboard case investigators, contact tracers and support staff to prevent additional community transmission; 5) Deployment of County strike teams to conduct site assessment at skilled nursing facility (SNFs), non-SNFs/long-term care facilities, and community setting outbreaks; 6) Offer rapid turn-around testing to identified contacts of known cases. (Date added to CDM list: July 13, 2020)

► San Mateo County

San Mateo County (has variance) is experiencing an elevated case rate that exceeds the State threshold. The County sees roots of community transmission related to social gatherings without sufficient physical distancing and wearing of facial coverings, as well as higher exposure for residents performing work that involves person-to-person contact and crowded housing conditions that make home isolation difficult. Key actions to address the increase include: 1) expanding the case and contact investigation team that is following up on every COVID-19 positive case and related contacts to assure safe quarantine and isolation in order to break the chain of transmission; 2) developing strategies to strengthen support for those facing barriers in safely isolating or quarantining; 3) continuing to work with hospital system partners and our Medi-Cal managed care plan partner to monitor and understand hospitalizations, support effective pathways to appropriate levels of care and prepare for surge, 4) continuing to provide infection prevention expertise and specimen collection and test processing support to assist skilled nursing facilities and other congregate care facilities in protecting all residents and staff; 5) continuing to analyze the epidemiology of local spread to inform additional prevention strategies; 6) reinforcing community-wide messaging about the importance of key behaviors individuals can take (wearing facial coverings, maintaining physical distance, avoiding gatherings, washing hands and not touching one's face) to keep themselves and the community safe; and 7) tailoring communication and outreach to the most impacted populations and communities to strengthen trust and engagement in case and contact investigation. The County continues to partner with

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cities, schools and community-based organizations and leaders to advocate for the longer-term policy changes that can prevent COVID-19 from exacerbating the burdens shouldered by the lowest income residents and populations of color. San Mateo County also continues to work with the State's decisions regarding reduced testing capacity at the Project Baseline sites and revised testing prioritization criteria that contribute to an increased positivity rate. (Date added to CDM List: July 29, 2020)

› Santa Barbara County

Santa Barbara County (has variance) is experiencing increasing hospitalization related to increasing cases in our north county region. Drivers of this increase include 1) community transmission due to gatherings, 2) workplace transmission and household transmission; 3) SNF outbreaks; and 4) increase in widespread community testing. Key action areas to address concerns include 1) engage community leaders, stakeholders, and members in taking actions to prevent community transmission; 2) continue prevention messaging through multiple mediums; 3) continue to enhance contact tracing; and 4) continuing to provide Infection Preventionists expertise to assist SNFs on infection control practices, ensure baseline testing, and proper use of PPE. (Date added to CDM list: June 15, 2020)

› Santa Clara County

Santa Clara County (has variance) is experiencing increased hospitalization. Drivers of increased hospitalization of COVID-19 patients may include: 1) increased transmission in the community; 2) patient transfers from outside the county; 3) patient transfers from long term care facilities; 4) /or increased transmission among residents or individuals from neighboring counties who seek care in hospitals in Santa Clara County. Although the percentage change in hospitalizations shows an increase, the increase in the absolute number of patients hospitalized is still low relative to the size of the population in Santa Clara County and is low relative to the number of hospital beds available in the County. Key actions to address the increase include: 1) coordination and communication between the local health department and hospitals in the county experiencing increases to identify underlying causes; 2) data collection from hospitals that serve large proportions of out-of- jurisdiction patients to identify county of residence; 3) coordination and communication between the local health department and long term care facilities to support these facilities with outbreak detection and control as well as care for residents with confirmed COVID-19 when appropriate to avoid transfer to the hospital; and 4) increased public messaging, in multiple languages, on harm reduction, including the importance of social distancing, consistent use of face coverings and the risks involved with mass gatherings. (Date added to CDM list: July 12, 2020)

› Santa Cruz County

Santa Cruz County (has variance) experienced a sharp upward trend in case rate in early July after having had success in "flattening the curve" for months. Along with the increased case rate, hospitalization numbers and test positivity have increased. South County communities are most impacted, with the Latinx population disproportionately impacted. County believes drivers of increases in infections are due to multiple causes including (1) increases in economic activity, tourism, and movement, (2) increases in social gatherings, (3) increases in mixing opportunities for persons from different households and different communities, (4) compliance fatigue around requirements for face coverings, physical distancing, hand hygiene, and environment disinfection, and (5) increasing infections in low-income crowded housing and among lower-wage essential workers. We have developed a collective impact approach across the County to expand community outreach, engagement, and mobilization with an equity focus. In addition, plans are in place to (a) expand education, support, and enforcement of guidance and orders, (b) expand and prioritize community testing, (c) expand case investigation and contact tracing, and (d) improve surveillance and epidemiology efforts to identify the strongest risk factors for infection and to evaluate containment efforts. County plans to follow all State directives and guidance. (Date placed on the CDM list: July 25, 2020).

› Solano County

Solano County (has variance) is experiencing increasing hospitalization. Drivers include a large outbreak among farm workers in the vineyards in Sonoma and Napa who are residing in Solano, as well as an ongoing surge in cases related to family gatherings and other social gatherings on the weekends. The farm worker cases total many dozens over the past

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one to two weeks, and the close-contact cases appear to have begun with weekend activities in early May and are continuing to the present. The large number of such cases overall is resulting in an increase in hospitalized cases. These cases are not at present resulting in a strain on the hospitals or in ICU admissions but the county is monitoring this closely. County reports that hospitals in their jurisdiction have multiple levels of surge capacity for hospitalizations and for ICU admissions, if these become necessary. Key action steps include: working with the neighboring counties and with the vineyard management companies to implement social distancing measures; 2) educating the workers themselves (using Spanish interpreters) on social distancing measures; 3) providing appropriate cautionary messages through social media and the press about the risks of gatherings, not social distancing and not using personal protection measures. (Date added to CDM list: June 29, 2020)

► Sonoma County

Sonoma County (has variance) is experiencing increasing hospitalization. Drivers of the situation include outbreaks in skilled nursing facilities (SNFs) and residential care facilities for the elderly, and rising case rates, particularly in the Latinx community, due to exposure of essential workers, household clusters, increasing workplace and community transmission with the state's reopening, and large social gatherings. Sonoma County's key actions to address concerns are:

1) restructuring of SNFs to allow for quarantine/isolation of PUIs and positive cases to avoid further spread, 2) field surveillance and testing at congregate care sites, 3) formation of a Latinx community workgroup, pop-up testing sites in Latinx community locations with highest rates of case transmission, and partnerships with community organizations and health partners to provide culturally sensitive case management and connection to resources, 4) building contact tracing and case investigation capacity and hiring of additional bilingual/bicultural staff, 5) public messaging and education on the importance of hygiene, social distancing, not gathering, and facial coverings, 6) outreach and support to businesses around implementing safety measures, 7) building alternate care site capacity to expand health care capacity and non-congregate care site for isolation/quarantine, and 8) securing PPE supplies in preparation for possible shortages in hospitals and skilled nursing facilities. (Date added to CDM list: July 10, 2020)

► Stanislaus County

Stanislaus County (has variance) is experiencing increasing hospitalization. Drivers of this include an 1) increase in outbreaks and clusters related to family gatherings, businesses (in and out of county) and healthcare facilities; 2) the hospital being a regional hospital accepting patients that are residents outside the county; 3) decreased attention to personal protection measures such as face coverings and social distancing. Action steps to address concerns include 1) prioritizing rapid contact tracing, isolation and quarantine by public health staff for new positive cases; 2) continual monitoring of tests being conducted in the county and relocating sites, when necessary, to more densely populated and higher incidence areas, 3) continually offering businesses resources and technical assistance to comply with local requirements; 4) closely monitoring healthcare facilities and continuing to provide Infection Preventionist expertise to assist SNFs with planning and response; 5) retaining trained employees from other county departments to continue to assist in contact tracing; 6) partnering with community-based organizations serving minorities for outreach, education, and mobile testing; and 7) increased messaging including a public media campaign to promote face covering and social distancing. (Date added to CDM list: June 17, 2020)

► Tulare County

Tulare County (has variance) is experiencing elevated disease transmission. Drivers of this include outbreaks in skilled nursing facilities and work places and barriers to preventing transmission within households. Increased hospitalizations and ICU utilization have been related to multiple conditions other than COVID19. Key action areas to address concerns include 1) continue to engage with SNFs and businesses and with ongoing collaboration with Licensing and Certification and the HAI program; 2) continue to enhance contact tracing; and, 3) continue public messaging through multiple mediums about actions to prevent community transmission. (Date added to CDM list: June 5, 2020)

► Ventura County

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Ventura County (has variance) is experiencing increasing hospitalizations related to increasing cases in our county. Drivers of this increase include: 1) community transmission due to gatherings; 2) essential workplace transmission followed by household transmission; 3) transmission in overcrowded housing; 4) SNF outbreaks; and 5) increase in widespread community testing through our drive-thru testing locations. Key action areas to address concerns include: 1) engage community leaders, stakeholders, and members in taking actions to prevent community transmission; 2) continue prevention messaging through multiple mediums including visiting workplaces/residential complexes in areas where we have increased community transmission; 3) continue to enhance case investigation and contact tracing efforts; and 4) continuing to provide Infection Preventionists expertise to assist SNFs on infection control practices, ensure baseline testing, and proper use of PPE. (Date added to CDM list: June 24, 2020)

➤ Yolo County

Yolo County (has variance) is experiencing elevated disease transmission and limited hospital capacity. Drivers of this include: 1) community transmission due to social and family gatherings; 2) workplace transmission; and 3) an increase in widespread testing at skilled nursing facilities. Action steps to address concerns include: 1) increase in disease investigation and contact tracing; 2) ongoing support for long-term care and congregate community facilities on infection control practices; 3) public messaging on social distancing and face covering mandates; 4) targeted educational outreach to religious groups and Latino communities; and 5) increased enforcement of mandated health and safety measures. (Date added to CDM list: July 8, 2020)

➤ Yuba County and Sutter County

Yuba County and Sutter County (has variance) are experiencing elevated disease transmission. Drivers of this include 1) household clusters relating to friend and family gatherings 2) workplace transmissions 3) 40% are unknown due to cases not able or not willing to provide source of exposure. Actions to address these concerns include 1) Strong messaging campaign to avoid large gatherings 2) aggressive outreach to the Latino community who have experienced a disproportionate burden of cases and hospitalizations 3) outreach and education to the Punjabi community given rising cases in this population in the past several weeks 4) Information campaign to the public regarding the importance of working with public health in regards to contact investigation and tracing as much as possible 5) hiring two additional teams of contact investigators and contact tracers 6) continue to aggressively work on education and outreach to businesses in the community. (Dates added to CDM list: July 11 and July 9, 2020, respectively)

Links:

- [County Data Monitoring Overview](#)
- [County Data Chart](#)
- [Step 1: Active Data Monitoring](#)
- [Step 2: Targeted Engagement with CDPH](#)
- [Step 3: Reinstitute Community Measures](#)

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- b. In accordance with CDC guidance, avoid sharing of electronic devices, toys, books, and other games or learning aids.
- c. Limit stuffed animals and any other toys that are difficult to clean and sanitize.
- d. In accordance with CDC and California Department of Pesticide Regulation (CDPR) guidance, and in consultation with local public health officials, develop a plan that includes:
 - i. A [safe and correct application](#) of disinfectants using personal protective equipment and ventilation recommended for cleaning.
 - ii. Disinfecting surfaces between uses, such as:
 - 1. Desks and tables
 - 2. Chairs
 - 3. Seats on bus
 - 4. Keyboards, phones, headsets, copy machines
 - iii. Disinfecting frequently—at least daily—high-touch surfaces, such as:
 - 1. Door handles
 - 2. Handrails
 - 3. Drinking fountains
 - 4. Sink handles
 - 5. Restroom surfaces
 - 6. Toys, games, art supplies, instructional materials
 - 7. Playground equipment
 - iv. When choosing disinfecting products, using those approved for use against COVID-19 on the Environmental Protection Agency (EPA) [List N: Disinfectants for Use Against SARS-CoV-2](#) and follow product instructions.
 - 1. To reduce the risk of asthma related to disinfecting, programs should aim to select disinfectant products on the EPA List N with asthma-safer ingredients (hydrogen peroxide, citric acid, or lactic acid).
 - 2. Avoid products that mix these ingredients with peroxyacetic acid, sodium hypochlorite (bleach), or quaternary ammonium compounds, which can cause asthma.
 - 3. Use disinfectants labeled to be effective against emerging viral pathogens, following label directions for appropriate dilution rates and contact times.
 - v. When cleaning, airing out the space before children arrive. Plan to do thorough cleaning when children are not present.
 - vi. Closing off areas used by any sick person and not using before cleaning and disinfection. To reduce risk of exposure, wait 24 hours before cleaning and disinfecting. If it is not possible to wait 24 hours, wait as long as possible.
- e. Make a Plan for Adequate Outdoor Air Circulation
 - i. In accordance with CDC guidance, ensure that ventilation systems and fans operate properly and increase circulation of outdoor air as much as possible by opening windows and doors and other methods. Do not open windows and doors if doing so poses a safety or health risk to children using the facility (for example, allowing pollen in or exacerbating asthma



symptoms). Maximize central air filtration for heating, ventilation, and air conditioning (HVAC) systems (targeted filter rating of at least MERV 13).

- f. Take steps to ensure that all water systems and features (e.g., drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of Legionnaires' disease and other diseases associated with water.
- g. Keep each child's belongings separated and in an individually labeled storage container, cubby, or area. Send belongings home each day to be cleaned.



Employee Issues. Engage employees on COVID-19 plans and provide necessary training and accommodations.

- a. Revisit existing bargaining agreement.
 - i. Engage the exclusive representatives of labor groups and work collaboratively in tailoring bargaining agreements to address the relevant employee issues in this checklist. Ideally, these are matters that would be resolved as part of the reopening planning process and prior to school starting so as to provide clarity for reopening.
 - ii. Create a plan for future bargaining that may be necessary as additional issues arise.
- b. Staffing Ratios
 - i. Ensure staffing levels are sufficient to meet unique facility cleanliness, physical distancing, student learning, and health and safety needs to address COVID-19.
 - ii. Consider rolling staff cohorts to meet needs and avoid overwork.
- c. Develop and provide staff training or utilize state-provided training on:
 - i. Disinfecting frequency and tools and chemicals used in accordance with the [Healthy Schools Act](#), [CDPR guidance](#), and Cal/OSHA regulations. For staff who use hazardous chemicals for cleaning, specialized training is required.
 - ii. Physical distancing of staff and students.
 - iii. Symptom screening, including temperature checks.
 - iv. Updates to the Injury and Illness Prevention Program (IIPP).
 - v. State and local health standards and recommendations, including, but not limited to, the following:
 - 1. Proper use of protective equipment, including information on limitations of some face coverings that do not protect the wearer and are not PPE but can help protect people near the wearer. Face coverings do not replace the need for physical distancing and frequent handwashing. Cloth face coverings are most essential when physical distancing is not possible. Also include training on removal and washing of cloth face coverings.
 - 2. Cough and sneeze etiquette.
 - 3. Keeping one's hands away from one's face.
 - 4. Frequent handwashing and proper technique.
 - 5. Confidentiality around health recording and reporting.
 - vi. Training for school health staff on clinical manifestations of COVID-19, pediatric presentations, and [CDC transmission-based precautions](#).
 - vii. Training on trauma-informed practices and suicide prevention.



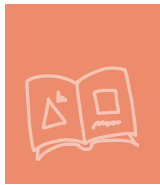
HEALTH AND SAFETY

- d. Designate a staff liaison or liaisons to be responsible for responding to COVID-19 concerns. Employees should know who they are and how to contact them.
- e. Reasonable Accommodations
 - i. Protect and support staff who are at higher risk for severe illness ([medical conditions that the CDC says may have increased risks](#)) or who cannot safely distance from household contacts at higher risk by providing options such as telework or negotiated change in classification or duties.
 - ii. If reasonable accommodations are not practicable, the LEA should work with the employee to develop a flexible leave plan that endeavors to avoid exhausting the employee's earned leave.



Communication with Students, Parents, Employees, Public Health Officials, and the Community

- a. School leaders should engage stakeholders, including families, staff, and labor partners in the school community, to formulate and implement the plans in this checklist.
- b. Communicate to staff, students, and parents about new, COVID-19-related protocols, including:
 - i. Proper use of PPE/EPG.
 - ii. Cleanliness and disinfection.
 - iii. Transmission prevention.
 - iv. Guidelines for families about when to keep students home from school.
 - v. Systems for self-reporting symptoms.
 - vi. Criteria and plan to close schools again for physical attendance of students.
- c. Target communication for vulnerable members of the school community.
- d. Create a communications plan for if a school has a positive COVID-19 case.
 - i. Address the school's role in documenting, reporting, tracking, and tracing infections in coordination with public health officials.
 - ii. Notify staff and families immediately of any possible cases of COVID-19. Review legal responsibilities and privacy rights for communicating about cases of the virus.
 - iii. Provide guidance to parents, teachers, and staff reminding them of the importance of community physical distancing measures while a school is closed, including discouraging students or staff from gathering elsewhere.
 - iv. Provide information to parents regarding labor laws, Disability Insurance, Paid Family Leave, and Unemployment Insurance.
 - v. Advise sick staff members and children not to return until they have met CDC [criteria to discontinue home isolation](#).
 - vi. Inform those who have had [close contact](#) with a person diagnosed with COVID-19 to stay home and self-monitor for symptoms and to follow [CDC guidance](#) if symptoms develop. If a person does not have symptoms follow appropriate CDC guidance for [home isolation](#).



INSTRUCTIONAL PROGRAMS

INSTRUCTIONAL SCHEDULING MODELS

As schools plan to reopen, the instructional schedule model chosen will become the foundation of a student's and family's future experience in their school community. There are many considerations and decision-making points LEAs will need to consider in their planning. First and foremost, LEAs planning for their instructional schedule model need to focus on ensuring student learning and competency development while also considering a student's social-emotional well-being.

We understand there are needed statutory changes to accommodate the instructional schedule model examples identified in this document. These instructional schedule model examples do not contemplate California's current instructional time, attendance for apportionment rules, and audit guidelines.

As schools reopen and considerations are made to meet the health and safety guidelines, the following are some instructional schedule model options and essential planning questions and action steps for LEAs to consider. LEAs should enter into their planning with a flexible approach, understanding that they may start the school year with one instructional schedule model and, as new information becomes available about health and safety, they may transition to a different model. Guidance on standards for quality distance learning is being developed and will be available on the CDE website.

No matter the instructional schedule model, please continue to work to eliminate the barriers to student success that existed before the closure. We have an unprecedented opportunity to improve how we care for and educate each child. Let's work to enhance the public good of our public schools as we implement more student-centered designs. These suggestions are only a few of the options that may be considered, so please work closely with your community to develop the list of essential planning questions that build on your assets and address your local needs.

Instructional Scheduling Model Options

EXAMPLE A: TWO-DAY ROTATION BLENDED LEARNING MODEL

Students report to school on two designated days based on grade level for in-person instruction (example: Monday/Wednesday for grade levels K–3, Tuesday/Thursday for grade levels 4–6). On the other days, students are engaged in enrichment opportunities aligned with academic goals established by the school through various programs, either on site or with community partners, that are coordinated by school instructional staff. This could mean small group instruction for certain student groups, such as English learners receiving designated English language development. Physical education, health, and other content area teachers, as well as administrators and teachers on special assignment, could be included to reduce



student–teacher ratios. On Fridays, all students would be engaged in distance learning opportunities and teachers in collaborative planning and/or professional learning opportunities. An important consideration is maximizing pre-existing student–teacher relationships. This could include students returning to teachers they had before the closure, creating advisory groups that build on positive relationships, or instituting looping to ensure students know who they will be working with for the next two or more years.

EXAMPLE B: A/B WEEK BLENDED LEARNING MODEL

Half of the student population attends in-person learning opportunities four full days per week while the other half is engaged in distance learning opportunities. The students would alternate each week. All grade bands would be included. The instructional program would be sequenced to accommodate both asynchronous and synchronous learning opportunities for students. One day a week, all students would be engaged in distance learning while teachers would use the time for collaborative planning and professional learning. LEAs may also decide to have certain grade levels attend only in-person instruction while other grade levels engage in only distance learning instruction.

EXAMPLE C: LOOPING STRUCTURE

For schools serving grade levels TK–8, there is an opportunity for students to stay with the same teacher in cohorts for multiple grade levels. Looping provides opportunities for improved relationships between students and teachers, more targeted and efficient instruction, and a higher attendance rate. For example, a teacher and student cohort would stay together for first and second grade, increasing the opportunity for literacy rates on or above grade level. Teachers and students staying together over multiple grade levels can build a better understanding of health and safety, decreasing risks to students and staff.

EXAMPLE D: EARLY/LATE STAGGERED SCHEDULES

Grade level bands would have staggered start and dismissal times, such as AM/PM rotations (for example, TK–2, 3–5, 6–8, 9–10, 11–12). The bell schedule would accommodate multiple recesses and lunch periods and multiple meal distribution points, along with time for students to engage in handwashing before entering classrooms. Students could be in a homeroom with teachers rotating to decrease student congregation in hallways.

Essential Planning Questions/Action Steps for LEAs

- How will the LEA engage with their education partners and staff in collaboratively making the decision of choosing an instructional schedule model?
- How will the LEA create a process for evaluating and adapting models throughout the year with all educational partners and staff?
- As an LEA is contemplating different instructional schedule models, a review of the LEA's infrastructure and resources should be considered in the decision-making process. For example:
 - What technology access and resources are available for students and families?
 - What technology support resources are available for students and families?



INSTRUCTIONAL PROGRAMS

- What technology policies are in place to protect private and sensitive student information? Are policies current and compliant with California data privacy laws?
- How does a survey of physical buildings and space inform the instructional schedule model decision?
- How will the LEA survey needs of staff and provide aligned professional learning?
- How will all students' needs be addressed within the instructional schedule model?
- What instructional and social-emotional supports will students and families need?
- How will you measure success and effectiveness of the model?
- What model are other schools in the area choosing to help with consistent and coherent approaches to support families?
- Conduct a survey or review on current teacher/staff, student, and family needs. Review data and determine LEA strengths, barriers, and capacity to support identified needs.
- What is the communication plan for reopening with a new instructional schedule model?
 - LEAs should consider communication for different audiences and critical messages, including
 - ▶ how messages will be delivered and
 - ▶ how to improve the efficacy of communication by identifying and addressing potential language barriers, cultural barriers, and disability accommodations or supports necessary for communicating to families and other audiences.

INSTRUCTIONAL PLANNING

As LEAs choose the instructional schedule model that best fits the needs of their students and families, considerations for intentional planning of instruction will be key to a successful implementation. Instructional planning should include time for general and special education staff to collaboratively plan and learn from each other. To support this collaboration, a system to learn in real time how the learning environment is or is not working for students is essential. Ideally, this feedback loop would allow for school leaders to see how well students are engaged in their learning, whether the instructional supports and accommodations are working, and whether the material is relevant and accessible to the student.

Essential Questions for Consideration

- What planning time and infrastructure will teachers and staff need to discuss real-time feedback from students?
- What planning resources will staff need to work together to design and lead changes in their classrooms?
- What data will be collected as a feedback loop on students' experiences to inform planning?
- How will the LEA ensure students with disabilities and other special populations are fully integrated into every aspect of preparation and participation of the instructional model?
- How will Universal Design for Learning (UDL) be utilized during instructional planning time?
- How will the teacher teams determine essential state standards to focus learning?
- How will staff engage with the student to figure out learning barriers and plan to find innovative ways to meet their needs?



- What academic and social–emotional supports or interventions are provided to those students who are struggling with the instructional program model?
- How will the LEA ensure not only the needs of all students are addressed, but that the decision made will benefit all students, staff, and families?

COLLABORATION AND ASSESSMENT

In order to inform instruction and gauge student learning, it is important to consider and solidify a systematic cycle of assessments including initial screenings and formative and summative assessments. For data to lead to meaningful change in student outcomes, teachers and administrators need designated collaboration time to analyze data, identify shifts and changes in instruction to meet student needs, implement intervention strategies, and assess the effectiveness of instructional strategies. This section assists district leadership and school boards as they make reopening determinations related to using assessments to inform instruction for all students, including those with unique learning needs such as students with disabilities, English language learners, students placed in foster care, and students experiencing homelessness.

Because parents may have children enrolled in multiple schools across districts, it is vital that communication protocols, online learning platforms, and expectations are coherent and consistent. This also engages parents as partners in learning.

Curriculum Frameworks

California's curriculum frameworks are guidance documents for implementing the content standards adopted by the State Board of Education. The standards themselves are a resource to inform teachers, administrators, and parents of the skills and knowledge that students should master and learn at each grade or proficiency level. All curriculum frameworks include information on how to ensure access and equity for all students. Much of this guidance includes how to utilize the Universal Design for Learning (UDL) practices in instructional planning and delivery.

INITIAL SCREENING/DIAGNOSTIC ASSESSMENTS

Purpose: Diagnostic assessments are used to identify specific areas where instruction or intervention may be needed to improve student learning.

Due to interrupted instruction caused by COVID-19, local educational agencies (LEAs) should consider scheduling universal screenings at a variety of intervals. For example, diagnostic assessments can be administered at the beginning of the school year (or in summer if appropriate or feasible).

FORMATIVE ASSESSMENTS/PROGRESS MONITORING

Purpose: Formative assessments and progress monitoring take place during the lesson and provide actionable information about students' learning status relative to the desired lesson goal. Teachers can use data from formative assessments immediately to adjust their instruction and ensure students progress towards learning goals.



Essential Questions

- Are there common diagnostic, formative, and summative assessment tools across the district/site for comparative analysis to identify specific targeted student learning needs?
- If assessments must be given at home, how have students been prepared for and given opportunity to practice the protocols for administration? If parent support or guidance is needed, how have they been prepared?
- Is there a clearly defined multitiered system of support that includes guidance for implementing Tier 1 strategies before offering Tier 2 interventions? When and how to offer Tier 2 and Tier 3 supports?
- Do staff have structured collaboration time to engage in improvement cycles including reviewing student assessments, planning instructional shifts and strategies based on data, establishing clear outcome goals, debriefing the lesson as a team, and repeating the process? What might this look like in a virtual setting?
- How will districts ensure appropriate accommodations are made for students?

Considerations

- Consider a data management platform to collect, house, and disaggregate local data on a regular basis.
- Consider developing a regularly scheduled time for grade-level teams and staff meetings to engage in cycles of inquiry around student data. Rural districts might use this opportunity to connect grade-level teams virtually for collaboration.
- Establish a common protocol for regular and consistent communication to parents.
- Develop a plan to meet the social–emotional needs of the student prior to administering an assessment. Examples include greetings and a warm-up game (with physical distancing) to ease anxiety, prior to asking students to demonstrate learning. If diagnostic testing has not been widely implemented in previous years, staff administering the assessments should be sure to clarify the purpose of diagnostic assessments.
- Interventions may include a regularly scheduled 30-minute session with an intervention provider or specialist through video conference, scaffolding for specific task assignments (e.g., an outline or sentence starters for written responses), pre-highlighted texts, more frequent feedback or check-ins, time management supports, or maintaining a daily written agenda. Students in upper grade levels may be offered guidance for monitoring their own progress and implementing interventions independently, if appropriate. For example, students can implement supports like setting their own timer to chunk assignments, keeping a daily agenda that outlines tasks and goals, or creating a playlist or active routine to help with stress or anxiety management.
- Formative assessment examples may include collecting exit tickets through a digital platform at the end of each class session, whether online or in person; using an opener to reinforce skills and check for understanding on concepts recently taught; giving students opportunities to share what is working and what is not working; or continuing to provide ample opportunity for discussion and meaningful content interaction with students through high-order thinking questions. As students are given opportunities to participate in engaging activities, be sure to provide students with ample time to think and develop a solid response, as appropriate.
- When reviewing all assessment data, focus on a continuous improvement learning model.



INSTRUCTIONAL PROGRAMS

- Provide professional learning for teachers on diagnostic assessments.
- Existing learning management systems can also provide opportunities to assign students quiz-style assessments that they can complete synchronously (in real time through distance learning) or asynchronously (learning same material at different times/locations). Students can be permitted to complete the assessment multiple times to allow for reteaching.
- Learning goals should be clearly established and explicitly communicated to students. Providing students with an essential question or learning goal at the beginning of instruction, and frequently referring back to the question or goal, provides transparency for students. In a virtual environment, this can include prominently posting the learning goal or essential question on a teacher's web page, asking students to keep a learning log to track their key learnings throughout a lesson or unit, or weekly check-ins that require students to respond to the essential question using information from the week's lessons and activities.
- Consider using choice boards, which provide students with a variety of options that demonstrate learning and allow students to revise or resubmit work after reteaching or receiving feedback. Feedback should be timely, specific, and actionable, either through written or oral communication, videos or sound recordings, or student-to-student feedback in online breakout sessions.
- Consider working with students to develop a portfolio (online or paper), selecting their work products to put in an online file, and submitting reflection videos.

Resources

See [Appendix B](#) for Instructional Programs resources.

SOCIAL-EMOTIONAL LEARNING

There is a growing body of research proving that social and emotional learning (SEL) is fundamental to academic success. SEL must be woven into the work of every teacher, in every classroom and every after-school and summer learning program if we truly want to prepare all our students for college and careers. We know the COVID-19 pandemic has created different types of traumatic experiences and high levels of stress for many of our staff, students, and families. This experience emphasizes the importance of social-emotional well-being for all. LEAs will need to have the emotional recovery of students, staff, and families at the forefront of their planning and decision making.

When educators and students practice physical distancing at school or through distance learning, it does not mean they must lose social and school connections. During the COVID-19 response, it is critically important to place adult and student wellness first to establish a positive, safe, and supportive learning environment. Leading with SEL is essential because children need social and emotional support as they, like the adults around them, navigate the unprecedented challenges of alternative learning contexts, and because SEL helps students access academic content through building essential self-management skills, resilience, and connections.

As students return to campus in classrooms adapted to ensure physical distancing, consider how your local education agency might adapt instruction to account for the following:



INSTRUCTIONAL PROGRAMS

- Before school starts, how will the LEA engage with families and provide activities to help families feel comfortable on the school campus?
- Before school starts, how will the LEA engage with staff to help them feel comfortable when returning to their classrooms and schools?
- How will the LEA support staff to integrate SEL practices? What types of professional development will be offered and how often will it be available?
- How will school staff provide non-academic-focused check-ins with students?
- How might wearing masks alter our understandings of how individuals are feeling? Consider lessons on alternative ways to communicate feelings.
- How can we positively communicate the need for physical distancing in the classroom? Children naturally hug, touch, etc. when playing. Consider finding ways to positively reinforce good practices.
- How will we handle students' and/or families' varied understandings of physical distancing measures? Consider age-appropriate lessons on the science behind infection. Such lessons may also be leaned upon when addressing students who express concern when seeing other classmates exhibit signs of allergies or other noncontagious symptoms.
- How will students who need additional support to physically distance or who may not be able to wear a mask due to a manifestation of their disability be supported at the school site? What, if any, exceptions can be made in such circumstances?
- How can we support movement to ensure children are expending adequate energy? As student movement from classroom to classroom or recess activities are restricted, there may not be as many opportunities for physical activity during the school day. Consider building in transition activities that allow for movement.
- How do we integrate SEL practices into instructional planning?

As the possibility of a virus resurgence exists, so does the possibility of alternating between virtual learning and in-person classroom activities. The CDE has compiled a list of resources that provide a range of SEL options for educators, administrators, other school leaders, and families/guardians as they support their students during distance learning. To view the list of resources, visit the CDE SEL and Distance Learning web page at <https://www.cde.ca.gov/ci/se/seldistance.asp>. Many of these resources can be used inside and outside the classroom.

The CDE is committed to helping educators learn more about SEL and how to infuse social and emotional supports into every child's school experience. The CDE convened a group of experts from different sectors of the education system to advise the best ways to support SEL implementation. The team developed California's Social and Emotional Learning Guiding Principles ([full version](#) and [summary](#)) and a social and emotional learning [resource guide](#). To learn more about this work, visit the CDE SEL web page at <https://www.cde.ca.gov/eo/in/socialemotionalllearning.asp>.



SPECIAL EDUCATION

As LEAs make plans to reopen school sites, they are presented with a unique opportunity—to ensure students with disabilities and other special populations are fully integrated into every aspect of preparation and participation, and to ensure the needs of all students are addressed and the decision benefits all students, staff, and families. As Tucker and Kruse wrote:

We must prepare in a way that is flexible enough to respond to an uncertain future under COVID-19, yet robust enough to ensure that all students—including students with disabilities—have an equal opportunity to succeed over the long term. Doing so can help ensure that equity is built into the foundation of a new era of education.¹

Creating A Universally Designed, Inclusive Plan for Reopening That Plans for the Needs of Diverse Learners and Students with Exceptional Needs

Seize the opportunity to develop an integrated plan for reopening that addresses the needs of students with disabilities from the build. While this is not an exhaustive list, the Special Education Local Plan Area (SELPA) Administrators of California surveyed their membership and provided the following areas to consider as LEAs build their plans to return to school sites.

AREAS IDENTIFIED SPECIFIC TO STUDENTS WITH DISABILITIES (SWD)

The following areas have been identified as overarching areas of concern that should be addressed in reopening planning.

Health and Safety

Personal Protective Equipment (PPE)/Essential Protective Gear (EPG)

- Consider the differing requirements of PPE/EPG for the differing populations of students with disabilities (i.e., for those requiring medical procedures, toileting, lifting and mobility assistance).
- Consider how the LEA will address students with disabilities who refuse or are not able to wear masks.

Planning for Students who are Medically Fragile and/or Immune Compromised

- Clearly define how staff can honor physical distancing recommendations, yet meet student medical, personal, or support needs.
- Determine how adequate space and facilities will be utilized to maintain health and safety of students and staff, especially when tending to individual student medical or personal needs.
- Build in flexibilities to keep students connected and included in the class and school community regardless of how much physical time they are able to attend school. Ensure the ability to quickly pivot to attending class virtually in order to retain some regular connection to teacher and peers.
- Determine any special or unique needs for students with disabilities related to planned district or schoolwide procedures and protocols related to the following:
 - Daily health screening and temperature checks

¹ Eric Tucker and Lindsay Kruse, 2020, “Preparing to Reopen: Six Principles That Put Equity at the Core,” *Getting Smart*. <https://www.gettingsmart.com/2020/05/preparing-to-reopen-six-principles-that-put-equity-at-the-core/>.



INSTRUCTIONAL PROGRAMS

- Restroom use as well as diapering and toileting
- Paths of travel
- Use of campuses for recess or recreational activities
- Cleaning and disinfecting

Physical Distancing

- Establish any necessary flexibilities for specific students-with-disabilities populations such as preschool-age, students with extensive support needs, behavioral challenges, etc.
- Establish flexibilities and plan for how to implement physical distancing given lack of space and facility limitations, particularly for children who will struggle with maintaining physical distancing.
- Address potential issues from physical distancing rules that could result in unintended segregation of students on campuses away from peers without disabilities.
- Plan for maintaining access to peers without disabilities and ensure that students remain in the least restrictive environment.
- Determine how the LEA will provide related services in instructional models while staying physically distant.
- Discuss how LEA staff and providers will conduct assessments while practicing physical distancing.



Ensuring a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act

- Work with each family and student to determine what FAPE looks like for each student and family during COVID-19. It may be different than the individualized education program (IEP) developed pre-COVID-19.
- Use the LEA model(s) for all students as the basis for establishing FAPE.
- Ensure children with disabilities are included in all offerings of school education models by using the IEP process to customize educational opportunities and provide supports when necessary.
- Use annual IEP to plan for traditional school year and while not required, it is suggested LEAs include distance learning plans or addendums to address distance learning needs during immediate or future school site closures.

UTILIZING THE IEP AND CONSIDERATION OF FAMILY NEEDS

Utilize and Update Individualized Education Programs (IEPs)

In the early stages of the COVID-19 pandemic, the federal Office of Special Education Programs (OSEP) and CDE provided guidance that IEP amendments were not necessarily required for the immediate change to distance learning. However, the duration and overarching changes to education delivery in many cases will warrant changes to students' IEPs. This ensures that the IEPs account for the local delivery of education as school sites reopen, including contingencies for pivoting in and out of distance learning.



INSTRUCTIONAL PROGRAMS

In accordance with the Individuals with Disabilities Education Act (IDEA), each student with a disability has unique needs and it is the purpose of the education system to ensure every student has access to their grade-level standards and makes progress in their education. The IEP is the roadmap for each student with a disability, and in these challenging and evolving times including COVID-19 restrictions, it is critical that the IEP team meets and works with the family to jointly determine what is working for each student in distance learning as well as what accommodations and modality of learning allows the greatest access.

Communicate Openly and Often with Families

Do not underestimate the need to initiate and have ongoing communication with families. Even for those families who switched apprehensively to distance learning, re-engaging and reaching out often and sometimes through multiple avenues is critical to ensure connectedness and support, particularly for families who may be in crisis.

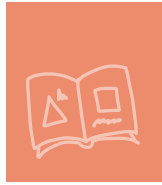
Collaborative, ongoing discussion about an appropriate path forward once school sites reopen for each student, given each student's unique needs and circumstances, is critical to ensuring equitable access and offering of FAPE for students with disabilities. We know every family situation and feeling about the current pandemic are as unique as the needs of the children. Honoring the fears, challenges, diversities, and preferences of families is critical to the success of students with disabilities in reopening our schools.

ENGLISH LEARNERS



School closures will have an increased impact on learning acceleration for the 1.1 million English learners enrolled in California public schools. When schools reopen—whether it is via distance learning, physical attendance, or a blended model—it is important that LEAs continue to ensure the goal of English learners acquiring fluent English proficiency as rapidly and effectively as possible is attained.

Our English learners, like all our students, have had a disruption of their daily lives, have worries about their own families, and have experienced high stress situations. These students will need additional supports to rebalance and refocus on the task of learning and being productive in the school community. The goal remains for English learners to achieve the same rigorous grade-level academic standards that are expected of all students, within a reasonable period of time. To accomplish these goals, all English learners must receive a comprehensive program of designated and integrated English language development (ELD) instruction targeted to their proficiency level, and appropriate academic instruction in a language acquisition program (5 CCR[c][1]).



The California English Learner Roadmap Policy

The Educational Programs and Services for English Learners (EL Roadmap Policy) sets the direction for educating English learners in California. The EL Roadmap Policy provides LEAs with four guiding principles to support and embrace the English learners they serve:

- Principle One: Assets-Oriented and Needs-Responsive Schools
- Principle Two: Intellectual Quality of Instruction and Meaningful Access
- Principle Three: System Conditions That Support Effectiveness
- Principle Four: Alignment and Articulation Within and Across Systems

These principles should continue to guide LEAs in implementing instructional programs for English learners during distance learning and the transition to reopening schools. This includes ensuring that LEAs support English learners' social–emotional well-being. LEAs should ensure that they embrace English learners as the assets they are while also providing them with the support they need to succeed. The same is true for English learner students with disabilities. For dually identified students, a knowledgeable educator should be involved in planning distance learning needs for students with an individualized education program (IEP). The Practitioners' Guide for Educating English Learners with Disabilities is available on the [CDE Educating English Learners with Disabilities](#) web page.

If an LEA is providing remote learning for its students, the LEA must provide language instruction services to English learners. LEAs must continue to provide designated and integrated ELD and have the flexibility to determine how services will be provided to English learners. The LEA can determine where, when, and what students receive in order to continue to make progress toward English language proficiency to meet grade-level academic achievement.

Under state and federal law, there is no required amount of time that must be allocated to English language services. LEAs do have a dual obligation to provide English learners a program designed to overcome language barriers, to address any deficits incurred while learning English. These services may be provided virtually, online, or via telephone.

California schools have over 700 language acquisition programs where students are learning in two languages through dual language or bilingual models, and those should continue to be implemented through the use of technology and support from LEAs that are effectively providing the services. While LEAs may not be able to provide services in the way they normally would during this national emergency, LEAs must make every attempt to continue to provide these services.

As we return to schools, it will be critical to leverage the Local Control and Accountability Plan (LCAP) concentration funds, supplemental federal Title I, Title III, and federal flexibilities on programs and supports to accelerate learning. Engaging parents and the community in this acceleration can be done with a parent liaison who facilitates family engagement. Using these resources helps ensure equipment, internet connectivity, access to the necessary materials, and professional development for teachers of English learners. Title III funds can support dual enrollment for students to be able to complete the A–G requirements or obtain college credit.

School closures and the reopening process may also impact reclassification. If an LEA was not able to administer the English Language Proficiency Assessments for California (ELPAC) to all students during the 2019–20 school year due to school closures, the LEA should follow the most recent guidance provided



by the CDE: LEAs may not exit an English learner from EL status unless the student has demonstrated proficiency (level 4) on the ELPAC. Schools should closely monitor English learners and students who were reclassified as fluent English proficient to evaluate whether students need additional services. An English learners' English proficiency level may have decreased because the student has experienced limited instruction for an extended time during school closures. Therefore, close monitoring is key to ensure that English learners have the opportunity to recover any academic losses incurred during school closures.

Collaboration is key to supporting English learners during distance learning and throughout the transition to reopening schools. Consider practices such as remote instruction, telephone calls, meetings held on digital platforms, online options for data tracking, and documentation of services, supports, and accommodations provided. In addition, an LEA might consider non-technology-based strategies, such as providing instructional packets or assigning projects and written assignments to English learners.



In addition to collaborating with classroom teachers and school, district, and county educators, engaging the parents of English learners remains important during distance learning and school reopening. LEAs have an obligation to ensure meaningful communication with parents of English learners in a language they can understand and to adequately notify parents of the same information about any program, service, or activity that is shared with parents of students who are not classified as English learners. LEAs should translate all mailings and emails to parents to provide access to the information in a language they understand. For parents who are not literate, LEAs may use recorded telephone calls that go to families that include the option to select a language in which to hear the message. Working with parents and offering them the opportunity to be involved in their children's education is key to the students' success at all times, especially during distance learning and the transition to reopening.

Essential Questions That LEAs Need to Consider

- How will designated and integrated ELD be provided?
- How will we support English learners with oral language development?
- How will we engage English learners' families and ensure they receive information and convey information in a language they understand?
- How will we ensure that the social-emotional and physical health needs of English learners are addressed?
- How will we ensure that English learners have the tools needed to engage in the curriculum, including access to technology as well as access to books or assignment packets?



INSTRUCTIONAL PROGRAMS

- How will we track English learners' progress and ensure that all current English learners and reclassified students make progress?
- How will we support English learners who are not making progress toward proficiency?
- How will we provide opportunities for home language development for all English learners and ensure that the home language is seen as an asset?
- How will we address the needs of multilingual students and English learners enrolled in multilingual programs?
- How will we ensure that English learners have access to the full curriculum, including ELD?
- How will we provide professional learning opportunities and tools to teachers and paraprofessionals focused on meeting the needs of English learners during distance learning and the transition to reopening schools?

CAREER TECHNICAL EDUCATION

As California begins the process of reopening its schools, special consideration must be given to those that offer programs in career and technical education (CTE). CTE programs and the local educational agencies (LEAs) that offer them need to consider the conduct of instruction, how career counseling should be offered, and the measures required to ensure safety without losing quality work-based learning (WBL) opportunities. For a safe reopening, CTE programs should review the health and safety guidance and checklist as well as guidance for other work sectors that the student may be working in. <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

As schools plan to reopen, reviewing the following 12 essential elements described by the California Workforce Pathways Joint Advisory Committee (CWPJAC) will help create a quality CTE program. These 12 elements are supported by the CWPJAC Guiding Principles. The Guiding Principles and the 12 essential elements are located at <https://www.cde.ca.gov/ci/ct/gi/guidingpps.asp>.

CTE programs are part of the comprehensive educational system and must be held to the same general guidelines set by the LEA. However, due to the nature of CTE programs and the hands-on approach that is needed, additional elements must be considered as schools plan for a safe reopening. Please refer to the CDE Career Technical Education page as a starting point for how current CTE students are being served, at <https://www.cde.ca.gov/ci/ct/>. There are also resources for CTE distance learning at <https://www.cde.ca.gov/ci/ct/dl/>.

CTE Instruction

CTE classrooms often engage students in learning activities that stretch the imagination and require critical thinking as well as experimentation. As such, students need to be prepared to enter the classroom or learning space feeling safe and comfortable. When schools are planning for reopening, they should consider what types of instructional models would best match the CTE program goals and ensure students and staff are engaging in a safe manner according to the health and safety guidelines.

LEAs should consider the following as they move to reopen their CTE classrooms.

- Develop a system to clean all equipment or tools being used using the health and safety guidance as the foundation for their planning. Tools are checked out often during an instructional period and returned at the end of that class. A process should be developed to ensure that all tools are cleaned each time they are returned so that they are ready for the next student or next class.



INSTRUCTIONAL PROGRAMS

- In an instructional laboratory such as a shop, equipment is used numerous times during a class period and may need to be sanitized according to the health and safety guidance. Extra time should be spent at the beginning of the year to review typical safety precautions with additional time reviewing special circumstances centered on cleanliness to avoid exposure to COVID-19.
- A process should be developed to ensure all equipment is clean and safe every time a class occurs. Many CTE courses assign tasks to students who assist in cleanup at the end of class, and the students should be trained in all safety processes and procedures. It would be appropriate to assign a student each period to ensure that equipment is properly cleaned following each use.
- To reduce the number of students in a CTE laboratory and maintain physical distancing, consider having half of the students remain in the classroom while the other half participates in the laboratory instruction.

A high-quality CTE program includes instruction and also engages students in career counseling, leadership, and experiential learning. To reopen schools, all three components need to be addressed along with high-quality CTE instruction.

Career Counseling

Career counseling is an important component for a student when they decide which high-quality CTE program to choose. When schools reopen, they should consider the following with regard to career counseling.

- Since counselors and teachers will likely be able to see students on site but with less face time, they may need to rely on blended instruction with some in-person direction and some via a remote platform. Direction could also be delivered by recorded instruction posted on a class web page.
- Educators should rely on online tools such as the California CareerZone, found at <https://www.cde.ca.gov/ci/ct/cc/>, California Career Center, and mobile apps such as the Career Surfer, My Stuff Job Central, and My Stuff CAP (career action plan) which students can use on their own and at their own speed to complete assignments.
- Educators will need lesson plans and activities developed for distance learning that can be given to students with less upfront direction due to the limited time of in-person instruction.

Experiential Learning

An important component of a quality CTE program is experiential learning. This is where a student is able to gain additional skills through job shadowing, internships, and entrepreneurial experiences. To ensure that students remain safe and healthy while completing this instructional strategy, LEAs should consider the following.

- Work with business and industry partners to develop a plan to maintain distancing requirements while students are on site.
- Look into alternatives to on-site placement. Are there opportunities for virtual industry opportunities?
- Work with teachers on potential methods to supervise and monitor students who are taking part in experiential learning opportunities. Teachers should consider skills being obtained by the student and also notice safety and cleanliness policies.



For long-term preparation, LEAs must explore different modes of delivering work-based learning (WBL), problem- and project-based learning, and how a blended approach of virtual and in-person instruction can create more experiential learning opportunities for students.

Career and Technical Student Organizations

Leadership development through participation in a Career Technical Student Organization (CTSO) provides skills that are necessary to be successful in any career. Critical thinking, consensus building, teamwork, and job readiness skills are a few of the many standards addressed through participation in a CTSO. As a graded component in a CTE course, it is important that the LEAs review the expectations and how they can be accomplished in a safe and healthy way.

Engage students in a process to review their calendar of events in an effort to provide creative alternatives to participation. Some considerations might include:

- Holding monthly meetings in a way that enhances the distancing requirements
- Developing engaging activities that can be completed virtually
- Working with community groups to plan for safely participating in service projects
- Reviewing the LEA's current travel policy and adopting revised strategies to ensure safe and healthy travels, as many CTSO activities are out-of-class and often out-of-town
- Reviewing the current travel restrictions for students and faculty, addressing travel within the community, county, state, and even nationally
- Addressing the need of the travel versus the risks
 - For example, if a group of seven students is traveling within a 30-mile radius to participate in a competition, what would the restrictions be? If the students were traveling the same distance to take part in a meeting, would the same restriction apply? What if the students were participating in a leadership conference with students from other communities?

For many students, their CTE class is what keeps them in school and engaged in learning. Significantly, it is the hands-on learning that takes place within a high-quality CTE program, and it is the social gathering that builds relationships. LEAs are encouraged to provide safe and healthy opportunities for students to develop alternatives that keep the students engaged in the hands-on learning process as well as having the opportunities to be social.

To ensure that learning is occurring, be creative; engage industry partners, teachers, and students; and listen actively. These are big steps that help CDE properly prepare young people to enter the career of their choice and/or elect to continue their education beyond high school.



EXPANDED LEARNING

As school districts consider their options for reopening and redesigning the school day, they should be reaching out proactively to their expanded learning partners. Publicly funded after-school and summer programs operate at more than 4,500 school sites around the state, serving over 860,000 students—more than 80 percent of whom are socioeconomically disadvantaged (California Department of Education 2018).² Expanded learning partners have a unique set of assets and expertise that are particularly important in the COVID-19 era. In particular, after-school and summer programs have an explicit commitment (defined in [Quality Standards for Expanded Learning in California: Creating and Implementing a Shared Vision of Quality](#)) to build the positive relationships, safe and supportive environments, and engaging activities that students most need in this time of uncertainty and stress.³

DIFFERENT TYPES OF EXPANDED LEARNING PROGRAMS

After-school and summer programs are often run by nonprofit, community-based organizations, sometimes under contracts with school districts for public funding like the state After School Education and Safety (ASES) Program or the federal 21st Century Community Learning Center (21st CCLC) and After School Safety and Enrichment for Teens (ASSETs). Sometimes these programs operate with private grants and/or charge parent fees. They may run programs on school sites or in the community.

Why: The Science Grounding

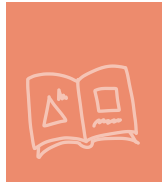
Stress has a major impact on the developing brain. The Science of Learning and Development Alliance is a great resource for teachers, administrators, and LEAs to understand how stress affects students (see its research at <https://www.soldalliance.org/resources>). In the pandemic, students may have experienced high levels of stress from the disruption of their daily lives, worries about their own and family members' health, and possibly financial strains in the household and community. For children living in unstable or unsafe conditions, the stress and trauma—resulting in ongoing, unbuffered cortisol—threaten to have long-term negative impacts on their bodies and brains. These students will likely return to school needing additional supports to rebalance their limbic systems and refocus on the task of learning and being productive in a school community.

This is where expanded learning can play a key role. Oxytocin—released through the experience of trusting relationships and safe, calm, predictable environments—acts as a buffer to cortisol, allowing children to access the higher order thinking, planning, remembering, and regulating functions of their limbic system.⁴ Expanded learning programs are an untapped resource that not only complement academic skill-building, but more importantly, specialize in building positive relationships with young people and their families.

2 California Department of Education, 2018, *Characteristics of Schools and Students Participating in After School Programs 2017 Report*. <https://www.cde.ca.gov/ls/ex/documents/lrafterschoolprograms17.pdf>.

3 California Department of Education, 2014, *Quality Standards for Expanded Learning in California: Creating and Implementing a Shared Vision of Quality*. https://www.afterschoolnetwork.org/sites/main/files/file-attachments/quality_standards.pdf?1490047028.

4 Turnaround for Children, n.d., "The Science." <https://www.turnaroundusa.org/what-we-do/the-science/>.



Staff in these programs often have had similar experiences of the student population and can quickly form authentic relationships with students. And, because family members sign their children out with staff at the end of the after-school program, expanded learning staff are more likely to have relationships with families, often acting as a bridge to school-day teachers through the ongoing communication that naturally takes place. In fact, during distance learning, some districts have relied on their expanded learning partners to find and re-engage families that they could not reach remotely. Expanded learning programs also focus on creating safe, supportive learning environments that foster a sense of belonging for all students, reinforce high expectations for behavior, and inspire engagement, skill development, and mastery—all of which are enhanced and deepened through the trust built between students and expanded learning staff. In this time of dysregulation and readjustment, expanded learning providers are key allies in reaching students and rebalancing their equilibrium for learning.

How: Innovation, Time, and People

There are multiple models being considered for a redesigned school structure to comply with health standards and physical distancing requirements. After-school programs can help in each model. Across all of the following configurations, expanded learning providers can ensure that students are having positive social interactions with adults and peers in safe and supportive environments that value youth engagement and learning.

STAGGERED TIMES

Some districts may have A and B groups that attend on alternating days or in AM and PM rotations. In either case, expanded learning staff could be

- working with the group that is not currently in class,
- doing innovative and engaging activities that build on the lessons taught in class,
- supporting students in completing projects assigned in class, or
- doing computer science activities, theatre, visual arts, or science to enrich students' learning experiences.

DIFFERENT GRADE LEVELS

Similarly, if districts choose to have in-school programming for younger students and continue distance learning for older students, after-school providers could schedule in-person activities for the older students so that they have opportunities to be with peers, practice social and emotional skills, get support with their school work, and have enriching activities to keep them engaged and active.

EPISODIC DISTANCE LEARNING

Should the pandemic re-emerge and require periodic distance learning, after-school providers can partner in ensuring that all students have remote access to learning and school meals, and are also maintaining connections with adults from their school communities.

ALL IN-PERSON INSTRUCTION

After-school providers will still be essential partners in helping students readjust to the school environment and re-engage with learning.



What: Eager Partners

What are your next steps?

- Find out who is offering after-school and summer programs at or near your schools.
- Invite them to talk about their approach and their programs.
- Engage them in the planning process as early as possible to align with instructional programs to accelerate learning. They often know much about the local community and its resources and opportunities. When asked, they are good at coming up with innovative solutions and flexible models for supporting the students.
- Be clear about your parameters and expectations, and then continue to engage as equal partners. Like you, expanded learning providers are professionals and experts in their field.
- Do any existing memoranda of understandings (MOUs) require updates on modifications to ensure students and staff are safe?



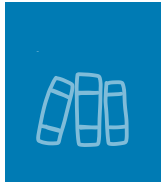
PROFESSIONAL RELATIONSHIPS AND LEARNING

Reopening schools utilizing new instructional models requires special attention to professional relationships and learning. Any large-scale transition for schools can only be achieved with commitment through strong educator supports. Educators must be supported in ways that allow them to focus on student learning. An important part of this support should include building and nurturing staff relationships. This can be achieved by addressing the strain of isolation through video conferencing, digital environments, and time for educators to stay in touch with each other, and by ensuring teachers have agency in determining the focus of professional learning (PL). PL sessions should also be facilitated with adult social-emotional learning in mind, incorporating practices such as welcoming rituals, engagement activities, and optimistic closures.



Implementation of a quality PL system aligned to California's [Quality Professional Learning Standards](#) ensures that the transition to a new instructional program model will result in positive outcomes for students and educators. Schools should conduct surveys of educators and families regarding early efforts to transition to distance learning to analyze what worked well and what needs improvement before transitioning to a new instructional program model. Data should be continuously collected throughout the transition to inform PL and should be disaggregated by student groups in order to identify the most critical student needs. The content of PL experiences should help administrators and teachers build a shared understanding of what successful implementation of the instructional program model looks like for all students and what the system needs in order to achieve it. PL should also cover health and safety protocols. Community of practice models should continue, through effective use of digital tools, to try new approaches and share results with colleagues, facilitate common planning and peer observation, and provide tailored supports as needed. Instructional leaders should support teachers in building confidence within the new model by providing opportunities to learn and experiment with tools and resources.

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ESSENTIAL PLANNING QUESTIONS

- How will the school maintain positive relationships among staff?
- What information can we solicit from students, families, and educators about distance learning efforts and a transition to a new instructional program model that can inform PL opportunities?
- What does successful implementation of the new instructional program model look like and what supports do educators need in order to achieve it?
- What PL structures can continue under the new instructional schedule model and what adjustments need to be made in order to maintain quality and safety and accelerate student learning?
- What opportunities will be provided to teachers in order to build their confidence with the new instructional program model?

MODELS AND BEST PRACTICES

[CDE Quality Professional Learning from a Distance](#)

[CDE Distance Learning Guidance](#)

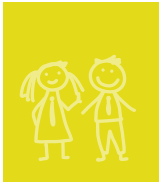
[CDE COVID-19 Webinars](#)

[Learning Forward: Tips for Leading Professional Learning Online](#)

[Education Week \(Opinion\): What Does Remote Instructional Leadership Look Like During a Pandemic?](#)

[Oakland Unified School District's Three Signature Social Emotional Learning \(SEL\) Practices](#)

[Chief Learning Officer: How Can We Build Relationships in Virtual Isolation?](#)



CONTINUITY OF RELATIONSHIPS AND LEARNING PLANS

Through the COVID-19 pandemic the importance of the physical space of schools has been amplified. The physical space of schools is where shared experiences happen, memories are created, connectedness and relationships are built, and meals are shared. When LEAs quickly pivoted to distance learning models, one of the reasons school staff found success was because of the existing relationships and connectedness built during the school year.



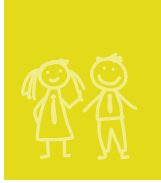
Relationships and connectedness are at the core of our healthiest school communities. We know from experience and the science of learning and development that meaningful relationships are essential for students to grow as learners. The student/staff relationships are the foundation of students' connectedness to the school community and learning. Staff to staff relationships provide the space for staff collaboration and growth. Student to student relationships allow peers to connect to each other and begin to understand diverse perspectives, helping them become more compassionate human beings.

When schools are developing their reopening plans it is important to include a plan to ensure that the learning and the connected relationships developed while the school buildings were open can continue if another school building closure occurs. This is also an opportune time for schools that have previously closed for wildfires, other natural disasters, or public safety power shutdowns (PSPS) to include how learning and relationships will continue if those, or similar, disasters occur again.

Below are essential questions for consideration when developing continuity of relationships and learning plans.

ESSENTIAL QUESTIONS FOR CONSIDERATION

- How will LEAs maintain relationships and connectedness when the physical school buildings are closed?
- How will the LEA continue some of the same practices, such as student announcements, even when the physical school buildings are closed?
- How will the LEA continue to provide opportunities for staff collaboration and professional learning?
- How will LEAs create a feedback loop about the experiences of students, staff, and families to inform their ongoing planning and communication?



CONTINUITY OF RELATIONSHIPS AND LEARNING

- How will LEAs consider the diverse needs of all students and plan for common and differentiated social–emotional and academic supports?
- How will LEAs continue their community partnerships to amplify their efforts of continuity of relationships and learning?
- How are all of our relationships becoming more equitable and strengthening our community?



MENTAL HEALTH AND WELL-BEING OF ALL

The entire education community has been affected by the COVID-19 pandemic. The community has experienced high levels of stress from the disruption of daily lives and worries about the physical health of oneself and others, and many have been under financial strains. For many, especially children, living with these strains in the household and community, the stress and trauma threaten to have long-lasting negative impacts on the body and brain. Each person will need additional supports and systems that will help to rebalance and refocus on the task of learning and being productive in a school community.

When considering the reopening of schools, LEAs should contemplate not only the physical health of their constituents but also their mental health and wellness and make it a priority within their planning. LEAs should examine the availability and accessibility of mental health resources and supports for their students, families, and staff members as they return to school, continue distance learning, or participate in a blended model. LEAs should ensure that strong partnerships with mental health supports are created and a system is in place to allow for student and staff support referrals without wait time. This checklist is intended to help local LEAs in their planning for the reopening of schools.



TIER 1: UNIVERSAL SUPPORTS: WHOLE SCHOOL SAFETY AND PREVENTION PLANNING

- What is the LEA doing to promote wellness of students on a daily basis?
 - Conduct universal screening to identify social–emotional needs of students.
 - Share student mental health need assessment data with stakeholders during LCAP stakeholder engagement process.
 - Encourage school boards to adopt policies that support staff and student wellness.
 - Consider strategies to become a trauma-responsive school system to support the school community.
 - Conduct routine check-ins using a trauma- and resilience-informed lens.
 - Develop a system to connect with students and families to promote attendance.



- Engage with students and families using culturally responsive techniques.
- Are staff trained in providing supports through a trauma-informed and responsive lens?
 - Use Psychological First Aid to assess immediate needs and provide support.
 - Use professional development time to increase trauma knowledge and skills.
- What is the LEA doing to reduce the stigma associated with accessing services?
 - Engage staff in professional development about mental health destigmatization.
- Has the LEA adopted a suicide prevention policy?
 - Share the National Suicide Prevention Lifeline 1-800-273-8255 widely. (Include it on staff and secondary student ID cards.)
 - Include mental health and wellness resources on district and school websites and in communications with families (newsletters, emails, texts, robocalls, etc.).
- Has the LEA engaged the school community and mental health practitioners in a survey to understand its constituents' needs in order to build upon existing assets and determine the current mental health needs of staff, students, and families? (For example, the CDE offers a free [CalSCHLS Learning from Home Survey](#).)
 - Conduct schoolwide mental health assessment that includes trauma and stress.
 - Assess and review necessary staffing ratios to meet student needs (teachers, support services, etc.).

TIER 1: COMMUNITY AND FAMILY ENGAGEMENT AND SUPPORT

- How are LEAs engaging community-based and local government partners in supporting the mental wellness of staff and students?
 - Collaborate with stakeholders, such as county behavioral health departments and local HMOs and PPOs, to promote staff wellness and provide workshops and supports regarding adult and student mental health, trauma responsiveness, suicide prevention, and resilience.
 - Suggest all LEAs (county offices of education, districts, and school sites) include information and links to increase access to mental health and wellness resources.
 - Share resources for basic needs: food banks, Medi-Cal, Covered California, energy programs, Section 8 housing, prescription and patient assistance programs, unemployment supports, local job postings, local CalFresh and food distribution, free internet access, etc.
 - Provide a link to CDE's Resources for Students in Crisis:
<https://www.cde.ca.gov/ls/cg/mh/studentcrisishelp.asp>.

TIER 1: UNIVERSAL SUPPORTS: STAFF WELLNESS

- What supports are available to promote staff wellness and prevent burnout, compassion fatigue, and secondary traumatic stress?
 - Provide trainings on secondary traumatic stress and self-care (e.g., Support for Teachers Affected by Trauma [STAT]).
 - Promote mindfulness techniques and staff social supports.



- Provide routine communication (in-person or virtual) to staff members to encourage self-care, including examples, and examples of wellness (e.g., saying no, accepting oneself and others, and not being at 100% all the time).
- Promote the use of staff support groups to enhance staff cohesion and coping.
- Provide a monthly informational insert in staff checks about mental wellness and local resources.

TIER 1: CLASSROOM STRATEGIES

- How do LEAs promote safety and consistency in the classroom?
 - Establish and implement daily routines for both in-person and remote delivery.
 - Include stress management or mindfulness practices in daily classroom routine.
 - Consider impact of stress and trauma when assessing and supporting students.
 - Use restorative circles (in-person and virtually).

TIER 2/3: EARLY AND TARGETED INTERVENTION FOR STUDENTS AND STAFF

- What supports are currently in place to assist students and staff with mental health issues?
 - Provide staff with resources from their Employee Assistance Program (EAP).
 - Align district funding, policies, and programs to fully support mental wellness for students and staff.
 - Implement or scale up Social Emotional Learning (SEL) to promote social–emotional competencies among students. Promote and support adult SEL.
 - Maintain or expand student mental health services using LCFF, ESSA Title II and IV funds, or other leveraged resources.
- What technology is being used to deliver mental health services remotely? Is this technology platform HIPAA or FERPA compliant? Is it secure?
 - Review district policy and coordinate with mental health partners to ensure confidentiality.
 - Assess what supports are currently in place to assist students with mental health issues.
 - Encourage students to use counseling services as needed. Promote messaging to remove stigma.
 - See that staff are trained in evidence-based practices (CBITS, SSET, DBT for Schools, etc.).
 - Provide information about and access to tele-behavioral health services for counseling services (group, individual).



COMMUNICATION AND COMMUNITY ENGAGEMENT



COMMUNICATION

The COVID-19 pandemic has created intense stress and trauma for the stakeholders schools serve. Any carefully crafted re-opening plan will be only as successful as an LEA's ability to maintain trust and credibility through frequent and transparent, two-way communication.

Research on risk communication shows that people are less able to comprehend information when under stress and trust is determined when organizations demonstrate empathy and hon-

esty during a crisis. CDE recommends that schools develop comprehensive communication plans targeting key audiences—such as students, parents and caregivers, employees, and community members—that are responsive to stakeholder concerns. Implementing clear, consistent, and specific communication protocols will allow everyone to safely reengage in this next transition for schools.

Effective communication plans will:

- Understand and utilize the communication methods preferred by target audiences.
- Determine the desired outcomes of communication efforts and design key messages to achieve them.
- Differentiate key messaging across multiple platforms (e.g., email, text messaging, push alerts, infographics, website posts, social media, news media outlets, printed mailings, etc.).
- Include languages other than English.
- Use communication methods that will accommodate persons with hearing and visual impairments.
- Develop frequent messaging that includes all critical information to reduce confusion, anxiety, or misunderstandings. Certainty reduces stress, even when there are not always specifics to share. For example, if plan or action step specifics are not yet available, provide detailed updates and information about the decision-making process and factors being considered (especially as they pertain to stakeholder feedback).



COMMUNITY STAKEHOLDER ENGAGEMENT

- Ensure communication is bias free and destigmatizing and does not perpetuate stereotypes.
- Use existing school resources to amplify messaging: school campus signage, marquees, existing handouts, etc.
- Provide contact information for follow-up questions or concerns.
- Develop a dedicated hotline and web page that includes answers to common questions and that all staff can direct the public to for the latest updates. This measure can reduce the burden on individual employees and will promote message clarity and consistency across schools.
- Encourage consistency of messaging by developing internal talking points for frontline staff, including principals, teachers, office and clerical staff, etc.

Communication strategies leading up to school reopening should emphasize the safety measures undertaken by the school, including personal protective equipment (PPE) for students, teachers, and staff, cleaning and sanitization protocols, physical distancing measures, and mental health and well-being supports. LEAs should also inform parents about the importance of symptom onset and keeping students home when sick. Communication efforts should also outline processes for parent and guardian visits, pick-up, and drop-off.

LEAs should consider partnering with community organizations, local government, health officials, and higher education partners, leveraging trusted third-party messengers to reach a broader audience.

COMMUNITY ENGAGEMENT

As schools begin to plan for reopening, they must actively and authentically engage parents and caregivers, families, and students in the decision-making process in order to build trust and credibility for any plans that are implemented. Effective community engagement will:

- Clearly communicate the organization's objectives.
- Ensure stakeholders understand the ask and their role in the process.
- Specify how and when feedback will be used in the decision-making process.
- Reflect back to stakeholders the feedback received to demonstrate the organization has listened.
- Close the loop and strengthen credibility by communicating how feedback was acted upon.

Examples of effective community engagement strategies include:

- Qualitative and quantitative surveys.
- Focus groups and listening sessions with target stakeholders.
- Previews of draft plans with representative stakeholders to build early understanding and solicit real-time feedback.
- Appointment of representative stakeholders—administrators, students, educators, parents and caregivers, health officers, etc.—to steering committees and task forces charged with developing plans.



EARLY LEARNING AND CARE

Early learning and care (ELC) programs are critical to the California economy. Many essential workers have children who require supervision and care while they perform their essential functions in the community. These children need a safe, quality environment with rich learning experiences and responsive interactions while their parents work.

Many school districts have ELC programs located on the school site that serve infants and toddlers or preschoolers during the day or operate as before or after school programs. The majority of these programs have contracts to provide care that are overseen by the CDE Early Learning and Care Division (ELCD) while other schools might operate an Early Head Start or Head Start program or use Title 1 funds for early learning.

Local school systems may want to consider reopening ELC programs on their campuses even if other classrooms remain closed in order to ensure families in their communities have adequate care for their children while they are at work. (See the [CDC guidance](#) and additional guidance from CDSS as available for more information about making the decision to reopen.)

As LEA ELC programs make decisions about whether and how to reopen in adherence to local and state health directives, they should ensure compliance with all program requirements. To ensure the health and safety of staff and children, programs should utilize resources developed by the California Department of Social Services (CDSS) and by ELCD outlining new regulations and operating procedures.

LEA ELC program providers will need to be well-resourced with cleaning and medical supplies, paying specific attention to handwashing stations, use of PPE by staff—face coverings at a minimum, and disinfecting procedures for all shared surfaces and materials, including toys and other manipulatives. (See [MB 20-06](#) and [PIN 20-06-CCP](#) for additional guidance.) All staff and children should minimally undergo temperature checks at the start of each day and appropriate actions should be taken as health concerns including, but not limited to, a temperature above 100.4 degrees Fahrenheit or known exposures to COVID-19 arise.

LEA ELC program providers should also take steps to ensure their ability to maintain reasonable physical distancing prior to reopening, including the following:





- Adhering, to the extent possible, to best practices guidance issued by the CDSS and ELCD regarding group size and ratios while also maintaining contractual requirements, unless waived.
- Instituting procedures to ensure children are grouped in the same configuration, with the same staff throughout the day and restrict mixing between groups. This may require reconfiguring the physical space (e.g., deconstructing centers to ensure access to all types of activities for all children) or moving children between physical spaces throughout the day.
- Closing or repurposing communal spaces such as cafeterias and libraries while implementing physical distancing procedures. Such spaces may offer opportunities for reconfiguring to support smaller groups of children.
- Maximizing outdoor time for children in accordance with schedules to rotate use and allow for cleaning of any shared materials or equipment.
- Utilizing head-to-toe placement of children and creating physical barriers, as needed, to protect children and ensure distancing during naptimes.
- Staggering arrival and pick-up times to limit direct contact with and between parents and caregivers to the greatest extent possible and creating processes such as curbside pick-up or different doors for entering and exiting to the greatest extent possible.

For additional guidance on implementing physical distancing with young children, see [recommendations from the Center for Disease Control \(CDC\)](#), [recommendations from the University of California San Francisco Child Care Health Center](#), and guidance in [MB 20-06](#).

ELCD will continue to support contractors who are unable to reopen and supplement providers who do reopen as funding and Executive Orders prevail. (See [MB 20-11](#) and [MB 20-06](#).)



SCHOOL SERVICES

TRANSPORTATION

Background

Many LEAs in California operate a school bus program to transport students to and from school. The California school transportation system is the largest mass transportation operation in the state. The system comprises 24,201 public and privately owned school buses, which transport approximately 1,121,857 students to and from school each day.

As the LEAs plan for reopening and decide on their instructional model, transporting students will need to align with the chosen model. Collaboration between the instructional program staff, school transportation staff, and city bus services will be necessary to ensure students reliant on school and city buses will be at school on time. Given the complexities of aligning transportation and instructional models, collaboration and further statewide dialogue on strategies and different scenarios will need to occur. It is critical to plan for the safe transportation of students to and from school during this pandemic.

Best Practices

In order to practice physical distancing on a school bus, the seating capacity must be reduced. This may necessitate the use of a seating chart to designate which seats are available for use.

Routing is the responsibility of the transportation providers at local levels. Each LEA or private carrier will need to evaluate the need of the students that are provided transportation. Transportation providers should be assessing their routes now to determine what will work for their individual area by surveying families and collaborative planning with stakeholders.

Loading/Unloading Zones and Bus Stops

LEAs and private carriers need to consider whether there is enough space for physical distancing at bus stops and school loading and unloading zones. Once physical space is confirmed, it is important to inform students and parents and guardians of steps they must





take to keep students and staff safe during loading and unloading. If transportation providers take the temperature of children prior to loading and unloading the school bus, the provider may need procedures in place for proper training to meet local policies.

Physical Distancing on School Buses

- Determine maximum capacity of students for each vehicle while meeting 6-foot physical distancing objectives.
- Create a plan for seating based on maximum capacity determined above. Sample options:
 - Option 1: Seat one student to a bench on both sides of the bus, skipping every other row.
 - Option 2: Seat one student to a bench, alternating rows on each side to create a zigzag pattern on the bus.
 - Mark or block seats that must be left vacant.
- Assign a bus aide to ensure distancing and do symptom screenings.
- Ensure 6-foot distancing at bus stops and while loading and unloading.
- Prevent students from walking past each other by taking the following measures:
 - Seat students from the rear of the bus forward.
 - Board afternoon runs based on the order in which students will be dropped off. Students who get off first should board last and sit in the front.
- Require face coverings for students and staff at bus stops and on buses.

Vehicle Cleaning

More information on cleaning practices is available in the [CDC Cleaning and Disinfecting Your Facility Guidelines](#).

NOTE: Wear disposable gloves to clean and disinfect.

Maintenance Scheduling

Vehicles may have exceeded a 45-day maintenance or inspection date while sitting out of service during the COVID-19 stay-at-home orders.

Vehicles need to meet all maintenance and inspection requirements before being placed back into service in accordance with [Title 13 CCR 1232 Periodic Preventive Maintenance Inspection](#).

Carriers and drivers need to look closely at each Vehicle Inspection Approval Certificate (CHP 292) in accordance with [Title 13 CCR 1231 Vehicle Inspection Approval Certificate](#).

Carriers and drivers need to make sure the vehicle's certificate is still valid and that 13 months from the last inspection have not been exceeded in accordance with [Vehicle Code 2807 Lawful Orders and Inspections](#).

Driver Training and Certification

LEAs and private carriers shall ascertain that all drivers meet licensing requirements before operating vehicles.



STUDENT MEALS

Student Meals

A successful nutrition program is a key component to every educational environment. School meals protect the most vulnerable children against hunger. A child cannot focus on learning when they are feeling hungry. School meals boost learning, and studies show that students perform best academically when well nourished. Therefore, ensuring a child has access to healthy and appealing meals in schools is extremely important.

As school food service operations transition from serving meals during unanticipated school closures to serving meals in a blended learning school environment, school districts will need to consider national, state, and local health and safety guidelines. It is important that school districts engage school food service directors in district discussions regarding plans for reopening schools to ensure that students participating in all learning models have access to healthy meals.



School districts will need to consider the resources and flexibilities necessary to transition food service operations to an on-site or off-site student meal delivery system or operate both at the same time. This includes applying for state or nationwide waivers and updating school policies, standard operating procedures, and trainings to ensure compliance with Child Nutrition Program requirements and procuring equipment, supplies, and menu options necessary for meal service.

Considerations for Changes in Food Service Operations

HEALTH AND HYGIENE PROMOTION

- Designate a COVID-19 coordinator.
- Teach and reinforce handwashing and use of a cloth face covering by employees when near other employees or students.
- Have adequate supplies for both employees and students including soap, hand sanitizer, and tissues.
- Post signs on how to stop the spread of COVID-19.

CLEANING AND SANITATION

- Update standard operating procedures for sanitation of school kitchens, cafeterias, food warehouses, and central production kitchens.
- Train all employees on health and safety protocols, including correct application of disinfectants and maintaining physical distancing.



- Clean and disinfect surfaces frequently touched by students during meal service, including tables, chairs, carts used in transportation, and point-of-service touch pads. Use timers for cleaning reminders.

MEAL PREPARATION

- Ensure gloves, masks, disposable aprons, and other supplies are readily available.
- Promote fresh healthy menu options that are individually plated meals and preportioned and prewrapped produce.
- Use disposable trays and wrap cold items in plastic and hot food with foil.
- Consider how work stations can be reorganized for proper physical distancing during meal preparation and meal service.
- Adjust employee shifts to minimize number of staff in the kitchen.

ONSITE MEAL SERVICE

- Assess whether to serve meals in the classroom or cafeteria or to use outdoor seating.
- Encourage physical distancing through increased spacing, small groups, and limited mixing between groups, if feasible. Stagger meal times to allow for cleaning between meal services and to serve students in smaller groups.
- Provide at least 6 feet of physical distancing between groups or tables by increasing table spacing, removing tables, marking tables as closed, or providing a physical barrier between tables.
- Provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that students remain at least 6 feet apart in lines or while waiting for seating.

- Remove or suspend use of share tables and self-service buffets for food and condiments.
- Consider having staff wear masks and gloves while using point of service (POS) touch pads, replace touch pads with a scanner, or have hand sanitizer available.
- Install physical barriers, such as sneeze guards and partitions, at POS and other areas where maintaining physical distance of 6 feet is difficult.
- Consider increasing access points for providing meal service.
- Ensure cleaning of every table between groups of students or meal service times.

OFFSITE MEAL SERVICE (WITH APPROVED USDA WAIVERS)

- Offer grab-and-go student meals for consumption at home, including drive-through, delivery, or curbside pick-up options.
- Assess whether there are students who are unable to access school meal distribution sites and identify ways to address these gaps.
- Consider whether it is feasible to continue to use buses to distribute meals to students.

COMMUNICATION WITH STUDENTS AND FAMILIES

- Notify parents and the school community about school meal service and options.
- Use a variety of communication methods such as social media, newsletters, and school websites.



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STRONGER TOGETHER | A GUIDEBOOK FOR THE SAFE REOPENING OF CALIFORNIA'S PUBLIC SCHOOLS

APPENDIX A. CDE HEALTH AND SAFETY CHECKLIST

CDC DECISION-MAKING TREE

Visit <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/Schools-Decision-Tree.pdf> for guidance on reopening decisions.

CAMPUS ACCESS

- [CDC: What to Do If You Are Sick](#)
- [CDC: People Who Are at Higher Risk for Severe Illness](#)

HYGIENE AND PPE

- [CDC: Hygiene Practices](#)
- [CDC: Using Personal Protective Equipment \(PPE\)](#)
- [CDC: Use of Cloth Face Coverings to Help Slow the Spread of COVID-19](#)

CLEANING AND DISINFECTING

- [EPA: 6 Steps for Safe and Effective Disinfectant Use](#)
- [EPA: List N - Disinfectants for Use Against SARS-CoV-2](#)

EMPLOYEE ISSUES

Information for Staff Training

- [Healthy Schools Act](#)
- [CDPR: California School & Child Care Integrated Pest Management \(IPM\)](#)
- [CDC: Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 \(COVID-19\) in Healthcare Settings](#)

Protect and Support Staff Who Are at Higher Risk for Severe Illness

- [CDC: People Who Are at Higher Risk for Severe Illness](#)

**Communication with Students, Parents, Employees,
Public Health Officials, and the Community**

- [CDC: Criteria to Discontinue Home Isolation](#)
- [CDC: Public Health Recommendations for Community-Related Exposure](#)



APPENDIX B. RESOURCES

Instructional Programs

COLLABORATION AND ASSESSMENTS

Multi-Tiered System of Support

For more information, please visit the California Department of Education's Multi-Tiered System of Support (MTSS) web page at <https://www.cde.ca.gov/ci/cr/ri/>.

Grade Two Diagnostic Assessments

The Grade Two Diagnostic Assessments web page at <https://www.cde.ca.gov/ta/tg/da/> provides more information about the optional diagnostic assessments for students in grade level two for English Language Arts (ELA) and mathematics that meet the requirements of California *Education Code*, Section 60644.

Grade K–8 Assessments

All instructional materials adopted by the State Board of Education include assessments for measuring what students know and are able to do, and also advise teachers how to use assessment results to guide instruction. Thus, if the district is utilizing SBE-adopted materials, standards-based assessments are provided in the instructional materials.

Tools for Teachers

A preview release of Tools for Teachers, the new Smarter Balanced formative assessment component of its system, is scheduled to be available June 16, 2020, at <http://www.smarterbalanced.org/tools-for-teachers/>. Tools for Teachers provides subject- and grade-specific resources intended to help educators apply the formative assessment process during daily instruction.

Curriculum Frameworks

All of the curriculum frameworks discuss the use of assessment of learning. Screening assessments identify students who may need additional supports or instruction, diagnostic assessments provide specific information about the difficulties, and progress-monitoring assessments provide feedback on whether planned interventions to address the difficulties are effective. These assessments can operate in short or medium cycles.

To access the various frameworks, please visit the CDE Curriculum Frameworks and Instructional Resources page at <https://www.cde.ca.gov/re/di/or/cfird.asp>.

Progress Monitoring: Interim Assessments Resources

For resources to support progress monitoring, please see the CDE Smarter Balanced Interim Assessments for ELA and mathematics web page at <https://www.cde.ca.gov/ta/tg/sa/sbacinterimassess.asp>.

- More than 160 interim assessments are scheduled to be available August 20, 2020.
- Although developed for grade levels three through eight and high school, the Smarter Balanced Interim Assessments can be administered to students at any grade level (i.e., K–12).
- Results from these assessments will be electronically available to educators within 20 minutes of administration after a school or district coordinator creates the student groups for teachers to access these results.



For practice or training resources visit the California Assessment of Student Performance and Progress (CAASPP) web page at <http://www.caaspp.org/practice-and-training/> or the English Language Proficiency Assessments for California (ELPAC) Practice and Training Tests web page at <https://www.elpac.org/resources/online-practice-and-training-test/>.

For additional information or support for distance learning instructional strategies and learning acceleration, please contact the Curriculum Frameworks and Instructional Resources Division at distancelearning@cde.ca.gov.

For additional information or support for assessments, please contact the Assessment Development and Administration Division at caaspp@cde.ca.gov for CAASPP; elpac@cde.ca.gov for ELPAC; and pft@cde.ca.gov for Physical Fitness Test.

SOCIAL–EMOTIONAL LEARNING

- [CDE SEL and Distance Learning web page](#)
- *California's Social and Emotional Learning Guiding Principles* ([full version](#) and [summary](#)) and social and emotional learning [resource guide](#)
 - To learn more about this work, visit the CDE SEL web page at <https://www.cde.ca.gov/eo/in/socialemotionallelearning.asp>

ENGLISH LEARNERS

The CDE English Learners web page at <https://www.cde.ca.gov/sp/el/> contains state and federal guidance, resources, webinars, program models, and newsletters to assist LEAs with implementing distance learning and the transition to reopening schools. This web page includes:

- Guidance
 - US Department of Education Guidance
 - English Language Advisory Committee (ELAC) and District English Learner Advisory Committee (DELAC) Guidance
 - State Seal of Biliteracy Guidance
 - Distance Learning FAQs
- Resources
 - This section includes resources to support English learners; newcomers; multilingual students; and immigrant, refugee, and migratory students during distance learning and the transition to schools reopening, including supporting their social–emotional needs and physical health.
- Webinars or Models
 - Language Acquisition Programs; Dual Language
 - Distance Learning Designated/Integrated ELD
- English Learner Support Division (ELSD) and Parent Newsletters

The Practitioners' Guide for Educating English Learners with Disabilities is available on the CDE [Educating English Learners with Disabilities](#) web page.



CAREER TECHNICAL EDUCATION

- The Guiding Principles and the 12 essential elements are located at the [Workforce Pathways Guiding Policy Principles page](#)
- [CDE Career Technical Education page](#) as a starting point for how current CTE students are being served
- [Resources for CTE distance learning](#)
- [California CareerZone](#)
- [California Career Center](#)
 - [California Career Center Mobile Applications page](#) featuring Career Surfer, My Stuff Job Central, and My Stuff CAP (career action plan) which students can use on their own and at their own speed to complete assignments
- [Cal/OSHA Industry Guidance](#)

EXPANDED LEARNING

- [Quality Standards for Expanded Learning in California: Creating and Implementing a Shared Vision of Quality](#)
- [Science of Learning and Development Alliance resources](#)

Professional Relationships and Learning

- [CDE Quality Professional Learning Standards](#)

MODELS AND BEST PRACTICES

- [CDE Quality Professional Learning from a Distance](#)
- [CDE Distance Learning Guidance](#)
- [CDE COVID-19 Webinars](#)
- [Learning Forward: Tips for Leading Professional Learning Online](#)
- [Education Week \(Opinion\): What Does Remote Instructional Leadership Look Like During a Pandemic?](#)
- [Oakland Unified School District's Three Signature Social Emotional Learning \(SEL\) Practices](#)
- [Chief Learning Officer: How Can We Build Relationships in Virtual Isolation?](#)

Mental Health and Well-Being of All

- [CalSCHLS Learning from Home Survey](#)
- [CDE Resources for Students in Crisis](#)

Early Learning and Care

During the state of emergency, the ELCD released Management Bulletins to guide contractors through the COVID closures. This guidance was developed by ELCD in coordination with CDSS Community Care Licensing Division (CCL), CDE Nutrition Services Division, and the California Head Start State Collaboration Office.

- [MB 20-11](#) COVID-19 Guidance: Emergency Closures
- [MB 20-09](#) COVID-19 Guidance on Program Self Evaluation, Contract Monitoring, and Program Quality Requirements



- Please see the following associated webpage:
 - [Early Learning and Care Resources for Family Engagement and Professional Development](#)
- [MB 20-08](#) COVID-19 Guidance on Procurement and Audits
- [MB 20-06](#) COVID-19 Guidance Regarding Emergency Childcare Services for Essential Workers and At-Risk Populations
 - Please see the following associated forms:
 - [COVID-19 Self-Certification Form](#) (PDF)
 - [COVID-19 2020 Confidential Application for Emergency Childcare Services](#) (PDF)
 - [COVID-19 Temporary Waiver Request](#) (PDF)
- [MB 20-05](#) COVID-19 Guidance on Temporary Waiver of Family Fees
- [MB 20-04](#) COVID-19 Guidance on Apportionment, Attendance, and Reporting Requirements

The links below provide access to guidance documents.

CDSS AND CCL

- [PIN 20-06-CCP](#) (PDF) Social and Physical Distancing Guidance and Healthy Practices for Child Care Facilities in Response to the Global Coronavirus (COVID-19) Pandemic Written in Collaboration with the California Department Education

US DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS Administration for Children and Families Early Childhood Development [Caring for Our Children Basics: Health and Safety Foundations for Early Care and Education](#)

School Services

TRANSPORTATION

[Cal/OSHA Guidance for Transportation](#)

Vehicle Cleaning

- [CDC: Cleaning and Disinfecting Your Facility Guidelines](#)

Maintenance Scheduling

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Vehicles need to meet all maintenance and inspection requirements before being placed back into service in accordance with [Title 13 CCR 1232 Periodic Preventive Maintenance Inspection](#).

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Carriers and drivers need to make sure the vehicle's certificate is still valid and that 13 months from the last inspection have not been exceeded in accordance with [Vehicle Code 2807 Lawful Orders and Inspections](#).

STUDENT MEALS

[Cal/OSHA Guidance for Restaurants](#)



STRONGER TOGETHER | A GUIDEBOOK FOR THE SAFE REOPENING OF CALIFORNIA'S PUBLIC SCHOOLS

**APPENDIX C. FREQUENTLY ASKED QUESTIONS (FAQS):
SAFE REOPENING OF SCHOOL DISTRICTS**

1. What will LEAs do if a teacher has an underlying health condition?

LEAs should work with the teacher to obtain a medical note and may need to consider providing these teachers with accommodations, such as telework or negotiated change in classification or duties.

2. What will the plan be for nonteaching staff with underlying health conditions?

LEAs may need to provide these employees with the ability to work remotely. There may need to be some reassignment of duties that lends to these staff being able to work remotely, or in some other way that meets their need for accommodations, for example, a parent engagement liaison assisting parents with technical support.

3. If students have underlying health conditions or parents/family members have underlying health conditions, what accommodations will LEAs make?

LEAs will likely need to consider providing these students with the option to distance learn so as to protect students and families with compromised health systems from being in harm's way.

4. How will LEAs arrange students and staff to accommodate physical distancing conditions?

LEAs will likely have to maintain small class sizes and limit the number of students in hallways and common spaces. There may need to be a morning session and afternoon session at each school so as to accommodate all students arranged into small class sizes and to offset space limitations.

5. How will LEAs work with early-grade students who, because of their age, may struggle with maintaining physical distance or wearing a mask?

If students from early grades participate in in-person instruction, LEAs may need to arrange them in small groups and may need to increase the number of staff who work with the students in classrooms to help keep students separated in physical distancing ways.

6. How will you manage school spaces (hallways, common areas, etc.) to accommodate physical distancing needs?

Staff will likely need to remind students in hallways and common spaces to maintain physical distancing. LEAs will need to have signage throughout the campus communicating physical distancing requirements.

7. How will you handle requests from parents who state a preference for distance learning instead of in-person instruction for their children?

There are families that may request distance learning and LEAs should consider providing parents, who request it, with the option to learn through distance learning.

8. How will LEAs handle physical education considering the need for physical distancing?

LEAs may need to consider providing physical education through instruction provided to students in small groups or through distance learning where students complete assignments independently.



9. How will LEAs manage meals during school hours?

LEAs may need to consider serving meals utilizing different spaces on campus for health and safety reasons. For those with staggered start times, this could be accomplished in ways such as providing “grab-and-go” meals as students who attended a morning session ending by lunch time leave campus.

10. How will LEAs handle physical distancing guidelines during bus transport?

LEAs will need to consider how transportation can best support their chosen instructional model. LEAs may need to consider deploying more buses or bringing students to schools in shifts in order to maintain physical distances on buses. Buses will have to be fully sanitized between each run. CDE recommends that students should wear cloth face coverings and maintain 6 feet of physical distance while on buses.

11. What will LEAs do if students forget to bring a mask or do not have one?

LEAs will likely have to maintain a supply of masks at school for students and staff who forget to bring one.

12. What, if any, temperature-taking procedures will LEAs utilize?

LEAs will need to designate staff and create a system for student entry that accommodates temperature checks for all students. This could include a self-screening process for families prior to coming to school. In some instances, they may also need to arrange for staff to take the temperatures of students and staff as they arrive to prevent the further spread of the coronavirus.

13. How will LEAs address hand sanitizing procedures for students?

LEAs may have to establish hand sanitizing stations at all school entrances and on playgrounds so that students and staff can sanitize their hands upon entering and exiting the campus and classrooms.

14. How will LEAs address campus cleaning and sanitizing?

Campuses will have to deploy deep-cleaning schedules at campuses at least daily, frequently disinfecting door handles, handrails, sink handles, restroom surfaces, playground equipment, and shared items. Considerations will need to be made for longer breaks within the instructional day to accommodate handwashing. Occupational safety guidelines should be consulted to determine the interval and the ingredients needed to ensure that desks and surfaces are properly sanitized.

15. How will LEAs handle after-school program needs?

If LEAs offer after-school programs, physical distancing guidelines will have to be followed at all times. School and after-school program staff ratios will need to be adjusted (more staff and smaller student group sizes).

16. How will LEAs address sports and extracurricular activities?

LEAs will need to consult public health experts for when these activities may be safely resumed. LEAs are encouraged to be in touch with their local lead of the California Interscholastic Federations.



17. How will LEAs ensure consistency of instruction across classes and schools in each district? Given that during distance learning the amount and nature of work varied from class to class, how will LEAs promote consistency in districts where there is a blended form of instruction (i.e., in-person instruction and distance learning)?

LEAs will need to engage in a collaborative planning process with teachers to develop a scope and sequence for learning and a continuity of learning plan should future school building closures be necessary.

18. How will locker rooms be sanitized and managed?

These facilities will need to be sanitized daily and possibly after each physical education class or activity.

19. How will students with special needs be served (for example, students with moderate/severe special needs and students who are assigned with a 1:1 paraprofessional)?

LEAs will need to engage in a collaborative Individual Education Plan meeting that provides accommodations for the instructional program model that best meets the needs of the student. This could include how a student would access the support of a 1:1 paraprofessional in a blended learning model or a distance learning model.



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APPENDIX D. DEPARTMENT OF PUBLIC HEALTH GUIDANCE

[CDPH Guidance Documents: Coronavirus Disease 2019 \(COVID-19\)](#)



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American Federation of State, County and Municipal Employees (AFSCME)
Association of California School Administrators (ACSA)
California Association of School Business Officials (CASBO)
California Charter Schools Association (CCSA)
California Collaborative for Educational Excellence (CCEE)
California County Superintendents Educational Services Association (CCSESA)
California Department of Public Health (DPH)
California Division of Occupational Safety and Health (Cal/OSHA)
California Federation of Teachers (CFT)
California Governor's Office of Emergency Services (CalOES)
California Labor Federation (CLF)
California Parent Teachers Association
California School Boards Association (CSBA)
California School Employees Association (CSEA)
California Special Education Local Plan Areas (SELPA)
California Teachers Association

Service Employees International Union (SEIU) 1000
Service Employees International Union (SEIU) Local 99
Service Employees International Union (SEIU) State Council
Small School Districts Association (SSDA)
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EXHIBIT FF

8/9/2020

Distance Learning Frequently Asked Questions - Distance Learning (CA Dept of Education)



[Home](#) / [Teaching & Learning](#) / [Curriculum and Instruction Resources](#) / [Distance Learning](#)

Distance Learning Frequently Asked Questions

Frequently asked questions (FAQs) about Distance Learning pursuant to Education Code 43500-43511.

[Coronavirus \(COVID-19\) Main Web Page](#)

[Distance Learning Main Web Page](#)

[Expand All](#) | [Collapse All](#)

General

1. [What is distance learning?](#)

Distance learning is defined in *Education Code* Section 43500(a).

Distance learning means instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certified employee of the local educational agency (LEA). Distance learning may include, but is not limited to, all of the following:

- Interaction, instructions, and check-ins between teachers and pupils through the use of a computer or other communications technology.
- Video or audio instruction in which the primary mode of communication between the pupil and certified employee is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.
- The use of print, video, and audio materials incorporating assignments that are the subject of written or oral feedback.

2. [What is considered in-person instruction?](#)


In-person instruction is defined as instruction under the immediate physical supervision and control of a certificated employee of the LEA while engaged in educational activities required of the pupil.

3. [What is considered an LEA for these purposes?](#)

An LEA for purpose of these provisions means a school district, county office of education (COE), or a charter school, excluding a charter school classified as a nonclassroom-based charter as of the 2019–20 fiscal year.

4. [When can LEAs offer distance learning?](#)

The intent is that LEAs offer in-person instruction to the greatest extent possible. However, LEAs can, and in some instances must, offer distance learning and/or hybrid models of learning under certain circumstances during the 2020–21 school year [*Education Code* Section 43503(a)(2)].

- Distance learning and/or a hybrid model of learning (a combination of in-person and distance learning) can be offered as a result of an order or guidance from a state or local public health official.
 - ❖ According to a letter to the [Journal](#)  (PDF), the intent is not to require a directive from local public health officials specific to closing down in-person learning, but rather that LEAs actively work in consultation and collaboration with public health officials in determining whether to offer distance learning for a particular site or LEA-wide. The provision is also not intended to prevent an LEA from adopting a distance learning, hybrid, or mixed-delivery instructional model to ensure safety. Instead LEAs have flexibility to determine what instructional model the LEA will adopt during the COVID-19 Pandemic, taking into account the needs of their students and staff and their available infrastructure, provided the model adheres to an applicable state and local health guidance.
 - ❖ LEAs do need to continue to follow all other public health guidance, directives, and orders, including those not specific to schools, that impact school indoor and outdoor facilities and activities (e.g., social distancing guidance).
- For students who are medically fragile, students who are self-quarantining because of exposure to COVID-19, or for students who would be put at risk by in-person instruction.
 - ❖ The letter to the Journal notes that the intent is to allow LEAs to offer distance learning based on the unique circumstances of each student. It allows for medically fragile students, and those in self-quarantine, but also for those students who would be put at-risk by in person instruction and as such, does not require an LEA to verify or make a determination that a request for this allowance meets a specific standard.

8/9/2020

Distance Learning Frequently Asked Questions - Distance Learning (CA Dept of Education)

- Non-classroom-based charter schools do not provide distance learning as defined in EC Section 43500(a). Instead, non-classroom-based charter schools continue to provide independent study pursuant to their petition. As a result, this new requirement does not apply to non-classroom-based charters who were defined as such pursuant to EC Section 47612.5 as of the 2019–20 fiscal year.

Distance learning requirements are in place for the 2020–21 school year. LEAs that offer distance learning will not face penalties for instruction that doesn't meet the requirements outlined in *Education Code* Section 43504 prior to September 1, 2020. To the extent possible it is recommended that LEAs begin the school year meeting the requirements outlined.

- [COVID-19 Industry Guidance: Schools and School-Based Programs](#) (PDF; released July 17, 2020)

5. Is an LEA required to offer distance learning?

An LEA must offer instruction through distance learning if it is unable to offer in-person instruction in part or fully pursuant to a state or public health order.

6. What type of distance learning model can LEAs offer?

LEAs have the flexibility to determine what model best fits their situation, which includes hybrid and mixed-delivery models, so long as it ensures the safety of students and staff. The chosen model must take into account the needs of students and staff, as well as the infrastructure available to the school. The model must also adhere to applicable state or local public health orders or guidance (e.g., wearing face coverings, social distancing requirements, etc.) and include all necessary academic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas. The requirements for distance learning are outlined in *Education Code* Section 43503.

7. Does an LEA need to get approval from a public health official to transition to distance learning?

An LEA does not need to seek out or receive approval from a state or local public health officer prior to transitioning instruction to a distance learning model. However, LEAs are required to following public health orders and guidance, as applicable, in determining safe in-person instruction, and when distance learning may be necessary. Parents should be informed of how instruction will occur, in a language understandable to the parent, pursuant to *Education Code* Section 48985.

8. Does an LEA need to get approval from a public health official for its planned model of distance learning?

An LEA does not need to seek out or receive approval from a state or local public health officer prior for its planned model of distance learning model. However, LEAs are required to following public health orders and guidance, as applicable, in determining safe in-person instruction, and when distance learning may be necessary. Parents should be informed of how instruction will occur, in a language understandable to the parent, pursuant to *Education Code* Section 48985.

9. Is distance learning available to individual students who are at-risk or whose parents have a concern about their student participating in in-person learning?

Yes, distance learning must be offered for students who are medically fragile, would be put at risk by in person instruction, or who are self-quarantining because of concerns of exposure to COVID-19.

10. Do schools need to confirm there is a valid reason that a student "would be put at risk by in-person instruction," or is the student's risk required to meet a specific standard?

No. There is not a definition of students who "would be put at risk by in-person instruction," as there are many circumstances when distance learning may be more appropriate. For example, a student may have a health condition, family members with health condition, live or regularly interact with high-risk individuals, or otherwise be identified as "at-risk" by a parent or guardian. There is no requirement for an LEA to verify or make a determination that a request to utilize distance learning meets a specific standard or require documentation.

11. What is considered "live interaction?"

Education Code Section 43503 requires that distance learning include "daily live interaction." Daily live interaction is two-way communication between a certificated employee and student each instructional day, at the actual time of occurrence. Daily live interaction is required for every student with both a certificated employee and their student peers. In particular English learners, and students with special needs benefit from daily oral language development opportunities.

Examples of daily live interaction include in-person and virtual communication or interactions, including but not limited to synchronous online instruction (per statute) and phone calls where both parties communicate at the time of occurrence. One-way communication, including voicemails, emails, or print materials, is not considered a live interaction.

8/9/2020

Distance Learning Frequently Asked Questions - Distance Learning (CA Dept of Education)

Pursuant to *Education Code* Section 43503(b)(6), if daily live interaction is not feasible as part of regular instruction, the governing board or body of the LEA shall develop, with parent and stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness.

12. What is the difference between daily live interaction and daily participation?

The purpose of daily live interaction, which occurs with teachers and students, is to provide instruction, monitor progress, and maintain school/social connectedness. The intent of daily live interaction is to ensure each student has live contact at least once each instructional day with a certificated employee, and ideally live contact with peers, even if live contact is not possible as part of daily instruction.

Daily participation is used to track attendance and ensure daily engagement by all students in learning activities. However, documenting daily participation may be met through daily live interaction with a teacher or virtual assignments. Daily participation may also be documented through participation in online activities, completion of regular assignments, and contacts between employees of the LEA, including those other than teachers, and pupils or parents or guardians.

13. Is the requirement for daily live interaction met if the interaction is only between an individual student and a teacher?

No. All students are required to receive daily live interaction with both a certificated employee and their peers for the purpose of instruction, progress monitoring and school connectedness. Teachers may meet individually with students but this alone does not meet the requirements for daily live interaction. The minimum standard should be the same for all students regardless of which school or program the student participates in within the LEA. Every effort should be taken to determine the amount of interaction that is needed for students to progress academically and remain engaged in learning and connected to the school community.

14. Is there a requirement for how frequently regular communication with parents or guardians regarding a pupil's academic progress must occur?

The statute does not define how this communication must occur, however LEAs should align communications on student academic progress with communications related to re-engagement of students pursuant to *Education Code* Section 43503(f)(2). LEAs should consider including the following when creating their local policy on how frequently to communicate with parents:

- Language of the parent
- Progress along the continuum of language development
- Access to content
- Strategies to improve attendance and motivation
- Information for parents to learn the virtual systems used by teachers
- Information for parents to understand home schedules and learning environments
- Social-emotional effects from distance learning
- Additional strategies included in the LEA's Learning Continuity and Attendance Plan pursuant to *Education Code* Section 43509(f)(1) (F).

15. May the State Board of Education (SBE) waive any of the requirements in Part 24.5 of Division 3 of Title 2 of the *Education Code*?

No, pursuant to *Education Code* Section 43511(a), the SBE may not waive any portion of the distant learning provisions.

16. Can students avail themselves of an independent study program rather than distance learning in the 2020–21 school year? (new 7/31/20)

Students can participate in independent study programs during the 2020–21 school year. When offering independent study programs, an LEA will need to ensure that the LEA still meets the statutory distance learning requirements in order to avoid any audit penalties. These requirements include the following:

- Adopt a learning continuity plan and attendance plan that includes plans for the distance learning program
- Track and report daily participation
- Maintain a weekly engagement record for each student documenting synchronous or asynchronous instruction for each whole or partial day of distance learning, verifying daily participation, and tracking assignments
- Schedule students for a minimum days' worth of assignments each day as certified to by a certificated employee
- Develop written procedures for tiered reengagement strategies for all pupils who are absent for more than three schooldays or 60 percent of the instructional days in a school week
- Provide either daily live interaction or develop an alternative plan for frequent live interaction

17. May the requirement for daily live interaction be met through synchronous learning (e.g., classroom instruction provided through interactive web meetings such as Zoom or Webex)? (new 7/31/20)

Yes. Pursuant to *Education Code* Section 43503(b)(6), synchronous instruction may meet the requirements of daily live interaction, provided the remaining components of daily live interaction are also met. This includes interaction with certificated employees and peers.

8/9/2020

Distance Learning Frequently Asked Questions - Distance Learning (CA Dept of Education)

Attendance and Absences

18. What is required if students are not participating regularly in instruction?

Education Code Section 43504(f) requires each LEA to develop written procedures for tiered reengagement strategies for all pupils who are absent from distance learning for more than three schooldays or 60 percent of the instructional days in a school week. These procedures shall include, but are not limited, to verification of current contact information for each enrolled pupil, daily notification to parents or guardians of absences, a plan for outreach from the school to determine pupil needs including connection line with health and social services as necessary and, when feasible, line transitioning the pupil to full-time in-person instruction.


19. Are LEAs required to collect information on absences during distance learning? (new 7/31/20).

Yes, pursuant to *Education Code* Section 52066(d)(5)(a) and (b), LEAs are required to collect information on absences and report absenteeism through the California Longitudinal Pupil Achievement Data (CALPADS) system.

Personal Protective Equipment (PPE)

20. How can LEAs secure PPE when they are offering in-person instruction?

All County Offices of Education received an initial allocation of PPE to support LEAs and expanded learning programs in their county with the initial restart of school, as announced by Governor Newsom on June 5, 2020. LEAs should contact their COE for additional information on this allocation from the Governor's Office of Emergency Services (Cal OES).

Cal OES and the Department of General Services (DGS) are working to provide California Multiple Award Schedules (CMAS) contract vehicles that all LEAs will be able to use to procure PPE at discounted rates secured by the state. Until these contracts are available, the [Safely Making California website](#)  includes a searchable database of manufacturers for face masks, gloves, face shields, sanitizers, and other items.

Nutrition

21. Will students who are participating in distance learning be provided meals?

Yes. LEAs are required to provide nutritionally adequate meals for pupils who are eligible for Free and Reduced-Price meals whether engaged in in-person instruction or distance learning. Information regarding meals should be communicated in the language and format the parent understands.

Please refer to [School and Child and Adult Day Care Meals](#) for additional COVID-19 guidance as well FAQs.

English Learners

22. How are the needs of English learners being met through distance learning?

English learners must receive designated and integrated English Language Development (ELD), including assessment of English language proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and support for dual language learning.

The LEAs are to incorporate designated and integrated ELD as part of the core instruction during distance learning model. Students are to continue to be assessed via distance learning to informally assess the progress in ELD pursuant to Section 11300 of Title 5 of the California Code of Regulations for English learners. LEAs are to continue to offer dual language support and language acquisition programs via distance learning. For more information regarding the ELPAC assessment using social distancing protocols, please see the assessment guidance provided on the [CDE COVID-19 Assessment FAQs web page](#).

Nonclassroom-based Charter Schools

23. Are non-classroom-based charter schools programs considered distance learning?

Nonclassroom-based charter schools do not provide distance learning as defined in *Education Code* Section 43500(a). Instead, nonclassroom-based charter schools shall continue to provide independent study pursuant to their charter petition. As a result, these new requirements do not apply to nonclassroom-based charters who were defined as such pursuant to *Education Code* Section 47612.5 as of the 2019–20 fiscal year. A nonclassroom-based charter school described in *Education Code* Section 47612.5 as of the 2019–20 fiscal year shall continue to comply with all of the statutory requirements in Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of Division 4 and the implementing regulations for that article.

8/9/2020

Distance Learning Frequently Asked Questions - Distance Learning (CA Dept of Education)

Senate Bill (SB) 98 does require that a nonclassroom-based charter school to adopt a learning continuity and attendance plan pursuant to *Education Code* Section 43509, and shall not be required to adopt a local control and accountability plan pursuant to *Education Code* Section 47606.5.

Virtual Schools

24. Can a school district open a virtual school or an independent study school to serve all students through distance learning? (new 7/31/20).

Independent study or virtual programs offered as a form of independent study at school districts should be offered as a program, and are not a school type. Although for the 2020–21 school year, a school district is able to meet its instructional day requirements through distance learning and the annual instructional time requirements have been temporarily suspended, the requirement that instruction be under the immediate supervision of a certificated employee to be included in instructional day and minute calculations and the requirement that all students be offered specific annual instructional minutes will be back in effect in 2021–22. These requirements are both district level and site level requirements, which carry a financial penalty for not meeting them. The CDE would advise against opening a virtual or independent study school because school districts can put themselves at risk for potential audit findings and/or fiscal penalties in future years by operating a virtual school.

In addition, distance learning and independent study are not interchangeable. While there is commonality between the two programs, the distance learning requirements established in Part 24.5, of the *Education Code* beginning with Section 43500 are different than the requirements of independent study. In order to establish an existing independent study program as a distance learning program for 2020–21, that independent study program would need to meet both independent study requirements and distance learning requirements.

Individualized Education Programs

25. Are there new requirements related to Individualized Education Programs (IEPs) and distance learning? (new 8/4/20).

Yes. *Education Code* Section 56345 was amended by SB 98 (Chapter 24, Statutes of 2020) to require that IEPs include a description of the means by which the IEP will be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. This description must be included in the development of each initial IEP or addressed during the regularly scheduled revision of an IEP, and must take public health orders into account.

SB 98 included other notable changes related to special education and distance learning. Please refer to the [related guidance](#) posted on the CDE website for more information.

Questions: California Department of Education | COVID19@cde.ca.gov

Last Reviewed: Tuesday, August 04, 2020

EXHIBIT GG

California Department of Education, August 2020

Learning Continuity and Attendance Plan Instructions (2020–21)

Senate Bill 98 (SB 98) established the Learning Continuity and Attendance Plan (Learning Continuity Plan), which is intended to balance the needs of all stakeholders, including educators, parents, students and community members, while streamlining meaningful stakeholder engagement and condensing several preexisting plans. In particular, it was important to combine (1) the intent behind Executive Order N-56-20 (<https://www.gov.ca.gov/wp-content/uploads/2020/04/EO-N-56-20-text.pdf>), which required a written report and envisioned an off-cycle Local Control and Accountability Plan (LCAP) due December 15th, and (2) the ongoing need for local educational agencies (LEAs) to formally plan for the 2020–21 school year in the midst of the uncertainty caused by the COVID-19 pandemic. The Learning Continuity Plan replaces the LCAP for the 2020–21 school year and supersedes the requirements in Executive Order N-56-20. This plan is intended to memorialize the planning process that is already underway for the 2020–21 school year. All LEAs, which includes school districts, county offices of education, and charter schools are required to complete the Learning Continuity Plan.

Instructions

The following resources, among others, may be helpful to LEAs when answering prompts within the Learning Continuity Plan:

- California Department of Public Health Website (<https://www.cdph.ca.gov/>)
- California Department of Education (CDE) Coronavirus Response and School Reopening Guidance web page (<https://www.cde.ca.gov/ls/he/hn/coronavirus.asp>)
- CDE Stronger Together, A Guidebook to the Safe Reopening of California's Public Schools (<https://www.cde.ca.gov/ls/he/hn/documents/strongertogether.pdf>)
- California Collaborative for Education Excellence (CCEE), *The Continuity of Learning Playbooks* (<https://k12playbook.ccee-ca.org/>) and Supporting Families and Communities in Distance Learning CCEE Supporting Families and Communities (<https://ccee-ca.org/wp-content/uploads/2020/05/CCEE-Webinar-Community-Engagement-Initiative-Supporting-Families-and-Communities-in-Distance-Learning.pdf>)
- CCEE COVID-19 Distance Learning Technical Assistance resources (<https://ccee-ca.org/distance-learning.asp#TechnicalAssistance>)
- Support for English learners in response to COVID-19 (<https://www.cde.ca.gov/sp/el/er/covid19resources.asp>)
- Special Education Guidance in response to COVID-19 (<https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp>)
- Support for Foster Youth in response to COVID-19 (<https://www.cde.ca.gov/ls/pf/fy/fyscp/covid19.asp>)
- Support for Students and Families Experiencing Homelessness in response to COVID-19 (<https://www.cde.ca.gov/sp/hs/cy/>)

Additional Guidance and Resources can be found at the CDE Learning Continuity and Attendance Plan web page (<https://www.cde.ca.gov/re/lc/learningcontattendplan.asp>)

Responses to the prompts below should be specific, concise and clear, with the overall goal of promoting stakeholder understanding.

In responding to the prompts throughout the Learning Continuity Plan, an LEA may include information from an existing plan to the degree that it addresses the prompt and related instructions.

General Information

A description of the impact the COVID-19 pandemic has had on the LEA and its community.

Briefly provide information deemed relevant to enable a reader to more fully understand how the LEA's Learning Continuity Plan has been informed by the impacts the LEA and its community have experienced from the COVID-19 pandemic.

Stakeholder Engagement

Purpose

Stakeholder engagement has long been recognized as an important component of school planning and improvement. Meaningful stakeholder engagement has been linked to:

- An improved understanding of current needs and possible solutions
- More informed decision-making
- Greater trust between parties
- Stronger and longer lasting partnerships

An LEA must consult with parents, pupils, teachers, principals, administrators, other school personnel, and local bargaining units, in developing its Learning Continuity Plan.

During the consultation and stakeholder feedback process regarding the development of the Learning Continuity Plan, LEAs shall include efforts to reach pupils, families, educators, and other stakeholders who do not have internet access, or speak languages other than English.

Specifically, an LEA shall:

- Solicit recommendations and comments regarding the specific actions and expenditures proposed to be included in the Learning Continuity Plan, using the most efficient method of notification possible.

- Provide the opportunity to submit written comments regarding specific actions and expenditures proposed to be included in the Learning Continuity Plan.
- Present the Learning Continuity Plan to the Parent Advisory Committee and the English Learner Parent Advisory Committee separately for review and comment*
 - District and County Office of Education (COE) superintendents must respond in writing to comments received from these committees.
- Present the Learning Continuity Plan to the community at a public hearing of the governing board of the school district, the county office of education, or charter school for review and comment (the agenda must be posted at least 72 hours prior to the public hearing and include the location where the learning continuity and attendance plan will be available for public inspection).
- Adopt the Learning Continuity Plan in a public meeting of the governing board of the school district, the county office of education, or charter school that is held after, but not on the same day as, the public hearing held pursuant to California *Education Code (EC)* 43509.

*Applicable to School Districts and COEs only

Given the impacts of the COVID-19 pandemic on California's school communities, there has been an increased awareness of the importance and necessity for meaningful and timely stakeholder engagement. Information and resources that support effective stakeholder engagement, define student consultation, and provide the requirements for advisory group composition, can be found under *Resources* on the following web page of the CDE's website: <https://www.cde.ca.gov/re/lc>.

Senate Bill 98 (Statutes of 2020, Chapter 24) established the requirement for LEAs to develop a Learning Continuity Plan that is informed by stakeholder engagement. Furthermore, the bill codified provisions to promote remote participation and to address language accessibility.

Instructions

A description of the efforts made to solicit stakeholder feedback.

A sufficient response to this prompt will describe the overall stakeholder engagement process, including the efforts to reach pupils, families, educators, and other stakeholders who do not have internet access, or who speak languages other than English; and a description of how stakeholder engagement was considered before finalizing the Learning Continuity Plan.

A description of the options provided for remote participation in public meetings and public hearings.

A sufficient response to this prompt will describe how the LEA promoted stakeholder engagement, and the option(s) provided that allowed remote participation in the public hearings and local governing board meetings.

- A local governing board/body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or

state body consistent with the flexibility afforded by Executive Order N-29-20 (<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>), published on March 18, 2020.

A summary of the feedback provided by specific stakeholder groups.

A sufficient response to this prompt will describe and summarize the stakeholder feedback provided by specific stakeholders. A sufficient response to this prompt will indicate ideas, trends, or inputs that emerged from an analysis of the feedback received from stakeholders.

A description of the aspects of the Learning Continuity Plan that were influenced by specific stakeholder input.

A sufficient response to this prompt will provide stakeholders and the public with clear, specific information about how the stakeholder engagement process influenced the development of the Learning Continuity Plan. This response must describe aspects of the Learning Continuity Plan that were influenced by or developed in response to stakeholder feedback.

- For the purposes of this prompt, “aspects” may include sections or specific actions within a section of the Learning Continuity Plan that may have been influenced by stakeholder input.

Continuity of Learning

In-Person Instructional Offerings

Purpose

In-person instruction is defined in California *Education Code (EC)* Section 43500(b) to mean instruction under the immediate physical supervision and control of a certificated employee of the LEA.

Given the uncertainty of the impact of the COVID-19 pandemic, in-person instruction may not be immediately allowable under state and local health orders. However, LEAs must be prepared to offer in-person instruction when possible. A sufficient response will address the actions the LEA will take when health and safety allows a return to in-person instruction.

Instructions

A description of the actions the LEA will take to offer classroom-based instruction whenever possible, particularly for students who have experienced significant learning loss due to school closures in the 2019–2020 school year or are at a greater risk of experiencing learning loss due to future school closures.

A sufficient response to this prompt will describe the LEA’s classroom-based instructional schedule model, including how the LEA will ensure student learning and competency development while also considering a student’s social–emotional well-being.

- The LEA's classroom-based instructional schedule model should include plans and protocols to ensure the safety of students and staff, consistent with public health guidance, including considerations for campus access, hygiene practices, protective equipment, physical distancing, and cleaning and disinfecting to ensure physical health and safety in school facilities and vehicles.
- To identify students who have experienced significant learning loss due to the school closures in 2019-20, LEAs should consider and solidify a systematic cycle of assessments, including initial screenings and formative and summative assessments. LEAs may use this data to develop an instructional schedule model to address student needs with a focus on implementation of intervention strategies to accelerate learning for students at risk of experiencing continued learning challenges due to the impacts of COVID-19 and ongoing distance learning.

Actions Related to In-Person Instructional Offerings

For each action related to in-person instructional offerings, please enter the following information in the table:

- A description of what the action is. This may include a succinct description of how the action contributes to meeting the increased or improved services requirement for foster youth, English learners, or low-income students, as applicable. Enter the total amount of expenditures associated with this action; and
- Indicate whether the action contributes to meeting the increased or improved services requirement as described in the Increased or Improved Services section using a "Y" for Yes or an "N" for No.

Please add additional rows, as necessary.

Distance Learning Program

Continuity of Instruction

A description of how the LEA will provide continuity of instruction during the school year to ensure pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery, including the LEA's plan for curriculum and instructional resources that will ensure instructional continuity for pupils if a transition between in-person instruction and distance learning is necessary.

A sufficient response to this prompt will:

- Include specific information that explains how the LEA will provide continuity of instruction and learning to ensure that pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery; and
- Provide a succinct description of the curriculum and instructional resources that will be developed or utilized that will ensure instructional continuity for pupils if a transition between in-person instruction and distance learning is necessary.

Access to Devices and Connectivity

A description of how the LEA will ensure access to devices and connectivity for all pupils to support distance learning.

A sufficient response to this prompt will describe how the LEA will ensure access to devices and connectivity for all pupils to support distance learning whenever it occurs, including:

- The process used to ascertain the needs of students. In doing so, the LEA may consider the needs of teachers and families in order to ensure that students have access to devices and connectivity.
- The plan for ensuring access to devices and connectivity for all pupils to support distance learning, whenever it occurs, and for providing technological support to ensure access to devices and connectivity.
- Descriptions of the efforts of the LEA to ensure students and families with unique circumstances have access to devices and connectivity.
- Description of methods used to reach students and families who were unable to access devices and connectivity following school closure in the 2019-20 school year.

Pupil Participation and Progress

A description of how the LEA will assess pupil progress through live contacts and synchronous instructional minutes, and a description of how the LEA will measure participation and time value of pupil work.

A sufficient response to this prompt will provide specific information about how the LEA will track and monitor student progress through live contacts and synchronous instructional minutes, and a description of how the LEA will measure participation and time value of student work.

- Instructional time for distance learning is calculated based on the time value of synchronous and/or asynchronous assignments made and certified by a certificated employee of the LEA.

Distance Learning Professional Development

A description of the professional development and resources that will be provided to staff to support the distance learning program, including technological support.

A sufficient response to this prompt will provide specific information about the professional development and resources the LEA will provide to staff to support the distance learning program, including technological support.

- When responding to this prompt, an LEA may find it helpful to refer to the “Professional Learning and Relationships” section in the CDE’s *Stronger Together: A Guidebook for the Safe Reopening of California’s Public Schools* (<https://www.cde.ca.gov/ls/he/hn/documents/strongertogether.pdf>). This section includes essential questions for LEA planning, as well as models and best practices related to professional learning.

Staff Roles and Responsibilities

A description of the new roles and responsibilities of affected staff as a result of COVID-19.

A sufficient response to this prompt will describe how the LEA has adapted the roles and responsibilities of employees that have necessarily changed as a result of COVID-19 such as, but not limited to:

- Modifications made to staff roles and responsibilities to meet the academic and social-emotional needs of students while ensuring the health and safety of staff and students.
- Changes to an employee's original role or responsibility when that original role or responsibility is not feasible in a remote environment.

Supports for Pupils with Unique Needs

A description of the additional supports the LEA will provide during distance learning to assist pupils with unique needs, including English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness.

A sufficient response to this prompt must describe the additional support that the LEA will provide during distance learning to assist pupils with unique needs, including additional supports provided to the following groups:

- English learners;
- Pupils with exceptional needs served across the full continuum of placements;
- Pupils in foster care; and
- Pupils who are experiencing homelessness.

Actions Related to Distance Learning Program

For each action related to the Distance Learning Program, please enter the following information in the table:

- A description of what the action is. This may include a description of how the action contributes to meeting the increased or improved services requirement for foster youth, English learners, or low-income students, as applicable. Enter the total amount of expenditures associated with this action; and
- Indicate whether the action contributes to meeting the increase or improved services requirement as described in the Increased or Improved Services section using a "Y" for Yes or an "N" for No.

Please add additional rows, as necessary.

Pupil Learning Loss

A description of how the LEA will address pupil learning loss that results from COVID-19 during the 2019–2020 and 2020–21 school years, including how the LEA will assess pupils to measure learning status, particularly in the areas of English language arts, English language development, and mathematics.

A sufficient response to this prompt will describe how, with what tools, and at what frequency the LEA will assess pupils to measure learning status, within any instructional delivery model, particularly in the following areas:

- English language arts
- English language development (ELD)
- Mathematics

Pupil Learning Loss Strategies

A description of the actions and strategies the LEA will use to address learning loss and accelerate learning progress for pupils, as needed, including how these strategies differ for pupils who are English learners; low-income; foster youth; pupils with exceptional needs; and pupils who are experiencing homelessness.

A sufficient response to this prompt will include specific actions and describe the strategies used to address learning loss and accelerate learning progress. In addition, the response must include a description as to how these strategies differ for:

- English Learners;
- Low-income pupils;
- Foster youth;
- Pupils with exceptional needs; and
- Pupils who are experiencing homelessness.

Effectiveness of Implemented Pupil Learning Loss Strategies

A description of how the effectiveness of the services or supports provided to address learning loss will be measured.

A sufficient response to this prompt will describe how and by what methods the LEA will measure the effectiveness of services or supports provided to address learning loss.

- When responding to this prompt, an LEA may find it helpful to refer to the “Instructional Programs” section in the CDE’s *Stronger Together: A Guidebook for the Safe Reopening of California’s Public Schools* (<https://www.cde.ca.gov/ls/he/hn/documents/strongertogether.pdf>)

Actions to Address Pupil Learning Loss

For each action addressing Pupil Learning Loss, please enter the following information in the table below:

- A description of what the action is. This may include a description of how the action contributes to meeting the increased or improved services requirement for foster youth, English learners, or low-income students, as applicable. Enter the total amount of expenditures associated with this action; and
- Indicate whether the action contributes to meeting the increased or improved services requirement as described in the Increased or Improved Services section using a “Y” for Yes or an “N” for No.

Please add additional rows, as necessary.

Mental Health and Social and Emotional Well-Being

A description of how the LEA will monitor and support mental health and social and emotional well-being of pupils and staff during the school year, including the professional development and resources that will be provided to pupils and staff to address trauma and other impacts of COVID-19 on the school community.

A sufficient response to this prompt will describe how the LEA will support mental health and social and emotional well-being of pupils during the school year which includes:

- What professional development will be provided to staff.
- What resources will be provided to pupils and staff to address trauma and other impacts of COVID-19 on the school community.

When responding to this prompt, LEAs may find it helpful to consider the guidance provided on pages 34–36 in the “Mental Health and Well-Being of All” section in the CDE’s *Stronger Together: A Guidebook for the Safe Reopening of California’s Public Schools* (<https://www.cde.ca.gov/ls/he/hn/documents/strongertogether.pdf>).

Pupil and Family Engagement and Outreach

A description of pupil engagement and outreach, including the procedures for tiered reengagement strategies for pupils who are absent from distance learning and how the LEA will provide outreach to pupils and their parents or guardians, including in languages other than English, when pupils are not meeting compulsory education requirements, or if the LEA determines the pupil is not engaging in instruction and is at risk of learning loss.

A sufficient response to this prompt will provide a description of pupil engagement and outreach including:

- The procedures for tiered reengagement strategies for pupils who are absent from distance learning.
- How the LEA will provide outreach to all pupils and their parents and guardians, including in languages other than English, when pupils are not meeting compulsory education requirements or if the LEA determines the pupil is not engaging in instruction and is at risk of learning loss.

School Nutrition

A description of how the LEA will provide nutritionally adequate meals for all pupils, including those students who are eligible for free or reduced-price meals, when pupils are participating in both in-person instruction and distance learning, as applicable.

A sufficient response to this prompt will describe how the LEA will provide nutritionally adequate meals for all pupils, including those students who are eligible for free or reduced-price meals, when pupils are participating in both in-person instruction and distance learning, as applicable.

- When responding to this prompt, LEAs may find it helpful to consider the changes in food service operations provided on pages 43–44 in the “School Services” section in the CDE’s *Stronger Together: A Guidebook for the Safe Reopening of California’s Public Schools* (<https://www.cde.ca.gov/ls/he/hn/documents/strongertogether.pdf>).

Additional Actions to Implement the Learning Continuity Plan [additional rows and actions may be added as necessary]

This table should include additional actions related to the implementation of the Learning Continuity Plan that are not already included in the plan, including any actions related to the Mental Health and Social Emotional Well Being, Pupil and Family Engagement and Outreach, and School Nutrition Sections of the plan if needed. If applicable, please enter the following information in the table:

- The section of the Learning Continuity Plan related to the action described. If the actions and expenditures described in this table do not apply to one particular section the LEA may put “N/A.”
- A description of what the action is. This may include a succinct description of how the action contributes to meeting the increased or improved services requirement for foster youth, English learners, or low-income students, as applicable.

- Enter the total amount of expenditures associated with this action; and
- Indicate whether the action contributes to meeting the increased or improved services requirement as described in the Increased or Improved Services section using a “Y” for Yes or an “N” for No.

Please add additional rows, as necessary.

Increased or Improved Services for Foster Youth, English Learners, and Low-Income Students

Purpose

EC Section 43509 maintains the requirement for LEAs to describe how they are increasing or improving services for unduplicated pupils pursuant to *California Code of Regulations*, Title 5 (5 CCR) Section 15496. In developing the Learning Continuity Plan, LEAs are to consider the unique needs of foster youth, English learners, and low-income students.

The responses to the prompts in the Increased or Improved Services section of the Learning Continuity Plan provide stakeholders and the LEA community with a comprehensive description, within a single dedicated section, of how an LEA plans to increase or improve services for its unduplicated students as compared to all students.

Descriptions provided should include sufficient detail yet be sufficiently succinct to promote a broader understanding of stakeholders to facilitate their ability to provide input.

Requirements and Instructions

Percentage to Increase or Improve Services

Identify the percentage by which services for unduplicated pupils must be increased or improved as compared to the services provided to all students in the Learning Continuity Plan year as calculated pursuant to 5 CCR Section 15496(a)(7).

Increased Apportionment Based on the Enrollment of Foster Youth, English Learners, and Low-Income Students

Specify the estimate of the amount of funds apportioned on the basis of the number and concentration of unduplicated pupils for the Learning Continuity Plan.

Required Descriptions

For the actions being provided to an entire school, or across the entire school district or county office of education (COE), an explanation of (1) how the needs of foster youth, English learners, and low-income students were considered first, and (2) how these actions are effective in meeting the needs of these students.

For the actions included in the Learning Continuity Plan and marked as contributing to the increased or improved services requirement for foster youth, English learners, and low-income students and that are being provided on an LEA-wide or schoolwide basis, provide a general explanation of these actions consistent with 5 CCR Section 15496(b).

Principally Directed and Effective: For these actions, explain how:

- The LEA considered the needs, conditions, or circumstances of its unduplicated pupils as a result of COVID-19;
- The action, or aspect(s) of the action (including, for example, its design, content, methods, or location), is based on these considerations; and
- The action is intended to meet the needs of the students in response to the COVID-19 pandemic.

A description of how services for foster youth, English learners, and low-income students are being increased or improved by the percentage required.

Consistent with the requirements of 5 CCR Section 15496, describe how the services marked in the Learning Continuity Plan as contributing to the increased or improved services requirement for foster youth, English learners, and low-income students contribute to meeting the percentage calculated as compared to the services provided for all students. Additionally, consistent with the requirements of 5 CCR Section 15496, please describe any other actions or services that contribute towards meeting the increased or improved services requirement.

- To improve services means to grow services in quality and to increase services means to grow services in quantity.

A sufficient description to this prompt must address how the action(s) are expected to result in the required proportional increase or improvement in services for unduplicated pupils as compared to the services the LEA provides to all students.

EXHIBIT HH

California Department of Education, July 2020

Learning Continuity and Attendance Plan Template (2020–21)

The instructions for completing the Learning Continuity and Attendance Plan is available at <https://www.cde.ca.gov/re/lc/documents/lrngcntntyatndncpln-instructions.docx>.

Local Educational Agency (LEA) Name	Contact Name and Title	Email and Phone
[Insert LEA Name here]	[Insert Contact Name and Title here]	[Insert Email and Phone here]

General Information

[A description of the impact the COVID-19 pandemic has had on the LEA and its community.]

[Respond here]

Stakeholder Engagement

[A description of the efforts made to solicit stakeholder feedback.]

[Respond here]

[A description of the options provided for remote participation in public meetings and public hearings.]

[Respond here]

[A summary of the feedback provided by specific stakeholder groups.]

[Respond here]

[A description of the aspects of the Learning Continuity and Attendance Plan that were influenced by specific stakeholder input.]

[Respond here]

Continuity of Learning

In-Person Instructional Offerings

[A description of the actions the LEA will take to offer classroom-based instruction whenever possible, particularly for students who have experienced significant learning loss due to school closures in the 2019–2020 school year or are at a greater risk of experiencing learning loss due to future school closures.]

[Respond here]

Actions Related to In-Person Instructional Offerings [additional rows and actions may be added as necessary]

Description	Total Funds	Contributing
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]

Distance Learning Program

Continuity of Instruction

[A description of how the LEA will provide continuity of instruction during the school year to ensure pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery, including the LEA's plan for curriculum and instructional resources that will ensure instructional continuity for pupils if a transition between in-person instruction and distance learning is necessary.]

[Respond here]

Access to Devices and Connectivity

[A description of how the LEA will ensure access to devices and connectivity for all pupils to support distance learning.]

[Respond here]

Pupil Participation and Progress

[A description of how the LEA will assess pupil progress through live contacts and synchronous instructional minutes, and a description of how the LEA will measure participation and time value of pupil work.]

[Respond here]

Distance Learning Professional Development

[A description of the professional development and resources that will be provided to staff to support the distance learning program, including technological support.]

[Respond here]

Staff Roles and Responsibilities

[A description of the new roles and responsibilities of affected staff as a result of COVID-19.]

[Respond here]

Supports for Pupils with Unique Needs

[A description of the additional supports the LEA will provide during distance learning to assist pupils with unique needs, including English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness.]

[Respond here]

Actions Related to the Distance Learning Program [additional rows and actions may be added as necessary]

Description	Total Funds	Contributing
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]

Pupil Learning Loss

[A description of how the LEA will address pupil learning loss that results from COVID-19 during the 2019–2020 and 2020–21 school years, including how the LEA will assess pupils to measure learning status, particularly in the areas of English language arts, English language development, and mathematics.]

[Respond here]

Pupil Learning Loss Strategies

[A description of the actions and strategies the LEA will use to address learning loss and accelerate learning progress for pupils, as needed, including how these strategies differ for pupils who are English learners; low-income; foster youth; pupils with exceptional needs; and pupils experiencing homelessness.]

[Respond here]

Effectiveness of Implemented Pupil Learning Loss Strategies

[A description of how the effectiveness of the services or supports provided to address learning loss will be measured.]

[Respond here]

Actions to Address Pupil Learning Loss [additional rows and actions may be added as necessary]

Description	Total Funds	Contributing
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]
[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]

Mental Health and Social and Emotional Well-Being

[A description of how the LEA will monitor and support mental health and social and emotional well-being of pupils and staff during the school year, including the professional development and resources that will be provided to pupils and staff to address trauma and other impacts of COVID-19 on the school community.]

[Respond here]

Pupil and Family Engagement and Outreach

[A description of pupil engagement and outreach, including the procedures for tiered reengagement strategies for pupils who are absent from distance learning and how the LEA will provide outreach to pupils and their parents or guardians, including in languages other than English, when pupils are not meeting compulsory education requirements, or if the LEA determines the pupil is not is not engaging in instruction and is at risk of learning loss.]

[Respond here]

School Nutrition

[A description of how the LEA will provide nutritionally adequate meals for all pupils, including those students who are eligible for free or reduced-price meals, when pupils are participating in both in-person instruction and distance learning, as applicable.]

[Respond here]

Additional Actions to Implement the Learning Continuity Plan [additional rows and actions may be added as necessary]

Section	Description	Total Funds	Contributing
[The section of the Learning Continuity Plan related to the action described; may put N/A if the action does not apply to one specific section]	[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]
[The section of the Learning Continuity Plan related to the action described; may put N/A if the action does not apply to one specific section]	[A description of what the action is; may include a description of how the action contributes to increasing or improving services]	[\$ 0.00]	[Y/N]

EXHIBIT U

8/8/2020

CountyMonitoringData- Step 3

COVID-19

County Data Monitoring

Step 3: Reinstitute Community Measures

County Data Chart

If the county has insufficient progress, on containing their disease transmission and hospitalization rates, a county should consider reinstituting sector limitations or more general Stay-at-Home provisions. If the county makes insufficient or no progress, the State Public Health Officer may take action.

Links:

- [County Data Monitoring Overview](#)
- [County Data Chart](#)
- [Step 1: Active Data Monitoring](#)
- [Step 2: Targeted Engagement with CDPH](#)
- [Step 3: Reinstitute Community Measures](#)

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CountyMonitoringData- Step 3

EXHIBIT V

8/8/2020

State Officials Announce Latest COVID-19 Facts

OFFICE OF PUBLIC AFFAIRS

State Officials Announce Latest COVID-19 Facts

Date: July 31, 2020

Number: NR20-179

Contact: CDPHpress@cdph.ca.gov

State confirms first death of a young person related to COVID-19

SACRAMENTO – The California Department of Public Health (CDPH) confirmed today the COVID-related death of a teenager in the Central Valley. This is the first death in California of a teenager, and this young person had underlying health conditions. Due to patient confidentiality, CDPH will not provide any additional information about this death. There have been no reported deaths in younger age categories, including children 5 and under.

"Our hearts go out to the family and loved ones of this young person whose death is a tragic and powerful reminder of how serious COVID-19 can be," said Dr. Sonia Angell, State Public Health Officer and Director of the California Department of Public Health.

The most recent statistics on COVID-19 are as follows:

- The 7-day average number of new cases is 8,322 per day. The 7-day average from the week prior was 9,881. California has 493,588 confirmed cases to date. Numbers may not represent true day-over-day change as reporting of test results can be delayed.
- There have been 7,811,041 tests conducted in California. This represents an increase of 177,201 over the prior 24-hour reporting period. As testing capacity continues to increase across the state, an increase in the number of positive cases has been expected – increasing the importance of positivity rates to find signs of community spread.
- As case numbers continue to rise in California, the total number of individuals who will have serious outcomes will also increase. There have been 9,005 COVID-19 deaths since the start of the pandemic. There have been 9,005 COVID-19 deaths since the start of the pandemic.
- A total of 37 counties are required to close indoor operations for certain sectors based on the July 13

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State Officials Announce Latest COVID-19 Facts

order to slow community transmission.



Note on Hospitalization Numbers

Since July 23, hospitalization numbers reflect a change in reporting requirements that were implemented last week by the U.S. Department of Health and Human Services. The change resulted in historical data from eight non-reporting facilities not being part of recent updates, resulting in lower numbers. This data will be added back in as soon as it is available.

Data and Tools

A wide range of data and analysis guides California's response to COVID-19. The state is making the data and its analytical tools available to researchers, scientists and the public at covid19.ca.gov.

Popular links include:

- [The Statewide COVID-19 Dashboard](#)
- [The California COVID-19 Assessment Tool \(CalCAT\)](#)
- [State Cases and Deaths Associated with COVID-19 by Age Group](#)
- [COVID-19 Race & Ethnicity Data](#)
- [COVID-19 Hospital Data and Case Statistics](#)
- View additional datasets at the [California Open Data Portal](#) (Including: Testing Data, PPE Logistics Data, Hospital Data, Homeless Impact and more)

Multisystem Inflammatory Syndrome in Children (MIS-C)

Each week, the California Department of Public Health updates the number of cases of Multisystem Inflammatory Syndrome in Children (MIS-C) reported in the state. As of July 28, 25 cases of MIS-C have been reported statewide. To protect patient confidentiality in counties with fewer than 11 cases, we are not providing total counts at this time.

MIS-C is a rare inflammatory condition associated with COVID-19 that can damage multiple organ systems. MIS-C can require hospitalization and be life threatening. Parents should be aware of the signs and symptoms of MIS-C including fever that does not go away, abdominal pain,

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vomiting, diarrhea, neck pain, rash, bloodshot eyes or feeling tired. Contact your child's doctor immediately if your child has these symptoms. Early diagnosis and treatment of patients is critical to preventing long-term complications.

Racial Demographics – A More Complete Picture

The California Department of Public Health is committed to health equity and collecting more detailed racial and ethnic data that will provide additional understanding for determining future action. Health outcomes are affected by forces including structural racism, poverty and the disproportionate prevalence of underlying conditions such as asthma and heart disease among Latinos and African American Californians. Only by looking at the full picture can we understand how to ensure the best outcomes for all Californians.

The differences in health outcomes related to COVID-19 are most stark in COVID-19 deaths. We have nearly complete data on race and ethnicity for COVID-19 deaths, and we are seeing the following trends: Latinos, African Americans, Native Hawaiians and Pacific Islanders are dying at disproportionately higher levels. More males are dying from COVID-19 than females, in line with national trends. More information is available at COVID-19 Race and Ethnicity Data.

Health Care Worker Infection Rates

As of July 29, local health departments have reported 23,513 confirmed positive cases in health care workers and 127 deaths statewide.

County Monitoring Data

California is using data and science to respond to COVID-19. Data by county gives Californians insight into how their county is doing and provides an early indication of developing areas of concern. Counties on the [County Monitoring List](#) for three or more consecutive days – currently 37 counties accounting for the majority of the state's population – must close indoor operations for additional activities.

For more information, visit the [County Data Monitoring webpage](#).

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Your Actions Save Lives

Every person has a role to play. Protecting yourself and your family comes down to common sense:

- Staying home except for essential needs/activities following local and state public health guidelines when patronizing approved businesses. To the extent that such sectors are re-opened, Californians may leave their homes to work at, patronize, or otherwise engage with those businesses, establishments or activities.
- Practicing social distancing.
- Wearing a cloth face mask when out in public.
- Washing hands with soap and water for a minimum of 20 seconds.
- Avoiding touching eyes, nose or mouth with unwashed hands.
- Covering a cough or sneeze with your sleeve, or disposable tissue. Wash your hands afterward.
- Avoiding close contact with people who are sick.
- Staying away from work, school or other people if you become sick with respiratory symptoms like fever and cough.
- Answer the call if a contact tracer from the CA COVID Team or your local health department tries to connect. Contact tracers will connect you to free, confidential testing and other resources, if needed.
- Following guidance from public health officials.

What to Do if You Think You're Sick

Call ahead: If you are experiencing symptoms of COVID-19 (fever, cough or shortness of breath), call your health care provider before seeking medical care so that appropriate precautions can be taken. More than 100 community testing sites also offer free, confidential testing: [Find a COVID-19 Testing Site](#).

For more information about what Californians can do to prevent the spread of COVID-19, visit [Coronavirus \(COVID-19\) in California](#).

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State Officials Announce Latest COVID-19 Facts

California continues to issue guidance on preparing and protecting California from COVID-19. Consolidated guidance is available on the [California Department of Public Health's Guidance web page](#).

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EXHIBIT W



Morbidity and Mortality Weekly Report (*MMWR*)

Weekly / August 7, 2020 / 69(31);1023–1025

On July 31, 2020, this report was posted online as an MMWR Early Release.

Christine M. Szablewski, DVM^{1,2}; Karen T. Chang, PhD^{2,3}; Marie M. Brown, MPH¹; Victoria T. Chu, MD^{2,3}; Anna R. Yousaf, MD^{2,3}; Ndubuisi Anyalechi, MD¹; Peter A. Aryee, MBA¹; Hannah L. Kirking, MD²; Maranda Lumsden¹; Erin Mayweather¹; Clinton J. McDaniel, MPH²; Robert Montierth, PharmD²; Asfia Mohammed¹; Noah G. Schwartz, MD^{2,3}; Jaina A. Shah¹; Jacqueline E. Tate, PhD²; Emilio Dirlikov, PhD²; Cherie Drenzek, DVM¹; Tatiana M. Lanzieri, MD²; Rebekah J. Stewart, MSN, MPH² ([View author affiliations](#))

[View suggested citation](#)

Limited data are available about transmission of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19), among youths. During June 17–20, an overnight camp in Georgia (camp A) held orientation for 138 trainees and 120 staff members; staff members remained for the first camp session, scheduled during June 21–27, and were joined by 363 campers and three senior staff members on June 21. Camp A adhered to the measures in Georgia’s Executive Order* that allowed overnight camps to operate beginning on May 31, including requiring all trainees, staff members, and campers to provide documentation of a negative viral SARS-CoV-2 test ≤12 days before arriving. Camp A adopted most† components of CDC’s Suggestions for Youth and Summer Camps[§] to minimize the risk for SARS-CoV-2 introduction and transmission. Measures not implemented were cloth masks for campers and opening windows and doors for increased ventilation in buildings. Cloth masks were required for staff members. Camp attendees were cohorted by cabin and engaged in a variety of indoor and outdoor activities, including daily vigorous singing and cheering. On June 23, a teenage staff member left camp A after developing chills the previous evening. The staff member was tested and reported a positive test result for SARS-CoV-2 the following day (June 24). Camp A officials began sending campers home on June 24 and closed the camp on June 27. On June 25, the Georgia Department of Public Health (DPH) was notified and initiated an investigation. DPH recommended that all attendees be tested and self-quarantine, and isolate if they had a positive test result.

A line list of all attendees was obtained and matched to laboratory results from the State Electronic Notifiable Disease Surveillance System¶ and data from DPH case investigations. A COVID-19 case associated with the camp A outbreak was defined as a positive viral SARS-CoV-2 test** in a camp A attendee from a specimen collected or reported to DPH from the first day at camp A (June 17 for staff members and trainees; June 21 for campers) through 14 days after leaving camp A (trainees left on June 21; staff members and campers left during June 24–June 27). Out-of-state attendees (27) were excluded from this preliminary analysis. Attack rates were calculated by dividing the number of persons with positive test results by the total number of Georgia attendees, including those who did not have testing results, because negative test results are not consistently reported in Georgia.

A total of 597 Georgia residents attended camp A. Median camper age was 12 years (range = 6–19 years), and 53% (182 of 346) were female. The median age of staff members and trainees was 17 years (range = 14–59 years), and 59% (148 of 251) were female. Test results were available for 344 (58%) attendees; among these, 260 (76%) were positive. The overall attack rate was 44% (260 of 597), 51% among those aged 6–10 years, 44% among those aged 11–17 years, and 33% among those aged 18–21 years ([Table](#)). Attack rates increased with increasing length of time spent at the camp, with staff members having the highest attack rate (56%). During June 21–27, occupancy of the 31 cabins averaged 15 persons per cabin (range = 1–26); median cabin attack rate was 50% (range = 22%–70%) among 28 cabins that had one or more cases. Among 136 cases with available symptom data, 36 (26%) patients reported no symptoms; among 100 (74%) who reported symptoms, those most commonly reported were subjective or documented fever (65%), headache (61%), and sore throat (46%).

The findings in this report are subject to at least three limitations. First, attack rates presented are likely an underestimate because cases might have been missed among persons not tested or whose test results were not reported. Second, given the increasing incidence of COVID-19 in Georgia in June and July, some cases might have resulted from transmission occurring before or after camp attendance.†† Finally, it was not possible to assess individual adherence to COVID-19 prevention measures at camp A, including physical distancing between, and within, cabin cohorts and use of cloth masks, which were not required for campers.

These findings demonstrate that SARS-CoV-2 spread efficiently in a youth-centric overnight setting, resulting in high attack rates among persons in all age groups, despite efforts by camp officials to implement most recommended strategies to prevent transmission. Asymptomatic infection was common and potentially contributed to undetected transmission, as has been previously reported (*1–4*). This investigation adds to the body of evidence demonstrating that children of all ages are susceptible to SARS-CoV-2 infection (*1–3*) and, contrary to early reports (*5,6*), might play an important role in transmission (*7,8*). The multiple measures adopted by the camp were not sufficient to prevent an outbreak in the context of substantial community transmission. Relatively large cohorts sleeping in the same cabin and engaging in regular singing and cheering likely contributed to transmission (*9*). Use of cloth masks, which has been shown to reduce the risk for infection (*10*), was not universal. An ongoing investigation will further characterize specific exposures associated with infection, illness course, and any secondary transmission to household members. Physical distancing and consistent and correct use of cloth masks should be emphasized as important strategies for mitigating transmission in congregate settings.

Acknowledgments

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¹Georgia Department of Public Health; ²CDC COVID-19 Response Team; ³Epidemic Intelligence Service, CDC.

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All authors have completed and submitted the International Committee of Medical Journal Editors form for disclosure of potential conflicts of interest. No potential conflicts of interest were disclosed.

* <https://gov.georgia.gov/document/2020-executive-order/06112001/download> .

† Notable adopted measures included cohorting of attendees by cabin (≤26 persons), staggering of cohorts for use of communal spaces, physical distancing outside of cabin cohorts, and enhanced cleaning and disinfection, especially of shared equipment and spaces.

§ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/summer-camps.html>.

¶ <http://sendss.state.ga.us/> .

** CDC defines a viral test as one that detects SARS-CoV-2 nucleic acids (e.g., polymerase chain reaction) or antigens. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html>.

†† <https://dph.georgia.gov/covid-19-daily-status-report> .

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TABLE. SARS-CoV-2 attack rates*[†] among attendees of an overnight camp, by selected characteristics — Georgia, June 2020



Characteristic	No. [§]	No. positive	Attack rate, %
Total	597	260	44
Sex			
Male	267	123	46
Female	330	137	42
Age group, yrs			
6–10	100	51	51
11–17	409	180	44
18–21	81	27	33
22–59	7	2	29
Type of attendee (dates attended camp)			
Trainee (June 17–21)	134	26	19
Staff member (June 17–27 ^{¶, **})	117	66	56

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SARS-CoV-2 Transmission and Infection Among Attendees of an Overnight Camp — Georgia, June 2020 | MMWR

Characteristic	No. [§]	No. positive	Attack rate, %
Camper (June 21–27 [¶])	346	168	49
Cabin size during camp ^{**} (no. of persons/cabin) ^{§§}			
Small (1–3)	13	5	38
Medium (7–13)	75	29	39
Large (16–26)	375	200	53

Abbreviation: COVID-19 = coronavirus disease 2019.

* Although positive and negative test results for Georgia residents are reportable in the state of Georgia, negative results are not consistently reported. Attack rates were calculated by dividing the number of persons with a positive test result reported to the Georgia Department of Public Health (DPH) by the total number of Georgia attendees, including those who did not provide testing results.

[†] A COVID-19 case associated with the camp outbreak was defined as a positive viral SARS-CoV-2 test in an attendee from a specimen collected or reported to DPH from the first day at camp A (June 17 for staff members, including trainees; June 21 for campers) through 14 days after leaving camp A (trainees left on June 21; staff members and campers left during June 24–June 27).

[§] Out-of-state attendees' (n = 27; 4%) test results were not reported to DPH and therefore were not included in this analysis.


[¶] Camp departures began June 24 and were completed June 27.

^{**} Three staff members arrived June 21.

^{††} Among camp attendees during June 21–27 (n = 463).

^{§§} No cabins included 4–6 or 14–15 persons.

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Page last reviewed: August 6, 2020

EXHIBIT X

8/8/2020

All These Schools Reopened and Then Had COVID-19 Outbreaks

Fatherly

All These Schools Reopened and Then Had COVID-19 Outbreaks

Tara Santora 1 day ago



Schools across the country are beginning to reopen for in-person classes, which means students and teachers are starting to get sick with COVID-19 — and it's only August. No one knows how badly opening schools' doors will propel the pandemic, or how many kids and teachers will be infected, hospitalized, and die. But looking at these early openers can give us a sense of what's to come.



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Districts are taking different precautions to prevent outbreaks, and some are more effective than others. Kids and teachers at some schools must wear masks at all times, but other schools either don't require everyone to wear a mask or aren't strict about enforcing mask rules. Some have cut class sizes, limited contact between different groups of students, and moved classes outside or to larger classrooms. And some screen students or ask their families' to screen them for symptoms. The problem with screening, of course, is that about 40% of cases are asymptomatic, and people who are infected without symptoms can spread the disease around their school unknowingly.

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Fatherly has collected information about as many COVID-19 cases linked to school reopenings as we could find. Not all of them were *caused* by the schools reopening per se. In fact, cases at this early point have mostly been in teachers and students who were infected before classes started. But the school outbreaks will come, and we'll be updating this list to catch them.

Here are the COVID-19 cases that have impacted schools in the US by state:

Florida

- **School Name: Samoset Elementary**
- COVID-19 Cases: 1 employee during reopening prep

Georgia

- **School Name: Cherokee County School District**
 - COVID-19 Cases: 1 middle school student, 2 elementary school students, and 1 kindergarten teacher
- **School Name: Gwinnett County Public Schools**
 - COVID-19 Cases: 260 teachers positive or potentially exposed

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All These Schools Reopened and Then Had COVID-19 Outbreaks

- **School Name: North Paulding High School**
 - COVID-19 Cases: An unspecified number of football players and multiple staff members
- **School Name: Mission Road Elementary School**
 - COVID-19 Cases: 4 staff members during reopening prep
- **School Name: Marietta City Schools**
 - COVID-19 Cases: 5 confirmed and 1 presumptive staff members during reopening prep
- **School Name: Harlem High School**
 - COVID-19 Cases: 1 student
- **School Name: Chattooga High School**
 - COVID-19 Cases: 2 students after reopening

Illinois

- **School Name: Lake Zurich High School**
 - COVID-19 Cases: 36+ students, traced back to the school's summer sports camps and social gatherings

Indiana

- **School Name: Elwood Junior Senior High School**
 - COVID-19 Cases: 1 teacher during school reopening prep
- **School Name: Greenfield Central Junior High School**
 - COVID-19 Cases: 1 student
- **School Name: Brownsburg High School**
 - COVID-19 Cases: 1 student
- **School Name: Avon High School**
 - COVID-19 Cases: 1 student and 1 employee
- **School Name: New Palestine High School**
 - COVID-19 Cases: 1 football player during season and 1 other student during classes
- **School Name: Edinburgh High School**
 - COVID-19 Cases: 1 student
- **School Name: Warren Central High School**
 - COVID-19 Cases: 1 football player during preseason
- **School Name: Indian Creek High School**
 - COVID-19 Cases: 1 football coach during preseason
- **School Name: Beech Grove High School**
 - COVID-19 Cases: 1 person connected to the football and boys' basketball teams during preseason
- **School Name: Fishers High School**
 - COVID-19 Cases: 1 football player during preseason
- **School Name: Lanesville Junior-Senior High School**
 - COVID-19 Cases: 4 students after reopening
- **School Name: Greater Clark County Schools**
 - COVID-19 Cases: 2 students after reopening
- **School Name: Castle High School**
 - COVID-19 Cases: 1 administrator during reopening prep

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All These Schools Reopened and Then Had COVID-19 Outbreaks

Louisiana

- **School Name: Jefferson Parish School District**
 - COVID-19 Cases: a "handful" of teachers during reopening prep

Mississippi

- **School Name: Corinth School District**
 - COVID-19 Cases: 5 high school students, 1 middle school student, and 1 elementary school employee

New York

- **School Name: Shaker High School**
 - COVID-19 Cases: 1 employee at the school's Extended School Year program

North Carolina

- **School Name: Thales Academy in Wake Forest**
 - COVID-19 Cases: 1 elementary school student
- **School Name: Asheville City Schools**
 - COVID-19 Cases: 2 middle school and 2 high school athletes during preseason

Pennsylvania

- **School Name: Shippensburg Area Senior High School**
 - COVID-19 Cases: 1 football player during preseason

Tennessee

- **School Name: Alcoa City Schools**
 - COVID-19 Cases: 3 high school students, 1 middle school student, 1 elementary school student

< Texas

- **School Name: Mason High School**
 - COVID-19 Cases: 1 football coach during preseason

Virginia

- **School Name: Shirley Heim Middle School**
 - COVID-19 Cases: An unspecified number of staff during reopening prep

This story is developing. We will update it as new information becomes available.

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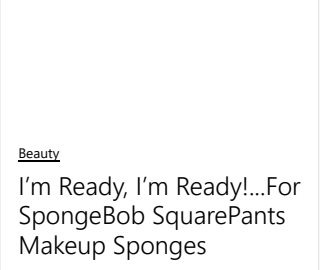
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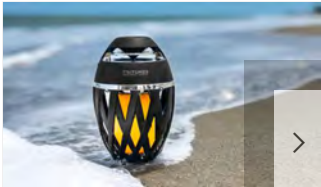
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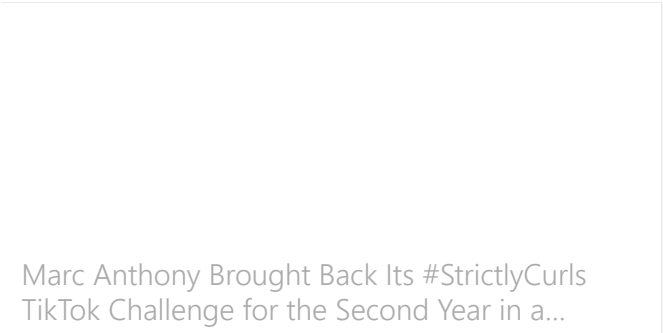
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After Reopening Schools, Israel Orders Them To Shut If COVID-19 Cases Are Discovered : Coronavirus Live Updates : NPR



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THE CORONAVIRUS CRISIS

After Reopening Schools, Israel Orders Them To Shut If COVID-19 Cases Are Discovered

June 3, 2020 · 11:32 AM ET



DANIEL ESTRIN



Students wear masks May 17 outside a school in the Israeli city of Modiin. Israeli students in all grades went back to school last month.

Xinhua News Agency/Getty Images

Two weeks after Israel fully reopened schools, a COVID-19 outbreak sweeping through classrooms — including at least 130 cases at a single school — has led officials to close dozens of schools where students and staff were infected. A new policy orders any school where a virus case emerges to close.

The government decision, announced Wednesday evening, comes after more than 200 cases have been confirmed among students and staff at various schools. At least 244 students and school employees have tested positive for the coronavirus, according to the Ministry of Education. At least 42 kindergartens and schools have been shuttered

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indefinitely. More than 6,800 students and teachers are in home quarantine by government order.

It's an abrupt reversal of the post-pandemic spirit in Israel as officials lifted most remaining coronavirus restrictions last week. With fewer than 300 deaths in Israel, Prime Minister Benjamin Netanyahu had declared victory in early May over the pandemic and last week told Israelis to go to restaurants and "enjoy yourselves."

But by the weekend, the spike in cases led him to consider reimposing restrictions, including closing all schools. The education minister, Yoav Gallant, argued that the overall number of virus cases in Israeli schools remains low and closing them all would not be justified.

Article continues below

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Schools first began to reopen in early May, with classes staggered in smaller groups or "capsules" of students to prevent a wide outbreak. By May 17, limitations on class size were lifted.

The most significant outbreak appeared last week in the Gymnasia Rehavia, a historic middle and high school in Jerusalem. There, 116 students and 14 teachers were infected, according to the Ministry of Education, and the school closed. Built in 1928, its graduates include prominent novelists, politicians and Netanyahu's late brother.

Health officials said they're investigating how the virus spread there. A teacher told NPR a seventh-grader was first discovered to be carrying the virus and the entire grade was ordered to quarantine at home. Then a ninth-grader tested positive, and the school was shut down.

"It was a mistake to go back to school in this format," the teacher said. She spoke on condition of anonymity because teachers were ordered not to speak with the press and she feared losing her job if identified.

Across Israel, many parents have yanked their children from schools that remain open. When the Collège des Frères, a French Roman Catholic school in the city of Jaffa, announced that the father of some students had tested positive for the virus, his

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children's classmates were sent home — but other parents pulled their children out, too.

Dr. Arnon Afek, who is helping manage Israel's coronavirus response, played down the outbreak, saying a spike in cases was expected when schools reopened. "It wasn't a surprise," he said. "It happened also in South Korea and Singapore."

coronavirus israel

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EXHIBIT Z

8/9/2020

When Covid Subsided, Israel Reopened Its Schools. It Didn't Go Well. - The New York Times

The New York Times | <https://nyti.ms/3k7S8eb>

When Covid Subsided, Israel Reopened Its Schools. It Didn't Go Well.

As countries consider back-to-school strategies for the fall, a coronavirus outbreak at a Jerusalem high school offers a cautionary tale.



By Isabel Kershner and Pam Belluck

Aug. 4, 2020

JERUSALEM — As the United States and other countries anxiously consider how to reopen schools, Israel, one of the first countries to do so, illustrates the dangers of moving too precipitously.

Confident it had beaten the coronavirus and desperate to reboot a devastated economy, the Israeli government invited the entire student body back in late May.

Within days, infections were reported at a Jerusalem high school, which quickly mushroomed into the largest outbreak in a single school in Israel, possibly the world.

The virus rippled out to the students' homes and then to other schools and neighborhoods, ultimately infecting hundreds of students, teachers and relatives.

Other outbreaks forced hundreds of schools to close. Across the country, tens of thousands of students and teachers were quarantined.

Israel's advice for other countries?

"They definitely should not do what we have done," said Eli Waxman, a professor at the Weizmann Institute of Science and chairman of the team advising Israel's National Security Council on the pandemic. "It was a major failure."

The lesson, experts say, is that even communities that have gotten the spread of the virus under control need to take strict precautions when reopening schools. Smaller classes, mask wearing, keeping desks six feet apart and providing adequate ventilation, they say, are likely to be crucial until a vaccine is available.

"If there is a low number of cases, there is an illusion that the disease is over," said Dr. Hagai Levine, a professor of epidemiology at Hebrew University-Hadassah School of Public Health. "But it's a complete illusion."

"The mistake in Israel," he said, "is that you can open the education system, but you have to do it gradually, with certain limits, and you have to do it in a very careful way."

The United States is facing similar pressures to fully reopen schools, and President Trump has threatened to withhold funding for districts that don't reopen. But the U.S. is in a far worse position than Israel was in May: Israel had fewer than 100 new infections a day then. The U.S. is now averaging more than 60,000 new cases a day, and some states continue to set alarming records.

Israel's handling of the pandemic was considered successful at first. The country of nine million quickly closed its borders, shuttered schools in mid-March and introduced remote learning for its two million students. In April, Passover and Ramadan were celebrated under lockdown.



The Western Wall in Jerusalem was nearly deserted when Israel was locked down in April. Dan Balilty for The New York Times

By early May, infection rates had fallen from more than 750 confirmed cases a day to double digits. The youngest students, grades three and under, and older students taking final exams returned in small groups, splitting the week to take turns using classrooms.

<https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html>

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When Covid Subsided, Israel Reopened Its Schools. It Didn't Go Well. - The New York Times

Then, emboldened by the dropping infection rates, the government completely reopened schools on May 17, the day a new government was sworn in.

In his inaugural speech, Prime Minister Benjamin Netanyahu promised a new budget that would deliver three things: “Jobs, jobs, jobs.” His new education minister, Yoav Gallant, said that the school system’s “immediate mission” was to allow parents to return to work with peace of mind.

Inna Zaltsman, an Education Ministry official, said administrators also wanted “to return the children to routine as much as possible, for their emotional and pedagogic well-being.”

Shopping malls, outdoor markets and gyms had already reopened, and soon houses of worship, restaurants, bars, hotels and wedding halls did too. Mr. Netanyahu told Israelis to grab a beer and, while taking precautions, “Go out and have a good time.”

In hindsight, that advice was wildly premature.

That same day, a mother phoned a teacher at Jerusalem's historic Gymnasia Ha'ivrit high school. Her son, a seventh-grade student there, had tested positive for the virus.

By the next day, the school confirmed another case in the ninth grade. Ultimately, Israeli officials said, 154 students and 26 staff members were found to be infected.



As Israel began to relax its restrictions in May, street life returned to Tel Aviv. Dan Balilty for The New York Times

"There was a general euphoria among the public, a sense that we had dealt with the first wave well and that it was behind us," said Danniel Leibovitch, Gymnasia's principal. "Of course, that wasn't true."

The Education Ministry had issued safety instructions: Masks were to be worn by students in fourth grade and higher, windows kept open, hands washed frequently and students kept six feet apart whenever possible.

But in many Israeli schools, where up to 38 children squeeze into classrooms of about 500 square feet, physical distancing proved impossible.

Unable to comply with the rules, some local authorities ignored them or simply decided not to reopen at full capacity.

Then a heat wave hit. Parents complained that it was inhumane to make children wear masks in steaming classrooms where open windows nullified the air conditioning.

In response, the government exempted everyone from wearing masks for four days, and schools shut the windows.

That decision proved disastrous, experts say.

“Instead of canceling school in those days, they just told the kids ‘OK, well you have to stay in the class with the air conditioning on and take your masks off,’ so you have no ventilation really,” said Dr. Ronit Calderon-Margalit, a professor of epidemiology at Hebrew University-Hadassah Braun School of Public Health. “You have the ideal circumstances for an outbreak.”

The Gymnasia became a petri dish for Covid-19.

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When Covid Subsided, Israel Reopened Its Schools. It Didn't Go Well. - The New York Times



In Gymnasia's 90-year-old building, an average of 33 to 34 students packed each classroom. Dan Balilty for The New York Times

When the first case was discovered, the student's classmates, teachers and other contacts were quarantined. After the second case, which was not directly linked to the first, the school was closed and everyone was instructed to quarantine for two weeks. All students and staff were tested, often waiting in line for hours.

About 60 percent of infected students were asymptomatic. Teachers, some of whom had been teaching multiple classes, suffered the most and a few were hospitalized, the principal said.

Parents were furious. Oz Arbel told Israel's Army Radio that for a school project, his daughter's classmates sat at a table and passed around a cellphone with a teacher who was showing symptoms. His daughter and wife became infected.



<https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html>

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When Covid Subsided, Israel Reopened Its Schools. It Didn't Go Well. - The New York Times

Books wrapped in plastic bags wait in Gymnasia's library for September. Dan Balilty for The New York Times

One Gymnasia student, Ofek Amzaleg, told Kan public radio that a teacher who coughed in class and joked that he didn't have coronavirus was among those who tested positive. Ofek also became infected.

Mr. Leibovitch, the principal, said he had no knowledge of any teacher coming in with symptoms.

Seeking to contain the contagion, the Education Ministry vowed to shut any school with even one Covid-19 case. It ultimately closed more than 240 schools and quarantined more than 22,520 teachers and students.

When the school year ended in late June, the ministry said, 977 pupils and teachers had contracted Covid-19.

But the Health Ministry, lacking the infrastructure and resources, did not make contact tracing a priority. In the Gymnasia case, Professor Waxman said, nobody even identified which buses the students had ridden on to school.

Proms were canceled, but graduating seniors in the central city of Ra'anana held an underground prom party anyway. Dozens contracted the virus.

A nursery school teacher, Shalva Zalfreund, 64, sent a note to parents saying she believed she had been infected in her school, where some parents had sent their children from homes with cases of the virus. She died in July.



Israeli health officials are divided as to whether the outbreak in schools spurred Israel's second wave of infections. Gil Cohen-Magen/Agence France-Presse — Getty Images

Outside school walls, the coronavirus returned with a vengeance. Covid wards that had closed with festive ceremonies in late April began filling again, with confirmed infections spiraling to about 800 a day by late June and more than 2,000 a day by late July.

Some blamed the hasty school reopening as a major factor in the second wave. Siegal Sadetzki, who resigned in frustration last month as Israel's director of public health services, wrote that insufficient safety precautions in schools, as well as large gatherings like weddings, fueled a "significant portion" of second-wave infections.

But others said singling out schools was unfair when the real problem was that everything reopened too quickly.

"The single super-spreader event in the Gymnasia just happened to be in a school," said Dr. Ran Balicer, an Israeli health care official and adviser to the prime minister on the pandemic. "It could have happened in any other setting."

Now Israel is confronting the same questions as other countries, trying to learn from its mistakes in planning for the school year that begins Sept. 1.

Public health experts worldwide have coalesced around a set of guidelines for reopening schools.

A major recommendation is to create groups of 10 to 15 students who stay together in classrooms, at recess and lunchtime, with teachers assigned to only one group. Each group has minimal contact with other groups, limiting any spread of infection. And if a case of Covid-19 emerges, one group can be quarantined at home while others can continue at school.

Other key recommendations include staggering schedules or teaching older students online, keeping desks several feet apart, sanitizing classrooms more frequently, providing ventilation and opening windows if possible, and requiring masks for staff and students old enough to wear them properly.

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Students keep their distance at an elementary school in the central Israeli town of Pardes Hanna-Karkur in May. Jack Guez/Agence France-Presse — Getty Images

Israel has already moved in that direction.

The government recently appointed a coronavirus czar, Dr. Ronni Gamzu, who transferred responsibility for virus testing and investigation from the Health Ministry to the military. "This is an operation, not medicine," he declared.

On Sunday, the government approved plans for returning only grades two and lower to school in full-size classes in the fall. Younger children are less likely to become seriously ill, and some studies have suggested that they are less likely than adults and teenagers to transmit the virus to others.

The plans also call for splitting older students into capsules of 18 and for mostly online instruction for grades five and above. Principals will have flexibility to adjust their school's policies based on local conditions.

Even those measures may not be enough.

Menashe Levy, president of the Israeli High School Principals Association, arranged desks six feet apart in a standard classroom. It could accommodate 14 students, not 18.

But Israel is plunging ahead. Only one option has been ruled out: closing the schools.

"This is a long-term pandemic," said Dr. Nadav Davidovitch, a pandemic policy adviser to the government. "We cannot close schools for a year."

Isabel Kershner reported from Jerusalem, and Pam Belluck from the United States.

EXHIBIT AA

The Washington Post
Democracy Dies in Darkness

Nine people test positive for the coronavirus at Georgia school where photos of packed hallways went viral

By **Derek Hawkins**

August 9, 2020 at 8:20 a.m. PDT

A cluster of novel coronavirus cases has emerged at the Georgia high school that drew national attention last week after students posted pictures and videos of their peers walking without mask in tightly packed hallways, according to a letter sent to parents over the weekend.

Six students and three staff members at North Paulding High School have reported testing positive for the virus, Principal Gabe Carmona wrote in the letter, which was first reported by [the Atlanta Journal-Constitution](#). He said the infected people were in school “for at least some time” last week.

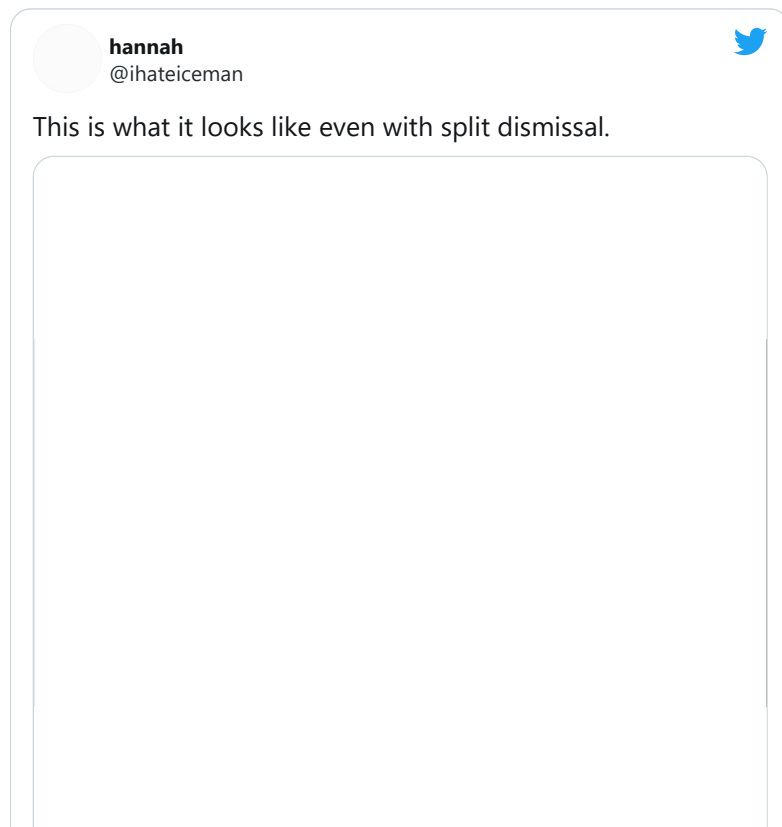
The infections validate concerns in Georgia and around the country that crowded conditions in the nation’s K-12 schools could facilitate virus transmission as the new academic year begins. Young people develop severe infections at far lower rates than adults, but experts warn they could be vectors for infecting more vulnerable populations, such as older relatives in the same household.

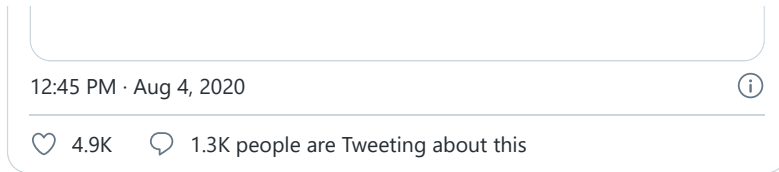
Carmona said custodial workers were cleaning and disinfecting the school building daily — a practice that offers only marginal protections against the virus, which primarily spreads through person-to-person contact, not from contaminated surfaces.

“The health and well-being of our staff and students remains our highest priority,” Carmona said, “and we are continuing to adjust and improve our protocols for in-person instruction to make our school the safest possible learning environment.”

A representative for the Paulding County School District did not immediately respond to a request for comment Sunday.

The school of more than 2,000 in Dallas, Ga., was thrown into the national spotlight last week when students posted images on social media showing seas of students milling through the halls between classes.





The school district suspended two students who shared the images, prompting another wave of negative attention from critics who said administrators were silencing them. Administrators reversed the suspensions on Friday following the backlash.

Lynne Watters, the mother of one of the students, said her daughter would be able to return to school Monday with her disciplinary record unblemished. “The principal just said that they were very sorry for any negative attention that this has brought upon her,” Watters said in a text message, “and that in the future they would like for her to come to the administration with any safety concerns she has.”

Officials have continually sought to downplay concerns generated by images of the crowded corridors.

On Wednesday, Paulding County Schools Superintendent Brian Otott told parents in a letter that while the photo “does not look good,” the conditions were permissible under the Georgia Department of Education’s health recommendations.

The superintendent also misleadingly cited a state health department document listing the different ways people can become infected with the coronavirus. He claimed that exposure occurs after “Being within 6 feet of a sick person with COVID-19 for about 15 minutes” but omitted other factors such as being coughed on that can cause the virus to spread faster and more directly.

Lateshia Beachum contributed to this report.

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A School Reopens, and the Coronavirus Creeps In

As more schools abandon plans for in-person classes, one that opened in Indiana this week had to quarantine students within hours.

By **Eliza Shapiro**, **Giulia McDonnell Nieto del Rio** and **Shawn Hubler**

Aug. 1, 2020

One of the first school districts in the country to reopen its doors during the coronavirus pandemic did not even make it a day before being forced to grapple with the issue facing every system actively trying to get students into classrooms: What happens when someone comes to school infected?

Just hours into the first day of classes on Thursday, a call from the county health department notified Greenfield Central Junior High School in Indiana that a student who had walked the halls and sat in various classrooms had tested positive for the coronavirus.

Administrators began an emergency protocol, isolating the student and ordering everyone who had come into close contact with the person, including other students, to quarantine for 14 days. It is unclear whether the student infected anyone else.

"We knew it was a when, not if," said Harold E. Olin, superintendent of the Greenfield-Central Community School Corporation, but were "very shocked it was on Day 1."

To avoid the same scenario, hundreds of districts across the country that were once planning to reopen their classrooms, many on a part-time basis, have reversed course in recent weeks as infections have spiked in many states.

Those that do still reopen are having to prepare for the near-certain likelihood of quarantines and abrupt shutdowns when students and staff members test positive.

Of the nation's 25 largest school districts, all but six have announced they will start remotely, although some in places like Florida and Texas are hoping to open classrooms after a few weeks if infection rates go down, over strong objections from teachers' unions.

More than 80 percent of California residents live in counties where test positivity rates and hospitalizations are too high for school buildings to open under state rules issued last month. And schools in Alexandria, Va., said on Friday that they would teach remotely, tipping the entire Washington-Baltimore metro area, with more than one million children, into virtual learning for the fall.

In March, when schools across America abruptly shuttered, it seemed unimaginable that educators and students would not return to school come fall, as they have in many other parts of the world. Now, with the virus continuing to rage, tens of millions of students will start the year remotely, and it has become increasingly clear that only a small percentage of children are likely to see the inside of a school building before the year ends.

"There's no good answer," Mark Henry, superintendent of the Cypress-Fairbanks Independent School District near Houston, told trustees at a recent special meeting in which they voted to postpone the district's hybrid reopening until September. "If there was a good answer, if there were an easy answer," he said, "we would lay it out for you and everybody would be happy."

Anywhere that schools do reopen — outside of a portion of the Northeast where the virus is largely under control — is likely to see positive test results quickly, as in Indiana.

A New York Times analysis found that in many districts in the Sun Belt, at least five people infected with the coronavirus would be expected to arrive at a school of about 500 students and staff members during the first week if it reopened today.

To deal with that likelihood, many schools and some states have enacted contact tracing and quarantine protocols, with differing thresholds at which they would close classrooms or buildings.

Because of the low infection rate locally, New York City, the largest district in the country, plans to reopen schools on a hybrid model on Sept. 10, with students attending in-person classes one to three days a week. Yet even there, the system might have to quickly close if the citywide infection rate ticks up even modestly.

On Friday, Mayor Bill de Blasio laid out a plan for responding to positive cases that would mean many of the city's 1,800 public schools would most likely have individual classrooms or even entire buildings closed at certain points.



Students leaving the middle school on Friday. About 85 percent of the 700 enrolled students opted for in-person learning, the district superintendent said. AJ Mast for The New York Times

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On the First Day of School, an Indiana Student Tests Positive for Coronavirus - The New York Times

One or two confirmed cases in a single classroom would require those classes to close for 14 days, with all students and staff members ordered to quarantine. The rest of the school would continue to operate, but if two or more people in different classrooms in the same school tested positive, the entire building would close for an investigation, and might not reopen for two weeks depending on the results.

In California, where schools in two-thirds of the state have been barred from reopening in person for now, state guidelines call for a school to close for at least 14 days if more than 5 percent of its students, faculty and staff test positive over a two-week period.

Chicago, the nation's third-largest school district, has proposed a hybrid system for reopening that would put students into 15-member pods that can be quarantined if one member tests positive. School buildings should close if the city averages more than 400 new cases a week or 200 cases a day, the plan states, with other worrying factors like low hospital capacity or a sudden spike in cases taken into account.

In Indiana, where the middle school student tested positive on Thursday in Greenfield, an Indianapolis suburb of 23,000 people, the virus began to spike in mid-June, and the caseload has remained relatively high. This week, Indianapolis opted to start the school year online.

The Greenfield-Central Community School Corporation, with eight schools and 4,400 students, gave families the option of in-person or remote learning. At Greenfield Central Junior High School, which the student with the positive test attends, about 15 percent of the 700 enrolled students opted for remote learning, said Mr. Olin, the superintendent.

"It was overwhelming that our families wanted us to return," he said, adding that families needed to be responsible and not send students to school if they were displaying symptoms or awaiting test results. Students are also required to wear masks except when they are eating or for physical education outside, he said — and as far as he knew, the student who tested positive was doing so.

Anyone who was within six feet of the student for more than 15 minutes on Thursday was instructed to isolate themselves for two weeks, Mr. Olin said. He would not give a specific number of people who were affected at the school, but he said no teachers or staff members were identified as close contacts, and therefore none have been told to quarantine.

"It really doesn't change my opinion about whether we should start or not," Mr. Olin said. "If we get down the road and realize that we need to make some adjustments, we're not opposed to that."

He said that the district did not have a specific threshold for when it would close a school, but that it would likely do so if absences reached 20 percent. The state has not provided specific guidance to schools on when they should shut their doors, he said.

Some teachers in the district said the positive case on the first day confirmed their fears about returning.

"I most definitely felt like we were not ready," said Russell Wiley, a history teacher at nearby Greenfield-Central High School. "Really, our whole state's not ready. We don't have the virus under control. It's just kind of like pretending like it's not there."

One father whose daughter goes to the middle school with the positive case said he felt conflicted about his three children attending classes in person. Few people in the community are wearing masks, said the father, who asked not to be named because he worried that his family would face backlash.

"I have all these concerns," the father said. But he has to commute at least an hour to work every day, so remote learning was not a good option for his family.

"It's just a mess," he said. "I don't know what the answers are."

EXHIBIT CC



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Dispatch

Contact Tracing during Coronavirus Disease Outbreak, South Korea, 2020

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[Suggested citation for this article](#)

Abstract

We analyzed reports for 59,073 contacts of 5,706 coronavirus disease (COVID-19) index patients reported in South Korea during January 20–March 27, 2020. Of 10,592 household contacts, 11.8% had COVID-19. Of 48,481 nonhousehold contacts, 1.9% had COVID-19. Use of personal protective measures and social distancing reduces the likelihood of transmission.

Effective contact tracing is critical to controlling the spread of coronavirus disease (COVID-19) ([1](#)). South Korea adopted a rigorous contact-tracing program comprising traditional shoe-leather epidemiology and new methods to track contacts by linking large databases (global positioning system, credit card transactions, and closed-circuit television). We describe a nationwide COVID-19 contact tracing program in South Korea to guide evidence-based policy to mitigate the pandemic ([2](#)).

The Study

South Korea’s public health system comprises a national-level governance (Korea Centers for Disease Control and Prevention), 17 regional governments, and 254 local public health centers. The first case of COVID-19 was identified on January 20, 2020; by May 13, a total of 10,962 cases had been reported. All reported COVID-19 patients were tested using reverse transcription PCR, and case information was sent to Korea Centers for Disease Control and Prevention.

We defined an index case as the first identified laboratory-confirmed case or the first documented case in an epidemiologic investigation within a cluster. Contacts in high-risk groups (household contacts of COVID-19 patients, healthcare personnel) were routinely tested; in non–high-risk groups, only symptomatic persons were tested. Non–high-risk asymptomatic contacts had to self-quarantine for 14 days and were placed under twice-daily active surveillance by public health workers. We defined a household contact as a person who lived in the household of a COVID-19 patient and a nonhousehold contact as a person who did not reside in the same household as a confirmed COVID-19 patient. All index patients were eligible for inclusion in this analysis if we identified ≥1 contact. We defined a detected case as a contact with symptom onset after that of a confirmed COVID-19 index patient.

We grouped index patients by age: 0–9, 10–19, 20–29, 30–39, 40–49, 50–59, 60–69, 70–79, and ≥80 years. Because we could not determine direction of transmission, we calculated the proportion of detected cases by the equation [number of detected cases/number of contacts traced] × 100, excluding the index patient; we also calculated 95% CIs. We compared the difference in detected cases between household and nonhousehold contacts across the stratified age groups.

We conducted statistical analyses using RStudio (<https://rstudio.com>). We conducted this study as a legally mandated public health investigation under the authority of the Korean Infectious Diseases Control and Prevention Act (nos. 12444 and 13392).

We monitored 59,073 contacts of 5,706 COVID-19 index patients for an average of 9.9 (range 8.2–12.5) days after severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection was detected (Table 1). Of 10,592 household contacts, index patients of 3,417 (32.3%) were 20–29 years of age, followed by those 50–59 (19.3%) and 40–49 (16.5%) years of age (Table 2). A total of 11.8% (95% CI 11.2%–12.4%) household contacts of index patients had COVID-19; in households with an index patient 10–19 years of age, 18.6% (95% CI 14.0%–24.0%) of contacts had COVID-19. For 48,481 nonhousehold contacts, the detection rate was 1.9% (95% CI 1.8%–2.0%) (Table 2). With index patients 30–39 years of age as reference, detection of COVID-19 contacts was significantly higher for index patients >40 years of age in nonhousehold settings. For most age groups, COVID-19 was detected in significantly more household than nonhousehold contacts (Table 2).

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Conclusions

We detected COVID-19 in 11.8% of household contacts; rates were higher for contacts of children than adults. These risks largely reflected transmission in the middle of mitigation and therefore might characterize transmission dynamics during school closure (3). Higher household than nonhousehold detection might partly reflect transmission during social distancing, when family members largely stayed home except to perform essential tasks, possibly creating spread within the household. Clarifying the dynamics of SARS-CoV-2 transmission will help in determining control strategies at the individual and population levels. Studies have increasingly examined transmission within households. Earlier studies on the infection rate for symptomatic household contacts in the United States reported 10.5% (95% CI 2.9%–31.4%), significantly higher than for nonhousehold contacts (4). Recent reports on COVID-19 transmission have estimated higher secondary attack rates among household than nonhousehold contacts. Compiled reports from China, France, and Hong Kong estimated the secondary attack rates for close contacts to be 35% (95% CI 27%–44%) (5). The difference in attack rates for household contacts in different parts of the world may reflect variation in households and country-specific strategies on COVID-19 containment and mitigation. Given the high infection rate within families, personal protective measures should be used at home to reduce the risk for transmission (6). If feasible, cohort isolation outside of hospitals, such as in a Community Treatment Center, might be a viable option for managing household transmission (7).

We also found the highest COVID-19 rate (18.6% [95% CI 14.0%–24.0%]) for household contacts of school-aged children and the lowest (5.3% [95% CI 1.3%–13.7%]) for household contacts of children 0–9 years in the middle of school closure. Despite closure of their schools, these children might have interacted with each other, although we do not have data to support that hypothesis. A contact survey in Wuhan and Shanghai, China, showed that school closure and social distancing significantly reduced the rate of COVID-19 among contacts of school-aged children (8). In the case of seasonal influenza epidemics, the highest secondary attack rate occurs among young children (9). Children who attend day care or school also are at high risk for transmitting respiratory viruses to household members (10). The low detection rate for household contacts of preschool-aged children in South Korea might be attributable to social distancing during these periods. Yet, a recent report from Shenzhen, China, showed that the proportion of infected children increased during the outbreak from 2% to 13%, suggesting the importance of school closure (11). Further evidence, including serologic studies, is needed to evaluate the public health benefit of school closure as part of mitigation strategies.

Our observation has several limitations. First, the number of cases might have been underestimated because all asymptomatic patients might not have been identified. In addition, detected cases could have resulted from exposure outside the household. Second, given the different thresholds for testing policy between households and nonhousehold contacts, we cannot assess the true difference in transmissibility between households and nonhouseholds. Comparing symptomatic COVID-19 patients of both groups would be more accurate. Despite these limitations, the sample size was large and representative of most COVID-19 patients early during the outbreak in South Korea. Our large-scale investigation showed that pattern of transmission was similar to those of other respiratory viruses (12). Although the detection rate for contacts of preschool-aged children was lower, young children may show higher attack rates when the school closure ends, contributing to community transmission of COVID-19.

The role of household transmission of SARS-CoV-2 amid reopening of schools and loosening of social distancing underscores the need for a time-sensitive epidemiologic study to guide public health policy. Contact tracing is especially important in light of upcoming future SARS-CoV-2 waves, for which social distancing and personal hygiene will remain the most viable options for prevention. Understanding the role of hygiene and infection control measures is critical to reducing household spread, and the role of masking within the home, especially if any family members are at high risk, needs to be studied.

We showed that household transmission of SARS-CoV-2 was high if the index patient was 10–19 years of age. In the current mitigation strategy that includes physical distancing, optimizing the likelihood of reducing individual, family, and community disease is important. Implementation of public health recommendations, including hand and respiratory hygiene, should be encouraged to reduce transmission of SARS-CoV-2 within affected households.

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Tables

Table 1. Contacts traced by age group of index coronavirus disease patients, South Korea, January 20–March 27, 2020

Table 2. Rates of coronavirus disease among household and nonhousehold contacts, South Korea, January 20–March 27, 2020

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Preparing K-12 School Administrators for a Safe Return to School in Fall 2020

Updated Aug. 1, 2020

[Print](#)

Schools are an important part of the infrastructure of communities and play a critical role in supporting the whole child, not just their academic achievement.

This guidance is intended to aid school administrators as they consider how to protect the health, safety, and wellbeing of students, teachers, other school staff, their families, and communities and prepare for educating students this fall.

This guidance is for K-12 school administrators who are preparing for students, teachers, and staff to return to school in fall 2020. School administrators are individuals who oversee the daily operations of K-12 schools, and may include school district superintendents, school principals, and assistant principals.

It is critical that all administrators:

- Engage and encourage everyone in the school and the community to practice preventive behaviors. These are the most important actions that will support schools' safe reopening and will help them stay open.
- Implement multiple SARS-CoV-2 mitigation strategies (e.g., social distancing, cloth face coverings, hand hygiene, and use of [cohorting](#)).
- **Communicate, educate, and reinforce** appropriate hygiene and social distancing practices in ways that are developmentally appropriate for students, teachers, and staff.
- Integrate SARS-CoV-2 mitigation strategies into co-curricular and extracurricular activities (e.g., limiting or cancelling participation in activities where social distancing is not feasible).
- Maintain healthy environments (e.g., cleaning and disinfecting frequently touched surfaces).
- Make decisions that take into account the level of community transmission.
- Repurpose unused or underutilized school (or community) spaces to increase classroom space and facilitate social distancing, including outside spaces, where feasible.
- Develop a proactive plan for when a student or staff member tests positive for COVID-19.
- Develop a plan with state and local health department to conduct case tracing in the event of a positive case.
- Educate parents and caregivers on the importance of monitoring for and responding to the symptoms of COVID-19 at home.
- Develop ongoing channels of communication with state and local health departments to stay updated on COVID-19 transmission and response in your local area.

The guidance described in this document is based on the best available evidence at this time. This guidance is meant to supplement—not replace—any state, local, territorial, or tribal health and safety laws, rules, and regulations with which schools must comply.

Key considerations for school administrators

- COVID-19 transmission rates in the immediate community and in the communities in which students, teachers, and staff live
- Approaches to cohorting that fit the needs of your school/district and community (e.g., keeping students in class pods, staggering when students return to school facility, having the same teacher stay with the same group of students)
 - Can unused or underutilized school spaces, including outdoor spaces, be repurposed to increase classroom space and facilitate social distancing?
- Concurrently implementing multiple strategies in school to prevent the spread of COVID-19 (e.g., social distancing, cloth face coverings, hand hygiene, and use of cohorting)
- Best practices for your school and community to communicate, educate, and reinforce personal protective behaviors to prevent the spread of COVID-19 in school and in the community
- Integrating strategies to reduce COVID-19 transmission into co-curricular and extracurricular activities (e.g., limiting participation in activities where social distancing is not feasible)
- Planning and preparing for when someone gets sick
- Working with state and local health authorities to develop a plan to conduct contact tracing in the event of a positive case
- Communicating appropriately to families about home-based symptom screening

Critical role of schools

This guidance is intended, first and foremost, to protect the health, safety and wellbeing of students, teachers, other school staff, their families, and communities.

Schools are an important part of the infrastructure of communities, as they provide safe, supportive learning environments for students, employ teachers and other staff, and enable parents, guardians, and caregivers to work. Schools also provide critical services that help to mitigate health disparities, such as school meal programs, and social, physical, behavioral, and mental health services. School closure disrupts the delivery of these critical services to children and families, and places additional economic and psychological stress on families, which can increase the risk for family conflict and violence.^{[1], [2]}

The unique and critical role that schools play makes them a priority for opening and remaining open, enabling students to receive both academic instruction and support as well as critical services. In order to prioritize opening schools safely and helping them to remain open, communities should consider adopting actions to mitigate community transmission. CDC's [Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission](#) has strategies for community mitigation to reduce or prevent the spread of COVID-19, which in turn will help schools to open and stay open safely. Recognizing the importance of providing safe, in-person learning, communities may also wish to help schools by examining whether additional public or private space, including outdoor spaces, that is currently underutilized might be safely repurposed for school and instructional purposes.

Returning to school in fall 2020 poses new challenges for schools, including implementing mitigation measures (e.g., social distancing, cleaning and disinfection, hand hygiene, use of cloth face coverings), addressing social, emotional, and mental health needs of students, addressing potential learning loss, and preparing for the probability of COVID-19 cases within the broader school community.

This guidance provides information about:

- What is currently known about COVID-19 among school-aged children
- The importance of going back to school safely
- What is currently known about SARS-CoV-2 (the virus that causes COVID-19) transmission in schools and its impact on community transmission
- The ways administrators for kindergarten through grade 12 (K-12) schools can plan and prepare for in-person instruction and minimize the impact of potential closures

What is known about the signs and symptoms, burden, and transmission of SARS-CoV-2 among children?

Signs and symptoms

Common COVID-19 symptoms [among children](#) include fever, headache, sore throat, cough, fatigue, nausea/vomiting, and diarrhea.^[3] However, many children and adults infected with the virus that causes COVID-19 are asymptomatic (meaning they have no signs or symptoms of illness).

Impact of COVID-19 on children

Collecting and sharing data, including how it affects different places and populations, is important for understanding the context and burden of the COVID-19 pandemic. School officials should make decisions about school reopening based on available data including levels of community transmission and their capacity to implement appropriate mitigation measures in schools. Children appear to be at lower risk for contracting COVID-19 compared to adults. While some children have been sick with COVID-19, adults make up nearly 95% of reported COVID-19 cases.^[4] Early reports suggest children are less likely to get COVID-19 than adults, and when they do get COVID-19, they generally have a less serious illness.^[5] As of July 21, 2020, 6.6% of reported COVID-19 cases and less than 0.1% of COVID-19-related deaths are among children and adolescents less than 18 years of age in the United States.^[6]

Early reports suggest the number of COVID-19 cases among children may vary by age and other factors. Adolescents aged 10-17 may be more likely to become infected with SARS-CoV-2 than children younger than age 10,^{[7], [8]} but adolescents do not appear to be at higher risk of developing severe illness.^[9] There are currently a higher proportion of COVID-19 cases among Hispanic/Latino children as compared to non-Hispanic white children. Children and adults with certain [underlying medical conditions](#) are at [increased risk of severe illness](#) from COVID-19.^[10] Severe illness means that they may require hospitalization, intensive care, or a ventilator to help them breathe, or may even die. Children with intellectual and developmental disabilities are more likely to have [comorbid medical conditions](#) (e.g., diseases of the respiratory system; endocrine, nutritional and metabolic diseases; and diseases of the circulatory system) that may put them at increased risk for severe illness from COVID-19.^[11] Although rare, some children have developed multisystem inflammatory syndrome (MIS-C) after exposure to SARS-CoV-2. As of May 20, 2020, the majority of children hospitalized with MIS-C had recovered.

^[12]

Data on SARS-CoV-2 transmission among children are limited. Evidence from other countries suggests that the majority of children with COVID-19 were infected by a family member.^[13] For example, the first pediatric patients in South Korea and Vietnam were most likely from contact with an adult family member.^{[14], [15]} Published reports from contact tracing of students with COVID-19 in schools from France, Australia, and Ireland suggest that students are not as likely to transmit the virus to other students compared to household contacts.^{[16], [17], [18]} However, more research is needed on SARS-CoV-2 transmission between children and household members.

What is known about how schools have reopened and the impact on SARS-CoV-2 transmission?

Internationally, schools have responded to COVID-19 using a variety of approaches.^{[19], [20]} For example, China, Denmark, Norway, Singapore, and Taiwan all required temperature checks at school entry.^[21] Most countries have changed the way they operate to reduce class sizes, increase physical distance between students, and keeping students in defined groups to reduce contacts (i.e., [cohorting](#)).^[22] Furthermore, many countries have staggered attendance, start and stop times, and created alternating shifts to enable social distancing. In some places this means that only certain students have returned to schools, either by grade range or need. For example, Denmark was the first European country to reopen schools. Denmark staggered students' reentry in waves (e.g., one group started school first, followed by another group at a later date), with limited class sizes and using other social distancing measures.^[23] Younger students (under age 12) returned first based on their lower health risk and need for more supervision than older students. Class sizes were reduced to allow physical distancing. In Taiwan, students returned to school with mandatory temperature checks and use of face masks. Rather than national school closures, Taiwan relied on local decision-making to determine if classroom or school closures were needed, based on infection rates.^[24]

There is mixed evidence about whether returning to school results in increased transmission or outbreaks. For example, Denmark initially reported a slight increase in cases in the community after reopening schools and child care centers for students aged 2-12 years, followed by steady declines in cases among children between ages 1 and 19 years.^[25] In contrast, Israel experienced a surge of new cases and outbreaks in schools after reopening and relaxing social distancing measures; it is unclear what caused the increase in cases and what other mitigation measures the schools had implemented.^[26] In summer 2020, Texas reported more than 1,300 COVID-19 cases in childcare centers; however, twice as many staff members had been diagnosed as children, suggesting that children may be at lower risk of getting COVID-19 than adults.^[27]

It is important to consider community transmission risk as schools reopen. Evidence from schools internationally suggests that school re-openings are safe in communities with [low SARS-CoV-2 transmission](#) rates.^[28] Computer simulations from Europe have suggested that school re-openings may further increase transmission risk in communities where transmission is already high.^[29] More research and evaluation is needed on the implementation of mitigation strategies (e.g., social distancing, cloth face coverings, hand hygiene, and use of [cohorting](#)) used in schools to determine which strategies are the most effective. Such research would improve understanding of the impact of mitigation strategies on the risk of SARS-CoV-2 transmission in schools, and ongoing monitoring and surveillance of transmission in schools could help with timely outbreak detection and prevent wider spread.

Why is it important to open schools for in-person instruction?

While opening schools – like opening any building or facility—does pose a risk for the spread of COVID-19, there are many reasons why opening schools in the fall of 2020 for in-person instruction is important.

Schools play a critical role in the wellbeing of communities

Schools are a fundamental part of the infrastructure of communities. Schools provide safe and supportive environments, structure, and routines for children, as well as other needed support services to children and families. Schools play a vital role in the economic health of communities by employing teachers and other staff and helping parents, guardians, and caregivers work.

Schools provide critical instruction and academic support

Schools provide critical instruction and academic support that benefit students and communities in both the short- and long-term. The main role and priorities of K-12 educational institutions are to provide age-appropriate instruction and support students' academic development. Reopening schools will provide in-person instruction for students, facilitate increased communication between teachers and students, and provide students with critical academic services, including school-based tutoring, special education, and other specialized learning supports.

Studies show that students have experienced learning loss during the period of school closure and summer months.^[30] In-person instruction for students has advantages over virtual learning, particularly when virtual learning was not the planned format for instruction, and schools may not have the resources or capability to transition fully to virtual learning. In-person classroom instruction has the added benefit for many students of interpersonal interaction between the student and the teacher and the student and peers.^[31] Teachers are able to more actively participate in student learning, provide feedback as students encounter challenges, and promote active learning among students.^[32]

In-person instruction may be particularly beneficial for students with additional learning needs. Children with disabilities may not have access through virtual means to the specialized instruction, related services or additional supports required by their Individualized Education Programs (IEPs) or 504 Plans.^[33] Students may also not have access through virtual means to quality English Language Learning (ELL).^[34]

When schools are closed to in-person instruction, disparities in educational outcomes could become wider, as some families may not have capacity to fully participate in distance learning (e.g., computer and internet access issues, lack of parent, guardian, or caregiver support because of work schedules) and may rely on school-based services that support their child's academic success. The persistent achievement gaps that already existed prior to COVID-19 closures, such as disparities across income levels and racial and ethnic groups, could worsen and cause long-term effects on children's educational outcomes, health, and the economic wellbeing of families and communities.^{[35], [35]} While concern over higher rates of COVID-19 among certain racial/ethnic groups may amplify consideration of closing a school that educates primarily racial minority students, there should also be consideration that these may also be the schools most heavily relied upon for students to receive other services and support, like nutrition and support services.

Schools play a critical role in supporting the whole child, not just the academic achievement of students

Social and emotional health of students can be enhanced through schools

Social interaction among children in grades K-12 is important not only for emotional wellbeing, but also for children's language, communication, social, and interpersonal skills.^[37] Some students may have experienced social isolation and increased anxiety while not physically being in school due to COVID-19. Resuming in-person instruction can support students' social and emotional wellbeing.^[38] Schools can provide a foundation for socialization among children. When children are out of school, they may be separated from their social network and peer-to-peer social support. Schools can facilitate the social and emotional health of children through curricular lessons that develop students' skills to recognize and manage emotions, set and achieve positive goals, appreciate others' perspectives, establish and maintain positive relationships, and make responsible decisions.^[39]

Mental health of students can be fostered through school supports and services

Schools are an important venue for students to receive [emotional and psychological support](#) from friends, teachers, and other staff members. Lengthy school building closures can leave some students feeling isolated from important friendships and support from other caring adults.^[40] Schools also provide critical psychological, mental and behavioral health (e.g., psychological counselling, mental and behavioral assessment) services to children who may not have access to these services outside of school. School closures have limited the availability of these services. Furthermore, isolation and uncertainty about the COVID-19 pandemic can create feelings of [hopelessness and anxiety](#) while removing important

sources of social support. Some students may have experienced trauma through the loss of a loved one from COVID-19. Increases in anxiety and depression may occur when students do not have the structure and routine that being in school brings to their daily lives. Finally, having opportunities to be physically active through recess and physical education can help improve students' feelings of anxiety and sadness. These physical activities should be provided regularly to students in a safe and supportive environment that includes physical distancing and strategies to reduce close contact between students.

Continuity of other special services is important for student success

Students who rely on key services, such as school food programs, special education and related services (e.g., speech and social work services, occupational therapy), and after school programs are put at greater risk for poor health and educational outcomes when school buildings are closed and they are unable to access such school health programs and services.^[41] During periods of school building closures, students had limited access to many of these critical services, potentially widening educational and health disparities and inequities.

How can K-12 schools prepare for going back to in-person instruction?

Expect cases of COVID-19 in communities

International experiences have demonstrated that even when a school carefully coordinates, plans, and prepares, cases may still occur within the community and schools. Expecting and planning for the occurrence of cases of COVID-19 in communities can help everyone be prepared for when a case or multiple cases are identified.

Coordinate, plan, and prepare

Administrators should coordinate with local public health officials to stay informed about the status of COVID-19 transmission in their community. Additionally, planning and preparing are essential steps administrators can take to safely reopen schools:

- CDC's [Considerations for Schools](#) provides detailed recommendations for schools to plan and prepare to reduce the spread of COVID-19, establish healthy environments and maintain healthy operations. This guidance includes information about implementation of mitigation strategies, such as physical distancing within buses, classrooms and other areas of the school, healthy hygiene habits, cleaning and disinfection, use of cloth face coverings, staggering student schedules, and planning for staff and teacher absences (e.g., back-up staffing plans).
- One important strategy that administrators can consider is [cohorting](#) (or "pods"), where a group of students (and sometimes teachers) stay together throughout the school day to minimize exposure for students, teachers, and staff across the school environment. At the elementary school level, it may be easier to keep the same class together for most of the school day. In middle and high school settings, cohorting of students and teachers may be more challenging. However, strategies such as creating block schedules or keeping students separated by grade can help to keep smaller groups of students together and limit mixing. Strategies that keep smaller groups of students together can also help limit the impact of COVID-19 cases when they do occur in a school. If a student, teacher, or staff member tests positive for SARS-CoV-2, those in the same cohort/group should also be tested and remain at home until receiving a negative test result or [quarantine](#). This helps prevent a disruption to the rest of the school and community by limiting the exposure. Schools should have systems in place to support continuity or learning for students who need to stay home for either isolation or quarantine. This includes access to online learning, school meals, and other services. The same holds for students with additional needs, including children with a disability, that makes it difficult to adhere to mitigation strategies.

[Operating Schools During COVID-19](#): Guiding principles and mitigation strategies to use when school is open

Prepare for potential COVID-19 cases and increased school community transmission

Schools should be prepared for COVID-19 cases and exposure to occur in their facilities. Collaborating with [local health officials](#) will continue to be important once students are back to school, as they can provide regular updates about the status of COVID-19 in the community and help support and maintain the health and wellbeing of students, teachers, and staff. Having a plan in place for maintaining academic instruction and ensuring students have access to special services is also critical.

Making decisions about school operations

Administrators should make decisions in collaboration with local health officials based on a number of factors, including the [level of community transmission](#), whether cases are identified among students, teachers, or staff, what other indicators local public health officials are using to assess the status of COVID-19, and whether student, teacher, and staff cohorts are being implemented within the school.

What is the level of community transmission?


There are specific strategies schools can implement based on the [level of community transmission](#) reported by local health officials:

- If there is [no to minimal community transmission](#), reinforcing everyday preventive actions, ensuring [proper ventilation](#) within school facilities, including buses, and maintaining cleaning and disinfection practices remain important. These actions can help minimize potential exposure. Schools should also monitor absenteeism among teachers, staff, and students to identify trends and determine if absences are due to COVID-19, symptoms that led to quarantine, concerns about being in the school environment and personal health and safety, or positive test results. Anyone who tests positive for COVID-19 should [stay home and self-isolate](#) for the timeframe recommended by public health officials. Anyone who has had [close contact](#) with someone who has tested positive or is symptomatic for COVID-19 should be tested and stay home until receiving a negative result, or [stay home and monitor for symptoms](#).
- If there is [minimal to moderate](#) community transmission, schools should follow the actions listed above, and continue implementing mitigation strategies such as [social distancing](#), use of [cloth faced coverings](#), reinforcing everyday preventive actions, and maintaining cleaning and disinfection. This also can include ensuring that student and staff groupings/cohorts are as static as possible and that mixing groups of students and staff is limited.
- If there is [substantial, controlled](#) transmission, significant mitigation strategies are necessary. These include following all the actions listed above and also ensuring that student and staff groupings/cohorts are as static as possible with limited mixing of student and staff groups, field trips and large gatherings and events are canceled, and communal spaces (e.g., cafeterias, media centers) are closed.
- If there is [substantial, uncontrolled](#) transmission, schools should work closely with local health officials to make decisions on whether to maintain school operations. The health, safety, and wellbeing of students, teachers, staff and their families is the most important consideration in determining whether school closure is a necessary step. Communities can support schools staying open by implementing strategies that decrease a community's level of transmission. However, if community transmission levels cannot be decreased, school closure is an important consideration. Plans for virtual learning should be in place in the event of a school closure.

Did a student or staff member test positive for SARS-CoV-2?

If someone within the school community (e.g., student, teacher, staff) tested positive for SARS-CoV-2, assessing the level of risk is important to determine if, when, and for how long part or all of a school should be closed. K-12 administrators can also refer to CDC's [Interim Considerations for K-12 for School Administrators for SARS-CoV-2 Testing](#), which provides

additional information about [viral diagnostic testing](#). A single case of COVID-19 in a school would not likely warrant closing the entire school, especially if levels of community transmission are not high. The levels of community transmission described above and the extent of [close contacts](#) of the individual who tested positive for SARS-CoV-2 should all be considered before closing. These variables should also be considered when determining how long a school, or part of the school, stays closed. If the transmission of the virus within a school is higher than that of the community, or if the school is the source of an outbreak, administrators should work collaboratively with local health officials to determine if temporary school closure is necessary. Students, teachers, and staff who test positive or had close contact of the individual who tested positive should be provided with guidance for when it is safe to [discontinue self-isolation](#) or end [quarantine](#).

- **What other indicators are local public health officials using to assess the status of COVID-19?** Local health officials can help inform decisions related to school operations by examining public health [indicators](#)  that are used to determine level of community transmission and disease severity levels. For example, indicators such as healthcare capacity (e.g., staffing, ICU bed occupancy), changes in newly identified COVID-19 cases, and percentage of people testing positive for SARS-CoV-2 infections in the community might be useful to determine whether to maintain or modify school operations. These indicators are set by state, local, tribal, and territorial health and healthcare officials, and should be shared with schools for decision making.
- **Is a cohort approach used within the school?** The level of student and staff mixing within the school should also be considered. If students are kept in cohorts to minimize mixing of students, exposure to an individual with COVID-19 may be limited to one particular cohort and not pose a broad risk to the rest of the school. Cohorts that have been in close contact with someone with COVID-19 can switch to virtual learning and stay home in accordance with CDC's guidelines for [quarantine](#) and [self-isolation](#), and the school may remain open.

Communicate with families, staff, and other partners

When preparing to go back to school, regular communication should be used to update students, families, teachers, and staff about academic standards, meal program services, and access to other school-based essential services that students and families rely on.

Regular communication with families, staff, and other partners should include:

- Updates about the status of COVID-19 in the school and community
- Notification when there are COVID-19 cases in the school (when communicating about the health status of students, schools should take care to avoid disclosing personally identifiable information and should follow all applicable privacy requirements, including those of the Family Educational Rights and Privacy Act)
- Explanation of what parents, students, teachers, and staff can expect when returning to school; in particular, communicating about:
 - The importance of staying home when sick and [staying home to monitor symptoms if close contact occurred with a person who tested positive for SARS-CoV-2](#)
 - Considerations for COVID-19 symptom screenings
 - Types of social distancing measures being implemented
 - When students, teachers, staff and/or visitors will be expected to wear cloth face coverings and whether cloth face coverings will be available from the school.
 - Everyday [healthy hygiene practices](#) that will be implemented upon reopening (e.g., students, teachers, staff staying home when sick, hand hygiene, cleaning frequently touched surfaces)
- Actions being taken to prevent SARS-Cov-2 transmission in buses, school buildings and facilities
- [Actions that families and households can take to help prevent the spread](#) of COVID-19
- Actions families can take to [manage anxiety about COVID-19](#)

- Decisions about operational status, potential use of virtual learning if COVID-19 cases are identified among students, teachers, or staff, and
- Guidance on [caring for someone who is sick](#) and for [parents, guardians, and caregivers who are sick](#)
- Guidance on how to [reduce stigma](#). Fear and anxiety about a disease can lead to social stigma, which is negative attitudes and beliefs toward people, places, or things

Families and students who had to make alternative arrangements with community providers to receive services (e.g., physical or occupational therapy, speech therapy, mental health services) during periods of school closures may need additional support and communication to establish a transition plan upon returning to school. Additionally, some families may have experienced significant hardship that now increases the number of students who need or qualify for some services, such as school meal programs. Schools can take actions to identify, support, and communicate with families who need to initiate new services as schools prepare to open. Administrators can work with community partners to plan for additional school-based services and programs during the transition back to normal schedules in anticipation of an increased need for mental health services.

What is cohorting?

Cohorting (sometimes called podding) is a new term for a strategy that schools may use to limit contact between students and staff as part of their efforts to limit transmission of SARS-CoV-2 (the virus that causes COVID-19). These strategies work by keeping groups of students – and sometimes staff – together over the course of a pre-determined period of time. Ideally, the students and staff within a cohort will only have physical proximity with others in the same cohort. This practice may help prevent the spread of COVID-19 by limiting cross-over of students and teachers to the extent possible, thus:

- Decreasing opportunities for exposure or transmission of SARS-CoV-2
- Reducing contact with shared surfaces
- Facilitating more efficient contact tracing in the event of a positive case
- Allowing for targeted testing, quarantine, and/or isolation of a single cohort instead of school-wide measures in the event of a positive case or cluster of cases

Cohorting strategies are common practice in many elementary schools across the United States. Many elementary school students have the same teacher and classmates during the entire school year. Implementation of this strategy varies, depending on setting and resources. For example:

- Schools may keep cohorts together in one classroom, and have teachers rotate between rooms.
- Schools may alternate cohorts by days or weeks, with cohorts assigned to specific days or weeks.
- Schools may adopt a hybrid approach, with some cohorts assigned to in-person learning and others assigned to online learning.

Evidence of the impact of cohorting on spread of COVID-19 is limited. Some evidence from other viral disease outbreaks and school reopenings in international settings suggests that cohorting may be an important tool for mitigating COVID-19 spread. However, it is essential to note that those studies were conducted in very different contexts, in communities with lower transmission levels.

Additional resources for K-12 administrators

[Considerations for Schools](#)

[COVID-19 Frequently Asked Questions](#)

[Latest COVID-19 Information](#)

[People at Higher Risk](#)

[Cleaning and Disinfection](#)

[Managing Stress and Coping](#)

[Guidance for Businesses and Employers](#)

[HIPAA and COVID-19](#)

[Guidance for Schools and Childcare Centers](#)

[CDC Communication Resources](#)

[COVID-19 Prevention](#)

[Community Mitigation](#)

[Handwashing Information](#)

[Approach for Monitoring and Evaluating Community Mitigation Strategies](#)

[Face Coverings](#)

[OSHA Guidance on Preparing Workplaces for COVID-19](#)


[Social Distancing](#)



[FERPA & Coronavirus Disease 2019](#)

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EXHIBIT EE



A GUIDEBOOK FOR THE SAFE REOPENING OF CALIFORNIA'S PUBLIC SCHOOLS





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STRONGER TOGETHER:

FOREWORD BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Greetings educational leaders, teachers, classified staff, parents, students, and all Californians:

The effects felt by COVID-19 have been widespread and created impacts unlike anything that we've ever seen. I want to commend the people of California for your resilience and the quick manner in which you moved into distance learning. Thank you for all that you've done to help keep California's students safe and able to continue learning.

As we prepare to move into the likely reopening of our schools, we provide this guidance as a "how to" for safely reopening our schools. In it you will find answers to many questions, including the need for physical distancing and types of recommended personal protective equipment. You'll also learn ways that we will have to rearrange our staff and students in order to ensure that those who are opting for in-person instruction can do so safely.

It has been my honor to lead a statewide reopening schools task force that created a participatory process for our educators and stakeholders to lend their voices. This guidance is also informed by the technical assistance and advice of many health and safety organizations including the Centers for Disease Control, California Department of Public Health, California Division of Occupational Safety and Health, and the many health officers from counties around our state. I want to thank the Governor's Office and our partners in the Legislature for their support in this endeavor, and all the staff at the California Department of Education (CDE) who have written and contributed their expertise throughout this document. I especially want to thank Dr. Stephanie Gregson, the Chief Deputy Superintendent at CDE, who served as its chief writer and editor.

We gathered additional input from focus group conversations with teachers, classified staff, child care providers, superintendents, and public health officials. Important voices were heard during virtual support circles with educators, parents, and students. And additional insight came from consultation with state superintendents, researchers, and experts from throughout the nation. Thank you to all those who took time to help review this document, and I look forward to the next steps of our work together to implement this guidance safely.

We know that guidance is only as good as its implementation, so think of this as the beginning of the conversation—not the end. We know that for many of us, this is the toughest challenge that we'll ever face, perhaps in our lifetime. But when it comes to ensuring that California students continue receiving a high-quality education—and doing so safely—we must rise to meet the challenge. Californians, I'm inspired by how you have come together to make it this far.



I couldn't be prouder to be your state superintendent. We are stronger together, we can do more together, and I thank you for all you are doing together to support our 6.2 million students.


Tony Thurmond

State Superintendent of Public Instruction



INTRODUCTION

The COVID-19 pandemic affected entire communities, states, and the world and led us on a journey none of us thought we would experience in our lifetime. Our communities and families have experienced physical, emotional, health, and financial strains. The high levels of stress and trauma experienced during this time have highlighted the resiliency, strength, and power of ourselves and the importance of our school communities.

We know our local educational agencies (LEAs) are all working collaboratively with their local county health officials and community partners to plan on how to safely reopen schools. **The intent of this document is to be a guide for local discussion on reopening schools.** It is not a “one-size-fits-all” document; rather, it is a document that honors the varied local contexts of each of our LEAs. This guidance document was developed with the most current information known at the time and may be updated as new data becomes relevant. This guide will provide checklists, essential questions for consideration, and examples of best practices. Guidance on standards for quality distance learning is currently being developed by the CDE and will be available on our website. While the guidance by its nature is not a mandate, this guidance serves as a “how to” for LEAs as they plan to safely reopen. LEAs need to work with their local health departments and local stakeholders to ensure that their protocols align with the most current scientific knowledge and community expectations. It is also reasonable to expect that the protocols schools implement will change as the local conditions change.



What has been highlighted during this pandemic is the importance of paying attention to the social–emotional well-being of our students, families, and staff. We encourage all LEAs to keep the emotional well-being of all at the forefront of their decision making. This is also a time to reflect on systems that may not have worked for every child, and we encourage you to please continue to eliminate the barriers to student success that existed before the closure. All of this is difficult work and each LEA should work to be inclusive and collaborative from the start of their planning with community stakeholders (i.e., students, families, teachers, staff, local bargaining representatives, school advisory councils, and other partners). LEAs have an opportunity to align and connect their reopening plans with tools such as the Local Control Accountability Plan (LCAP) and safety plans while utilizing inclusive, distributive, and collaborative leadership grounded in continuous improvement. We have an unprecedented opportunity to improve how we care for and educate each child. Let's work to enhance the public good of our public schools as we implement new, more student-centered designs.

TIMELINE OF THE CDE COVID-19 RESPONSE AND ACTIVITIES

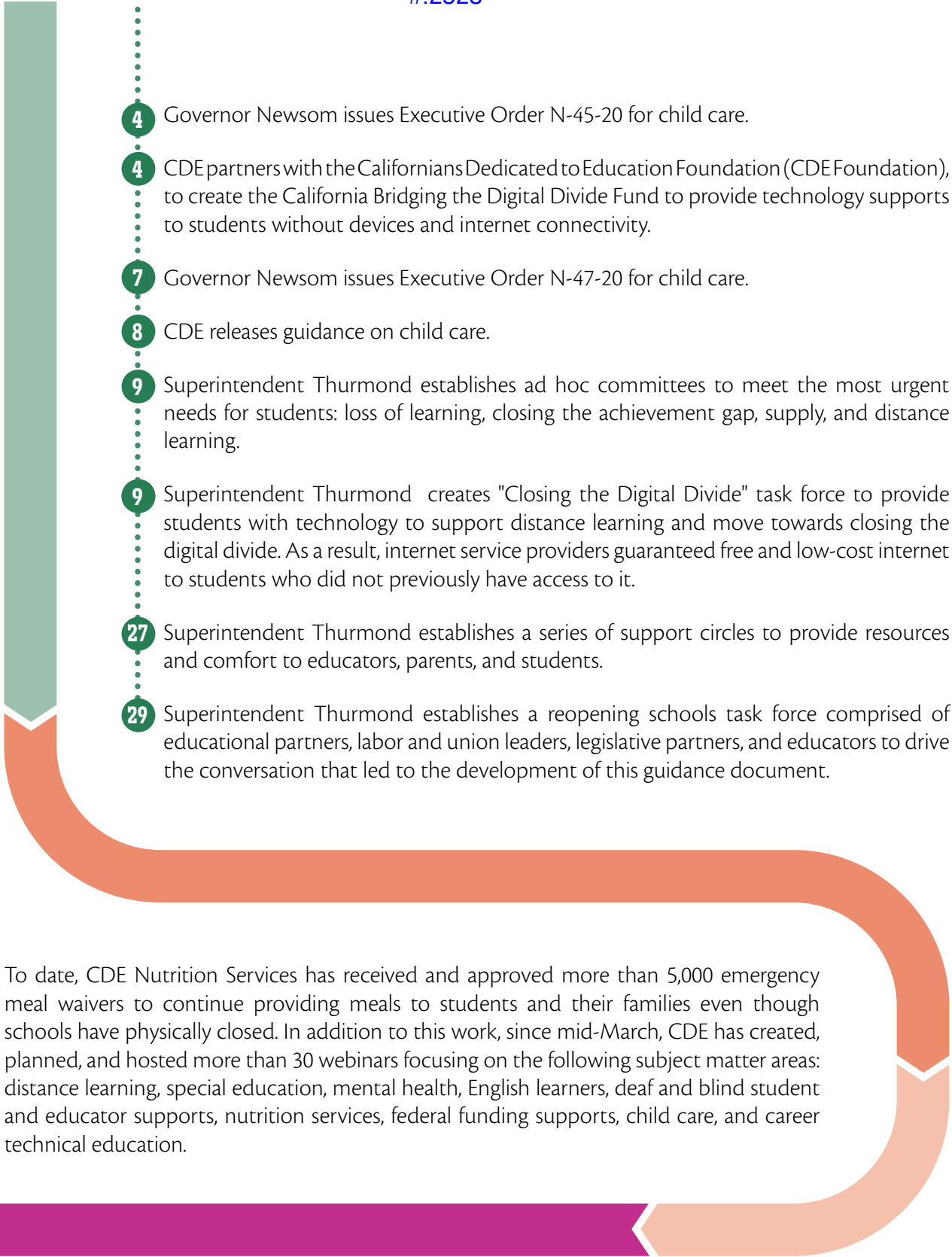
This is a brief overview of key dates and the response efforts of the California Department of Education (CDE).

MARCH 2020

- 13 Governor Gavin Newsom issues Executive Order N-26-20, ensuring state funding for schools even in event of physical closure.
- 17 In coordination with the Department of Health and Human Services, CDE releases guidance on distance learning, child nutrition, and child care.
- 18 Governor Newsom issues Executive Order N-30-20, suspending standardized testing for local educational agencies to take appropriate actions to mitigate the effects of the COVID-19 pandemic while California pursued a federal waiver of testing requirements.
- 19 Governor Newsom issues a stay at home order for the entire state.
- 20 CDE releases special education guidance to support students with disabilities.
- 26 The US Department of Education issues informal approval of Assessment Waiver; joint request from CDE and the California State Board of Education.
- 31 State Superintendent of Public Instruction Tony Thurmond releases a recommendation letter to all schools in the state to consider closing physical campuses to ensure the safety of students and staff through the end of the 2019–20 school year.

APRIL 2020

- 1 CDE releases guidance on graduation and grading requirements.
- 1 CDE releases Labor Management Framework established by the Labor Management Task Force facilitated by SSPI Thurmond.
- 1 Superintendent Thurmond announces Senate Bill (SB) 117 funding is available to school districts.
- 2 The California State Board of Education, CDE, California State University, University of California, California Community Colleges, and the Association of Independent California Colleges and Universities issue a joint statement to waive entrance requirements for college-bound seniors and juniors.

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- 4 Governor Newsom issues Executive Order N-45-20 for child care.
 - 4 CDE partners with the Californians Dedicated to Education Foundation (CDE Foundation), to create the California Bridging the Digital Divide Fund to provide technology supports to students without devices and internet connectivity.
 - 7 Governor Newsom issues Executive Order N-47-20 for child care.
 - 8 CDE releases guidance on child care.
 - 9 Superintendent Thurmond establishes ad hoc committees to meet the most urgent needs for students: loss of learning, closing the achievement gap, supply, and distance learning.
 - 9 Superintendent Thurmond creates "Closing the Digital Divide" task force to provide students with technology to support distance learning and move towards closing the digital divide. As a result, internet service providers guaranteed free and low-cost internet to students who did not previously have access to it.
 - 27 Superintendent Thurmond establishes a series of support circles to provide resources and comfort to educators, parents, and students.
 - 29 Superintendent Thurmond establishes a reopening schools task force comprised of educational partners, labor and union leaders, legislative partners, and educators to drive the conversation that led to the development of this guidance document.

To date, CDE Nutrition Services has received and approved more than 5,000 emergency meal waivers to continue providing meals to students and their families even though schools have physically closed. In addition to this work, since mid-March, CDE has created, planned, and hosted more than 30 webinars focusing on the following subject matter areas: distance learning, special education, mental health, English learners, deaf and blind student and educator supports, nutrition services, federal funding supports, child care, and career technical education.



HEALTH AND SAFETY

The health and safety of students and staff is the top priority when making the decision to physically reopen school campuses for use by students, staff, and others. Local educational agencies should work in collaboration with their local health officials in making the decision to safely reopen. Per CDC recommendations, the CDE recommends all staff and students should wear cloth face coverings or face shields while at school or on a bus, and maintain 6 feet of physical distance during school activities.

When the decision is made to reopen, LEAs will need to establish clear plans and protocols to ensure the safety of students and staff. Knowing that there is not a “one-size-fits-all” solution for opening schools across California’s 1,000 LEAs, the CDE has created a comprehensive checklist of health and safety items that LEAs should use to guide the important reopening decisions they will be making. This checklist was developed in consultation with the California Department of Public Health, the California Division of Occupational Safety and Health, school labor and management representatives, California LEAs, and officials from other states to provide a comprehensive menu of considerations for LEAs.

While the checklist focuses on statewide guidance, the final decision to reopen will be made by each LEA working in close collaboration with local health officials and community stakeholders, including families, staff, and labor partners. When a school is reopened, it is important that LEAs continue to communicate with local and state authorities to monitor current disease levels and the capacities of the local health providers and health care systems. Items in the checklist will likely require collaboration between labor and management groups and in some cases a revisit of existing bargaining agreements. These are matters that would be resolved as part of the reopening planning process and prior to school starting so as to provide clarity for reopening. This checklist will support LEA leaders in their ongoing collaboration with their school communities and health professionals about reopening strategies.

The following checklist covers the following main categories:

- | | | |
|--|---|---|
| 1. Local Conditions to Guide Reopening Decisions | ⋮ | 6. Protective Equipment |
| 2. Plan to Address Positive COVID-19 Cases or Community Surges | ⋮ | 7. Physical Distancing |
| 3. Injury and Illness Prevention Plan | ⋮ | 8. Cleaning/Disinfecting |
| 4. Campus Access | ⋮ | 9. Employee Issues |
| 5. Hygiene | ⋮ | 10. Communication with Students, Parents, Employees, Public Health Officials, and the Community |



CDE HEALTH AND SAFETY CHECKLIST

LEA Checklist for Physically Reopening Campuses for Students



Local Conditions. Ensure that the following local conditions are in place:

- a. Flexibility or Lifting of State Stay-Home Order
 - i. The state has lifted or relaxed the stay-home order to allow schools to physically reopen.
- b. Flexibility or Lifting of County Stay-Home Order
 - i. The county has lifted or relaxed the stay-home or shelter-in-place order to allow schools to physically reopen.
- c. Local Public Health Clearance. Local public health officials have made determinations, including, but not limited to, the following:
 - i. Testing Availability. Consult with local public health officials to ensure adequate tests and tracking/tracing resources are available for schools to reopen. Employees have access to COVID-19 testing at regular and ongoing intervals.
 - ii. Sufficient duration of decline or stability of confirmed cases, hospitalizations, and deaths.
 - iii. Sufficient surge capacity exists in local hospitals.
- d. Equipment Availability
 - i. Have sufficient protective equipment to comply with California Department of Public Health (CDPH) guidance for students and staff appropriate for each classification or duty, as well as relevant California Division of Occupational Safety and Health Administration (Cal/OSHA) requirements.
 - ii. Have a plan for an ongoing supply of protective equipment.
 - iii. Purchase a sufficient number of no-touch thermal scan thermometers for symptom screenings.
 - iv. Consider the differing requirements of PPE/EPG for the differing populations of students with disabilities (i.e., for those requiring medical procedures, toileting, lifting and mobility assistance).
- e. Cleaning Supply Availability
 - i. Have enough school-appropriate cleaning supplies to continuously disinfect the school site in accordance with CDPH guidance.
 - ii. Ensure sufficient supplies of hand sanitizers, soap, handwashing stations, tissues, no-touch trash cans, and paper towels.



Plan to Address Positive COVID-19 Cases or Community Surges

- a. Establish a plan to close schools again for physical attendance of students, if necessary, based on public health guidance and in coordination with local public health officials.
- b. In accordance with CDPH guidance, when a student, teacher, or staff member or a member of their household tests positive for COVID-19 and has exposed others at the school implement the following steps:
 - i. In consultation with the local public health officials, the appropriate school official may consider whether school closure is warranted and length of time based on the risk level within the specific community as determined by the local public health officer.



- ii. In accordance with standard guidance for isolation at home after close contact, the classroom or office where the COVID-19-positive individual was based will typically need to close temporarily as students or staff isolate.
- iii. Additional close contacts at school outside of a classroom should also isolate at home.
- iv. Additional areas of the school visited by the COVID-19-positive individual may also need to be closed temporarily for cleaning and disinfection.
- v. Develop a plan for continuity of education, medical and social services, and meal programs and establish alternate mechanisms for these to continue.

☒ **Injury and Illness Prevention Program (IIPP)**

- a. Update the [IIPP](#) to address unique circumstances during the COVID-19 crisis and make updates accessible to employees and parents.

☒ **Campus Access.** Develop a plan to minimize access to campus, and limit nonessential visitors, facility use permits, and volunteers.

- a. Exclude any student, parent, caregiver, visitor, or staff showing symptoms of COVID-19 (reference CDC and CDPH guidelines for COVID-19 symptoms). Staff should discuss with the parent or caregiver and refer to the student's health history form or emergency card to identify whether the student has a history of allergies, which would not be a reason to exclude.
- b. Monitor staff and students throughout the day for signs of illness. Determine any special or unique needs for students with disabilities related to planned district or schoolwide procedures.
- c. Students—Entering Campuses
 - i. Passive Screening. Instruct parents to screen students before leaving for school (check temperature to ensure temperatures below 100.4 degrees Fahrenheit, observe for symptoms outlined by public health officials) and to keep students at home if they have symptoms consistent with COVID-19 or if they have had close contact with a person diagnosed with COVID-19.
 - ii. Active Screening. Engage in symptom screening as students enter campus and buses, consistent with public health guidance, which includes visual wellness checks and temperature checks with no-touch thermometers (check temperature to ensure temperatures below 100.4 degrees Fahrenheit), and ask all students about COVID-19 symptoms within the last 24 hours and whether anyone in their home has had COVID-19 symptoms or a positive test.
 - 1. If a thermometer requiring a touch method (under the tongue or arm, forehead, etc.) is the only type available, it should only be used when a fever is suspected and caution is taken by temperature screeners, such as by wearing gloves, eye protection, and a mask.
 - 2. Thermometers must be properly cleaned and disinfected after each use.
 - iii. All students must wash or sanitize hands as they enter campuses and buses.
 - iv. Provide supervised, sufficient points of access to avoid larger gatherings.
 - v. Use privacy boards or clear screens when practicable.
 - vi. If a student is symptomatic while entering campus or during the school day:
 - 1. Students who develop symptoms of illness while at school should be separated from others right away, preferably isolated in an area through which others do not enter or pass. If more than one student is in an isolation area, ensure physical distancing.



2. Any students or staff exhibiting symptoms should be required to immediately wear a face covering and wait in an isolation area until they can be transported home or to a health care facility.
 3. Students should remain in isolation with continued supervision and care until picked up by an authorized adult.
 4. Follow established guidelines for triaging students in the health office, recognizing not all symptoms are COVID-19 related.
 5. Advise parents of sick students that students are not to return until they have met [CDC criteria to discontinue home isolation](#).
- vii. Develop a plan for if students are symptomatic when boarding the bus.
- viii. Protect and support students who are at higher risk for severe illness ([medical conditions that the CDC says may have increased risks](#)) or who cannot safely distance from household contacts at higher risk by providing options such as virtual learning or independent study.
- d. Staff—Entering Campuses
- i. Passive Screening. Instruct staff to self-screen before leaving for work (check temperature to ensure temperatures below 100.4 degrees Fahrenheit, check for symptoms outlined by public health officials) and to stay home if they have symptoms consistent with COVID-19 or if they have had close contact with a person diagnosed with COVID-19.
 - ii. Active Screening. Engage in symptom screening as staff enter worksites, consistent with public health guidance, which includes visual wellness checks and temperature checks with no-touch thermometers (check temperature to ensure temperatures below 100.4 degrees Fahrenheit), and ask all staff about COVID-19 symptoms within the last 24 hours and whether anyone in their home has had COVID-19 symptoms or a positive test.
 1. If a thermometer requiring a touch method (under the tongue or arm, forehead, etc.) is the only type available, it should only be used when a fever is suspected.
 2. Thermometers must be properly cleaned and disinfected after each use.
 - iii. All staff must wash or sanitize hands as they enter worksites.
 - iv. Exclude employees who are exhibiting symptoms from the workplace.
 1. Staff members who develop symptoms of illness should be sent to medical care. Have emergency substitute plans in place.
 2. Create a procedure for reporting the reasons for the exclusions.
 3. Advise sick staff members not to return until they have met [CDC criteria to discontinue home isolation](#).
- e. Outside Visitors and Groups
- i. Limit access to campus for parents and other visitors.
 - ii. Evaluate whether and to what extent external community organizations can safely utilize the site and campus resources. Ensure external community organizations that use the facilities also follow the school's health and safety plans and CDPH guidance.
 - iii. Review facility use agreements and establish common facility protocols for all users of the facility.
 - iv. Establish protocol for accepting deliveries safely.



v. Charter School Co-locations

1. Update facility use agreements to address unique circumstances during the COVID-19 crisis, ensuring that organizations that are using the same facility have agreed to the same understandings about how to reopen in a healthy and safe way. Establish a protocol for responding to site concerns regarding health and safety issues that arise during the pandemic that is collaborative and meets the needs of all stakeholders.



Hygiene. Plan to address [hygiene practices](#) to ensure personal health and safety in school facilities and vehicles.

- a. Handwashing. In accordance with CDPH and Cal/OSHA guidance and in consultation with local public health officials, develop a plan for handwashing that includes:
 - i. Providing opportunities for students and staff to meet handwashing frequency guidance.
 - ii. Ensuring sufficient access to handwashing and sanitizer stations. Consider portable handwashing stations throughout a site and near classrooms to minimize movement and congregations in bathrooms to the extent possible.
 - iii. Ensuring fragrance-free hand sanitizer (with a minimum of 60 percent alcohol) is available and supervised at or near all workstations and on buses. Children under age nine should use hand sanitizer under adult supervision. Call Poison Control if consumed: 1-800-222-1222. Note: frequent handwashing is more effective than the use of hand sanitizers.
- b. Train staff and students on proper handwashing techniques and PPE/EPG use, including the following:
 - i. Scrub with soap for at least 20 seconds or use hand sanitizer if soap and water are not accessible. Staff and students should use paper towels (or single use cloth towels) to dry hands thoroughly.
 - ii. Wash hands when: arriving and leaving home; arriving at and leaving school; after playing outside; after having close contact with others; after using shared surfaces or tools; before and after using restroom; after blowing nose, coughing, and sneezing; and before and after eating and preparing foods.
 - iii. [CDC guidance](#) on proper PPE use.
- c. Teach staff and students to:
 - i. Use tissue to wipe the nose and cough and sneeze inside the tissue.
 - ii. Not touch the face or face covering.



Protective Equipment. Plan to address protective equipment needs to ensure personal health and safety in school facilities and vehicles.

- a. According to CDC guidance:
 - i. [Training and information](#) should be provided to staff and students on proper use, removal, and washing of cloth face coverings.
 - ii. Face coverings are not recommended for anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the covering without assistance. LEAs should make reasonable accommodations such as a face shield with a cloth drape for those who are unable to wear face coverings for medical reasons. Per Cal/OSHA, considerations for face shields should include a cloth drape attached across the bottom and tucked into shirt.



- iii. Cloth face coverings are meant to protect other people in case the wearer is unknowingly infected (many people carry COVID-19 but do not have symptoms). Cloth face coverings are not surgical masks, respirators, or personal protective equipment.
- b. Staff Protective Equipment
 - i. As recommended by the CDC, all staff should wear face coverings. Per CDPH guidance, teachers could use face shields, which enable students to see their faces and to avoid potential barriers to phonological instruction.
 - ii. Provide masks if the employee does not have a clean face covering.
 - iii. Provide other protective equipment, as appropriate for work assignments.
 - 1. For employees engaging in symptom screening, provide surgical masks, face shields, and disposable gloves.
 - 2. For front office and food service employees, provide face coverings and disposable gloves.
 - 3. For custodial staff, provide equipment and PPE for cleaning and disinfecting, including:
 - A. For regular surface cleaning, provide gloves appropriate for all cleaning and disinfecting.
 - B. Classified staff engaged in deep cleaning and disinfecting should be equipped with proper PPE for COVID-19 disinfection (disposable gown, gloves, eye protection, and mask or respirator) in addition to PPE as required by product instructions. All products must be kept out of children's reach and stored in a space with restricted access.
 - C. Cal/OSHA requires that PPE be provided and worn to effectively protect employees from the hazards of the cleaning products used and training be provided to staff on the hazards of chemicals.
- c. Student Protective Equipment
 - i. Students should use cloth face coverings, especially in circumstances when physical distancing cannot be maintained. If an LEA requires students to wear face coverings, then the LEA must provide face coverings to be used. Consider how the LEA will address students with disabilities who refuse or are not able to wear masks. At a minimum, face coverings should be worn:
 - 1. While waiting to enter the school campus.
 - 2. While on school grounds (except when eating or drinking).
 - 3. While leaving school.
 - 4. While on a school bus.
 - A. Driver has access to surplus masks to provide to students who are symptomatic on the bus.



Physical Distancing. Plan to meet physical distancing standards in school facilities and vehicles. Clearly define how staff can honor physical distancing recommendations, yet meet student medical, personal, or support needs. Determine how adequate space and facilities will be utilized to maintain health and safety of students and staff, especially when tending to individual student medical or personal needs.


- a. Plan to limit the number of people in all campus spaces to the number that can be reasonably accommodated while maintaining a minimum of 6 feet of distance between individuals. (6 feet is the current minimum recommendation for physical distancing from the CDC, but it is important to pay attention to future modifications in public health recommendations.)



- b. To the extent possible, and as recommended by the CDC, attempt to create smaller student/ educator cohorts to minimize the mixing of student groups throughout the day. Minimize movement of students, educators, and staff as much as possible.
- c. In a circumstance where sufficient physical distancing is difficult or impossible, such as when students enter or exit a school bus in proximity to the bus driver, all individuals, including staff and students, should wear face coverings that cover the mouth and nose consistent with public health guidance. To be clear, face coverings are not a replacement for physical distancing, but they should be used to mitigate virus spread when physical distancing is not feasible.
- d. Student Physical Distancing. LEAs should plan to:
 - i. Limit number of students physically reporting to school, if needed to maintain physical distancing.
 - 1. Determine student and staff capacity of each school meeting 6-foot physical distancing objectives.
 - 2. Consider various strategies outlined in the Instructional Program Models in the guidance document, such as early/late start times and blended learning models.
 - ii. The CDC recommends virtual activities in lieu of field trips and intergroup events.
 - iii. Post signage and install barriers to direct traffic around campus.
 - iv. Buses
 - 1. Determine maximum capacity for students of each vehicle while meeting 6-foot physical distancing objectives.
 - 2. Create a plan for seating based on maximum capacity determined above, and develop a plan for bus routes that accommodates the capacity limitations. Mark or block seats that must be left vacant. Sample seating options:
 - A. Option 1: Seat one student to a bench on both sides of the bus, skipping every other row.
 - B. Option 2: Seat one student to a bench, alternating rows on each side to create a zigzag pattern on the bus.
 - 3. Instruct students and parents to maintain 6-foot distancing at bus stops and while loading and unloading.
 - 4. Seat students from the rear of the bus forward to prevent students from walking past each other. To prevent students from walking past one another, afternoon runs should be boarded based on the order in which students will be dropped off. (Students who get off first should board last and sit in the front.)
 - 5. Students and staff should wear face coverings at bus stops and on buses.
 - v. Playgrounds/Outside Spaces/Athletics
 - 1. Increase supervision to ensure physical distancing.
 - 2. Physical education (PE) and intramural/interscholastic athletics should be limited to activities that do not involve physical contact with other students or equipment until advised otherwise by state/local public health officials.
 - vi. Classrooms
 - 1. Determine maximum capacity for students of each classroom while meeting 6-foot physical distancing objectives.



HEALTH AND SAFETY

2. In accordance with CDC and CDPH guidance, ensure desks are a minimum of 6 feet apart and arrange desks in a way that minimizes face-to-face contact.
 3. If necessary, utilize other campus spaces for instructional activities (e.g., lecture halls, gyms, auditoriums, cafeterias, outdoors).
 4. If necessary, broadcast to other classrooms and students distance learning at home.
 5. Increase staffing to ensure physical distancing for younger students and students with special needs.
 6. Arrange developmentally appropriate activities for smaller group activities and rearrange furniture and play spaces to maintain separation, when possible.
 7. Address physical distancing objectives as students move between classrooms.
 8. Address potential issues from physical distancing rules that could result in unintended segregation of students with disabilities on campuses away from peers without disabilities.
- vii. Food Service
1. Consider strategies to limit physical interaction during meal preparation and meal service (e.g., serving meals in classrooms, increasing meal service access points, staggering cafeteria use).
 2. Suspend use of share tables and self-service buffets for food and condiments.
 3. Install physical barriers, such as sneeze guards and partitions, at point of sale and other areas where maintaining physical distance of 6 feet is difficult.
 4. With an approved National School Lunch Program waiver, offer meal delivery for students quarantined or in a home-based cohort.
 5. If providing meal service in classrooms, plan for cleaning and trash removal.
- e. Staff
- i. Develop a plan that ensures physical distancing among staff in their work environment to reduce spread of the virus that includes:
 1. Avoiding staff congregation in work environments, break rooms, staff rooms, and bathrooms.
 2. Avoiding grouping staff together for training or staff development. Consider conducting the training virtually or, if in-person, ensure distancing is maintained.
 - ii. Adjust staff schedules (through negotiations) to accommodate new student schedules and physical distancing strategies.
 - iii. In accordance with Cal/OSHA regulations and guidance, evaluate all workspaces to ensure that employees can maintain physical distancing to the extent possible.
 1. Where possible, rearrange workspaces to incorporate a minimum of 6 feet between employees and students.
 2. If physical distancing between workspaces or between employees and students and visitors is not possible, add physical barriers that cannot be moved to separate workspaces.
-  **Cleaning and Disinfecting.** Plan to meet cleanliness and disinfecting standards in school facilities and vehicles.
- a. Overall Cleanliness Standards. Schools must meet high cleanliness standards prior to reopening and maintain a high level during the school year.

Increased or Improved Services for Foster Youth, English Learners, and Low-Income Students

Percentage to Increase or Improve Services	Increased Apportionment Based on the Enrollment of Foster Youth, English Learners, and Low-Income students
[Insert percentage here]%	[Insert dollar amount here]

Required Descriptions

[For the actions being provided to an entire school, or across the entire school district or county office of education (COE), an explanation of (1) how the needs of foster youth, English learners, and low-income students were considered first, and (2) how these actions are effective in meeting the needs of these students.]

[Provide description here]

[A description of how services for foster youth, English learners, and low-income students are being increased or improved by the percentage required.]

[Provide description here]

EXHIBIT II

8/9/2020

2020 Budget Act and Special Education - Laws, Regulations, & Policies (CA Dept of Education)



[Home](#) / [Specialized Programs](#) / [Special Education](#) / [Laws, Regulations, & Policies](#)

**California Department of Education
Official Letter**

July 15, 2020

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices, Special Education Program Directors, Charter School Administrators, Principals, and Nonpublic School Directors:

2020 Budget Act and Special Education

On June 29, 2020, Governor Newsom signed the 2020 Budget Act and accompanying budget-implementing legislation, including Senate Bill (SB) 98 (Chapter 24, Statutes of 2020), the education omnibus trailer bill. The purpose of this notice is to outline some notable changes related to special education and distance learning enacted with the 2020 Budget Act.

Individualized Education Program Requirements

SB 98, Section 66, amends Section 56345 of the California *Education Code* (EC) to require that individualized education programs (IEPs) include a description of the means by which the IEP will be provided under emergency conditions, as described in EC 46392, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. Specifically, SB 98 adds EC 56345(a)(9)(A-C), which states:

(9)(A) A description of the means by which the individualized education program (IEP) will be provided under emergency conditions, as described in Section 46392, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. The description shall include all of the following:

- (i) Special education and related services.
- (ii) Supplementary aids and services.
- (iii) Transition services, as defined in Section 56345.1.
- (iv) Extended school year services pursuant to Section 300.106 of Title 34 of the *Code of Federal Regulations*.

(B) Subparagraph (A) shall apply, on or after the operative date of this paragraph, to the development of an initial individualized education program or the next regularly scheduled revision of an individualized education program that has not already met the requirements of subparagraph (A).

(C) Public health orders shall be taken into account in implementing subparagraph (A).

The description required by EC 56345(a)(9)(A) must be included in the development of each student's initial IEP or addressed during the next regularly scheduled revision of students' IEPs (i.e. annual IEP).

Distance Learning

SB 98, Section 34, includes new requirements for distance learning services in the 2020-21 school year, including defining "distance learning" in EC 43500(a) as:

. . . instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certificated employee of the local educational agency. Distance learning may include, but is not limited to, all of the following:

- (1) Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology.
- (2) Video or audio instruction in which the primary mode of communication between the pupil and certificated employee is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.
- (3) The use of print materials incorporating assignments that are the subject of written or oral feedback.

8/9/2020

2020 Budget Act and Special Education - Laws, Regulations, & Policies (CA Dept of Education)

In contrast, *EC 43500(b)* defines "in-person instruction" as "instruction under the immediate physical supervision and control of a certificated employee of the local educational agency (LEA) while engaged in educational activities required of the pupil."

EC 43503(b) requires that distance learning shall include several components, including:

- (4) Special education, related services, and any other services required by a pupil's individualized education program pursuant to Section 56341, including the requirements of subparagraph (A) of paragraph (9) of subdivision (a) of Section 56345, with accommodations necessary to ensure that individualized education program can be executed in a distance learning environment.

Learning Continuity and Attendance Plan

SB 98, Section 34, in *EC 43509(a)(1)(A)*, requires the governing board of a school district, a county board of education, and the governing body of a charter school to adopt, by September 30, 2020, a learning continuity and attendance plan for the 2020-21 school year. *EC 43509(f)* requires the California Department of Education (CDE) to develop a template for the learning continuity and attendance plan on or before August 1, 2020.

The learning continuity and attendance plan must include what additional supports will be provided for pupils with exceptional needs served across the full continuum of placements during the period in which distance learning is provided (*EC 43509(f)(1)(B)(vi)*). Additionally, *EC 43509(f)(1)* specifies that the learning continuity and attendance plan shall include:

- (C) How the school district, county office of education, or charter school will address pupil learning loss that results from COVID-19 during the 2019–20 and 2020–21 school years, including all of the following:
 - (i) How the school district, county office of education, or charter school will assess pupils to measure pupil learning status, particularly in the areas of English language arts, English language development, and mathematics.
 - (ii) What actions and strategies the school district, county office of education, or charter school will use to address learning loss and accelerate learning progress for pupils, as needed, and how these strategies differ for pupils who are classified as English learners, are eligible for a free or reduced-price meal, or are foster youth, as those terms are defined in Section 42238.01, individuals with exceptional needs, pupils in foster care, and pupils who are experiencing homelessness.
 - (iii) How the effectiveness of the services or supports provided to address learning loss will be measured, actions and strategies the school district, county office of education, or charter school will use to address learning loss and accelerate learning progress for pupils, as needed, and how these strategies differ for individuals with exceptional needs.

Funding to Mitigate Learning Loss

SB 98 appropriates funding to support pupil achievement and mitigate learning loss. *EC 43509(f)(2)* specifies that the learning continuity and attendance plan shall describe how federal and state funding will be used to support the efforts described in the learning continuity and attendance plan, including federal and state funds provided for learning loss mitigation pursuant to Section 110 of SB 98. Subsection 110(d) specifies that certain funds shall be used for activities that directly support pupil academic achievement and mitigate learning loss related to COVID-19 school closures, and shall be expended for any of the following purposes:

- (1) Addressing learning loss or accelerating progress to close learning gaps through the implementation, expansion, or enhancement of learning supports that begin before the start of the school year and the continuation of intensive instruction and supports into the school year.
- (2) Extending the instructional school year by making adjustments to the academic calendar, increasing the number of instructional minutes provided during each week or school day, or taking any other action that increases the amount of instructional time or services provided to pupils based on their learning needs.
- (3) Providing additional academic services for pupils, such as diagnostic assessments of pupil learning needs, intensive instruction for addressing gaps in core academic skills, additional instructional materials or supports, or devices or connectivity for the provision of in-classroom and distance learning.
- (4) Providing integrated pupil supports to address other barriers to learning, such as the provision of health, counseling, or mental health services, professional development opportunities to help teachers and parents support pupils in distance-learning contexts, access to school breakfast and lunch programs, or programs to address pupil trauma and social-emotional learning.

LEAs are encouraged to carefully review the 2020 Budget Act and implementing legislation, including the required components of the IEP, distance learning, and learning and continuity plans outlined in SB 98, in order to plan for services to students with disabilities in the upcoming school year.

8/9/2020

2020 Budget Act and Special Education - Laws, Regulations, & Policies (CA Dept of Education)

Should there be any questions related to the above information, please contact the Special Education Division via email at SEDinfo@cde.ca.gov or the appropriate Focused Monitoring and Technical Assistance (FMTA) Consultant using the contact information provided on the CDE FMTA Consultant Assignments by Region web page at <https://www.cde.ca.gov/sp/se/qa/fmtacnct.asp>.

Sincerely,

Original signed by Sarah Neville-Morgan. A hard copy of the signed document is available by contacting the Special Education Division's Director's Office by phone at 916-445-4602.

Sarah Neville-Morgan, Deputy Superintendent
Opportunities for All Branch

SNM:sw

Last Reviewed: Monday, July 27, 2020

EXHIBIT JJ

K-12 EDUCATION

California provides instruction and support services to roughly six million students in grades kindergarten through twelve in more than 10,000 schools throughout the state. A system of 58 county offices of education, 1,000 local school districts, and more than 1,200 charter schools provides students with instruction in English, mathematics, history, science, and other core competencies to enable them to develop the skills they will need upon graduation for either entry into the workforce or higher education.

The Budget includes total funding of \$98.8 billion (\$48.1 billion General Fund and \$50.7 billion other funds) for all K-12 education programs.

PROPOSITION 98

Proposition 98 is a voter-approved constitutional amendment that guarantees minimum funding levels for K-12 schools and community colleges. The Guarantee, which went into effect in the 1988-89 fiscal year, determines funding levels according to multiple factors including the level of funding in 1986-87, General Fund revenues, per capita personal income, and school attendance growth or decline. The Local Control Funding Formula is the primary mechanism for distributing these funds to support all students attending K-12 public schools in California.

The COVID-19 Recession has heavily impacted the economy and the state's General Fund revenues, creating a parallel negative impact on the state's K-14 Proposition 98 Guarantee. The Budget estimates Proposition 98 levels of \$78.5 billion, \$77.7 billion, and

\$70.9 billion in 2018-19, 2019-20, and 2020-21. For K-12 schools, this results in Proposition 98 per pupil spending of \$10,654 in 2020-21—a \$1,339 decrease over the 2019-20 per pupil spending levels. Additionally, in the same period, per pupil spending from all state, federal, and local sources decreased by approximately \$542 per pupil to \$16,881.

ADDRESSING IMMEDIATE NEEDS AND AVOIDING PERMANENT DECLINE

To help mitigate the negative impacts of the state's revenue decline on funding for K-12 schools and California Community Colleges, the Budget includes the following:

DEFERRALS

The COVID-19 Recession requires \$1.9 billion of Local Control Funding Formula (LCFF) apportionment deferrals in 2019-20, growing to \$11 billion LCFF apportionment deferrals in 2020-21. These deferrals will allow LCFF funding to remain at 2019-20 levels in both fiscal years; the Budget suspends the statutory LCFF cost-of-living adjustment in 2020-21. Of the total deferrals, \$5.8 billion will be triggered off in 2020-21 if the federal government provides sufficient funding that can be used for this purpose.

LEARNING LOSS MITIGATION

The Budget includes a one-time investment of \$5.3 billion (\$4.4 billion federal Coronavirus Relief Fund, \$539.9 million Proposition 98 General Fund, and \$355.2 million federal Governor's Emergency Education Relief Fund) to local educational agencies to address learning loss related to COVID-19 school closures, especially for students most heavily impacted by those closures.

Funds will be allocated to local educational agencies on an equity basis, with an emphasis on ensuring the greatest resources are available to local educational agencies serving students with the greatest needs. The funds are intended to track and mitigate the inequitable impact that the COVID-19 pandemic has had on different student populations, including low-income students and students with disabilities. Specifically, funds will be allocated in the following manner:

- \$2.9 billion based on the LCFF supplemental and concentration grant allocation.
- \$1.5 billion based on number of students with exceptional needs.

- \$979.8 million based on total LCFF allocation.

Funds may be used for:

- Learning supports that begin prior to the start of the school year, and the continuing intensive instruction and supports into the school year.
- Extending the instructional school year, including an earlier start date, by increasing the number of instructional minutes or days.
- Providing additional academic services for pupils, including diagnostic assessments of student learning needs, intensive instruction for addressing gaps in core academic skills, additional instructional materials or supports, or devices and connectivity for the provision of in-classroom and distance learning.
- Providing integrated student supports to address other barriers to learning, such as the provision of health, counseling or mental health services; professional development opportunities to help teachers and parents support pupils in distance-learning contexts; access to school breakfast and lunch programs; or programs to address student trauma and social-emotional learning.

SUPPLEMENTAL APPROPRIATIONS

In 2019-20 and 2020-21, the Proposition 98 funding level drops below the target funding level (Test 2), by a total of approximately \$12.4 billion. To accelerate the recovery from this funding reduction, the Budget provides supplemental appropriations above the constitutionally-required Proposition 98 funding level, beginning in 2021-22, and in each of the next several fiscal years, in an amount equal to 1.5 percent of General Fund revenues per year, up to a cumulative total of \$12.4 billion. This appropriation will accelerate growth in the Guarantee, which the Administration proposes to increase as a share of the General Fund. Currently, Proposition 98 guarantees that K-14 schools receive approximately 38 percent of the General Fund in Test 1 years. The Budget increases this share of funding to 40 percent by 2023-24.

REVISED CALPERS AND CALSTRS CONTRIBUTIONS

To provide local educational agencies with increased fiscal relief, the Budget redirects \$2.3 billion appropriated in the 2019 Budget Act to CalSTRS and CalPERS for long-term unfunded liabilities to reduce employer contribution rates in 2020-21 and 2021-22. This reallocation will further reduce the CalSTRS employer rate from 18.41 percent to

approximately 16.15 percent in 2020-21 and from 17.9 percent to 16.02 percent in 2021-22. The CalPERS Schools Pool employer contribution rate will be further reduced from 22.67 percent to 20.7 percent in 2020-21 and from 24.6 percent to 22.84 percent in 2021-22.

FEDERAL FUNDS

In addition to the federal Coronavirus Relief Fund and Governor's Emergency Education Relief Fund allocated to K-12 education above, the Budget appropriates \$1.6 billion in federal Elementary and Secondary School Emergency Relief funds that California was recently awarded. Of this amount, 90 percent (\$1.5 billion) will be allocated to local educational agencies in proportion to the amount of Title I-A funding they receive to be used for COVID-19 related costs. The remaining 10 percent (\$164.7 million) is available for COVID-19 related state-level activities, as follows:

- \$112.2 million to provide up to \$0.75 per meal for local educational agencies participating in the National School Lunch Program, School Breakfast Program, Seamless Summer Option, or Summer Food Service Program and serving meals between March 2020 and August 2020 due to physical school closures caused by the COVID-19 pandemic. These funds will enable local educational agencies to address food insecurity in their communities, especially for students and families who rely on school meals.
- \$45 million for grants to local educational agencies, including county offices of education, to coordinate or expand community schools to increase access to health, mental health, and social service supports for high-needs students. These funds will enable improved delivery of mental health and social-emotionally supportive services for students experiencing the stress, anxiety, and trauma caused by the COVID-19 pandemic.
- \$6 million for the University of California Subject Matter Projects to provide educator professional development for providing high-quality distance learning and addressing learning loss in mathematics, science, and English language arts due to the COVID-19 pandemic.
- \$1.5 million for the Department of Education for state operations costs associated with the COVID-19 pandemic.

TEMPORARY REVENUE INCREASES

The Budget proposes the temporary three-year suspension of net operating losses and limitation on business incentive tax credits to offset no more than \$5 million of tax liability per year. This, along with other tax changes, generates a net \$4.3 billion in General Fund revenues and approximately \$1.6 billion in benefit to the Proposition 98 Guarantee.

SPECIAL EDUCATION

The Budget increases special education resources and creates new mechanisms to improve special education financing, programs, and student outcomes. Specifically, the Budget increases special education base rates to \$625 per pupil pursuant to a new funding formula, apportioned using the existing hold harmless methodology, and provides \$100 million to increase funding for students with low-incidence disabilities.

The Budget also includes: (1) \$15 million federal Individuals with Disabilities Education Act (IDEA) funds for the Golden State Teacher Scholarship Program to increase the special education teacher pipeline, (2) \$8.6 million federal IDEA funds to assist local educational agencies with developing regional alternative dispute resolution services and statewide mediation services, and (3) \$1.1 million federal IDEA funds for a study of the current special education governance and accountability structure, as well as three workgroups to create a statewide Individualized Education Program template, provide recommendations on alternative pathways to a diploma for students with disabilities, and study the costs of out-of-home care.

AVERAGE DAILY ATTENDANCE

Since the beginning of the COVID-19 pandemic in early March, local educational agencies across the state closed for classroom instruction, transitioning students and teachers to distance learning models. The loss of classroom-based instruction has had unprecedented impacts on students and families, especially the most vulnerable students.

To help minimize additional learning loss related to COVID-19, the budget presumes that local educational agencies should transition back to providing in-classroom instruction in the 2020-21 school year. However, if local or state public health official orders necessitate a school closure, local educational agencies will need flexibility to

provide distance learning. To ensure funding stability regardless of the instructional model, the Budget includes a hold harmless for the average daily attendance used to calculate school funding for all local educational agencies. Additionally, the Budget includes requirements for distance learning to ensure that, when in-person instruction is not possible, students continue to receive access to a quality education via distance learning.

Specifically, the Budget includes:

- A hold-harmless for the purpose of calculating apportionment in the 2020-21 fiscal year; average daily attendance shall be based on the 2019-20 year, except for new charter schools commencing instruction in 2020-21.
- An exemption for local educational agencies from the annual minimum instructional minutes requirement. The minimum daily instructional minutes and minimum instructional day requirements are maintained, but may be met through a combination of in-person and distance learning instruction.
- Requirements for distance learning services, including the provision of devices and connectivity and supports for students with exceptional needs, English language learner students, youth in foster care, and youth experiencing homelessness, as well as students in need of mental health supports. Daily interaction with students in distance learning is required and local educational agencies are required to provide access to nutrition programs.
- Distance learning attendance requirements, including documentation of daily student participation, weekly engagement records, and attendance reporting for purposes of chronic absenteeism tracking. The Budget also requires local educational agencies offering distance learning to develop tiered re-engagement strategies for students who do not participate and to regularly engage with parents or guardians regarding academic progress.
- Fiscal penalties for local educational agencies offering distance learning that do not meet instructional day requirements or the attendance-related requirements.
- A material revision exemption for site-based charter schools offering distance learning.

Additionally, the Budget provides \$750,000 one-time Proposition 98 General Fund for the Sacramento County Office of Education to develop distance learning curriculum and instructional guidance for mathematics, English language arts, and English language development, for adoption by the State Board of Education by May 31, 2021.

2020-21 LEARNING CONTINUITY AND ATTENDANCE PLAN

In April, the Governor issued Executive Order N-56-20, which allowed local educational agencies to submit local control and accountability plans, normally due July 1, 2020, by December 15, 2020, in recognition of the challenges that local educational agencies would have faced in completing the plans during the COVID-19 pandemic this spring. Federal funds provided to schools for COVID-19 must be expended by local educational agencies on an accelerated timeline. In order to ensure transparency around the expenditures of these new federal funds, and in alignment with new flexibilities related to distance learning, the Budget replaces the December local control and accountability plan with a Learning Continuity and Attendance Plan, to be completed by September 30, 2020.

The Budget requires the Superintendent of Public Instruction, in consultation with the executive director of the State Board of Education, to develop the template for the Learning Continuity and Attendance Plan by August 1, 2020, and requires the template to include all of the following:

- A description of how the local educational agency will provide continuity of learning during the COVID-19 pandemic and address all of the following:
 - Distance learning
 - Learning loss
 - Mental health and social-emotional well-being
 - Professional development
 - Pupil engagement and outreach
 - School nutrition
- Local educational agency expenditures related to addressing the impacts of the COVID-19 pandemic.
- How local educational agencies are increasing or improving services in proportion to funds generated on the basis of the number and concentration of English learners, youth in foster care, and low-income students pursuant to the local control funding formula.

In adopting the Learning Continuity and Attendance Plan, local educational agencies must consult with stakeholders, solicit stakeholder input, and hold public hearings on the plan.

SCHOOL POLICING

Schools serve a foundational role in the social development of students. This development can be advanced or hindered by the presence of police officers on school campuses. To better promote student mental health, restorative justice, and social-emotional well-being, state and local leaders must evaluate opportunities for improvement in school safety infrastructure.

To this end, the Budget includes \$200,000 one-time non-Proposition 98 General Fund for the creation of a Young People's Task Force, whose members can speak to the lived reality of school policing and will inform changes in policy, contingent on the enactment of future legislation. The Budget also includes intent language for the Legislature to evaluate the presence of law enforcement on school campuses and consider reforms informed by local needs to improve student safety.

EMPLOYEE PROTECTIONS

To ensure the continuity of employment for essential school staff during the COVID-19 pandemic, the Budget includes the following:

- Suspension of the August 15, 2020, layoff window for teachers and other non-administrative certificated staff.
- Suspension of layoffs for classified staff working in transportation, nutrition, and custodial services from July 1, 2020 through June 30, 2021.

The Budget also includes the intent of the Legislature that school districts, community college districts, joint powers authorities, and county offices of education retain all classified employees in the 2020-21 fiscal year.

Other Significant Adjustments

- **Classified School Employees Summer Assistance Program**—An increase of \$60 million Proposition 98 General Fund to provide a match of state funds for participating classified employees to be paid during the summer recess period.

- **Department of Education State Operations**—A total increase of \$436,000 non-Proposition 98 General Fund for the following:
 - \$336,000 ongoing non-Proposition 98 General Fund for the School Fiscal Services Division for workload associated with deferrals and average daily attendance changes.
 - \$100,000 one-time non-Proposition 98 General Fund for the Department of Education to develop a template for the Learning Continuity and Attendance Plan in consultation with the executive director of the State Board of Education.

EARLY LEARNING AND CARE PROGRAMS

Investing in early learning and care supports the success of children and families of color, the majority of people served by these programs. The Budget preserves funding for early learning and care programs to the greatest extent possible, given the constraints of the COVID-19 Recession. Access, reimbursement rate levels, and quality investments are all maintained or grown, with a specific focus on serving the children of income-eligible workers essential to the fight against COVID-19.

PROTECTING ESSENTIAL SERVICES

To support access for families and provide stable funding for early learning and care programs and providers, the Budget:

- Maintains early learning and care provider reimbursement rates at 2019-20 levels.
- Eliminates the application of negative statutory growth adjustments for early learning and care programs.
- Provides a hold harmless provision in 2020-21 for providers that contract directly with the Department of Education.
- In 2020-21, provides reimbursement at a child's maximum certified level of need for all providers accepting vouchers.

CARES ACT FUNDING FOR CHILD CARE

California received \$350.3 million through the federal CARES Act for COVID-19 related child care activities. To maximize the benefits of these funds to providers and families, the Budget includes the following expenditure plan:

- \$144.3 million for state costs associated with SB 89 expenditures, family fee waivers, and provider payment protection.
- \$125 million for voucher provider hold harmless and stipends.
 - Up to \$62.5 million to fund providers accepting vouchers at the maximum certified level of need.
 - At least \$62.5 million for one-time stipends for providers accepting vouchers that offer care during the COVID-19 pandemic.
- \$73 million to continue care for at-risk children and essential workers.
- \$8 million to extend family fee waivers until June 30, 2020.

FUTURE FEDERAL COVID-19 FUNDS FOR CHILD CARE

To allow for the quick deployment of potential future federal COVID-19 funds for child care, the Budget includes language allowing up to \$300 million of such funds to be allocated by the following schedule:

- \$150 million to extend access for families being served through limited-term subsidies and expand access for unserved, eligible families.
- \$125 million to provide limited-term stipends for state-subsidized child care providers offering care during the COVID-19 pandemic.
- \$25 million to assist licensed child care providers with costs to re-open child care facilities closed due to the COVID-19 pandemic, and to supplement unfunded costs caused by low attendance or temporary closures due to the COVID-19 pandemic.

SHIFT OF CHILD CARE PROGRAMS TO THE DEPARTMENT OF SOCIAL SERVICES

To promote a high-quality, affordable, and unified early childhood system, the Budget includes \$2.3 million General Fund in 2020-21 to transition the existing child care and child development programs from the Department of Education to the Department of

Social Services. This will align all child care programs within a single department in state government and will ease the administration of collective bargaining commencing later this year.

Other Significant Adjustments

- \$9.3 million one-time federal funds to develop and implement an early learning and care data system.
- A decrease in new federal Child Care and Development Block Grant funding available for child care vouchers of \$6 million, bringing the total allocation for increased access in the Alternative Payment Program from \$53.3 million to \$47.2 million. Additionally, the Budget specifies that first priority for these funds will be to extend subsidized care for income-eligible essential worker families and at-risk children from a limited-term to an ongoing basis.

EXHIBIT KK

8/9/2020

SSPI Outlines Support for Distance Learning - Year 2020 (CA Dept of Education)



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**California Department of Education
News Release**

Release: #20-63
July 29, 2020

Contact: Daniel Thigpen
E-mail: communications@cde.ca.gov
Phone: 916-319-0818

State Superintendent Tony Thurmond Outlines Ongoing Supports to Strengthen Distance Learning and Announces Timeline for Ethnic Studies Model Curriculum during Virtual Media Check-in

SACRAMENTO—State Superintendent of Public Instruction Tony Thurmond on Wednesday outlined ways in which the California Department of Education (CDE) is helping schools implement and strengthen distance learning in the weeks leading up to the new school year, including guidance updates and virtual professional development, and ongoing efforts to connect school districts to resources that can close the digital divide.

"With school starting in a matter of weeks for many districts—and with as many as 97 percent of students expected to begin in distance learning—CDE is leaning into this moment to help make sure our educators are ready," said Thurmond. "Whether we are helping schools close the digital divide, or providing guidance and webinars to understand new requirements, I am proud of the work our team is leading to help educators have the resources and responsiveness they need to make critical decisions in real time."

With most of the state's students beginning the next academic year in distance learning, Thurmond said during Wednesday's virtual media briefing, the need to ensure all of them have the basic technology to access their learning grows increasingly urgent. More than 700,000 students still lack computing devices and another 300,000 lack hotspots to connect to the internet. The CDE has begun reaching out to school districts across California to ensure they are aware that California schools are receiving \$5.3 billion to acquire devices, strengthen distance learning and address learning gaps. This funding makes it possible for most school districts to immediately close the digital divide and remove inequitable barriers to remote learning.

Schools can apply now for their share of the [Learning Loss Mitigation Funds](#), authorized by the 2020–21 state budget. The CDE has posted online [each school district's initial allocation](#) (XLS) of Learning Loss Mitigation Funds and [answers to Frequently Asked Questions](#).

In the meantime, the CDE has released its first set of answers to [Frequently Asked Questions regarding distance learning](#), which are designed to help school districts better understand new state requirements for live instruction, daily participation, and steps for re-engagement when students have not connected with their schools.

During today's media briefing, the State Superintendent also provided an update on CDE's timelines and planned recommendations for a revised Ethnic Studies Model Curriculum. The CDE will post its recommendations for a revised [Ethnic Studies Model Curriculum](#) on Friday, July 31.

The CDE's recommendations will be made after reviewing thousands of comments, consulting with ethnic studies subject matter experts and thought leaders, working closely with educators and state leaders, and engaging with students in a series of virtual classroom webinars focused on ethnic studies.


Thurmond said the recommendations will focus on the four foundational disciplines of ethnic studies: African American Studies, Asian American Studies, Chicano Latino Studies, and Native American and Indigenous Studies. He said the recommendations will also include educator resources for engaging in expanded, critical conversations that combat hate, prejudice, and bias by utilizing the History-Social Science Framework to make connections to ethnic studies and broader social justice issues.

"Our recommendations will come at a time when communities across the nation are demanding recognition for the roles and contributions of people of color from the institutions that have been historically designed to minimize them," said Thurmond. "This has been the central focus of the ethnic studies movement for decades. And the diverse cross-section of students we have engaged in recent weeks through our virtual classroom series have been clear about their expectations for ethnic studies: that racial justice is overdue and should begin in the classroom."

California is required by law to develop a model curriculum in ethnic studies that can be used as a guide for districts or schools that want to develop their own curriculum. The recommendations will be submitted to the Instructional Quality Commission (IQC) for discussion at its next meeting on August 13, 2020, kicking off a new process for public input and recommendations to the State Board of Education, which must take final action on the curriculum guidance by March 31, 2021.

8/9/2020

SSPI Outlines Support for Distance Learning - Year 2020 (CA Dept of Education)

An archived broadcast of the full media check-in can be viewed on the [CDE's Facebook page](#) .

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Tony Thurmond — State Superintendent of Public Instruction
Communications Division, Room 5602, 916-319-0818, Fax 916-319-0100

Last Reviewed: Wednesday, July 29, 2020

EXHIBIT LL

8/9/2020

SPI Announces Collaboration with Apple & T-Mobile - Year 2020 (CA Dept of Education)



Home / Newsroom / News Releases / Year 2020

**California Department of Education
News Release**

Release: #20-65
August 5, 2020

Contact: Communications
E-mail: communications@cde.ca.gov
Phone: 916-319-0818

State Superintendent Tony Thurmond Announces Major Collaboration with Apple and T-Mobile to Connect Students in Need

Districts can acquire discounted, internet-enabled devices as distance learning resumes

SACRAMENTO—State Superintendent of Public Instruction Tony Thurmond announced today that the California Department of Education (CDE) is collaborating closely with Apple and T-Mobile to connect up to 1 million students in need as most schools across California expect to begin the next school year in distance learning.

At a time when schools have experienced a shortage of available computing devices, the two companies are teaming up with the state to facilitate technological access that currently prevents hundreds of thousands of students from connecting with their teachers, peers, and school communities. Apple and T-Mobile will fulfill orders from districts—which could reach up to 1 million students—with discounted iPads already equipped with high-speed internet connectivity.

The COVID-19 pandemic forced an estimated 97 percent of California's 6.2 million students to resume their school year in distance learning. Since April, the State Superintendent and his Closing the Digital Divide Task Force—in collaboration with the Governor's Office, state lawmakers, and nonprofits such as the Californians Dedicated to Education Foundation—have been working to remove inequitable barriers to student access by working with internet service providers, tech companies, device manufacturers, and others to increase access to devices and internet connections.

"As schools are working around the clock to prepare students and families for virtual learning, I want to commend Apple and T-Mobile for stepping up in a monumental way to support California's neediest students," said Thurmond. "As Californians, we have a shared commitment to ensure every student has access to the basic tools needed to connect to their learning, succeed in today's world, and pursue their dreams. This commitment provides schools across the state a unique chance to put devices in the hands of students now, while potentially making longer-term investments that can help us remove these inequities once and for all."

iPad with cellular offers a powerful and portable solution for schools that will keep students engaged in learning from anywhere. Apple's Professional Learning team is dedicated to supporting educators and will be providing weekly virtual training sessions for California teachers, offering creative strategies for learning remotely. Apple also offers one-to-one virtual coaching sessions and teachers can gain foundational technology skills through the Apple Teacher Learning Center, available at no cost. Since March, Apple has led more than 150 thousand educator coaching sessions worldwide.

"At Apple, we believe technology has the power to transform the learning experience for students at all levels," said Susan Prescott, Apple's vice president of Markets, Apps, and Services. "We are proud the State of California has chosen iPad to facilitate remote learning, and during these challenging times we look forward to working with administrators and school districts across the state to help make learning more accessible for their students."

In response to the pandemic, T-Mobile has accelerated its efforts to help close the digital divide and enable families and schools to embrace remote learning, connecting hundreds of thousands of kids for virtual learning in over 300 school districts nationwide, even before this landmark collaboration with the State of California.

"Education is the great leveler in our society but only if everyone can access it. The pandemic has exposed just how widespread and detrimental the digital divide really is for millions of children in this country. At T-Mobile, we're committed to doing something about it, and we're incredibly proud to partner with Apple to help the State of California connect up to a million students when they need it most," said Mike Katz, EVP of T-Mobile for Business.

CDE's commitment to working with Apple and T-Mobile comes at the same time the Governor's Office and lawmakers included \$5.3 billion in one-time funding in the state budget for schools to strengthen distance learning heading into the same year. These funds can be used immediately for purchasing needed technology. Under the arrangement, T-Mobile will provide discounted service and Apple is offering special pricing for iPad + cellular, which has been available to schools on top of its [education volume pricing](#), to enable all learners during this time.

8/9/2020

SPI Announces Collaboration with Apple & T-Mobile - Year 2020 (CA Dept of Education)

The CDE will provide instructions to school districts to submit orders to Apple and T-Mobile. At least 100,000 devices can be ready to arrive through the back to school time frame, according to Apple and T-Mobile. The companies expect to be able to fulfill school district demand through the end of 2020.

School district leaders will have the opportunity to learn more about pricing options, ordering procedures, and timelines for deliveries during a special webinar of the Closing the Digital Divide Task Force at 11 a.m. today. The webinar will be broadcast live on [CDE's Facebook page](#) and school district leadership teams can register on Zoom at https://us02web.zoom.us/webinar/register/WN_Ojom6-BXS2idutF2RKC8Ug.

###

Tony Thurmond — State Superintendent of Public Instruction
Communications Division, Room 5602, 916-319-0818, Fax 916-319-0100

Last Reviewed: Wednesday, August 05, 2020

EXHIBIT MM

8/9/2020

Connecting School Leaders to Available Devices - Year 2020 (CA Dept of Education)



[Home](#) / [Newsroom](#) / [News Releases](#) / [Year 2020](#)

**California Department of Education
News Release**

Release: #20-66
August 5, 2020

Contact: Cynthia Butler
E-mail: communications@cde.ca.gov
Phone: 916-319-0818

State Superintendent Tony Thurmond and Digital Divide Task Force Connect School Leaders to Available Devices as Learning Resumes

SACRAMENTO—State Superintendent of Public Instruction Tony Thurmond and the Closing the Digital Divide Task Force held a special webinar today to connect school districts to available technology during a time when most schools are starting the school year in distance learning and many are experiencing a shortage of computing devices.

The task force, co-chaired by Senator Connie Leyva (D-Chino), also provided an update on one-time funding available immediately to school districts to purchase devices. State law requires that schools have a plan for ensuring access to devices and connectivity for all students whenever distance learning occurs.

"We know that up to 1 million students still need devices for distance learning, and we're in a race against the clock as most schools plan to begin the next school year virtually," Thurmond said. "We are proud to have provided this opportunity for all school districts in California to learn about the public-private partnerships available that can help us accelerate our efforts to meet the urgent needs of our most vulnerable students."

During today's webinar, panelists provided more details [about a landmark collaboration with Apple and T-Mobile](#) to fulfill orders from districts—which could reach 100,000 students during the back to school period and up to 1 million students by the end of 2020—with discounted iPads already equipped with high-speed internet connectivity.

The Governor's Office also offered additional guidance for school districts regarding the [\\$5.3 billion in one-time funding in the state budget](#) for schools to strengthen distance learning heading into the same year. These funds—a rare opportunity for districts to make short and long-term investments in student technology—can be used immediately for purchasing needed devices.

An archived broadcast of today's task force meeting can be found on the [California Department of Education \(CDE\) Facebook page](#).

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Tony Thurmond — State Superintendent of Public Instruction
Communications Division, Room 5602, 916-319-0818, Fax 916-319-0100

Last Reviewed: Thursday, August 06, 2020

EXHIBIT NN

Senate Bill No. 98

CHAPTER 24

An act to amend Sections 313.3, 2572, 8209, 8227.7, 8280, 8280.1, 14002, 14041, 14041.5, 14041.6, 17375, 17524, 35710.5, 38000, 41203.1, 41327.1, 41341, 41370, 42127, 42127.6, 42127.8, 42131, 42238.02, 42238.025, 42238.03, 42238.15, 44955.5, 46200.5, 46201.5, 47604.1, 47605, 47607, 47607.2, 47607.5, 47612.5, 47612.7, 47632, 47635, 47644, 48000, 51461, 52064, 52074, 52202, 54444.2, 54444.3, 56122, 56195.1, 56345, 56477, 56836.06, 56836.07, 56836.08, 56836.10, 56836.11, 56836.159, 56836.165, 56836.21, 56836.22, 56836.24, and 56836.31 of, to amend and renumber Sections 56836.145 and 56836.15 of, to amend and repeal Section 56213 of, to add Sections 8227.8, 14041.8, 41020.9, 41204.2, 42238.021, 44225.4, 44235.4, 44266.5, 45227, 47653, 47654, 47655, and 56214 to, to add Article 2.2 (commencing with Section 56836.14) to Chapter 7.2 of Part 30 of Division 4 of Title 2 of, to add and repeal Sections 17463.7 and 42603.1 of, to add and repeal Part 24.5 (commencing with Section 43500) to Division 3 of Title 2 of, and to repeal Section 56836.045 of, the Education Code, to amend Section 17581.6 of the Government Code, to amend Sections 97.2 and 97.3 of the Revenue and Taxation Code, to add Chapter 5.4 (commencing with Section 13265) to Part 3 of Division 9 of, and to add Part 1.7 (commencing with Section 10200) to Division 9 of, the Welfare and Institutions Code, to amend the Budget Act of 2019 (Chapters 23 and 55 of the Statutes of 2019) by amending Items 6100-158-0001, 6100-194-0001, and 6100-196-0001 of Section 2.00 of that act, and to amend Sections 1, 4, and 9 of Chapter 3 of the Statutes of 2020, relating to education finance, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 29, 2020. Filed with Secretary of State June 29, 2020.]

I am signing Senate Bill 98, which provides schools with the resources and flexibilities necessary to provide quality public education during the COVID-19 pandemic. Among other things, this bill protects school funding from uncertainties caused by COVID-19, including for schools that offer distance learning to accommodate public health and safety conditions.

The fiscal protections offered to schools by this measure are predicated on new standards for distance learning that prioritize quality instruction for all students. The preferred method of instruction will always be in-person; students gain the most from the relationships developed through in-person interactions. However, it is the expectation of the state that if a school offers hybrid or mixed-delivery instructional models, it will do so through a framework of maximum teacher student engagement, with plans in place to ensure that no child falls through the cracks. This balance of flexibility for schools and instructional accountability is essential to navigate the COVID-19 pandemic while minimizing the impact of, educational disruption on student learning.

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While maintaining school funding at current levels allows for stability in the public education system, it does not take into account schools that had planned expansions. By not funding those expansions, families enrolled in those schools may be displaced, with impacts exacerbated by the uncertainties caused by COVID-19. I urge members of the Legislature to pursue targeted solutions to

these potential disruptions, and will work with you in the coming weeks to enact them.

GAVIN NEWSOM, Governor

LEGISLATIVE COUNSEL'S DIGEST

SB 98, Committee on Budget and Fiscal Review. Education finance: education omnibus budget trailer bill.

(1) Existing law requires the State Department of Education to develop, on or before June 30, 2020, a standardized English language teacher observation protocol for use by teachers in evaluating a pupil's English language proficiency.

This bill would extend the date for completion of that protocol until December 31, 2021.

(2) The Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer childcare and development programs that offer a full range of services to eligible children from infancy to 13 years of age. The act requires the department to contract with local contracting agencies to provide for alternative payment programs, and authorizes alternative payments to be made for childcare services, as provided. The act requires that families meet specified requirements to be eligible for federal- and state-subsidized childcare and development services.

This bill would require the Superintendent to reimburse contracting agencies for certain state-subsidized childcare programs from July 1, 2020, to June 30, 2021, inclusive, due to the ongoing impacts of childcare and development facility closures and low child attendance due to the COVID-19 pandemic and related public health directives, if the contracting agency meets one of 2 specified conditions. The bill would require a childcare program that receives that reimbursement and that is physically closed due to the COVID-19 pandemic, but funded to be operational, to submit a distance learning plan to the department pursuant to guidance from the Superintendent and to provide those distance learning services.

The bill would require the Controller, on July 1, 2020, to transfer \$152,314,000 from the Federal Trust Fund, consistent with specified federal requirements, to the General Fund to offset the state costs of providing assistance to childcare providers during the COVID-19 pandemic from March 4, 2020, to August 28, 2020, as provided. The bill would appropriate \$198,000,000 from the Federal Trust Fund, consistent with those same federal requirements, to the Superintendent for COVID-19 pandemic-related relief and assistance for childcare providers, the families those childcare providers serve, and essential workers, as provided. The bill would require that all children who meet specified childcare need and eligibility

account to be temporarily transferred to another fund or account of the school district for payment of obligations. The transfer shall be accounted for as temporary borrowing between funds or accounts and shall not be available for appropriation or be considered income to the borrowing fund or account. Amounts transferred shall be repaid either in the same fiscal year, or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. Borrowing shall occur only if the fund or account receiving the money will earn sufficient income, during the current fiscal year, to repay the amount transferred. No more than 85 percent of the maximum of moneys held in any fund or account during a current fiscal year may be transferred.

(b) If a school district elects to exercise the authority described in subdivision (a), the governing board of the school district shall hold a public hearing to take testimony from the public before adopting the required resolution.

(c) This section shall become inoperative on July 1, 2023, and, as of January 1, 2024, is repealed.

SEC. 34. Part 24.5 (commencing with Section 43500) is added to Division 3 of Title 2 of the Education Code, to read:

**PART 24.5. SCHOOL FINANCE, INSTRUCTION, AND
ACCOUNTABILITY IN THE 2020–21 SCHOOL YEAR**

43500. For purposes of this part, the following definitions apply:

(a) “Distance learning” means instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certificated employee of the local educational agency. Distance learning may include, but is not limited to, all of the following:

(1) Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology.

(2) Video or audio instruction in which the primary mode of communication between the pupil and certificated employee is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.

(3) The use of print materials incorporating assignments that are the subject of written or oral feedback.

(b) “In-person instruction” means instruction under the immediate physical supervision and control of a certificated employee of the local educational agency while engaged in educational activities required of the pupil.

(c) “Local educational agency” means 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.

43501. For the 2020–21 school year, the minimum schoolday for a local educational agency is as follows:

- (a) 180 instructional minutes in kindergarten.
- (b) 230 instructional minutes in grades 1 to 3, inclusive.
- (c) 240 instructional minutes in grades 4 to 12, inclusive.
- (d) 180 instructional minutes for pupils in grades 11 and 12 that are also enrolled part time in classes of the California State University or the University of California for which academic credit will be provided upon satisfactory completion of enrolled courses.
- (e) 180 instructional minutes for any pupil who is also a special part-time student enrolled in a community college under Article 1 (commencing with Section 48800) of Chapter 5 of Part 27 of Division 4 and who will receive academic credit upon satisfactory completion of enrolled courses.
- (f) 180 instructional minutes for pupils enrolled in a continuation high school.

43502. (a) For purposes of calculating apportionments for the 2020–21 fiscal year, a local educational agency shall offer in-person instruction, and may offer distance learning, pursuant to the requirements of this part.

(b) Notwithstanding Sections 41601, 42238.05 to 42238.053, inclusive, and 46010, for purposes of calculating apportionments for the 2020–21 fiscal year for a local educational agency, except for a new charter school that is authorized by the governing board of a school district or county board of education on or before June 1, 2020, or approved by the state board at its July 8 and 9, 2020, meeting and that is beginning instruction in the 2020–21 school year, the department shall use the average daily attendance in the 2019–20 fiscal year reported for both the second period and the annual period apportionment that included all full school months from July 1, 2019, to February 29, 2020, inclusive, and extended year average daily attendance attributed to the 2019–20 school year reported pursuant to Section 96 of the act adding this part. Any positive adjustment to average daily attendance for the 2019–20 fiscal year in the second or annual period attendance report submitted to the Superintendent after August 17, 2020, shall be substantiated by concurrence from an independent auditor.

(c) For the 2020–21 fiscal year, a local educational agency shall satisfy the annual instructional day requirements described in Sections 41420, 46200.5, and 46208, and in Section 11960 of Title 5 of the California Code of Regulations through in-person instruction or a combination of in-person instruction and distance learning pursuant to this part.

(d) (1) For the 2020–21 fiscal year, a local educational agency shall not be required to offer the annual instructional minutes that it would otherwise have offered pupils to meet the requirements of Sections 46207 and 47612.5, or the implementing regulations for those sections.

(2) For the 2020–21 fiscal year, a local educational agency shall not be required to offer the minimum instructional minutes in physical education required pursuant to Sections 51210, 51220, 51222, and 51223.

(e) For the 2020–21 school year, instructional minutes shall be determined as follows:

(1) For in-person instruction, instructional minutes shall be based on time scheduled under the immediate physical supervision and control of an

employee of the local educational agency who possesses a valid certification document, registered as required by law.

(2) For distance learning, instructional time shall be based on the time value of assignments as determined, and certified to, by an employee of the local educational agency who possesses a valid certification document, registered as required by law.

(3) For a combined day of instruction delivered through both in-person instruction and distance learning, time scheduled under the immediate supervision of an employee of the local educational agency who possesses a valid certification document can be combined with assignments made under the general supervision of an employee of the local educational agency who possesses a valid certification document as registered by law to meet the equivalent of a minimum day of instruction.

(f) For the 2020–21 school year, the process by which a local educational agency receives credit for a material decrease in average daily attendance for apportionment pursuant to Section 46392 due to an event described in Section 46392 that occurs during the 2020–21 fiscal year is suspended for all local educational agencies.

(g) Except for a new charter school that is authorized by the governing board of a school district or county board of education on or before June 1, 2020, or approved by the state board at its July 8 and 9, 2020, meeting, and that is beginning instruction in the 2020–21 school year, for purposes of any calculations that would use average daily attendance, the Superintendent, consistent with subdivision (b), shall use the local educational agency's average daily attendance in the 2019–20 school year in place of its average daily attendance in the 2020–21 school year.

43503. (a) (1) For the 2020–21 school year, a local educational agency that offers distance learning shall comply with the requirements of subdivision (b).

(2) Distance learning may be offered under either of the following circumstances:

(A) On a local educational agency or schoolwide level as a result of an order or guidance from a state public health officer or a local public health officer.

(B) For pupils who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19.

(b) Distance learning shall include all of the following:

(1) Confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work.

(2) Content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.

(3) Academic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such

as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports.

(4) Special education, related services, and any other services required by a pupil's individualized education program pursuant to Section 56341, including the requirements of subparagraph (A) of paragraph (9) of subdivision (a) of Section 56345, with accommodations necessary to ensure that individualized education program can be executed in a distance learning environment.

(5) Designated and integrated instruction in English language development pursuant to Section 11300 of Title 5 of the California Code of Regulations for English learners, including assessment of English language proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and, as applicable, support for dual language learning.

(6) Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness. This interaction may take the form of internet or telephonic communication, or by other means permissible under public health orders. If daily live interaction is not feasible as part of regular instruction, the governing board or body of the local educational agency shall develop, with parent and stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness.

(c) Pursuant to Sections 49550 and 47613.5, school districts, county offices of education, and charter schools shall provide nutritionally adequate meals for pupils who are eligible for free and reduced-price meals, whether engaged in in-person instruction or distance learning, contingent upon the department receiving an approved waiver from the United States Department of Agriculture, for each day of the scheduled school year.

43504. (a) The compulsory education requirements described in Section 48200 continue to apply for the 2020–21 school year.

(b) A local educational agency shall offer in-person instruction to the greatest extent possible.

(c) For the 2020–21 school year, for purposes of the requirement on school districts to offer 180 instructional days per school year pursuant to Section 46208 and the requirement on charter schools to offer 175 instructional days per school year pursuant to Section 11960 of Title 5 of the California Code of Regulations, an instructional day is a day in which all pupils are scheduled for the length of the day established by the governing board or body of the local educational agency in a classroom under the immediate supervision of a certificated employee or in distance learning that meets the minimum requirements described in this part.

(d) (1) Each local educational agency shall document daily participation for each pupil on each schoolday, in whole or in part, for which distance learning is provided. A pupil who does not participate in distance learning on a schoolday shall be documented as absent for that schoolday.

(2) For purposes of this section, daily participation may include, but is not limited to, evidence of participation in online activities, completion of

regular assignments, completion of assessments, and contacts between employees of the local educational agency and pupils or parents or guardians.

(e) Each local educational agency shall ensure that a weekly engagement record is completed for each pupil documenting synchronous or asynchronous instruction for each whole or partial day of distance learning, verifying daily participation, and tracking assignments.

(f) (1) A pupil who does not participate daily in either in-person instruction pursuant to subdivision (b) or distance learning pursuant to subdivision (d) shall be deemed absent by the local educational agency. A local educational agency shall use documentation of the absence for purposes of reporting its chronic absenteeism rates in its local control and accountability plan.

(2) Each local educational agency shall develop written procedures for tiered reengagement strategies for all pupils who are absent from distance learning for more than three schooldays or 60 percent of the instructional days in a school week. These procedures shall include, but are not limited to, verification of current contact information for each enrolled pupil, daily notification to parents or guardians of absences, a plan for outreach from the school to determine pupil needs including connection with health and social services as necessary and, when feasible, transitioning the pupil to full-time in-person instruction.

(g) Each school shall regularly communicate with parents and guardians regarding a pupil's academic progress.

(h) The Controller shall include instructions necessary to enforce the requirements of this part in the 2020–21 audit guide required by Section 14502.1.

(i) (1) For a school district or charter school that offers fewer than the instructional days required in subdivision (c), the Superintendent shall withhold from the local educational agency's local control funding formula grant apportionment for the prior year average daily attendance of each affected grade level, the sum of .0056 multiplied by that apportionment for each day less than what was required pursuant to this section.

(2) For a local educational agency that does not meet the requirements in subdivision (d), (e), or (f), the Superintendent shall withhold from the local educational agency's local control funding formula grant apportionment the percentage of days out of compliance multiplied by the derived value of average daily attendance, all multiplied by the average daily attendance of each affected grade level. For purposes of this paragraph, the percentage of days out of compliance is equivalent to the number of days out of compliance divided by the total number of instructional days required to be offered.

(3) A local educational agency that provides distance learning shall not be penalized for instruction provided before September 1, 2020, that fails to meet the requirements of this section.

43505. (a) For purposes of calculating apportionments for the 2020–21 fiscal year and for any other calculations that would be based on average daily attendance in the 2020–21 school year, for all newly operational charter

schools that are authorized by the governing board of a school district or county board of education on or before June 1, 2020, or approved by the state board at its July 8 and 9, 2020, meeting and that are beginning instruction in the 2020–21 school year, the department shall use the enrollment of that charter school as of Information Day, October 7, 2020, based on data reported in the California Longitudinal Pupil Achievement Data System pursuant to Chapter 10 (commencing with Section 60900) of Part 33 of Division 4, reduced by either the statewide average rate of absence for elementary school districts for kindergarten and grades 1 to 8, inclusive, or the statewide average rate of absence for high school districts for grades 9 to 12, inclusive, as applicable, as calculated by the department for the prior fiscal year with the resultant figures and rates rounded to the nearest tenth.

(b) (1) For purposes of calculating apportionments for the 2020–21 fiscal year and for any other calculations that would be based on average daily attendance in the 2020–21 school year, for a nonclassroom-based charter school described in Section 47612.5 as of the 2019–20 fiscal year, the department shall use the nonclassroom-based charter school’s average daily attendance in the 2019–20 fiscal year pursuant to subdivision (b) of Section 43502.

(2) For the 2020–21 school year, a nonclassroom-based charter school described in Section 47612.5 as of the 2019–20 fiscal year shall adopt a learning continuity and attendance plan pursuant to Section 43509, and shall not be required to adopt a local control and accountability plan pursuant to Section 47606.5.

(3) A nonclassroom-based charter school described in Section 47612.5 as of the 2019–20 fiscal year shall continue to comply with all of the statutory requirements in Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of Division 4 and the implementing regulations for that article.

43506. (a) A charter school that offers distance learning pursuant to this part is not required to submit a request to its chartering authority for a material revision to its charter pursuant to Section 47607 in order to offer distance learning.

(b) Notwithstanding Section 47612.5, an existing classroom-based charter school that offers distance learning pursuant to this part and did not receive a nonclassroom-based funding determination in the 2019–20 fiscal year pursuant to Section 47612.5 shall not be considered a nonclassroom-based charter school in the 2020–21 fiscal year because it provides distance learning and shall not be required to submit a request for a funding determination.

43507. Notwithstanding Sections 15948.1 and 15103 of Title 5 of the California Code of Regulations, for purposes of calculating the local control funding formula grade span adjustment pursuant to Section 42238.02 or the class size penalty pursuant to Sections 41376 and 41378, “class” may include instruction offered through distance learning or in-person instruction pursuant to this part.

43508. Notwithstanding Sections 14022, 14022.3, and 14022.5, for purposes of computing the minimum funding obligation for school districts and community colleges pursuant to Sections 8 and 8.5 of Article XVI of the California Constitution for the 2020–21 fiscal year, both of the following definitions apply:

(a) “Change in enrollment” means the most recent available count of average daily attendance for the 2019–20 school year, adjusted for the change in enrollment between the most recent available count of average daily attendance for the 2018–19 school year and the most recent available count of average daily attendance for the 2019–20 school year.

(b) “Enrollment” means the most recent available count of average daily attendance for the 2019–20 school year.

43509. (a) (1) For the 2020–21 school year, the governing board of a school district, a county board of education, and the governing body of a charter school shall adopt both of the following:

(A) By September 30, 2020, a learning continuity and attendance plan pursuant to this section.

(B) By December 15, 2020, with the first interim report required pursuant to Sections 1240, 42131, and 47604.33, the local control funding formula budget overview for parents required pursuant to Section 52064.1.

(2) (A) The governing board of a school district, a county board of education, and the governing body of a charter school shall not be required to adopt a local control and accountability plan or an annual update to a local control and accountability plan pursuant to Article 4.5 (commencing with Section 52059.5) of Chapter 6.1 of Part 28 of Division 4 or Section 47606.5 for the 2020–21 school year.

(B) The governing board of a school district, a county board of education, and the governing body of a charter school shall not be required to comply with paragraph (2) of Executive Order No. N-56-20.

(b) The governing board of a school district, a county board of education, and the governing body of a charter school shall consult with teachers, principals, administrators, other school personnel, local bargaining units of the school district, county office of education, or charter school, parents, and pupils in developing a learning continuity and attendance plan pursuant to this section. Specifically, engagement under this section shall include all of the following:

(1) The superintendent of a school district, a county superintendent of schools, and a charter school administrator shall solicit recommendations and comments of members of the public regarding the specific actions and expenditures proposed to be included in the learning continuity and attendance plan.

(2) The superintendent of a school district, a county superintendent of schools, and a charter school administrator shall notify members of the public of the opportunity to submit written comments regarding the specific actions and expenditures proposed to be included in the learning continuity and attendance plan, using the most efficient method of notification possible. This paragraph does not require a school district, county board of education,

or charter school to produce printed notices or to send notices by mail. The superintendent of a school district, a county superintendent of schools, and a charter school shall ensure that all written notifications related to the learning continuity and attendance plan are provided consistent with Section 48985.

(3) The superintendent of a school district and a county superintendent of schools shall present the learning continuity and attendance plan to the parent advisory committee and the English learner parent advisory committee established pursuant to Section 52063 separately for review and comment. The superintendent of a school district and a county superintendent of schools shall respond, in writing, to comments received from the parent advisory committee and the English learner parent advisory committee.

(4) The superintendent of a school district, a county superintendent of schools, and a charter school administrator shall present the learning continuity and attendance plan at a public hearing of the governing board of the school district, the county board of education, or the governing body of the charter school for review and comment by members of the public. The agenda for the public hearing shall be posted at least 72 hours before the public hearing and shall include the location where the learning continuity and attendance plan will be available for public inspection.

(5) (A) The governing board of a school district, a county board of education, and the governing body of a charter school shall adopt the learning continuity and attendance plan in a public meeting. This meeting shall be held after, but not on the same day as, the public hearing held pursuant to paragraph (4).

(B) The governing board of a school district, a county board of education, and the governing body of a charter school shall provide options for remote participation in the public hearings required by paragraph (4) and subparagraph (A) and include efforts to solicit feedback pursuant to paragraphs (1), (2), and (3) to reach pupils, families, educators, and other stakeholders who do not have internet access, or who speak languages other than English.

(c) (1) Not later than five days after adoption of a learning continuity and attendance plan, the governing board of a school district shall file the learning continuity and attendance plan with the county superintendent of schools. The county superintendent of schools may submit recommendations, in writing, for amendments to the learning continuity and attendance plan by October 30, 2020. The governing board of a school district shall consider the recommendations submitted by the county superintendent of schools in a public meeting within 15 days of receiving the recommendations. If a county superintendent of schools has jurisdiction over a single school district, the Superintendent shall perform the duties specified in this paragraph.

(2) Not later than five days after adoption of a learning continuity and attendance plan, the county board of education shall file the learning continuity and attendance plan with the Superintendent. The Superintendent may submit recommendations, in writing, for amendments to the learning continuity and attendance plan by October 30, 2020. The county board of

education shall consider the recommendations submitted by the Superintendent in a public meeting within 15 days of receiving the recommendations.

(3) Not later than five days after adoption of a learning continuity and attendance plan, the governing body of a charter school shall file the learning continuity and attendance plan with its chartering authority and the county superintendent of schools, or only to the county superintendent of schools if the county board of education is the chartering authority.

(d) A learning continuity and attendance plan adopted pursuant to this section shall be posted consistent with the requirements of Sections 52065 and 47606.5.

(e) A learning continuity and attendance plan adopted by the governing board of a school district, a county board of education, or the governing body of a charter school shall address continuity of learning and include, for the school district, county office of education, or charter school and each school within the school district, county office of education, or charter school, all of the information specified in the template developed by the Superintendent pursuant to subdivision (f).

(f) On or before August 1, 2020, the Superintendent, in consultation with the executive director of the state board, shall develop a template for the learning continuity and attendance plan that includes, but is not limited to, all of the following:

(1) A description of how the school district, county office of education, or charter school will provide continuity of learning and address the impact of COVID-19 on pupils, staff, and the community in the following areas, and the specific actions and expenditures the school district, county office of education, or charter school anticipates taking to support its ability to address the impacts of COVID-19:

(A) In-person instructional offerings, and specifically, the actions the school district, county office of education, or charter school will take to offer classroom-based instruction whenever possible, particularly for pupils who have experienced significant learning loss due to school closures in the 2019–20 school year or are at greater risk of experiencing learning loss due to future school closures.

(B) Plans for a distance learning program, including all of the following:

(i) How the school district, county office of education, or charter school will provide continuity of instruction during the school year to ensure pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery. This shall include a plan for curriculum and instructional resources that will ensure instructional continuity for pupils if a transition between in-person instruction and distance learning is necessary.

(ii) A plan for ensuring access to devices and connectivity for all pupils to support distance learning whenever it occurs.

(iii) How the school district, county office of education, or charter school will measure participation and assess pupil progress through live contacts and synchronous instructional minutes, as well as how the time value of pupil work will be measured.

(iv) What professional development and resources will be provided to staff to support the provision of distance learning, including technological support.

(v) To the extent that staff roles and responsibilities change because of COVID-19, what the new roles and responsibilities of affected staff will be.

(vi) What additional supports for pupils with unique needs will be provided, including for English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness during the period in which distance learning is provided.

(C) How the school district, county office of education, or charter school will address pupil learning loss that results from COVID-19 during the 2019–20 and 2020–21 school years, including all of the following:

(i) How the school district, county office of education, or charter school will assess pupils to measure pupil learning status, particularly in the areas of English language arts, English language development, and mathematics.

(ii) What actions and strategies the school district, county office of education, or charter school will use to address learning loss and accelerate learning progress for pupils, as needed, and how these strategies differ for pupils who are classified as English learners, are eligible for a free or reduced-price meal, or are foster youth, as those terms are defined in Section 42238.01, individuals with exceptional needs, pupils in foster care, and pupils who are experiencing homelessness.

(iii) How the effectiveness of the services or supports provided to address learning loss will be measured.

(D) How the school district, county office of education, or charter school will monitor and support the mental health and social and emotional well-being of pupils and staff during the school year.

(E) What professional development will be provided to staff, and what resources will be provided to pupils and staff to address trauma and other impacts of COVID-19 on the school community.

(F) Pupil engagement and outreach, including the procedures of the school district, county office of education, or charter school for tiered reengagement strategies for pupils who are absent from distance learning, and how the school district, county office of education, or charter school will provide outreach to pupils and their parents or guardians, including in languages other than English, when pupils are not meeting compulsory education requirements, or the school district, county office of education, or charter school determines the pupil is not engaging in instruction and is at risk of learning loss.

(G) School nutrition, including how the school district, county office of education, or charter school will provide meals for pupils who are eligible for free or reduced-price meals, as defined in Section 42238.01, for pupils participating in both in-person instruction and distance learning, as applicable and contingent upon the department receiving an approved waiver from the

United States Department of Agriculture, for each day of the scheduled school year.

(2) For each of the areas described in paragraph (1), the learning continuity and attendance plan shall describe how federal and state funding included in the original or revised budget adopted by the governing board of a school district, a county board of education, or the governing body of a charter school is used to support the efforts described in the learning continuity and attendance plan, including federal and state funds provided for learning loss mitigation pursuant to Section 110 of the act adding this part. If the actions and expenditures described in paragraph (1) are not included in the budget, the learning continuity and attendance plan shall reference how these expenditures will be included in the first interim report of the school district, county office of education, or charter school pursuant to Section 1240, 42131, or 47604.33.

(3) The learning continuity and attendance plan shall include a description of how the school district, county office of education, or charter school is increasing or improving services in proportion to funds generated on the basis of the number and concentration of unduplicated pupils under the local control funding formula pursuant to Sections 2574, 2575, 42238.02, and 42238.03 in the 2020–21 fiscal year pursuant to the regulations adopted by the state board pursuant to Section 42238.07. The description shall include the portion of any federal funds provided to backfill reductions to the local control funding formula on a dollar-for-dollar basis generated on the basis of the number and concentration of unduplicated pupils pursuant to Sections 2574, 2575, 42238.02, and 42238.03.

43510. If any activities authorized pursuant to this part and implementing regulations are found to be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, funding provided for school districts, county offices of education, and charter schools pursuant to Sections 2574, 2575, 42238.02, and 42238.03 shall be used to directly offset any mandated costs.

43511. (a) The requirements of this part shall not be waived by the state board pursuant to Section 33050 or any other law.

(b) This part shall become inoperative on June 30, 2021, and, as of January 1, 2022, is repealed.

SEC. 35. Section 44225.4 is added to the Education Code, to read:

44225.4. The time of validity of examination scores used to satisfy a requirement for the issuance of a credential, certificate, permit, or waiver pursuant to subdivision (b) of Section 80071 of Title 5 of the California Code of Regulations is extended to 11 years for any score used to satisfy a requirement from March 19, 2020, to June 30, 2021, inclusive.

SEC. 36. Section 44235.4 is added to the Education Code, to read:

44235.4. The time of validity of fees submitted with paper applications for credentials not available for online renewal or recommendation pursuant to subdivision (f) of Section 80002 of, and subdivision (e) of Section 80487 of, Title 5 of the California Code of Regulations, is extended to 120 days

the Budget Act of 2018 shall be available for encumbrance until November 30, 2021.

SEC. 109. (a) Consistent with the intent expressed in subdivision (c) of Section 76 of Chapter 15 of the Statutes of 2017, the sum of one million dollars (\$1,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to the Southern California Regional Occupational Center for instructional and operating costs in the 2020–21 fiscal year. It is the intent of the Legislature that this allocation assist the Southern California Regional Occupational Center to transition to a fully fee-supported funding model.

(b) As a condition of receiving funding appropriated pursuant to subdivision (a), the Southern California Regional Occupational Center shall submit an updated operational plan to the Department of Finance and the Legislative Analyst's Office on or before September 1, 2020.

(c) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the amount appropriated in subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2020–21 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2020–21 fiscal year.

SEC. 110. (a) The sum of three hundred fifty-five million two hundred twenty-seven thousand dollars (\$355,227,000) from the Federal Trust Fund and the sum of one billion one hundred forty-four million seven hundred seventy-three thousand dollars (\$1,144,773,000) from the Coronavirus Relief Fund are hereby appropriated to the Superintendent of Public Instruction for allocation in the 2020–21 fiscal year to eligible local educational agencies in an equal amount per pupil using the following methodology:

(1) For each eligible local educational agency, determine the total number of pupils 3 to 22 years of age, inclusive, with exceptional needs enrolled in that local educational agency using Fall 1 Census special education data for the 2019–20 fiscal year.

(2) The sum of the totals determined pursuant to paragraph (1) is the total statewide number of pupils with exceptional needs for the applicable year.

(3) Calculate a per pupil amount by dividing the amount specified in subdivision (a) for purposes of this section by the total statewide number of pupils with exceptional needs calculated in paragraph (2).

(4) Calculate a grant for each eligible local educational agency by multiplying the per pupil amount calculated in paragraph (3) by the total amount of pupils with exceptional needs for the eligible local educational agency determined in paragraph (1).

(5) The Superintendent shall allocate the applicable amount of funds calculated in paragraph (4) to eligible local educational agencies.

(b) (1) In addition to the amounts specified in subdivisions (a) and (c), the sum of two billion eight hundred fifty-five million two hundred twenty-seven dollars (\$2,855,227,000) from the Coronavirus Relief Fund is hereby appropriated to the Superintendent for allocation in the 2020–21 fiscal year to eligible local educational agencies. For purposes of making this allocation, funds shall be apportioned proportionally on the basis of the eligible local educational agency's supplemental and concentration grant funding determined as of the 2019–20 second principal apportionment certification, pursuant to subdivisions (e) and (f) of Section 42238.02 of the Education Code or paragraphs (2) and (3) of subdivision (c) of Section 2574 of the Education Code, as applicable.

(2) Consistent with Section 2576 of the Education Code, a county office of education's supplemental and concentration grant funding for purposes of paragraph (1) shall include funding that the Superintendent transferred to the county, wherein a pupil is enrolled, equal to the amount calculated for the school district of residence pursuant to subdivisions (e) and (f) of Section 42238.02 of the Education Code for each unit of average daily attendance credited to the school district of residence as of the 2019–20 second principal apportionment certification.

(c) In addition to the amounts specified in subdivisions (a) and (b), the sum of five hundred thirty-nine million nine hundred twenty-six thousand dollars (\$539,926,000) from the General Fund and the sum of four hundred thirty-nine million eight hundred forty-four thousand dollars (\$439,844,000) from the Coronavirus Relief Fund are hereby appropriated to the Superintendent for allocation in the 2020–21 fiscal year to eligible local educational agencies. For purposes of making this allocation, funds shall be apportioned proportionally on the basis of the eligible local educational agency's local control funding formula entitlement determined as of the 2019–20 second principal apportionment certification.

(d) Funds apportioned to eligible local educational agencies from the Federal Trust Fund pursuant to subdivision (a) shall be used from March 13, 2020, to September 30, 2021, inclusive, and all other funds apportioned pursuant to this section shall be used from March 1, 2020, to December 30, 2020, inclusive, for activities that directly support pupil academic achievement and mitigate learning loss related to COVID-19 school closures, and shall be expended for any of the following purposes:

(1) Addressing learning loss or accelerating progress to close learning gaps through the implementation, expansion, or enhancement of learning supports that begin before the start of the school year and the continuation of intensive instruction and supports into the school year.

(2) Extending the instructional school year by making adjustments to the academic calendar, increasing the number of instructional minutes provided during each week or schoolday, or taking any other action that increases the amount of instructional time or services provided to pupils based on their learning needs.

(3) Providing additional academic services for pupils, such as diagnostic assessments of pupil learning needs, intensive instruction for addressing

gaps in core academic skills, additional instructional materials or supports, or devices or connectivity for the provision of in-classroom and distance learning.

(4) Providing integrated pupil supports to address other barriers to learning, such as the provision of health, counseling, or mental health services, professional development opportunities to help teachers and parents support pupils in distance-learning contexts, access to school breakfast and lunch programs, or programs to address pupil trauma and social-emotional learning.

(e) As a condition of receipt of the funds pursuant to this section, an eligible local educational agency shall certify that funding received pursuant to this section will be used in full compliance with federal law, and shall adopt, on or before September 30, 2020, at a regularly scheduled meeting of the governing board or body of the local educational agency, a learning continuity and attendance plan pursuant to Section 43509 of the Education Code.

(f) This section does not preclude an eligible local educational agency from receiving or expending funds pursuant to subdivisions (a) and (b) before the adoption of its learning continuity and attendance plan for the 2020–21 school year.

(g) As a condition of receipt of the funds pursuant to this section, each eligible local educational agency shall maintain a file of all receipts and records of expenditures made pursuant to this section for a period of no less than three years, or, where an audit has been requested, until the audit is resolved, whichever is longer. Receipts and records that are required to be retained by each eligible local educational agency shall be made available to the Superintendent, upon request. The Superintendent shall take action to recoup any federal disallowances of funds allocated to eligible local educational agencies, as applicable.

(h) (1) As a condition of receipt of the funds pursuant to this section, an eligible local educational agency shall report, on or before August 31, 2020, the balance of any unexpended funds received from the Coronavirus Relief Fund to the Superintendent. Funds that are not expended by December 30, 2020, shall be reported to the Superintendent within 30 days, and the Superintendent shall initiate collection proceedings.

(2) As a condition of receipt of the funds pursuant to this section, an eligible local educational agency shall report, on or before August 31, 2021, the balance of any unexpended funds received from the Federal Trust Fund to the Superintendent. Funds that are not expended by September 30, 2021, shall be reported to the Superintendent within 30 days, and the Superintendent shall initiate collection proceedings.

(i) (1) For purposes of subdivisions (a) and (b), “eligible local educational agency” means a school district, county office of education, or a classroom-based direct-funded charter school as determined pursuant to Sections 47612.5 and 47634.2 of the Education Code as of the 2019–20 second principal apportionment certification.

(2) For purposes of subdivision (c), “eligible local educational agency” means a school district, county office of education, or a charter school.

(j) (1) For purposes of the calculations pursuant to subdivisions (a) and (b), data for a classroom-based locally funded charter school shall be included in the determination of the chartering authority’s funding.

(2) For purposes of the calculations pursuant to subdivision (c), data for a locally funded charter school shall be included in the determination of the chartering authority’s funding.

SEC. 111. (a) The Legislature finds and declares all of the following:

(1) The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act Child Care and Development Block Grant supplemental payment awarded three hundred fifty million three hundred fourteen thousand dollars (\$350,314,000) to California to address the impact of the COVID-19 pandemic on childcare providers and the families they serve. These funds were awarded to prevent, prepare for, and respond to the COVID-19 pandemic emergency, to provide assistance to childcare providers in the case of decreased enrollment or closures, and to provide childcare assistance to essential workers during the response to the COVID-19 pandemic.

(2) In response to the COVID-19 pandemic, the state appropriated the sum of one hundred fifty-two million three hundred fourteen thousand dollars (\$152,314,000) from the General Fund to childcare providers for COVID-19 pandemic-related assistance between March 4, 2020, and August 28, 2020, inclusive, as follows:

(A) Fifty million dollars (\$50,000,000) was allocated to non-local educational agency childcare providers, which remained open or intend to reopen during the COVID-19 pandemic emergency, for health, safety, and cleaning supplies related to federal, state, and local COVID-19 pandemic emergency public health and safety guidance, pursuant to Senate Bill 89 (Chapter 2 of the Statutes of 2020).

(B) Fifty million dollars (\$50,000,000) was allocated to existing state-subsidized childcare providers to support additional access to early learning and care for essential workers, at-risk children, and children with disabilities or special health care needs whose individualized education programs or individualized family service plans include early learning and care services, pursuant to Senate Bill 89 (Chapter 2 of the Statutes of 2020), for a minimum of 60 days of care for each eligible worker and at-risk child.

(C) Forty-one million three hundred fourteen thousand dollars (\$41,314,000) was allocated for the estimated cost of provider closures, waived family fees, and other assistance, consistent with Executive Order No. N–66–20.

(D) Three million three hundred thousand dollars (\$3,300,000) was allocated to CalWORKs Stage 1 childcare for the estimated cost of waived family fees, consistent with Executive Order No. N–66–20.

(E) Six million dollars (\$6,000,000) was allocated for the estimated costs of extending the family fee waivers through June 30, 2020, consistent with Executive Order No. N–66–20.

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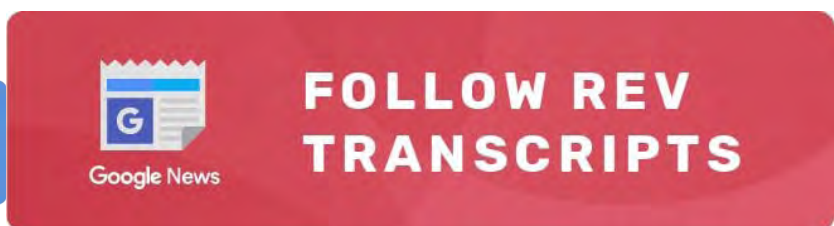


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Governor of California Gavin Newsom's July 17 coronavirus press conference. He said schools in most counties will start remotely. Read the full news briefing speech transcript here with all COVID-19 updates for CA.



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about specifically today. Our students, our teachers, staff, and certainly parents we all prefer in classroom instructions for all the obvious reasons social and emotional foundationally but only, only if it can be done safely.

Gavin Newsom: (05:02 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=302.66)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=302.66))

As a parent, I believe that as someone that has a responsibility to help support the education of six plus million kids in the state of California, have the backs of our staff, our teachers, our school nurses, our counselors, our guidance staff, principals, bus drivers, janitors, all the folks that are responsible for the caretaking, the safety and the health of our children. We have to have their backs as well including obviously the preciousness that is our children and the kids in our education system. But safety is foundational and safety will ultimately make the determination of how we go about educating our kids as we move into the fall and we work our way through this pandemic.

Gavin Newsom: (05:51 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=351.81)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=351.81))

Here is the five principles that we are laying out in terms of our expectations, here is our pandemic plan for schools in the state of California. Number one, safe in-person school based again if you're going to be in person in the school based upon local health data and I'll walk through that bullet point in more detail in a moment. We have new mask requirements that we are putting forth today, some clarification and some constructive guidance on physical distancing and other adaptations that we expect to see within the school setting. We're putting out specific guidance as it relates to testing and contact tracing in our school system and what we mean by distance learning and the word rigorous is foundational. If we're going to have distance learning and we will to make sure that it's real, that we address equity, we address the divide and it's quality, it's a rigorous distance learning.

Gavin Newsom: (06:49 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=409.94)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=409.94))

Let's talk about number one. Using data, using the foundational data that we have laid out county by county all throughout the state of California we are now putting forth guidelines that say, "Schools can physically open for in-person education when the county that they're operating in has been off our monitoring list for 14 consecutive days." If you've tuned into these daily briefings you're very familiar with our monitoring list. I'll be updating that list later in the presentation today but we are now putting forth guidelines that say, "Based on the data, based upon the background spread, the community spread of the virus, that if you are not on that monitoring list you can move forward as a county if you choose to physically open your campus, physically open your schools." However, schools that don't meet this requirement they must begin the school year this fall through distance learning.

Gavin Newsom: (07:56 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=459.94)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=459.94))

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Number two, and I'm going to get to that in a moment. Number two, we're putting forth a new mask requirement in the state. All school staff and students, all staff and students in third grade and above must wear masks. Students in the second grade or below we strongly encourage wearing masks and face shields. I have a very young son Dutch and caregivers when he first saw masks he naturally recoiled. A lot of caregivers now have face shields and he can see their expressions, their humanity, and that's why we put specifically guidance out as it relates to not just masks but face shields as well.

Gavin Newsom: (08:40 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=520.13)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=520.13))

Our third frame of guidance that we're putting forth today is around physical distancing and as I mentioned other adaptations. So, on the physical distancing side we believe that it's incumbent upon staff to maintain at least a six distance between each other and a six foot distance between themselves and the students. We believe that a school day should start with symptom checks meaning temperature checks. We have robust expectations around hand washing stations, sanitation, deep sanitation, deep disinfection efforts, and that these schools have along the lines of the adaptations have quarantine protocols. And we'll talk a little bit more in a moment about these continuity and attendance plans that each school site is now responsible for putting forth.

Gavin Newsom: (09:35 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=575.92)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=575.92))

As it relates to the issue of testing there's a requirement that we test on a rotating basis a cohort of staff on a consistent basis. Dr. Galli will talk a little bit more about that. And in turn, we are bringing to the school system the benefit and support of the 10 plus thousand contact tracers that we have trained here in the state of California in partnership with UCSF and UCLA with a backbone and a database that now has organized a collective. We want to turn our contact tracing where we think it became very effective in the school environments. It could be very effective in mitigating the spread and trying to understand exactly where and how the spread had advanced and allow us obviously to isolate and quarantine cohorts of not only children but staff as it relates to mitigating that spread further.

Gavin Newsom: (10:39 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=639.52)

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1cpXc7LR9oPD4DivX30WF0rlm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=639.52))

As it relates to distance learning as I said rigorous access to devices is one thing and connectivity it's foundational. And in a moment I'll talk about the money we have put up to allow for districts to purchase new devices to get the kind of connectivity that our students need and deserve to address this yawning gap as it relates to the digital divide. We want daily live interaction with teachers and other students, students connecting peer-to-peer with other students, teachers connecting daily on an interactive frame to advance our distance learning efforts. Remember we had a lot of experience that came through the spring this year.

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Gavin Newsom: (11:22 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=682.97)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=682.97))

We reviewed a lot of the fits and starts related to quality, access issues, points of consideration and concern. We shared a lot of those best practices. No one is going to deny that based upon the early orders to start to close schools at the local level that some of it worked more effectively in certain parts of the state than others. Clearly we have work to do to make sure that we are doing rigorous distance learning but this is the predicate, the foundation. These are the expectations that we have, minimum expectations in terms of quality, engagement, connectivity, and access to the devices that are foundational in terms of providing for quality distance learning.

Gavin Newsom: (12:08 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=728.44)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=728.44))

We also want to create a challenging environment where assignments are equivalent and in terms of what you would otherwise get in an in person class setting. I'm not naive and again we stipulate that second slide I showed that staff, that teachers, that parents prefer the social emotional learning of in class education. That is a default, that's our bias, but under the circumstances with the spread of this virus and I'll get to that spread in a moment as an explanation again as to why at this point we're putting out this recommendation that we want to do our best to create some sense of equivalency with the obvious constraints that is distance learning. We also want to make sure that we're always mindful of our students that are homeless, our students that are foster care kids that are in the system, kids with English as a second language and those with learning disabilities, those that have special needs and the like.

Gavin Newsom: (13:17 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=797.63)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=797.63))

Look that right foundation is laid, it was laid rather with the legislature and the strong support we received from the legislature when we put forth the package on equity that was approved. That package includes \$5.3 billion to deal with learning loss that was associated with some of the closers last year in a very, very focused and intentional effort to meet the needs of those again that fall into those categories of special needs in our system. So \$5.3 billion was put in additional funding to prioritize the issue of equity. So it's not just a throwaway line, it's not just a catch phrase, it's not just something we put out to promote a point of view but we're substantively putting real resources and heft into advancing that point of view as well.

Gavin Newsom: (14:12 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVx30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=852.61)

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So, the question a lot people are asked or rather begin to ask is, "All right, once our school is open what happens if the spread goes in to the classroom setting or in a district setting or if the spread continues in the county unabated?" And so, this slide puts forth some criteria that we are setting forth. Again, these are brackets and within these brackets we'll work through with the county and all the local conditions and

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recognizing the nuances and the gray areas that are part of a system as large as ours. Over a thousand

school districts here in the state of California in addition to all of these county superintendents and all of these local districts and cities and counties and all the jurisdictional criteria it makes this unlike any other state in terms of size and scope challenging.

Gavin Newsom: (15:05 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=905.24)

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But nonetheless, here's the minimum expectation in terms of expectation to consult with public health officers first if a classroom cohort has to go home because there's a confirmed case. If a school goes home with multiple cohorts that have cases or we stipulate 5% of the school, local school, not district local school is positive then it would trigger criteria to consider closing or mandate rather the closure of that school's site. However, one school does not make a district and depending on the size and scale of your district this could be multiple schools or just a few schools. If they have similar cohort caseload's we then have a stipulation here, a mandate that if 25% of the schools that compose of a district have positive cases that reach that threshold that they need to be closed within a 14 day period.

Gavin Newsom: (16:08 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=968.88)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=968.88))

So, that's the foundation that we're laying out today on public education guidance. As many of you know we put out guidance, the Department of Public Health, California Department of Public Health some time ago. There's a lot of local guidance, you have CDE, which is the California Department of Education that put out guidance as well. The purpose of today is to try to lean in from a health and data perspective in terms of our expectations, public and private schools in the state of California expectations, mandates with the flexibility that recognizes each part of this state is unique, each part of this state is distinctive. Some counties are on the monitoring list for a good reason others are not for an equally good reason because they're not seeing the outbreak and as a consequence are able to do the in-person education. But even those that are currently on the monitoring list we hope and expect...

Gavin Newsom: (17:03 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1023.351)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1023.351))

But even those that are currently on the monitoring list, we hope and expect as we mitigate the spread of this disease, they'll fall off that monitoring list. And we've created the parameters and guidelines over a 14 day stabilization period to then reopen those schools and allow that as an option to local education entities in partnership and counsel with public health officials to make that determination as to what is best for their children and those that support our children. Remember public education, education broadly is absolutely about our kids, but we cannot deny the fact that we have hundreds of thousands of adults that are responsible to taking care and educating our kids as well. And their health has to be considered as well. And I just offer that as a parent, but as someone who has reverence for our principals, for our teachers, for our janitors, for our bus drivers and others. And I am entrusted to be accountable and responsible to their health, as well as the health of my children and your children and our children, our future.

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Gavin Newsom: (18:12 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1092.9)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1092.9))

So that's the framework that we're putting out today on education. Of course, I'll happily answer any questions and we have the head of the California Board of Education, Linda Darlene Hammond, also available on the line for those of you wish to ask her any questions. And our not only head of Health and Human Services, Dr. Galley, but pediatrician himself is available for questions. I could talk a little bit more about his own personal experience with four young children he has as well and his expectations moving forward.

Gavin Newsom: (18:46 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1126.08)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1126.08))

But first I want to just quickly run through what I began with or end with what I began with. Again, that learning remains nonnegotiable, but neither is the safety of all of our cohorts of support staff, as well as our children. Here are today's numbers. You become familiar with the seven day average, which to me is even more important than the episodic rise and fall of a single day number of case counts as it relates to total number of cases that are positive. Oh by the way we tested 129,000 people on July 16th. You'll see the number 9,986 individuals tested positive for COVID-19. That seven day average at 8,838.

Gavin Newsom: (19:39 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1179.36)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1179.36))

You'll see the positivity rate has gone actually down modestly to 7.4%. The seven day positivity rate actually is lower than the 14 day positivity rate. Our current California positivity rate over a seven day period is 7.1%. The slide you see here represents a 14 day period at 7.4%. We're averaging now 124,000 tests on a daily basis. We have blown past that goal of 80,000. We've reconstituted, earlier this week you heard from Dr. Galley reconstituted our testing task force. I want to make this crystal clear. Our goal is to increase testing in the State of California, but do so with a different intensity of focus, which Dr. Galley laid out on Tuesday. But I want to see those numbers, those average daily test numbers continue to climb. They are continuing to climb. This is the largest seven day average number of daily tests that we've ever put forth. And I'll just remind you, it wasn't that long ago, a hundred or so days ago, we're averaging 2000 tests a day, now over 124,000 tests a day, and we'll continue to fight to see those numbers increase.

Gavin Newsom: (20:55 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1255.61)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1255.61))

Despite all of the external challenges, we'll just have to be more resourceful. And we, as a state are more than capable of figuring out how we can navigate some of those supply chain shortages and some of the other constraints that have been highlighted over the course of the last few weeks and understandably so. So positivity rate 7.4% over 14 day period that represents about a 7.3% increase over the 14 day period. As you can see from this slide it relates to hospitalizations. We continue to see hospitalization numbers

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increase in the State of California, about a 20% increase over... Excuse me, I'm looking now more like 22%

increase over the 14 day period. 6,808 individuals now are currently COVID-19 positive patients in our current healthcare system represents about 9.2% of the total number of hospital beds now have an identified COVID-19 positive patient. That was about 9% when I shared this slide with you on Monday.

Gavin Newsom: (22:08 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1328.42)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1328.42))

So it's increasing, but again at a rate that this current system in the aggregate and the aggregate can absorb. And in a moment, talk again a little bit more about what we're seeing at the county level. But what we're seeing in the aggregate at a state level related to hospitalizations, not surprisingly extends to the issue of ICU, is up about 15% over this two week period. Now 1,941 individuals that have been admitted into our ICUs about 16.6% of the total number of patients and our total population, or rather our total asset base of ICUs and NICU beds of 11,711. So that's holding is about 16% when I presented these slides to you on Monday, still north of 10,000 ventilators available. But again, this is in the aggregate statewide, doesn't represent what's happening at the local level and what's happening at the ground level. That's the purpose of this slide to talk about the counties on our monitoring list, now 32 counties, likely 33, we're monitoring one or two others.

Gavin Newsom: (23:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1404.83)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1404.83))

I expect and anticipate a county or two that's sort of two days likely to be on a third day again, though people fall off, they come back on, but 32 counties currently on the monitoring list. 58 counties in the state of California, 32 counties represented on this monitoring list. That number's held fairly steady, 29 or so last week, the end of the week, now 32. Has started the week around 32 people coming on, people coming off, but these are the counties of most concern. Now, if I broke this down in Stanislaus County and broke it down in Imperial County, what's happening into Tulare County, you'll see a higher utilization in those three counties, specifically of ventilators. You'll see other parts of the state like Napa and others that don't necessarily have a lot of remaining ICU capacity within their counties. That's a cause of concern, but please consider that the concern is not unnoticed in terms of our pandemic planning, in terms of our strategy to engage at a regional basis, our healthcare delivery system, our hospital system, that absorbs patients from outside of counties into other counties.

Gavin Newsom: (24:34 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1474.57)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1474.57))

So while it's understandable that some of these things generate screaming headlines, it also, I think, should be contextualized that there are smaller jurisdictions that don't have a lot of capacity. Just a few patients in the ICU will fill up their ICU capacity, but that doesn't mean we're not attending to the needs of those patients. Quite the contrary, that's part of a larger regional approach. So the counties matter, regions, multiple counties also are points of consideration. The Central Valley, we're starting to see an increase in the spread. Southern California continues to remain stubborn in terms of the spread, but you'll see counties on

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that list increasingly going further and further North of the Bay area. And you'll see a number of those represented on this slide that came on over the course of the last week or two reinforcing that no part of our state is immune from the transmission of this virus.

Gavin Newsom: (25:37 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1537.7)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1537.7))

And that's why it remains incumbent upon all of us to wear a mask, the most significant non-pharmaceutical intervention that you have at your disposal. And to the extent you don't, please go to our covid19.ca.gov website, covid19.ca.gov website to avail yourselves of all the resources, not just knowledge on that site. But to have the opportunity to look at support, if you need the support to get masks or you're in an industry where you feel that you need the support in terms of PPE, broadly defined, even beyond masks. I'd encourage you to take a look at that site. There's a number of things in that site that lay a specific focus on some partnerships we formed and some strategies we have advanced to provide and procure PPE and the like. By the way, we have done that in our public school system, we have provided millions and millions of masks, face shields, hand sanitizer, over well 50,000+ temperature devices. Over two months of PPE has been provided to our public education system, we'll provide more as needed. Yes, we considered the size of face masks recognizing that my four or five year old, six years old, [inaudible 00:27:08] year olds have different sized spaces, then dad and mom. And so we are also considering that in terms of the next tranch of not only procurement, though we've been in the process of procuring different size masks, but in terms of the distribution of the same. And so I just also want to make that point, that \$5.3 billion you saw on the equity slide was focusing on equity broadly, but it's money that is available for additional purchases of PPE. Money that is available for additional purchases of connected devices. Money that's available to address the digital divide, again it's why we call it learning loss. And within that lots of flexibility with an equity lens to provide real resources to the school districts to allow them to make the kind of bulk purchases that are necessary at this moment to close those divides.

Gavin Newsom: (28:08 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1688.53)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1688.53))

I remind you always to physically distance, wash your hands, minimize mixing that includes large crowds, backyard events with neighbors or extended family members you haven't spent time with or been in contact with in some time. These are just foundational points.

Gavin Newsom: (28:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1704.81)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1704.81))

And I'll just close with this. None of us want to see education virtualized, at least I don't. I know some folks perhaps may think that's a better approach. I believe profoundly in the power of individuals and the cohort and the connectiveness of being engaged with others and learning to develop yourselves, not just intellectually, but emotionally and maturing in ways where I respectfully submit is difficult when you're doing it online. That said the one thing we have the power to do,, to get our kids back into school is look at

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this list again, wear a mask, physically distance, wash your hands, minimize the mixing. The more we do on this list and we do it at scale, the quicker all those counties are going to come off that monitoring list. We're going to mitigate the spread of this virus and those kids are back in school.

Gavin Newsom: (29:28 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1768.98)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1768.98))

So if that's your top priority, it's certainly mine. Then it's incumbent upon us to practice, not just what some of us preach, but to practice what we preach as individuals that desire to see our kids go back, to model the behavior that we know can mitigate the spread, model the behavior that can actually extinguish this virus. I saw one study, I don't really want to get into the details, but if every American wore a mask, in just a number of weeks, we'll have dramatically bent the curve. I don't know that's too much to ask, though I recognize these are not the most comfortable things and often attractive things to wear. But what's more unattractive, what's more uncomfortable is not taking care of the needs of our small business and our most precious resource, our children.

Gavin Newsom: (30:20 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1820.67)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1820.67))

And that's why this list and your individual acts can make a profound impact and move us in a much more expedited manner towards our ultimate goal in getting every one of our kids back in the classroom, getting every one of our small businesses up and running again and getting us back to a semblance of normalcy that all of us desperately look forward to, long for and we'll once again enjoy, if again we attend to these basic and foundational and fundamental principles.

Gavin Newsom: (30:54 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1854.41)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1854.41))

So with that, I always encourage you to learn more and go to that covid19.ca.gov website. And I encourage you to go to that website to learn more about these continuity plans that are also required in our public education system. We call them local continuity attendance plans. In the vernacular that's well known in the education system, we talk about [inaudible 00:31:19] plans. We are now adopting those in a COVID-19 environment to consider the spread and consider this disease and it's spread in light of some of those local plans. Those have to go up on... Well made public and go up on site where you have as a parent, as someone who cares about this issue, you have access to that information. A lot of that information, again, always been aggregated our covid19.ca.gov website.

Gavin Newsom: (31:54 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1914.16)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1914.16))

So again, we have Dr. Galley, a dad, a pediatrician who is available for any questions. We have Linda Darlene Hammond. And if you don't know her as in her formal role, she's also one of our nation's leading educational

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experts. The reason she was appointed to this position, we're blessed to have her as she's also available to answer [inaudible 00:32:19] questions. And then you have a governor with four kids, is also available to answer any questions.

Speaker 1: (32:26 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1946.21)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1946.21))
Ricardo Cano, CalMatters.

Speaker 2: (32:31 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1951.17)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1951.17))

Thank you, governor. There seems to be some skepticism from parents and students over the quality of distance learning that they're going to receive, just given the way things played out in the spring. The budget you signed in [inaudible 00:32:45] standards, but doesn't spell out requirements for live synchronous instruction that parents in academics feel is an important part of distance planning. My question is how much live instruction do you feel school should be offering students this fall? And what reports will parents and students have if they're not receiving the quality instruction from their schools laid out under your budget?

Gavin Newsom: (33:07 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1987.72)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=1987.72))

Well we stipulated \$5.3 billion in terms of statutory language and expectation that certain conditions will be met as it relates to rigorous online and distance learning. So we laid those out in very specific terms here today, in terms of the slide that I put up. Let me put that slide now back up, because it will answer your question more specificity. You'll see our fifth bullet point rigorous distance learning. This is about having a requirement to have access to devices and connectivity for all of our kids. You may be aware and I'm really proud, my wife has been working overtime to try to get philanthropy engaged and to get support, to get devices donated and to have wifi hotspots and connectivity beyond even wifi-

Gavin Newsom: (34:03 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2043.001)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2043.001))

... by hotspots and connectivity beyond even WiFi in our public schools. I thank Tony Thurman for his leadership in this space as well, and Darlene Hammond. They all worked collaboratively together. I made an announcement a number of months ago, how Google really led in this space. We found 100,000 hotspots that we did advance in partnership with them, Microsoft, Amazon, others. Verizon came in providing \$10 a month per household plans. A lot of people still can't afford that, but it's a cohort of support. An example of where philanthropy even government is coming in, or business rather, is coming in. We have a lot more work to do there. We were able to get Chromebooks and laptops. We've already got tens of thousands, over 70,000. We announced a few months back, tens of thousands more coming in the CPUC.

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Gavin Newsom: (34:56 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2096.3)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2096.3))

I had made an announcement on this a few months ago. It goes to your question. It's worth repeating today. The CPUC has been doing much more targeted mapping of areas where connectivity is not robust and it's not optimal. There's been a renewed effort over the last few months to prepare for our fall academic season. We have, in addition to that, put up tens of millions of dollars, \$25 million from the CPUC that is providing supports to what we call LEAs, these local education authorities, to cut the costs of connectivity in devices in half in addition to all the philanthropic efforts that are underway.

Gavin Newsom: (35:39 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2139.17)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2139.17))

But we put that \$5.3 billion up and we put statutory language in the budget as it relates to the need to do lot more in the old traditional ways through bulk purchasing. And that's why that money is available. And that's why it's incumbent upon districts in the next couple of weeks that'll open up, some as early as August 17th, to purchase these devices to get that connectivity moving. Let me just give you an overall example of some of the connectivity. The City of Sacramento outfitted a lot of old school buses for connectivity and put out a playbook for other parts of the state to consider a possibility of mobile connectivity as well. It's just an example of some of the work that's being done. Some of the innovation that deserves some recognition. It's not a solution at scale, but it gives you a sense of what's been going on and what we intend to advance.

Gavin Newsom: (36:31 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2191.18)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2191.18))

Daily live interaction. You're absolutely right. The spirit of your question. As a parent, I agree with the spirit of your question. I want to see that interaction with teachers. I want to see that interaction with students. And I also want to see it rigorous. I want to see it challenging. I don't want to see it passive. I don't want to see it disjointed. So we deal with equity, we deal with connectivity, we deal with quality, we deal with the importance of having lesson plans that are robust and are meaningful, and we move aggressively to extinguish this virus so we can get everybody back in to the classroom as soon as we can. This is how we start in those monitory counties. This is not how we intend to end. Quite the contrary. We hope in some cases, some of these counties fall right off that monitoring list and we're back up and running in-person with all these new criteria and safety health expectations in place.

Speaker 4: (37:33 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2253.33)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2253.33))

John Myers, LA Times.

John Myers: (37:37 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2253.33)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2253.33))

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1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2257.09))

Hi governor. I'm hoping you can give me a little bit of information about your thinking on this question. When you talk to the press on Monday, a couple of reporters asked you about additional statewide efforts or statewide clarity, and you seemed to suggest at the time that there was enough out there already. But clearly things have changed in your thinking. So I'm just curious, what's changed between then and now, I should say. Did you see data from some of the local communities that gave you pause? Did you see maybe the suggestions of other school districts that have already moved to this? What changed? What was the moment that made you think you needed to do more work on the state?

Gavin Newsom: (38:11 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2291.95)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2291.95))

That was about 10 days ago, so forgive me for leaving you with that impression on Monday. It certainly was not my intention. Quite the contrary. We've been planning to make this announcement for some time. We've been working very collaboratively with all of our partners across the spectrum. John, you know well the spectrum of educational leaders, counsel, and advice that we've received from them, but also working with local health officials. So, I previewed that on Monday with the expectation that we'd be rolling out this plan with a little bit more nuance and detail. And so, we're just moving in that direction as we intended and we're very, very pleased and grateful for the incredible counsel advice that we've received from so many stakeholders.

Speaker 4: (38:57 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2337.15)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2337.15))

John [inaudible 00:38:56].

Speaker 3: (38:59 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2339.07)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2339.07))

Governor, thanks for taking our questions today. I think a lot of parents around the state are wondering what this means. You and others have talked about how kids getting back to school is going to be critical for really getting the economy restarted. So, do you have any plans to support parents who this news will mean kids staying at home indefinitely at this point?

Gavin Newsom: (39:22 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2362.34)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2362.34))

Yeah. I mean it's across the spectrum, isn't it? I mean, when you have an average daily rate of case increases now over 8,838, that's our seven day average, those case numbers are of concern. And that's why we move forward with modifications to our state at home order. I added more of these counties to the monitoring list. We're concerned across the spectrum about the impact on local businesses, the economy in the state, and obviously our parents. And again, it's not an intellectual exercise for me. It's quite personal as it is for so many people watching. I don't need to belabor that point except to say that I bring that personal experience to bear as it relates to the conversations we're having.

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Gavin Newsom: (40:03 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2403.78)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2403.78))

Dr. Ghaly certainly does as a pediatrician and as a parent of four. And of course, with our partners at CDE and our partnerships with the state board, we have been very sober in terms of how we've engaged in this conversation because, yes, our default, and I made that clear in that first slide, our default is in-person, but we have to do it in a safe way and we have to do it in a way that can guarantee the health of not just our kids, but also those that are entrusted with their care. And based upon the spread, based upon the increased spread of this virus just over the course of the last number of weeks and the fact that we haven't been able to yet, and we will, bend that curve to a degree that we must, that has unfortunately put us in this position.

Gavin Newsom: (40:55 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2455.03)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2455.03))

And so, I look forward to finding all of those supports we possibly can across the spectrum to help support our small businesses, to help support our caregivers and to help support our parents that, trust me, I know intimately are dealing with an extraordinary moment in their lives and their children's lives. The pressure we put on our parents is very, very intense indeed.

Speaker 4: (41:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2484.48)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2484.48))

Hannah Wiley, Sac Bee.

Hannah Wiley: (41:28 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2488.5)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2488.5))

Hi governor. Thanks for taking questions. Had the state moved more slowly through the reopening phase back in the late spring and early summer, do you think more school districts would be in a position to offer in-person learning?

Gavin Newsom: (41:43 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2503.64)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2503.64))

I am not able to hypothesize about coulda woulda shoulda. Here's the reality, the reality that's in front of us, reality I've presented you today in terms of the spread in these parts of the state. It's been, well, I think many people recognized that we are still going through the first wave with this pandemic. We're not out of the first wave. We were able to substantially mitigate any increase in the spread of this virus. We extended that mitigation for a period of time where ICU and hospitalizations held steady. And as we started to open up sectors of our economy, region by region, we are where we are. And now we are trying to tackle that in a very judicious way. We made some modifications last week, earlier in this week and we'll continue to be open argument, interested in evidence, looking at the data, looking at the conditions as they present

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themselves in diverse parts of the state and making subsequent recommendations.

Speaker 4: (42:43 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2563.24)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2563.24))

John Woolfolk from the Mercury News.

John Woolfolk: (42:47 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2567.7)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2567.7))

Hi governor. Can you just clarify this is an order or a recommendation, and can you clarify this is public as well as private schools or just public schools, and does it affect universities?

Gavin Newsom: (43:01 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2581.16)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2581.16))

Yeah. Public, private, university guidelines. We are working on basically [inaudible 00:43:05] socializing between us with the new incoming president of the UC system that's now transferring over. I want to make sure I don't put everything out as he's about to come on board, but we've been working overtime for our CSUs and UCs community colleges very, very collaboratively. And so, that guideline will be coming out very shortly. As it relates to your question about public, private, it includes public and private. And yes, as it relates to the stipulations that we put forth in our budget for public education, the criteria and the statutory language, the hold-harmless agreements and other relevant information that was put forth, adopted by the legislature and signed by me, it puts this in the form of a mandate in our public education system.

Speaker 4: (43:59 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2639.36)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2639.36))

Dustin Gardiner, SF Chronicle.

Dustin Gardiner: (44:04 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2644.19)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2644.19))

Thank you, governor. With respect to the testing requirement, how is the state going to ensure there's enough capacity for hundreds of thousands of educators to get tested every other month? How do you pay for that and how do you make sure there's the capacity?

Gavin Newsom: (44:18 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2658.13)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlVX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2658.13))

Well, as you may know, earlier this week on Tuesday, Dr. Ghaly put forth a new testing plan, new testing strategy, announced new co-directors of our testing task force that specifically answered the question of how we're prioritizing and what we're prioritizing. And today we reinforced that priority. He referenced during that presentation on Tuesday the expectation that health plans will start picking up the costs as they're required to do, but with different language we put forth. Then the federal guidelines to require those

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plans to reimburse and to provide for those tests. Employer responsibility. Employers include our responsibility as a state in our school system to pick up the costs of those tests. So that goes specifically into how we're going to pay for them.

Gavin Newsom: (45:13 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2713.13)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2713.13))

The testing, we need to increase. I was very clear about that. Even though we had 129,000 people tested yesterday, we still have responsibility to test many, many more. The purpose of that presentation, the purpose of reinvigorating our testing taskforce was to do just that. Today we've set forth expectation that our adults in our education system will be tested on a cohort basis, on a rotating basis. And as we avail ourselves to more testing capacity, we'll step up those efforts to a whole nother level.

Gavin Newsom: (45:49 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2749.84)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2749.84))

And more important perhaps than anything else is I think the announcement could be lost on connecting our contact tracers to our public education system as well. Because it's one thing to test someone, and we, again, focus a lot on that, but what do you do after someone's tested positive or someone's been exposed to someone who has tested positive? And that question can be very anxiety inducing in a public school setting. And that's why the partnership with the contact tracers at the county level now to really do the contact tracing isolation to understand where the spread happened, what the cohort looks like, becomes foundational in terms of meaningfully addressing, mitigating that spread and meaningfully opening up the opportunity to reintroduce students back into that school setting once we've addressed the spread of the virus.

Speaker 4: (46:44 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2804.35)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2804.35))

Kathleen Ronayne, AP.

Kathleen Ronayne: (46:48 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2808.65)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2808.65))

Hi governor. As you mentioned, some schools are starting in the middle of August, so four weeks from now. Do you think that you're giving them enough time to implement these complicated rules in a meaningful way by the time school starts? And then secondly, the guidelines don't mention extracurriculars. So if a school is open for in-person learning, what can they do in the extracurricular space? And then finally for Dr. Ghaly, is this slight decrease in the positivity rate a sign that the latest closures are having a positive effect.

Gavin Newsom: (47:20 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2840.38)))

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2840.38))

Yeah. Well, I'll leave that to Dr. Ghaly. I'll just defer to him since I've taken too much of everybody's time. I

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year. Well, I'll leave that to Dr. Ghaly. I'll just defer to him since I've taken too much of everybody's time. I have strong opinions about that positivity rate, but I'll let Dr. Ghaly express his first. But look, as it relates to providing time, we've been at this for months now. This shouldn't come as a surprise to anybody. We ended our school year last year with the expectation of providing distance learning. We work with a lot of the districts to share best practices to work through a lot of issues. So this is not sprung on people. This is not a shock just a few weeks before the school year.

Gavin Newsom: (47:55 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2875.53)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2875.53))

Now, the expectation that we're doing in all the monitoring counties obviously renews a sense of focus as it relates to distance learning. But the frame around distance learning broadly has been socialized over the course of many, many months here in the state of California. Example, by the work we did at the end of the year last year to provide more devices, to provide more points of connectivity, and also exampled, and I think you can appreciate this, by the fact that some of our state's largest school districts have already moved forward to distance learning. And the fact is, many others followed suit in the last few days.

Gavin Newsom: (48:35 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2915.96)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2915.96))

And so, you have dozens and dozens and dozens of districts that already are moving down this path. And so, from that perspective, I think the opportunity for these districts to prepare, an opportunity to use the resources that we made available weeks and weeks ago in the budget avail themselves, I think, very favorably though, again, I'm not naive. You'll invariably find a district that doesn't want any mandate. And certainly not this mandate that obviously may express a different point of view. But we are working through 1000 plus districts in this state and we're working through a scale no other state in the country is working through. But with that, I'm not sure another state in the country has its head of Health and Human Service that has four kids and is a pediatrician. So let him answer that question on that positivity rate.

Dr. Mark Ghaly: (49:40 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2980.78)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=2980.78))

Thank you governor. Kathleen, thanks for the question on test positivity. Of course, it's encouraging to see it begin to stabilize, but we will see. I think we're doing a lot more testing. We know that we're seeing more transmission as evidenced by the increased number of cases over a seven day average. But certainly one of the first signs is that we start to see more of our tests come back negative and that positivity rate come down. So as we do every day, we're going to keep watching it very closely. Take it in context of some of the increased challenges of getting test results back because of the large number of tests being done across the nation.

Dr. Mark Ghaly: (50:23 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3023.71)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DlvX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3023.71))

So yes, it's encouraging, but we're going to watch it closely and we're prepared for whatever we see tomorrow and over the trends. We continue to push out testing, try to get it to the places where we know

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we're seeing cases increased in those communities where it's vital and important, and we'll be keeping up on the updates. As soon as we feel confident in that trend and we see other numbers start to stabilize, we'll credit some of the moves we've made over the last few weeks to those. This is that time that given it's been about three, four weeks since we first started to make moves, the governor with his finger on the demo...

Dr. Mark Ghaly: (51:03 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3063.8)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3063.8))

Once we made, first started to make moves, the governor with his finger on the dimmer, moving it down a little bit. So we're right in that time period where we may see some of the changes in the benefits of those. So, with all of you, we'll watch it closely and see where we are over the weekend and early next week.

Gavin Newsom: (51:18 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3078.78)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3078.78))

And just to reinforce for folks, the positivity rate on the seven day when we announced that on Monday, was about 7.7%, 7.1 today. But, I've got to just say as a point of caution, those positivity numbers can fluctuate significantly in the seven day averages. And so, we may be in a completely different place on Monday. And so, again, some of these data points, even these short-term trends, I want to caution folks. But nonetheless, I want to thank everybody for their indulgence and their personal responsibility over the course last few weeks, and allowing us to move forward at this next level to mitigate the spread of this virus,

Speaker 5: (52:10 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3130.03)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3130.03))

[inaudible 00:52:11].

Speaker 6: (52:13 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3133.35)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3133.35))

Governor, on the topic of parents that have students with special needs, I spoke to several parents over this course with students on the autism spectrum. They say their children have regressed considerably since [inaudible 00:52:24] learning last semester, it just didn't work with less. Than two weeks for some of these districts, I understand there's additional funding. But realistically, how quickly is that going to be divvied up? And what additional services will be offered in terms of interaction for students with special needs?

Gavin Newsom: (52:38 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3158.98)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3158.98))

Yeah. No one, and I mean no one, better positioned than the champion of special education reform, Linda Darling-Hammond, who's on the line. Linda can answer that question more effectively than perhaps anyone. And so let me ask Linda to answer that question and I'll fill in wherever she leaves off. Linda.

Linda D.: (53:01 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3158.98)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3158.98))

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1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3181.48))

Thanks very much for that question. We're very concerned about meeting the needs of the full range of students. All of the districts, you have been aware that they need to have capacities for distance learning and begin to adapt what they're doing for students with special needs. We will have further standards and guidance coming out over the coming week. But in the meanwhile, a lot of the districts and county offices have been developing resources. Many of them targeted for students with special education needs. Curriculum and plans for how teachers will be able to do one-on-one, as well as small group instruction, whether it's in person or online. There's been a lot of training happening this summer, and many teachers are learning how to, both getting their time put in their schedule and learning how to use the breakout room in Zoom, so that a small group can meet with them, including students who need one-on-one attention. The paraprofessionals sometimes can be one-on-one in that Zoom breakout room and in other contexts to work directly with students in the ways that they need to receive services.

Linda D.: (54:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3264.09)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3264.09))

So I think we're going to see a lot more capacity this school year than we were able to have in all districts last school year, to really respond to both classrooms as a whole and the needs of particular students. And of course, as the governor said, we want to get people back to school in person, and the guidelines not only say who can't open school, but who can. That's going to actually be encouraging. And how counties and districts and schools can get off the distance learning list if you will, and back in school in person. And so, as districts have been providing their plan A and plan B for classrooms of kids and individual kids, there's been a lot of attention that they've been able to provide with new resources from the Collaborative for Educational Excellence, and from the CDE to help them do that.

Gavin Newsom: (55:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3324.73)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3324.73))

Linda, let me, if I may, interject and ask you a question as well. In relationship to the work that CDE has done, all of your cohorts and partners, the superintendent of public education, the webinars, et cetera, just on the distance learning question. I thought Kathleen's question was a right question about the fact that some schools are opening as early as August 17th, and not all of them had announced that they were moving towards distance learning. Now they are compelled in these monitoring counties to talk a little bit about the last few months. Maybe you can fill in with a little bit more specificity, the work that has been done. That we haven't just been sitting on our hands, as it relates to preparing for some expectation that we may see distance learning this fall. Can you fill in just perhaps, a little more nuance into that?

Linda D.: (56:21 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3381.63)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-

1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3381.63))

Sure. The CDE, the California Department of Education, has been offering both a wide variety of resources, including curriculum resources, instructional resources, and webinars to educators, both around general instruction and distance learning and best practices, but also specific for English learners, for students with

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disabilities. Our Center for Collaboration, Excellence, and Education, the CCEE, has also been working very

closely with county superintendents who then work with their district superintendents. A number of them have created entire curricula that are now available for districts that didn't have a pathway to a continuity plan for instruction earlier, and have been holding up best practices, including for students with disabilities, in ways that have been traveling across the state at a very rapid clip.

Linda D.: (57:26 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3446.6)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3446.6))

We do have an infrastructure where the county offices has worked directly with the districts in their counties and they're getting a lot of support from both of those agencies at the state level. And they also then are in touch at the county level, with county public health providers and health departments so that there's toggling that we're going to need to do between the safe environment for learning, and the method by which the learning will be enabled, can be done in a much more coherent way than we were able to do in the spring. Remember in the spring, when we first closed schools, a lot of people thought it would be two weeks. So they were just providing some supplementary resources. Some districts only had instructional packets. Many of them did not have the devices and connectivity for all of the students that they needed to have to really be in touch with kids one-on-one, that synchronous instruction is now required. So we're a much better position going into the school year in every county and district, to support the needs of children then we were back in the spring.

Gavin Newsom: (58:40 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3520.42)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3520.42))

I appreciate that. Thank you, Linda. Thank you. Next question.

Speaker 5: (58:43 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3523.15)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3523.15))

Final question?

Speaker 7: (58:46 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3526.56)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3526.56))

Musadiq Bidar, CBS News.

Musadiq Bidar: (58:47 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3527.14)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3527.14))

Hey Governor, thank you for taking the question. The Trump administration has made clear in recent weeks that reopening America goes hand in hand with reopening schools. President Trump has said he will pressure governors to open all schools. What kind of pushback and comments do you anticipate from the president on this? And have you been in contact with anyone in the administration or the Coronavirus Task Force about your plan?

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Gavin Newsom: (59:12 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3552.5)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3552.5))

Yeah. We've been constantly in contact with members of the Task Force, the vice president directly, not just individual members of the Task Force. I think this afternoon, I have a number of conversations with specific members as well on a myriad of issues, including where we are as it relates to education. Look, I want to just put up a slide, because I think it deserves to be reinforced. And this was a slide about what is our bottom line, because I think it goes to the heart of your question and to the heart of the moment we're in. You can just remove political context, remove one individual or elected official. I think broadly, this statement. And forgive me, I say broadly, because I recognize not everyone would submit to it. But broadly the statement I believe is accurate, that students, teachers, staff, and parents prefer in-classroom instruction. That we stipulate to, but only if we can do it safely.

Gavin Newsom: (01:00:09 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3609.91)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3609.91))

And I think it's that, "But only, if we could do it safely." That's the responsibility of governors. It's a responsibility of superintendents of public education. It's responsibility of county health officers. Responsibility of caretakers and teachers and other incredibly important classified staff. It's incumbent upon parents as well. And so, this is the question that we are responsible for answering. How can we do it safely, when you're seeing a background spread of a virus in certain areas that invariably will impact what's happening within the school environment? And I deeply recognize. I follow the science. I pay attention to the data as it relates, again, as a parent first. But as a governor, to the data about the spread of this virus based upon age. None of us are naive about a lot of the studies that are out there. And by age I mean, not just young people, but by ages underneath them meaning, 10 and younger. And our elementary school kids and the like.

Gavin Newsom: (01:01:19 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3679.12)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3679.12))

But we're not just talking about our children. We are also talking about those we entrust our children with when we drop them off at school as well, and their health and their safety. So it's an ecosystem, our public education system, our education system broadly, and we are responsible to address the needs of that ecosystem. And part of that ecosystem, in closing, does extend. And I recognize the president's insistence from an economic paradigm. I get that. It also impacts the larger economic question, because we all recognize as parents, the need, not only to get our kids back to school where they're healthy and safe, but also for us to get back to work as well. So all of these things are being weighed. They weigh heavily on all of us as parents, as members of a community that have roles of responsibility.

Gavin Newsom: (01:02:11 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3731.98)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3731.98))

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And so I appreciate this dialectic, I guess it's a way of saying this. I'm not looking to score cheap political

points with people that have different points of view. I respect and appreciate this dialectic, this conversation, that we're having. And we'll continue to have it with, I think, clarity of purpose and conviction to keep our kids and keep our economy moving. Keep everybody safe and healthy in the right balance.

Gavin Newsom: (01:02:39 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3759.89)

editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3759.89))

And so again, I thank all of you for the opportunity to balance perhaps some of your day with this update and your time. I want to thank for the questions that we received. I want to thank Linda Darling-Hammond for her just extraordinary work over the course of many, many months, not just weeks, as we organized around the announcement we're making today. Dr. Ghaly for all his work, working overtime, to help advance this cause. To all our education advisors and to the superintendent of public education, Tony Thurman, for his willingness to never sacrifice for expediency, but to really focus on the medium-long-term safety of our children and our staff.

Gavin Newsom: (01:03:24 ([https://www.rev.com/transcript-](https://www.rev.com/transcript-editor/shared/nWnVCjVbqWLqQAe3h2rswbPNUjZzJXmZUyH6m5wanrCTmTKDcy8-1cpXc7LR9oPD4DivX30WF0rIm2rFHsFM8AdZ4dc?loadFrom=PastedDeeplink&ts=3804.88)

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With that, hope everybody has a safe weekend where you are wearing your masks, practicing the physical distancing, and doing so in turn in the spirit of getting our kids back in classroom instruction. Take care everybody.

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 capacity as the State Public Health Officer and
 Director of the Department of Public Health and
 Tony Thurmond, in his official capacity as State
 Superintendent of Public Instruction and Director
 of Education*

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION – FIRST STREET COURTHOUSE

MATTHEW BRACH, et al.,
 Plaintiffs,
 v.
GAVIN NEWSOM, et al.,
 Defendants.

Case No. 2:20-cv-06472 SVW (AFMx)

**DECLARATION OF DARIN L.
 WESSEL IN SUPPORT OF
 REQUEST FOR JUDICIAL
 NOTICE IN OPPOSITION TO
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER (Dkt. 28);
 EXHIBITS**

Date: August 17, 2020
 Time: 1:30 p.m.
 Courtroom: 10A - Telephonic
 Judge: The Honorable Stephen
 V. Wilson
 Trial Date: Not set
 Action Filed: 7/21/2020

1 I, Darin L. Wessel, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am a
3 Deputy Attorney General with the California Office of the Attorney General. I
4 have personal knowledge of the facts set forth herein, except as to those stated on
5 information and belief and, as to those, I am informed and believe them to be true.
6 If called as a witness, I could and would competently testify to the matters stated
7 herein. I make this declaration to authenticate the exhibits attached to the Request
8 for Judicial Notice submitted in opposition to plaintiffs' application for a temporary
9 restraining order.

10 2. Attached as Exhibit A to the Request for Judicial Notice is a true and
11 correct copy of Governor Newsom's Coronavirus State of Emergency
12 Proclamation, dated March 4, 2020.

13 3. Attached as Exhibit B to the Request for Judicial Notice is a true and
14 correct copy of Executive Order N-25-20.

15 4. Attached as Exhibit C to the Request for Judicial Notice is a true and
16 correct copy of the Official Statement regarding Executive Order N-33-20 and
17 Essential Workers.

18 5. Attached as Exhibit D to the Request for Judicial Notice is a true and
19 correct copy of California's Resilience Roadmap.

20 6. Attached as Exhibit E to the Request for Judicial Notice is a true and
21 correct copy of Executive Order N-60-20.

22 7. Attached as Exhibit F to the Request for Judicial Notice is a true and
23 correct copy of Order of the State Public Health Officer, dated May 7, 2020.

24 8. Attached as Exhibit G to the Request for Judicial Notice is a true and
25 correct copy of Order of the State Public Health Officer, dated March 19, 2020.

26 9. Attached as Exhibit H to the Request for Judicial Notice is a true and
27 correct copy of Order of the State Public Health Officer, dated July 13, 2020.
28

1 10. Attached as Exhibit I to the Request for Judicial Notice is a true and
2 correct copy of California Department of Public Health, Guidance on Closure of
3 Sectors in Response to COVID-19, dated July 13, 2020.

4 11. Attached as Exhibit J to the Request for Judicial Notice is a true and
5 correct copy of California Department of Public Health, COVID-19 and Reopening
6 In-Person Learning Framework for K-12 Schools in California, 2020-2021 School
7 Year, dated July 17, 2020.

8 12. Attached as Exhibit K to the Request for Judicial Notice is a true and
9 correct copy of California Department of Public Health, COVID-19 Industry
10 Guidance: Schools and School-Based Programs, updated August 3, 2020.

11 13. Attached as Exhibit L to the Request for Judicial Notice is a true and
12 correct copy of California Department of Public Health, Schools Guidance FAQs,
13 dated August 3, 2020.

14 14. Attached as Exhibit M to the Request for Judicial Notice is a true and
15 correct copy of California Department of Public Health, COVID-19 and Reopening
16 of In-Person Learning for Elementary Education Waiver Notice to the California
17 Department of Public Health, dated August 3, 2020.

18 15. Attached as Exhibit N to the Request for Judicial Notice is a true and
19 correct copy of California Department of Public Health, COVID-19 and Reopening
20 In-Person Learning Elementary Education Waiver Process, dated August 3, 2020.

21 16. Attached as Exhibit O to the Request for Judicial Notice is a true and
22 correct copy of California Department of Public Health, Waiver-Letter Template,
23 issued August 3, 2020.

24 17. Attached as Exhibit P to the Request for Judicial Notice is a true and
25 correct copy of California Department of Public Health, Waiver Letter Template
26 Cover Form, issued August 3, 2020.

1 18. Attached as Exhibit Q to the Request for Judicial Notice is a true and
2 correct copy of California Department of Public Health, COVID-19 County
3 Monitoring Overview (accessed Aug. 7, 2020).

4 19. Attached as Exhibit R to the Request for Judicial Notice is a true and
5 correct copy of California Department of Public Health, COVID-19 County Data
6 Monitoring (accessed Aug. 7, 2020).

7 20. Attached as Exhibit S to the Request for Judicial Notice is a true and
8 correct copy of California Department of Public Health, COVID-19 County Data
9 Monitoring, Step 1: Active Data Monitoring (accessed Aug. 8, 2020).

10 21. Attached as Exhibit T to the Request for Judicial Notice is a true and
11 correct copy of California Department of Public Health, COVID-19 County
12 Monitoring Step 2: Targeted Engagement with CDPH (accessed Aug. 8, 2020).

13 22. Attached as Exhibit U to the Request for Judicial Notice is a true and
14 correct copy of California Department of Public Health, COVID-19 County
15 Monitoring Step 3: Reinstitute Community Measures (accessed Aug. 8, 2020).

16 23. Attached as Exhibit V to the Request for Judicial Notice is a true and
17 correct copy of State Officials Announce Latest COVID-19 Facts, July 31, 2020,
18 State confirms first death of a young person related to COVID-19
19 (<https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-179.aspx>, accessed Aug. 8,
20 2020).

21 24. Attached as Exhibit W to the Request for Judicial Notice is a true and
22 correct copy of Christine M. Szablewski, et al., SARS-CoV-2 Transmission and
23 Infection Among Attendees of an Overnight Camp — Georgia, June 2020, 69(31)
24 Centers for Disease Control Morbidity and Mortality Weekly Report, pp. 1023-
25 1025 (Aug. 7, 2020) (<https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>,
26 accessed Aug. 8, 2020).

27 25. Attached as Exhibit X is a list of reported school outbreaks of COVID-19
28 in the United States, compiled in Santora, All These Schools Reopened and Then

1 Had COVID-19 Outbreaks, Fatherly, August 7, 2020, accessed via MSN on August
2 8, 2020.

3 26. Attached as Exhibit Y to the Request for Judicial Notice is a true and
4 correct copy of National Public Radio, *After Reopening Schools, Israel Orders*
5 *Them to Shut Down After COVID-19 Cases Are Discovered*, June 3, 2020.

6 27. Attached as Exhibit Z to the Request for Judicial Notice is a true and
7 correct copy of Isabel Kershner, et al., *When Covid Subsided, Israel Reopened Its*
8 *Schools. It Didn't Go Well*, The New York Times, Aug. 4, 2020.

9 28. Attached as Exhibit AA to the Request for Judicial Notice is a true and
10 correct copy of Derek Hawkins, *Nine people test positive for the coronavirus at*
11 *Georgia school where photos of packed hallways went viral*, The Washington Post,
12 Aug. 9, 2020.

13 29. Attached as Exhibit BB to the Request for Judicial Notice is a true and
14 correct copy of Eliza Shapiro, et al., *A School Reopens, and the Coronavirus*
15 *Creeps In*, The New York Times, Aug. 1, 2020.

16 30. Attached as Exhibit CC to the Request for Judicial Notice is a true and
17 correct copy of Young Joon Park, et al., *Contract Tracing during Coronavirus*
18 *Disease Outbreak, South Korea, 2020*, Centers for Disease Control Dispatch, vol.
19 26, no. 10 (early release).

20 31. Attached as Exhibit DD to the Request for Judicial Notice is a true and
21 correct copy of *Preparing K-12 School Administrators for a Safe Return to School*
22 *in Fall 2020*, Centers for Disease Control and Prevention, updated Aug. 1, 2020.

23 32. Attached as Exhibit EE to the Request for Judicial Notice is a true and
24 correct copy of *Stronger Together: A Guidebook for the Safe Reopening of*
25 *California's Public Schools*, California Department of Education, June 2020.

26 33. Attached as Exhibit FF to the Request for Judicial Notice is a true and
27 correct copy of *Distance Learning Frequently Asked Questions*, California
28 Department of Education, accessed Aug. 9, 2020.

1 34. Attached as Exhibit GG to the Request for Judicial Notice is a true and
2 correct copy of Learning Continuity and Attendance Plan Instructions (2020-21),
3 California Department of Education, Aug. 2020.

4 35. Attached as Exhibit HH to the Request for Judicial Notice is a true and
5 correct copy of Learning Continuity and Attendance Plan Template (2020-21),
6 California Department of Education, Jul. 2020.

7 36. Attached as Exhibit II to the Request for Judicial Notice is a true and
8 correct copy of California Department of Education Official Letter, 2020 Budget
9 Act and Special Education, July 15, 2020.

10 37. Attached as Exhibit JJ to the Request for Judicial Notice is a true and
11 correct copy of California State Budget Summary – 2020-2021, K-12 Education,
12 pages 31-41.

13 38. Attached as Exhibit KK to the Request for Judicial Notice is a true and
14 correct copy of California Department of Education, Release #20-63, State
15 Superintendent Tony Thurmond Outlines Ongoing Supports to Strengthen Distance
16 Learning and Announces Timeline for Ethnic Studies Model Curriculum during
17 Virtual Media Check-in, dated July 29, 2020.

18 39. Attached as Exhibit LL to the Request for Judicial Notice is a true and
19 correct copy of California Department of Education, Release #20-65, State
20 Superintendent Tony Thurmond Announces Major Collaboration with Apple and
21 T-Mobile to Connect Students in Need, dated August 5, 2020.

22 40. Attached as Exhibit MM to the Request for Judicial Notice is a true and
23 correct copy of California Department of Education, Release #20-66, State
24 Superintendent Tony Thurmond and Digital Divide Task Force Connect School
25 Leaders to Available Devices as Learning Resumes, dated August 5, 2020.

26 41. Attached as Exhibit NN to the Request for Judicial Notice is a true and
27 correct copy of Excerpts of California Senate Bill No. 98.
28

CERTIFICATE OF SERVICE

Case Name: Brach v. Newsom, et al.

No. 2:20cv06472 SVW (AFMx)

I hereby certify that on August 9, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28)
- DECLARATION OF JAMES WATT, M.D., M.P.H., IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE
- REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28); EXHIBITS
- DECLARATION OF DARIN WESSEL IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER (Dkt. 28)

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 9, 2020, at San Francisco, California.

G. Guardado
Declarant

/s/ G. Guardado
Signature

SF2020400794
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, an individual,
et al.,

Plaintiffs,
v.

GAVIN NEWSOM, in his official ca-
pacity as the Governor of California, *et*
al.,

Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Judge: Hon. Stephen V. Wilson
Courtroom: 10A

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INTRODUCTION

Defendants do not dispute that distance learning in the Spring was an unmitigated disaster that deprived millions of California students of an adequate education and subjected hundreds of thousands of children to abuse, depression, isolation, and hunger. Nor do they deny that the Governor’s Order will fall hardest on students on the wrong side of the digital divide—many of whom are Black and Latino—and on those with learning disabilities. Instead, Defendants ask this Court to believe that these problems will magically disappear this Fall because the state is throwing \$5 billion at the problem, even though schools are not required to *submit plans* for effective distance learning until end of September.

Defendants alternatively contend that the massive injuries the Order will inflict are somehow justified by the current public health situation. Defendants do not seriously dispute that COVID-19 presents only a nominal risk to children—nor could they—but contend, without scientific evidence, that opening schools is dangerous because children may transmit the disease to adults. But as Plaintiffs’ experts have explained, *numerous* scientific studies from around the world have demonstrated that children are *not* significant vectors of the disease. Defendants have not submitted a single expert declaration disputing this evidence. Their lone expert—whose declaration does not cite any source material—opines only that it’s “possible” that “asymptomatic transmission *may occur*” in the school setting. Watt Decl. ¶ 26 (emphasis added).

On the merits, Defendants contend that the Governor’s Order is effectively unreviewable because *Jacobson* supposedly authorizes the executive to suspend constitutional rights as long as necessary to combat a disease. That astonishing argument, if accepted, would give the Governor czar-like powers until he decides to abdicate them—perhaps not until the virus is completely eradicated, which may never happen. Although judicial deference to state decision-makers may be appropriate in the early days of a pandemic when scientific evidence about the scope of the threat is scarce and the public’s fears are heightened—which is when some district courts upheld the

1 various pandemic-related restrictions cited by Defendants—there is now sufficient
2 public information for the Court to perform its traditional constitutional analysis.

3 When stripped of the *Jacobson* overlay, the case for a TRO is clear. The right to
4 education is fundamental (or at least “quasi-fundamental”) and the Order’s ban on in-
5 person education plainly infringes it. Defendants do not even attempt to show that the
6 Order is narrowly tailored to advance the state’s interest in combatting the spread of
7 COVID-19—nor could they. Indeed, the Order’s discriminatory treatment of schools
8 in different counties cannot survive even rational basis review. While day care facili-
9 ties and summer camps are allowed to provide in-person services, the Order prohibits
10 *all* schools in affected counties from reopening. And whereas school districts are al-
11 lowed to offer “social distancing support” to students *on campus* (for a fee), schools
12 are prohibited from providing in-person instruction in those same classrooms. Plain-
13 tiffs’ likelihood of success on the disability claims is even clearer, as Defendants make
14 no effort to show that school districts can possibly provide the services required under
15 the thousands of IEPs using so-called “distance learning.” Exhaustion of administra-
16 tive remedies is not required where, as here, it would be futile.

17 To prevent the state from irreparably harming millions of children and their fami-
18 lies, without any valid public health justification, this Court should immediately grant
19 a TRO and Preliminary Injunction.

20 ARGUMENT

21 Plaintiffs’ TRO application demonstrates, at minimum, “serious questions” on the
22 merits of their due process, equal protection, and IDEA/ADA claims. Because the bal-
23 ance of hardships and public interest tilt decisively in Plaintiffs’ favor, a TRO is ap-
24 propriate under Ninth Circuit precedent. *All. for the Wild Rockies v. Cottrell*, 632 F.3d
25 1127, 1134–35 (9th Cir. 2011).

26 I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

27 Defendants urge the Court not to interfere with the Governor’s unilateral decision
28 to ban in-person education across the state because the Order purports to respond to a
“health emergenc[y].” Resp. 8 (citing *Jacobson*). But “[n]othing in *Jacobson* supports

1 the view that an emergency displaces normal constitutional standards.” *Spell v. Ed-*
 2 *wards*, 962 F.3d 175, 181 (5th Cir. 2020) (Ho, J., concurring) (quoting *S. Bay United*
 3 *Pentecostal Church v. Newsom*, 959 F.3d 938, 942 (9th Cir. 2020) (Collins, J., dis-
 4 senting)); *see also In re Abbot*, 954 F.3d 772, 784 (5th Cir. 2020) (“[I]ndividual rights
 5 secured by the Constitution do not disappear during a public health crisis.”). If the
 6 Court were to accept Defendants’ argument, “the fiat of a state Governor, and not the
 7 Constitution of the United States, would be the supreme law of the land.” *Sterling v.*
 8 *Constantin*, 287 U.S. 378, 397 (1932).

9 Although *Jacobson v. Massachusetts* affirmed that a “community has the right to
 10 protect itself against an epidemic of disease which threatens its members,” it recog-
 11 nized that judicial intervention is appropriate where the state exercises the police
 12 power in “an arbitrary, *unreasonable* manner,” or where it goes “so far beyond what is
 13 *reasonably required* for the safety of the public, as to authorize or compel the courts
 14 to interfere.” 197 U.S. 11, 27–28 (1905) (emphases added). Thus, whatever *Jacobson*
 15 means, it does not give the Governor *carte blanche* to suspend the Constitution indefi-
 16 nitely without any meaningful judicial review. *See Roberts v. Neace*, 958 F.3d 409,
 17 414–15 (6th Cir. 2020) (“While the law may take periodic naps during a pandemic, we
 18 will not let it sleep through one.”).¹

19 Defendants’ reliance on Chief Justice Roberts’ concurrence in *South Bay United*
 20 *Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020), which no other justice joined,
 21 is also misplaced. There, applicants requested “emergency relief in an interlocutory
 22 posture,” which the Court grants “sparingly” in “exigent circumstances” when the “le-
 23 gal rights at issue are indisputably clear.” *Id.* at 1613 (Roberts, C.J., concurring in de-
 24 nial of application for injunctive relief) (citation omitted). Here, by contrast, Plaintiffs

25
 26 ¹ *Jacobson* was decided in 1905—long before the modern strict-scrutiny framework
 27 was developed—and thus any reliance upon *Jacobson* must overcome the significant
 28 “challenge of reconciling century-old precedent with ... more recent constitutional ju-
 risprudence.” *Adams & Boyle, P.C. v. Slatery*, 956 F.3d 913, 926 (6th Cir. 2020). For
 example, in 1927 the Supreme Court relied on *Jacobson* to uphold Virginia’s forcible
 sterilizations of the “feeble-minded”—a result that would be unthinkable under mod-
 ern strict-scrutiny analysis. *Buck v. Bell*, 274 U.S. 200, 207 (1927).

1 need show only that their TRO application raises “serious questions on the merits.”
 2 *All. for the Wild Rockies*, 632 F.3d at 1135. Plaintiffs have met this requirement.

3 **A. The Order Violates the Fourteenth Amendment Because it Infringes**
 4 **Fundamental Rights and Is Not Narrowly Tailored to Advance the**
 5 **Government’s Interest in Combatting the Spread of COVID-19**

6 **Education is a Fundamental Right.** State-provided education is “deeply rooted
 7 in this Nation’s history and tradition” and is “implicit in the concept of ordered lib-
 8erty.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). Any infringement of
 9 the right to basic minimum education—or discrimination that deprives certain groups
 10 of that right—is thus subject to a “heightened level of scrutiny.” *United States v. Har-*
 11 *ding*, 971 F.2d 410, 412. n.1 (9th Cir. 1992).

12 And while Defendants contend that “no court has recognized a fundamental right
 13 to a basic education” (Resp. 14), *Plyer* and *Rodriguez* demonstrate that any infringe-
 14ment on the right to basic minimum education must be met with at least heightened
 15scrutiny. *Plyer v. Doe*, 457 U.S. 202, 221 (1982); *San Antonio Indep. Sch. Dist. v. Ro-*
 16 *driguez*, 411 U.S. 1, 36–37 (1973). Moreover, the “identification and protection of
 17 fundamental rights is an enduring part of the judicial duty to interpret the Constitu-
 18tion.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2598 (2016).

19 In all events, education is at least a “quasi-fundamental right” under settled prece-
 20dent. *Harding*, 971 F.2d at 412 n.1. Courts have long held that pupils have a “right to
 21be taught,” *Farrington v. Tokushige*, 11 F.2d 710, 714 (9th Cir. 1926), *aff’d*, 273 U.S.
 22284 (1927), and that parents have a right “to control the education of their” children.
 23 *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923). The very concept of “liberty,” “[w]ith-
 24out doubt, [] denotes . . . the right of the individual . . . to acquire useful knowledge.”
 25 *Id.* at 399. Any burden on the right to education thus raises heightened scrutiny. *See*
 26 Carmen Green, *Educational Empowerment: A Child’s Right to Attend Public School*,
 27 103 Geo. L. J. 1089, 1127–28 (the test utilized in *Meyer* is “most similar to today’s in-
 28termediate standard of review”).

Defendants contend any fundamental right to education that may exist is a “limita-
 tion on the State’s power, . . .” not a “guarantee of certain obligations to individuals by

1 the state.” Resp. 15. But the Supreme Court has recognized affirmative fundamental
 2 rights, *see Gideon v. Wainwright*, 372 U.S. 335 (1963); *Obergefell*, 135 S.Ct. at 2598,
 3 and in any event Plaintiffs are asking the Court to enforce constitutional limits on the
 4 state’s power. And while the State distinguishes due process cases from equal protec-
 5 tion cases, Resp. 15, a fundamental right is a fundamental right, regardless of which
 6 clause the claim invokes. *See, e.g., Obergefell*, 135 S.Ct. at 2603–04.

7 Defendants mischaracterize Plaintiffs as advocating for a “fundamental right to in-
 8 person school.” Resp. 17. Plaintiffs’ actual argument is that “the Fourteenth Amend-
 9 ment of the United States Constitution [] protects Californians’ fundamental right to a
 10 basic minimum education,” TRO at 2, and that the Order infringes that right because
 11 distance learning has proved woefully inadequate. *See id.* 7-9.² On this outcome-deter-
 12 minative point, the State cites *no admissible evidence* showing that the many students
 13 who lack adequate technology can be educated effectively. Rather, it simply asserts
 14 that “all schools in the state must provide instruction to students in the 2020-21 school
 15 year, whether by distance learning or in-person instruction.” Resp. 12. But simply or-
 16 dering schools to make bricks without straw will not ensure an adequate education for
 17 millions of students, especially those on the wrong side of the digital divide. Indeed,
 18 even according to Defendants, “up to 1 million students still need devices for distance
 19 learning”—and only “100,000 students” will receive “computing devices” “during the
 20 back to school period.” RJN Ex. MM.

21 Defendants also cite a “newly enacted State law” that forces school districts to
 22 “submit” a learning plan by September 30, 2020. Resp. 16. This confirms that school
 23 districts will start the school year without any concrete plan concerning distance learn-
 24 ing for weeks, or months. And even once they do submit their proposals, the plans
 25 could be revised or rejected, further delaying their implementation. The evidence thus
 26 demonstrates that the Order unreasonably infringes Plaintiffs’ fundamental rights.
 27
 28

² *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) (cited at Resp. 15) is inapposite because Plaintiffs seek to enjoin state action based on federal law.

1 **The Order is Not Narrowly Tailored.** When a state regulation burdens a funda-
 2 mental right, the regulation must be narrowly tailored such that the regulation “is nec-
 3 essary to achieve the articulated state goal.” *Kramer v. Union Free Sch. Dist. No. 15*,
 4 395 U.S. 621, 632 (1969). Here, the “articulated state goal” is “to reduce transmission
 5 of SARS-CoV-2.”³ Shuttering schools across California is not “necessary” to achieve
 6 that goal because, as even Defendants concede, “children have been found to have a
 7 lower risk of child-to-child or child-to-adult transmission and a lower risk of serious
 8 infection.” Resp. 13; *see also* TRO at 9-11 (citing expert declarations). Indeed, a re-
 9 cent study carried out in 100 institutions in the UK confirmed that “there is very little
 10 evidence that the virus is transmitted in schools.” Bhattacharya Supp. Decl. ¶ 4.

11 In response to this voluminous scientific evidence, Defendants offer a handful of
 12 cherry-picked news articles that largely misrepresent the scientific evidence. Resp. 11.
 13 For example, Defendants mention an outbreak at an Israeli school in May (Resp. 11
 14 n.6; RJN Exs. Y & Z), but the evidence showed that teachers passed the virus to stu-
 15 dents, not the other way around, likely because children were “crowded into a small
 16 closed space and no precautions [were] taken against disease spread.” Bhattacharya
 17 Decl. ISO Opp’n to RJN. ¶ 4. Moreover, because “no viral sequencing analysis was
 18 conducted,” “no causal connection should be inferred from the correlation between Is-
 19 raeli school openings and the rise of cases” in the country. *Id.* ¶ 5. The data from trac-
 20 ing studies in South Korea (*see* RJN Ex. CC) indicate nothing “whatsoever about the
 21 relative propensity of children and adults to transmit the disease,” *id.* ¶ 10, and a re-
 22 cent paper analyzing the same data found “no instances of a child passing the disease
 23 to an adult.” *Id.* ¶ 11. And while a few students in Georgia and Indiana schools have
 24 tested positive (*see* RJN Exs. AA & BB), there is no evidence that any infected stu-
 25 dents transmitted the virus at school. *Id.* ¶ 14. Finally, the Georgia summer camp (*see*
 26 RJN Ex. W) is “no analogy for schools” because “the kids were older, they slept to-
 27 gether in crowded cabins, and engaged in lots of singing and screaming.” *Id.* ¶ 15.

28

³ Cal. Dep’t of Pub. Health, *COVID-19 and Reopening In-Person Learning* (July 17, 2020), <https://tinyurl.com/y495p4v2>.

1 And many developed symptoms within days of arriving, which “suggests strongly”
 2 that they “were infected prior to arrival.” *Id.* In short, Defendants have not presented
 3 any competent *evidence* that children are transmission vectors.

4 Nor have Defendants shown that the state’s goal could not be achieved through
 5 “less drastic means,” *Shelton v. Tucker*, 364 U.S. 479, 488 (1960), such as through so-
 6 cial distancing, mask wearing, increased hand washing, limited interactions among
 7 teachers, etc.—precautions recommended by the CDC. *See, e.g.*, Brach Decl. ¶ 12.
 8 The Order is also both under- and over-inclusive, because it permits similar activities
 9 such as daycares, and closes schools geographically removed from COVID-19 out-
 10 breaks just because they are in the wrong county. *See Kramer*, 395 U.S. at 632. For
 11 these reasons, Defendants flunk the narrow tailoring requirement under a quasi-funda-
 12 mental rights analysis as well. *See Charfauros v. Bd. of Elections*, 249 F.3d 941, 953
 13 (9th Cir. 2001) (Board failed to show that alternative solution was “impractical”).

14 **B. The Order Cannot Survive Even Rational Basis Review⁴**

15 For a policy to have a rational basis, it “must find some footing in the realities of
 16 the subject addressed by the legislation.” *Heller v. Doe*, 509 U.S. 312, 321 (1993).
 17 Plaintiffs may “rebut the facts underlying defendants’ asserted rationale for a classifi-
 18 cation, to show that the challenged classification could not reasonably be viewed to
 19 further the asserted purpose.” *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 590–91
 20 (9th Cir. 2008); *see, e.g., Lockary v. Kayfetz*, 917 F.2d 1150, 1155 (9th Cir. 1990).

21 Here, there is no rational basis for differentiating between similarly situated school
 22 districts based on countywide health metrics, because children are highly unlikely to
 23 be sickened by or transmit COVID-19. TRO at 9–11. “[V]ague, undifferentiated
 24 fears” do not provide a rational basis for “what would otherwise be an equal protec-
 25 tion violation.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 449 (1985).
 26
 27
 28

⁴ Plaintiffs have *not* conceded that their equal protection claim is subject only to ra-
 tional basis review, but to the extent education is a fundamental right, the strict-scru-
 tiny analysis here overlaps with the analysis of the due process claim.

1 The State asserts that schools in counties on the monitoring list are not similarly situ-
 2 ated to those in other counties (Resp. 19), but the state’s metrics have *nothing to do*
 3 with the risk of COVID-19 transmission in schools. Bhattacharya Decl. ¶ 20. The San
 4 Mateo County Health Officer has called the metrics “arbitrary” and “fundamentally
 5 flawed,”⁵ and the Solano County Health Officer has warned “it may be impossible for
 6 his county to get off the watch list.”⁶ *See Behrens*, 546 F.3d at 589 (Courts need not
 7 “accept Defendants’ characterizations of *what classifications they made*.”).

8 The Order’s irrationality is compounded by the fact that the monitoring list is fro-
 9 zen due to a “data meltdown” involving “hundreds of thousands of missing COVID-
 10 19 test results,”⁷ preventing the state from adding or removing counties from the list.⁸

11 Defendants argue that childcare centers and day camps involve smaller groups of
 12 children, but private and rural public schools subject to the Order also have low stu-
 13 dent-to-teacher ratios, and the Governor made no effort to calibrate school closures to
 14 class sizes. Defendants also contend that childcare facilities serve only very young
 15 children, but school districts are now offering childcare to children of all ages *on cam-*
 16 *pus*—just without an in-person educational component. Dhillon Decl. ¶ 7. Finally,
 17 there is no meaningful difference between “[a]llowing *continued* operation of a sector
 18 that has been open” (like day camps and childcare centers) and “permitting a sector
 19 that has been closed,” (like schools) “to reopen.” Resp. 19.

22 ⁵ Eric Ting, *San Mateo County health officer assails ‘fundamentally flawed’ state*
 23 *watch list*, SF GATE (Aug. 6, 2020), <https://tinyurl.com/y3apmlgf>.

24 ⁶ Eric Ting, *Solano County health chief: It may be impossible to get off state watch*
 25 *list*, SF GATE (Aug. 1, 2020), <https://tinyurl.com/y65xlmsu>.

26 ⁷ Dustin Gardiner & Erin Allday, *California’s coronavirus response is in crisis mode,*
 27 *as computer glitch makes case data unreliable*, SAN FRANCISCO CHRONICLE (Aug. 7,
 28 2020), <https://tinyurl.com/yxs4qyot>; Chris Jennewein, *California Public Health*
Director Resigns After Missing COVID-19 Test Results, TIMES OF SAN DIEGO (Aug.
 10, 2020), <https://tinyurl.com/y596g9y2>.

⁸ TRIBUNE NEWS SERVICE, *State COVID-19 Data Glitch Impacts Contact Tracing,*
School Reopening Process, TECHWIRE (August 6, 2020), [https://ti-](https://tinyurl.com/y4q7h2ox)
[nyurl.com/y4q7h2ox](https://tinyurl.com/y4q7h2ox).

C. The Order Violates Title VI's Implementing Regulations

Although Defendants do not dispute that the Order has a disparate impact on minority students, the parties agree Plaintiffs' Title VI claim is currently foreclosed.

D. Plaintiffs are Likely to Succeed on the Merits of their IDEA, Rehabilitation Act, and ADA Claims

Defendants do not deny that the Order will violate the statutory rights of disabled students, essentially conceding what is abundantly clear: schools cannot provide necessary, federally mandated services to disabled students remotely. *See Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 1210 & n.7 (N.D. Cal. 2013) (failure to respond constitutes a concession) (collecting cases). Instead, Defendants avoid the merits by wrongly arguing that Plaintiffs' claims are procedurally barred. Resp. 22–23.

First, Plaintiffs' citation to 42 U.S.C. § 1983 does not render the claims "defective." Resp. 22. Even if Plaintiffs' claims must be raised under Section 1415 of the IDEA, Section 504 of the Rehabilitation Act, and Title II of the ADA, Plaintiffs' Amended Complaint does so. *See* Dkt. 9:36–38. *See Alvarez v. Hill*, 518 F.3d 1152, 1157 (9th Cir. 2008) ("Notice pleading requires the plaintiff to set forth in his complaint *claims for relief*, not causes of action, statutes or legal theories."). In any event, the IDEA, ADA, and Rehabilitation Act "have [all] been enforced under § 1983." *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 872 (9th Cir. 2011) (collecting cases), *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).⁹

Defendants' exhaustion argument fares no better. Plaintiffs' claims under the ADA and Rehabilitation Act are not subject to the IDEA's exhaustion requirement because they do not turn on the right to "special education" and "related services," 20 U.S.C.

⁹ In *Blanchard v. Morton Sch. Dist.*, 509 F.3d 934 (9th Cir. 2007) (cited at Resp. 22), the court held only that a parent could not use § 1983 to seek compensatory damages when bringing a claim for the prior denial of a FAPE under the IDEA. *Id.* at 937–38. The Court did not hold that all claims involving the right to a FAPE must be brought under 20 U.S.C. § 1415. And in *Vinson v. Thomas*, 288 F.3d 1145 (9th Cir. 2002) (cited at Resp. 22), the court held that "a plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State official in her *individual* capacity to vindicate rights created by Title II of the ADA or section 504 of the Rehabilitation Act." *Id.* at 1156 (emphasis added). Here, Plaintiffs named Defendants in their *official* capacities only.

§ 1401, but rather on the right to receive an education on the same terms as non-disabled students. *See Fry v. Napoleon Cmty Schls.*, 137 S. Ct. 743, 754–55 (2017). When a neutral policy “burdens [disabled] persons in a manner different and greater than it burdens others,” that policy “discriminates against [those individuals] by reason of their disability.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996). Here, the Order discriminates against disabled children on the basis of their disabilities because Z.R. and other disabled children are burdened by the school closures “in a manner different and greater than” other children. *Id.*; TRO at 23–24.

In any event, Plaintiffs were not required to exhaust administrative remedies because “it would be futile to use the due process procedures.” *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992) (citation omitted). The issues created by the Orders cannot be solved by filing complaints with the Department of Education, which has no authority to override the Governor’s Order. The claims here are also systemic, *id.*, and a plaintiff need not exhaust when alleging an “absence of any services whatsoever.” *Handberry v. Thompson*, 446 F.3d 335, 344 (2d Cir. 2006). Indeed, pursuing administrative remedies here would serve none of the purposes of exhaustion, as this case is not fact-bound, but involves legal challenges to a statewide order affecting every student in California. *See Hoelt*, 967 F.2d at 1302–03.

II. DEFENDANTS HAVE NOT SUBMITTED ANY *EVIDENCE* REBUTTING PLAINTIFFS’ SHOWING OF IRREPARABLE HARM

As Plaintiffs’ Application and supporting declarations demonstrate, children will suffer immediate and irreparable harm if the Order is not enjoined. Most significantly, the ban on in-person education will deprive Plaintiffs and millions of other children of an adequate education. Distance learning harms *all children*, even the well-connected ones, by forcing them to spend countless hours staring at a screen and depriving them of the necessary social interactions that facilitate learning. *See, e.g.*, Lyons-Weiler Decl. ¶ 25; Hamilton Decl. ¶ 9; McDonald Decl. ¶ 7; Brach Decl. ¶ 8; Beaulieu Decl. ¶ 15. And for those on the wrong side of the digital divide, distance learning effectively means *no* learning. Defendants offer no evidence to the contrary.

Hundreds of thousands of children will also suffer collateral consequences resulting from the state's forced isolation, including abuse, depression, and hunger. Apparently unable to find a *single declarant* willing to swear on penalty of perjury that these harms will not materialize, Defendants simply assert that "the State has taken important steps to mitigate any such harms." Resp. 24 (citing RJN Exs. GG-JJ, NN). But the irreparable harm Plaintiffs have identified will not be avoided merely because the state plans to throw money at the problem or because state bureaucrats created guidance documents and templates local education agencies can use to describe their plans for distance learning. *See* RJN Exs. GG-JJ, NN. Indeed, Defendants tacitly concede that the Order will cause irreparable harm when they tout the state's funding for "mental health services to address trauma." Resp. 24.

In all events, Defendants do not dispute that deprivation of constitutional rights constitutes irreparable harm, and the Order unlawfully burdens the Fourteenth Amendment rights to due process and equal protection (*see supra* Part I.A–B).

III. A STAY IS FIRMLY IN THE PUBLIC INTEREST

Plaintiffs have submitted overwhelming evidence that a stay is in the public interest because (1) the risk to children from COVID-19 is negligible, (2) children are not a significant transmission vector of the disease; and (3) keeping schools closed will financially cripple thousands of California families and injure the state economy. Once again, Defendants have no meaningful response to any of these points.

First, Defendants do not dispute that COVID-19 is less lethal to children than seasonal influenza. Although Dr. Watt notes that 30 cases of multisystem inflammatory syndrome in children (MIS-C) have been linked to COVID-19, this uncommon response to the virus has not been lethal to any of the children identified with the condition, and the state can hardly justify an Order barring millions of children from receiving an in-person education on the basis of 30 such cases.

Second, while Plaintiffs' numerous public health experts have provided exhaustive declarations discussing every major scientific study on child transmission, the State's lone expert does not discuss *any* scientific studies and opines only that "it is *possible*

1 that in the school setting, as in other settings, asymptomatic transmission *may occur*.”
 2 Watt Decl. ¶ 26 (emphasis added). Instead of using experts, the State improperly asks
 3 the Court to take judicial notice of newspaper articles written by non-scientists who of-
 4 ten misunderstand the very studies they are reporting. *See* RJN Exs. Y-BB; Pltfs. Opp.
 5 to RJN; Bhattacharya Decl. ISO Opp’n to RJN ¶¶ 4-15. Defendants also raise the
 6 specter of teachers and staff being “exposed to potential transmission without ade-
 7 quate safety measures” (Resp. 25), and their *amici* fret that various health risks cannot
 8 be mitigated or or eliminated (Amicus Br. at 13-18), but school administrators across
 9 the state have developed safety protocols to protect teachers and staff from possible
 10 infection at school. *See, e.g.*, Brach Decl. ¶¶ 12, 16; Hackett Decl. ¶ 6; Reardon Decl.
 11 ¶ 9. Schools around the world and in other states are successfully managing these
 12 challenges, and the CDC—well aware of such risks—supports school reopening.

13 Third, Defendants do not even address the massive economic consequences of
 14 closing schools, both for affected families—especially those who cannot afford tutors
 15 and must quit their jobs to stay home with children—and the state economy.¹⁰ Survey
 16 evidence shows that most childcare responsibilities, including homeschooling, fall on
 17 women,¹¹ indicating that the Order will exacerbate income *and* gender inequality.

18 The State notes there is a waiver available for elementary schools, but Defendants’
 19 admission that there are “lower risks of transmission and infection in children under
 20 age 12” (Resp. 25), confirms that the public interest favors *a stay* of the Governor’s
 21 Order, which prohibits elementary schools from opening for in-person instruction.

22 CONCLUSION

23 For the foregoing reasons, the Court should preliminarily enjoin Defendants from
 24 enforcing the Order, leaving districts and schools free to decide whether and how to
 25 reopen for in-person education, as they are in every other state in the U.S. today.

27 ¹⁰ *See The COVID-19 cost of school closures*, BROOKINGS (Apr. 29, 2020), <https://tinyurl.com/yyktwmpf>.

28 ¹¹ *See* Diana Boesch & Katie Hamm, *Valuing Women’s Caregiving During and After the Coronavirus Crisis*, CENTER FOR AMERICAN PROGRESS (June 3, 2020), <https://tinyurl.com/y4tvu8km>.

1
2 Date: August 12, 2020

Respectfully submitted,
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**UNITED STATES DISTRICT COURT
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MATTHEW BRACH, an individual,
et al.,

Plaintiffs,
 v.

GAVIN NEWSOM, in his official ca-
 pacity as the Governor of California, *et*
al.,

Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**PLAINTIFFS OPPOSITION TO DE-
 FENDANTS' REQUEST FOR JUDI-
 CIAL NOTICE [DOC. 36]**

Judge: Hon. Stephen V. Wilson
 Courtroom: 10A

I. INTRODUCTION

Defendants rely on 41 exhibits attached to their Request for Judicial Notice (“RJN”), ECF No. 36, to oppose Plaintiffs’ application for a TRO and preliminary injunction. Although Defendants do not explain the purpose for which they ask the Court to take judicial notice of these documents, they presumably want the Court to accept the statements contained therein for the truth of the matters asserted. But Defendants do not even attempt to show how any of the attached documents satisfy the requirements of Federal Rule of Evidence 201, which permits a court to take judicial notice of a fact *only if* it “is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The accuracy of the *facts* asserted in Defendants’ exhibits is hotly contested, and this court cannot “verify the factual data and calculations contained” therein. *Herwick v. Budget Rent A Car Sys. Inc.*, 2011 WL 13213626, at *11 (C.D. Cal. Mar. 22, 2011).

Defendants were free to present evidence in the form of sworn declarations submitted by experts competent to testify to the facts asserted—just as Plaintiffs did in support of their TRO application. Defendants declined to do so, submitting a single declaration by Dr. Watt that fails to discuss any of the scientific studies or documents attached to the RJN. Yet in the absence of expert testimony, Defendants now ask the Court to take judicial notice of dozens of government publications and news articles—and presumably accept the facts and analysis presented in those documents as correct. This request is wildly improper, and the Court should reject it. While Plaintiffs do not object to the Court taking judicial notice of the fact that the various reports and news articles *were published*, the Court should not take judicial notice of any of the facts and conclusions contained in those documents.

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II. OBJECTIONS

Plaintiffs do not object to Exhibits A, B, E, DD, JJ, or NN. However, Plaintiffs do object to Exhibits C-D, F-CC, EE-II, KK-MM, and OO on the grounds set forth as follows:

1. **Newspaper Articles, Press Releases, and Press Conferences should not be admitted for the truth of the matter asserted.**

- a. **Exhibit V:** is a California Department of Public Health press release;
- b. **Exhibit X:** is a news article published by *Fatherly*;
- c. **Exhibit Y:** is a news article published by *NPR*;
- d. **Exhibit Z:** is a news article published by *The New York Times*;
- e. **Exhibit AA:** is a news article published by *The Washington Post*;
- f. **Exhibit BB:** is a news article published by *The New York Times*;
- g. **Exhibits KK – MM:** are press releases by the California Department of Education;
- h. **Exhibit OO:** is a transcript of Gov. Newsom’s July 17th Press Conference published by *Rev.*

Plaintiffs object to Defendants’ request for judicial notice as to Exhibits V, X-BB, KK-MM, and OO. “The cases in which courts take judicial notice of newspaper articles and press releases” are “limited to a narrow set of circumstances.” *Gerristen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015). The veracity of the information contained in these exhibits cannot be judicially noticed, “because often [] the accuracy of information in newspaper articles and press releases cannot be readily determined and/or can be reasonably questioned.” *Id.* (citing FED. R. EVID. 201).

This Court has held that while the “court can take judicial notice of a published newspaper for the mere fact of publication,” the Court cannot take judicial notice “for the truth of the contents therein.” *L.A. Printex Industries, Inc. v. Forever 21, Inc.*, 2009 WL 10698834, *6 (C.D. Cal, Oct. 27, 2009).

Judicial notice would be especially inappropriate here, as the articles attached to Defendants' RJN mischaracterize and misrepresent the scientific studies they discuss. As Dr. Jayanta Bhattacharaya explains in his Declaration in support of Plaintiffs' Opposition, Exhibits Y & Z cited "no viral sequencing analysis ... to verify the direction of disease spread." (Decl. Bhattacharya ¶ 5). Dr. Bhattacharaya also explains the problem with Exhibit AA, which is that the article does not establish how the students received the virus. (Decl. Bhattacharya ¶ 14). Exhibit BB is also inappropriate for judicial notice because the article does not provide the necessary evidence of whether the student "transmitted the virus or even suffered any adverse effects." (*Id.*).

Because news articles, press releases, and press conferences are inappropriate subjects for judicial notice, Defendants' request for Judicial Notice as to Exhibits V, X-BB, KK-MM, and OO should be denied.

2. Studies are not proper for Judicial Notice:

- a. **Exhibit D:** is an "Update on California's Pandemic Roadmap" study presentation;
- b. **Exhibits Q - U:** are "COVID-19 County Data Monitoring" study overviews;
- c. **Exhibit W:** is a Center for Disease Control ("CDC") a weekly report study;
- d. **Exhibit CC:** is a CDC study titled "Contact Tracing during the Coronavirus Disease Outbreak";

Plaintiffs object to Defendants' request for judicial notice as to Exhibits D, Q-U, W, and CC. A court can take judicial notice of a study for "background material, without relying on it to resolve any factual dispute[s]." *U.S. v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008). However, as this Court has ruled, a "[s]tudy is not appropriate for judicial notice" when the facts "are not generally known in this Court's territorial jurisdiction." *Duy Nam Ly V. J.B. Hunt*

1 *Transport Inc.*, 2019 WL 2902501 (C.D. Cal. Apr. 25, 2019) (denying request for ju-
 2 dicial notice because “the Court [was] not confident that the accuracy of the Study
 3 cannot reasonably be questioned”).

4 Many of these studies provide hospital trend statistics, predictions on the lon-
 5 gevity of COVID-19, preventative measure directives, indicators—presumably based
 6 on scientific studies—and predictions as to where COVID-19 is most prevalent. The
 7 fact that the State has frozen its monitoring list due to a “data meltdown” involving
 8 “hundreds of thousands of missing COVID-19 test results” further illustrates that the
 9 accuracy of the data is questionable.¹

10 Judicial notice would be especially inappropriate here, as two of the studies at-
 11 tached to Defendants’ RJN lack necessary information for the court to take Judicial
 12 Notice as to the points that Defendants desire this Court to take. As Dr. Jayanta
 13 Bhattacharaya explains in his Declaration in support of Plaintiffs’ Opposition, the
 14 problem with the South Korea study (Ex. CC) is that the authors “do not sequence the
 15 genome of the viruses identified to documented mutation patterns. Consequently, they
 16 cannot distinguish whether the index patient passed the virus to the contact or the
 17 other way around.” (Decl. Bhattacharya ¶ 9). Furthermore, the CDC article regarding
 18 the overnight camps in Georgia (Ex. W) is not analogous to the school setting, and
 19 many of the students developed symptoms at a time that clearly show that they did not
 20 contract the virus at the camp. (Decl. Bhattacharya ¶ 15). Dr. Bhattacharya concluded
 21 that “there is no indication of whether the transmission was from staff to student, or
 22 student to student.” (*Id.*).
 23
 24
 25

26 ¹ Dustin Gardiner & Erin Allday, *California’s coronavirus response is in crisis mode,*
 27 *as computer glitch makes case data unreliable*, SAN FRANCISCO CHRONICLE (Aug. 7,
 28 2020, 9:23 AM), <https://tinyurl.com/yxs4qyot>.

As such, it is clear the contents contained in these exhibits are not generally known and may be subject to error or alternative analysis by others. There is no evidence as to the scientific bases upon which the State relies in producing these studies and the Court should not take Judicial Notice as to Exhibits D, Q-U, W, and CC.

3. Government Documents should not be admitted unless the facts are beyond controversy.

- a. **Exhibit C:** is a March 22, 2020 Public Health Officer's Directive that is unexecuted and purports to list "Essential Critical Infrastructure Workers";
- b. **Exhibits F - H:** are orders of the State Public Health Officer;
- c. **Exhibits I - M:** are California Department of Public Health guidance documents;
- d. **Exhibits N – P:** are documents associated with a waiver process for schools to open;
- e. **Exhibit EE:** is a guidebook published by the California Department of Education ("CDE");
- f. **Exhibit FF:** is a FAQ page found on the CDE website;
- g. **Exhibit GG:** is a document produced by the CDE which appears to be a summary of Senate Bill 98;
- h. **Exhibit HH:** appears to be a form that teachers or schools are to fill out in response to Exhibit GG;
- i. **Exhibit II:** is a letter dated July 15, 2020 by CDE in which they summarize the 2020 Budget Act.

Defendants have produced hundreds of pages of documents that appear to be official government documents (Exhibits C, F-P, EE-II). The general rule is that "judicial notice is appropriate for records and reports of administrative bodies." *Gonzales v. Marriott International, Inc.*, 142 F.Supp.3d 961, 968 (C.D. Cal. 2015) (quoting *United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th

1 Cir. 2008)). However, because “the effect of judicial notice is to deprive a party of an
 2 opportunity to use rebuttal evidence, cross-examination, and argument to attach con-
 3 trary evidence, caution must be used in determining that a fact is beyond controversy
 4 under Rule 201(b).” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142 (9th Cir. 2005). As
 5 this Court has previously explained when addressing a request for judicial notice of a
 6 similar government document: “The Court may take judicial notice of the fact that
 7 this document exists, however, it would be inappropriate to accept all of the contents
 8 within the document as facts beyond reasonable dispute. Defendant is free to cite to
 9 these public records and make arguments in its brief regarding the appropriate level of
 10 deference that the Court should give to the documents; judicial notice is unnecessary
 11 and therefore, the Court will not take judicial notice of the entirety of these docu-
 12 ments.” *Delarosa v. Boiron, Inc.* 818 F.Supp.2d 1177, 1182 n.3 (C.D. Cal. 2011). The
 13 Court should take the same approach here. While Plaintiffs do not object to this Court
 14 taking judicial notice that these official documents exist, it is inappropriate for the
 15 Court to accept all the contents within the document as fact.²

16 **4. Paragraph 24 is asking the court to take judicial notice of Defend-**
 17 **ant’s Work Product**

18 Paragraph 24 of Defendants’ RJN is merely a recitation of specific numbers and
 19 figures from the study evidenced in Exhibit W. Defendants’ should have had an expert
 20 witness review the study and provide the court with these numbers if Defendants
 21 wanted the Court to rely on them as a basis for denying Plaintiffs’ Application for a
 22
 23

24 ² Furthermore, many of these documents appear to be guidance documents which have
 25 not followed the California Administrative Procedure Act. (Gov. Code, § 11340 *et*
 26 *seq.*) (“APA”). As such, these guidance documents may be unenforceable under Cali-
 27 fornia law as they might be deemed “underground regulations”. *See, Patterson Flying*
 28 *Service v. California Dept. of Pesticide Regulation*, 161 Cal. App. 4th 411, 429
 (2008).

1 Temporary Restraining Order. Because the contents of the study itself are not judi-
2 cially noticeable, the Court should also deny Defendants' request for judicial notice as
3 to the contents of Paragraph 24 of the RJN.

4 **III. CONCLUSION**

5 Defendants' Request for Judicial Notice as to Exhibits C-D, F-CC, EE-II, KK-
6 MM, OO, and the contents of Paragraph 24 of the RJN should be denied.

7
8 Respectfully submitted,
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**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW BRACH, et al.

Plaintiffs,
v.

GAVIN NEWSOM, et al.
Defendants.

Case No.: 2:20-CV-06472-SVW-AFM

**DECLARATION OF DR. JAYANTA
BHATTACHARYA IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

Judge: Hon. Stephen V. Wilson
Courtroom: 10A

Jayanta Bhattacharya declares, pursuant to 28 U.S.C. § 1746:

1. I am a resident of Los Altos, California, I am 52-years-old, and I am competent to render this declaration.

2. I previously filed a declaration in this case in support of Plaintiff's application for a temporary restraining order, and my background and education are detailed in that declaration. *See* Dkt. 28-3 ¶¶ 2–15.

3. In support of this declaration, I have reviewed Defendants' Request for Judicial Notice in Opposition to Application for Temporary Restraining Order, Dkt. 36, and the exhibits attached thereto, and Defendants' Memorandum of Points and Authorities in Opposition to Application for Temporary Restraining Order, Dkt. 35.

Schools in Israel

4. First, I understand that Defendants believe COVID-19 outbreaks swept through schools two weeks after they reopened in Israel for in-person instruction. *See* Dkt. 35 at 11 n.6 (citing Dkt. 36, Exs. Y & Z). While the Israeli opening of schools is cited by Defendants as a counter-example to the many other studies showing the negligible risk of transmitting COVID-19 by children, the Israeli reports¹ suggest it was a unique circumstance, with children crowded into a small closed space and no precautions taken against disease spread. The *New York Times* story cited above provides two illustrative anecdotes of symptomatic teachers passing the virus to their students. And the primary source of disease spread was a single symptomatic teacher infecting colleagues and students at the Gymnasia Rehavia high school (out of the 5,000+ schools in Israel). This finding is consistent with the evidence that children are very unlikely to spread the disease to adults. Schools can be opened safely for in-person

¹ Isabel Kershner and Pan Belluck (2020) "When COVID Subsided, Israel Reopened Its Schools. It Didn't Go Well." THE NEW YORK TIMES (Aug. 4, 2020), available at <https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html>.

1 learning if reasonable precautions – specific to the circumstances of each school – are
2 taken.

3 5. In the Israeli case, as with much of the anecdotal evidence cited, no viral
4 sequencing analysis was conducted to verify the direction of disease spread. A [report in](#)
5 [Science Magazine](#) emphasizes that no causal connection should be inferred from the
6 correlation between Israeli school openings and the rise in cases there: “In Israel,
7 infections among children increased steadily after schools opened. That paralleled a rise
8 in cases nationwide, but it’s not clear whether the country’s rising caseload contributed
9 to the increase within schools or vice versa.”²

10 6. A systematic review³ of evidence in early May concluded that even though
11 it may be possible for children to be infected with the virus and even transmit it,
12 “[o]pening up schools and kindergartens is unlikely to impact COVID-19 mortality
13 rates in older people.”

14 **Schools in South Korea**

15 7. Second, although Defendants do not cite or explain any reports in their
16 Opposition memorandum concerning schools in South Korea, they include studies of
17 these schools in their Request for Judicial Notice. *See* Dkt. 36, Exs. CC.

18 8. A recent South Korean contact tracing study⁴ traced the 59,073 contacts of
19 5,706 COVID-19 patients, confirmed by PCR to be infected. The authors divide up
20

21 ² Jennifer Couzin-Frankel, Gretchen Vogel, Meagan Weiland (2020) “School openings
22 across globe suggest ways to keep coronavirus at bay, despite outbreaks” SCIENCE,
23 [https://www.sciencemag.org/news/2020/07/school-openings-across-globe-suggest-](https://www.sciencemag.org/news/2020/07/school-openings-across-globe-suggest-ways-keep-coronavirus-bay-despite-outbreaks)
[ways-keep-coronavirus-bay-despite-outbreaks](https://www.sciencemag.org/news/2020/07/school-openings-across-globe-suggest-ways-keep-coronavirus-bay-despite-outbreaks) (accessed online Aug. 12, 2020)

24 ³ Jonas Ludvigsson (2020) “Children are Unlikely to be the Main Drivers of the
25 COVID-19 Pandemic – A Systematic Review” *Acta Paediatrica*, DOI:
10.1111/apa.15371 (accessed online Aug. 6, 2020).

26 ⁴ Park YJ, Choe YJ, Park O, Park SY, Kim YM, Kim J, et al. “Contact tracing during
27 coronavirus disease outbreak, South Korea, 2020,” *Emerg Infect Dis.* (Oct. 2020),
28 available at <https://doi.org/10.3201/eid2610.201315> (accessed online July 27, 2020),

1 their patients into 10-year age bins and report the fraction of contacts in each bin who
2 also tested positive. The authors report that among 0-9-year-old cases, 5.3% of
3 household contacts tested positive, while among 10-19-year-old cases, 18.6% of
4 household contacts tested positive (in both groups, only about 1% of non-household
5 contacts tested positive.

6 9. This pattern of evidence does not imply that older children spread the
7 corona virus as much as adults. The authors define an index case as “the first identified
8 laboratory-confirmed case or the first documented case in an epidemiologic
9 investigation within a cluster.” In other words, they cannot tell whether an index case
10 was the first person within a cluster to be infected – just that they were the first to come
11 to the attention of public health authorities. The authors of the South Korean study do
12 not sequence the genome of the viruses identified to document mutation patterns.
13 Consequently, they cannot distinguish whether the index patient passed the virus to the
14 contact or the other way around.

15 10. The authors report that children 0-9 years old represented only 0.5% of
16 their index cases and children 10-19 years old represented only 2.2% of their index
17 cases. The vast majority of their cases were 20 years old or older. The study data
18 collection took place during a period of strict lockdown and school closure in South
19 Korea. It is highly unlikely that these few index children spread the disease throughout
20 their cluster. The authors document that adults are more likely to have contacts outside
21 their household than children during this period. It is far more likely that older members
22 of households were the true index cases and spread the infection to children within the
23 household. Third, the authors report that 7% of household contacts of 20–29 year olds
24 were infected. This is less than the positive case rate for 10–19 year olds. If the higher
25 rate of infections among household contacts of 10–19 year olds is evidence of increased
26 transmissibility, then the low rate of infections among households of 20–29 year olds
27 should be taken as evidence of decreased transmissibility for patients in that age group.
28 A better interpretation is that the study methods of this paper do not permit any

1 inference whatsoever about the relative propensity of children and adults to transmit the
2 disease.

3 11. A follow-on paper on South Korean case study, reanalyzing the same data
4 set, the same patients, and published in the *Archives of Disease in Childhood*, clarified
5 the direction of transmission of disease by focusing only on cases without “shared
6 exposure” to a positive case.⁵ This method focuses the analysis only on situations where
7 contact tracing without confirmatory viral genome analysis may be able to distinguish
8 the direction of disease spread. Using this method, the authors found a single case (out
9 of 107 pediatric index cases and 248 household members who also tested positive) of a
10 child passing on the disease to another household member – another child. They find
11 no instances of a child passing the disease to an adult.

12 12. This reanalysis of the South Korean paper is instructive, and the lesson
13 should be clear. Correlation studies and anecdotes that do not distinguish the direction
14 of spread of disease provide no information whatsoever about the safety (or lack
15 thereof) of school reopening. In every single instance, when a more careful analysis that
16 identifies the direction of spread (such as this South Korean study) is conducted, the
17 analysis finds that children pose a negligible risk of spreading the disease to adults, both
18 at school and at home.

19 **Schools in Georgia and Indiana**

20 13. Next, in the same footnote where Defendants cite the anecdotal Israeli
21 evidence, they also assert that when schools recently reopened for in-person instruction
22 in Georgia and Indiana, both states faced COVID-19 outbreaks. *See* Dkt. 35 at 11 n.6
23 (citing Dkt. 36, Exs. AA & BB).

24 14. The comparison between schools in California, on the one hand, and
25 schools in both Georgia and Indiana, on the other, is not a persuasive indicator of the

26
27 ⁵ Kim J, Choe YJ, Lee J, et al., *Role of children in household transmission of COVID-*
28 *19*, ARCHIVES OF DISEASE IN CHILDHOOD (August 7, 2020), available at doi:
10.1136/archdischild-2020-319910

1 success for reopening schools. Exhibit BB, for example, establishes that one middle
 2 school student in Indiana happened to have the coronavirus and attend school.
 3 Importantly, the news article does not say that same student transmitted the virus or
 4 even suffered any adverse effects. Nor is there any evidence of which I am aware
 5 suggesting that such transmission occurred. In Georgia, nine people tested positive for
 6 the coronavirus at a school, but again the article does not establish how those students
 7 received the virus. *See* Ex. AA. Nor does the article suggest that the students
 8 transmitted it in school. The Defendants are citing correlational evidence, from which
 9 no causal inference should be drawn.

10 15. Defendants also cited articles about the coronavirus and overnight camps
 11 in Georgia. *See* Ex. W.⁶ The summer camp anecdote is no analogy for schools. There,
 12 the kids were older, they slept together in crowded cabins, and engaged in lots of
 13 singing and screaming. Many of the children who developed symptoms did so within
 14 two days of arriving at the camp. Since the time between viral exposure and symptom
 15 development is typically longer than two days, this suggests strongly that many of the
 16 children in the camp were infected prior to their arrival at the camp. Some developed
 17 cases more than two weeks after leaving the camp. Since symptom development – if it
 18 happens at all – is typically within two weeks of infection, this leaves open the
 19 possibility that the campers were exposed at home. Since this outbreak corresponds to a
 20 time when community spread was common in Georgia, these are not just theoretical
 21 possibilities, and indeed likely. Finally, as with many of the correlational contact
 22 tracing studies, there is no indication of whether the transmission was from staff to
 23 student, or student to student.

24
 25 _____
 26 ⁶ A recent article in the Wall Street Journal also misinterpreted this study: *See* Caitlin
 27 McGabe, *Latest Research Points to Children Carrying, Transmitting Coronavirus*, THE
 28 WALL STREET JOURNAL (Aug. 9, 2020), available at
https://www.wsj.com/articles/latest-research-points-to-children-carrying-transmitting-coronavirus-11596978001?st=4rrxzoyo0jou5ns&reflink=article_email_share.

1 I declare under penalty of perjury under the laws of the United States of America
2 and the State of California that the foregoing is true and correct.

3
4
5 Dated: August 12, 2020



6 Jayanta Bhattacharya, M.D., Ph.D.

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**UNITED STATES DISTRICT COURT
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Case Number: 2:20-CV-06472-SVW-AFM

**SUPPLEMENTAL POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. Stephen V. Wilson
Courtroom: 10A

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10	438 U.S. 265 (1978).....	3, 4
11	<i>Renee v. Duncan</i> ,	
12	686 F.3d 1002 (9th Cir. 2012)	3, 4
13	<i>Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.</i> ,	
14	547 U.S. 47 (2006).....	1
15	<i>Runyon v. McCrary</i> ,	
16	427 U.S. 160 (1976).....	2
17	<i>Scaggs v. New York Dept. of Educ.</i> ,	
18	No. 06-CV-0799, 2007 WL 1456221 (E.D.N.Y. May 16, 2007).....	10, 11, 12
19	<i>Tourgeman v. Collins Fin’l Servs., Inc.</i> ,	
20	755 F.3d 1109 (9th Cir. 2014)	2
21	<i>Utah v. Evans</i> ,	
22	536 U.S. 452 (2002).....	6
23	<i>Vill. of Arlington Heights v. Metro. Housing Dev. Corp.</i> ,	
24	429 U.S. 252 (1977).....	4
25	<i>Winkelman ex rel. Winkelman v. Parma City Sch. Dist.</i> ,	
26	550 U.S. 516 (2007).....	2
27	<i>Zukle v. Regents of Univ. of California</i> ,	
28	166 F.3d 1041 (9th Cir. 1999)	8

Statutes

23	20 U.S.C. § 1401	6, 7
24	20 U.S.C. § 1401	6, 11
25	20 U.S.C. § 1415	4, 6
26	Cal. Educ. Code § 42238.02	5
27	Cal. Educ. Code § 56500.2	4, 11
28	Cal. Educ. Code § 56500.3	4
	Cal. Educ. Code § 56505	4

Regulations

Cal. Code Regs. tit. 5, § 4650	4
Cal. Code Regs. tit. 5, § 4670	4

Other Authorities

H.R.Rep. No. 296.....	11
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1 Plaintiffs provide this supplemental briefing pursuant to the Court’s minute order
 2 issued on August 17, 2020. ECF No. 48. As explained below, Plaintiffs have demon-
 3 strated the required elements for Article III standing, and Plaintiffs asserting claims
 4 under the Americans with Disabilities Act (“ADA”), Rehabilitation Act, and Individu-
 5 als with Disabilities Education Act (“IDEA”) were not required to exhaust administra-
 6 tive remedies. Finally, Plaintiffs have submitted supplemental declarations from
 7 Charles Cicchetti, Sean Kaufman, and Dr. Jayanta Bhattacharya that highlight the Or-
 8 der’s irrationality and confirm that injunctive relief is warranted.

9 **I. PLAINTIFFS HAVE ARTICLE III STANDING**

10 The “irreducible constitutional minimum of [Article III] standing contains three el-
 11 ements.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “First, the plaintiff
 12 must have suffered an ‘injury in fact’” that is “concrete and particularized” and “ac-
 13 tual or imminent.” *Id.* “Second, there must be a causal connection between the injury
 14 and the conduct complained of, such that the injury is fairly traceable to the action
 15 challenged.” *Id.* “Third, it must be likely, as opposed to merely speculative, that the
 16 injury will be redressed by a favorable decision.” *Id.* at 561.

17 Where multiple plaintiffs are involved, the “presence of one party with standing is
 18 sufficient to satisfy Article III’s case-or-controversy requirement.” *Rumsfeld v. Forum*
 19 *for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 n.2 (2006); *see also Juliana v.*
 20 *United States*, 947 F.3d 1159, 1168 (9th Cir. 2020). Here, at least one Plaintiff has
 21 standing to assert each of the claims in the First Amended Complaint.

22 **A. Plaintiffs Have Demonstrated a Concrete Injury Traceable to De-** 23 **fendants’ Actions**

24 The Governor’s Order prohibits every school located in a county on the state’s
 25 monitoring list—public or private—from opening for in-person education. As Plain-
 26 tiffs have demonstrated, the ban on in-person learning has had, and will continue to
 27 have, devastating consequences for their children. *See* ECF No. 28-1 at 3-9, 12-13.
 28 Most significantly, so-called “distance learning” does not provide an adequate mini-
 mum education, and the Order irrationally treats children who live in counties on the

1 state’s monitoring list differently than children who live in other counties. Defendants
 2 have thus deprived Plaintiffs and their children of their Fourteenth Amendment rights
 3 to due process and equal protection. *See Tourgeman v. Collins Fin’l Servs., Inc.*, 755
 4 F.3d 1109, 1114–15 (9th Cir. 2014) (the “injury required by Art. III” may exist either
 5 through statutory or constitutional violations); *see, e.g.*, Beaulieu Decl. ¶¶ 6–11;
 6 Hackett Decl. ¶ 8; Walsh Decl. ¶ 4; Onibokun Decl. ¶ 8. The Order inflicts other con-
 7 crete injuries as well. *See, e.g.*, Petrilla Decl. ¶¶ 6–8 (loss of social interaction); Brach
 8 Decl. ¶ 7 (depression), Mitrowke Decl. ¶¶ 5–6 (depression).¹

9 Several Plaintiffs are parents of disabled children with Individual Educational Pro-
 10 grams (“IEPs”) and thus have enforceable rights under the IDEA, ADA, and Rehabili-
 11 tation Act. *See, e.g.*, Ruiz Decl ¶ 15; Berma ¶ 12; *see also Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 526 (2007). Because schools cannot pro-
 12 vide through distance learning the essential and legally required services these chil-
 13 dren need to thrive, the Order inflicts special injury on Plaintiffs’ disabled children.
 14 *See, e.g.*, Ramirez Decl. ¶¶ 5–6; Bema Decl. ¶ 12.

16 These injuries—which were imminent when Plaintiffs filed their complaint and are
 17 now actual given the start of the Fall term—are all traceable to the Governor’s Order.
 18 Before the Order was issued on July 17, 2020, each local educational agency (“LEA”)
 19 was free to decide whether and how to open for in-person education. According to
 20 guidance issued by the California Department of Education, “the final decision to reo-
 21 pen” was to “be made by each LEA working in close collaboration with local health
 22 officials and community stakeholders, including *families*.” Ex. A at 1 (emphasis
 23 added). Prior to the issuance of the Governor’s order, a number of schools voiced ten-
 24 tative plans to reopen, with the “most popular model” involving “a hybrid, or blended,
 25 model of instruction, which has students attending some classes on campus and doing
 26

27
 28 ¹ It is well established that parents have standing to assert claims on behalf of their
 children. *See, e.g., Runyon v. McCrary*, 427 U.S. 160 (1976); *Blanchard v. Morton*
Sch. Dist., 509 F.3d 934, 938 (9th Cir. 2007) (parental claims on behalf of their
 children under the ADA and Rehabilitation Act).

1 some work at home.”² Although some LEAs had not yet finalized their plans for the
 2 Fall, several of the schools attended by Plaintiffs’ children likely would have resumed
 3 in-person education. *See, e.g.*, Brach Decl. ¶ 9; Hackett Decl. ¶ 6. The only reason
 4 these schools, and many others, are not currently offering in-person education is that
 5 they are in counties currently on the state’s monitoring list. The concrete injuries
 6 Plaintiffs have asserted are thus directly traceable to the Governor’s July 17 Order.

7 **B. An Injunction Would Redress Plaintiffs’ Injuries**

8 Plaintiffs’ burden to establish *Lujan*’s third element is “relatively modest.” *Renee*
 9 *v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012) (citing *Bennett v. Spear*, 520 U.S.
 10 154, 171 (1997)). “Plaintiffs need not demonstrate that there is a ‘guarantee’ that their
 11 injuries will be redressed by a favorable decision.” *Id.* Instead, Plaintiffs need to show
 12 only “a substantial likelihood that the relief sought would redress the injury.” *Mayfield*
 13 *v. United States*, 599 F.3d 964, 971 (9th Cir. 2010) (citation omitted). Plaintiffs thus
 14 do not have the burden of demonstrating that their children *would* receive a basic min-
 15 imum education or receive identical education to children in other counties if this
 16 Court enjoins the Order—it is sufficient that an injunction would significantly in-
 17 crease the likelihood that their children would receive such an education by allowing
 18 their schools to reopen for in-person instruction. *See Regents of Univ. of Cal. v. Bakke*,
 19 438 U.S. 265, 280 n.14 (1978) (“[E]ven if Bakke had been unable to prove that he
 20 would have been admitted [to medical school] in the absence of the [challenged] spe-
 21 cial program, it would not follow that he lacked standing.”).

22 An injunction would also provide redress for the injuries suffered as a result of De-
 23 fendants’ violations of the IDEA, ADA, and Rehabilitation Act. Once the Order is en-
 24 joined, schools will be free to provide the legally required services mandated in Plain-
 25 tiffs’ IEPs—many of which require some type of in-person educational component,
 26

27 ² *See* Shivani Patel, *What we know: Ventura County school districts’ plan for fall*
 28 *2020 reopening, so far*, VC Star (July 8, 2020), <https://tinyurl.com/y3zpwao> (stating
 that the “majority” of schools in Ventura County “are at least offering a hybrid of in-
 person/online and fully remote learning”).

1 *see* ECF No. 28-1 at 21–23—and make reasonable accommodations to ensure that dis-
 2 abled children have the same educational opportunities as non-disabled children. Alt-
 3 hough an injunction would not guarantee full compliance with Plaintiffs’ IEPs, it
 4 would significantly increase the chance that schools will faithfully implement them.
 5 *See Renee*, 686 F.3d at 1013–15.

6 Moreover, an injunction would restore the procedural safeguards guaranteed to
 7 children and parents under Section 1415 of the IDEA. Under normal circumstances, if
 8 a school or district fails to implement IEPs or otherwise fulfill their obligations under
 9 the IDEA, affected parents and children can utilize the administrative procedures
 10 guaranteed by the IDEA to remedy the issue. 20 U.S.C. § 1415.³ But, as explained be-
 11 low, the Order renders these administrative procedures entirely useless. *Infra* pp. 9–
 12 12. Enjoining the Order would restore the efficacy of these administrative procedures
 13 and allow parents and children to once again use the administrative process to address
 14 issues caused by these local decisions. *Cf. Bakke*, 438 U.S. at 280 n.14 (enjoining
 15 program would “permit Bakke to compete” in application process).

16 It is possible, of course, that various counties could issue their *own* orders prevent-
 17 ing in-person education if the Governor’s Order is enjoined, but Plaintiffs’ standing
 18 does not turn on hypothetical actions *other* government actors may take in the future.
 19 Otherwise a plaintiff would be required to preemptively sue every government agency
 20 that *might* injure him somewhere down the line. That is not the law. *See Vill. of Ar-*
 21 *lington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 261–62 (1977). And in
 22 any event, there is no evidence in the record that any of the counties in which Plain-
 23 tiffs reside are contemplating such a blanket prohibition.⁴

24
 25 ³ In California, parents may file complaints with the State’s Department of Educa-
 26 tion. Cal. Educ. Code § 56500.2; Cal. Code Regs. tit. 5, § 4670; *see also* Cal. Code
 27 Regs. tit. 5, § 4650. The Legislature encourages parties to mediate these disputes to
 28 reach a solution. Cal Educ. Code § 56500.3. Finally, parents and students are guaran-
 29 teed an administrative hearing before a hearing officer. Cal. Educ. Code § 56505.

⁴ If Defendants present evidence that Counties *are* contemplating such orders (or have
 already issued them), Plaintiffs should be given the opportunity to amend their com-
 plaint to name relevant county officers as additional defendants.

1 To be sure, some LEAs have independently decided not to resume in-person in-
 2 struction this Fall, and others may decide not to reopen even if the Order is enjoined.
 3 But that possibility likewise does not defeat standing because several Plaintiffs send
 4 their children to schools that *are* likely to open for in-person instruction if this Court
 5 grants an injunction. Plaintiff Brach, for example, has “firsthand knowledge of the
 6 steps that [his] district has taken to be able to safely reopen [the] sixteen schools for
 7 the upcoming 2020-2021 school year.” Brach Decl. ¶ 9. “[A]n overwhelming amount
 8 (65%) of parents in [his] district support[] returning the students to school, for in-per-
 9 son learning,” suggesting that the district will likely open as soon as possible. *Id.* ¶ 13.
 10 Similarly, Plaintiff Hackett’s children attend a private school in Los Angeles County
 11 that made “huge investments of effort and money to comply with the CDC and health
 12 directives, so that children can safely attend school in person.” Hackett Decl. ¶¶ 2, 6.⁵

13 Moreover, if the Order is enjoined, parents who currently send their children to
 14 schools in districts that decide not to reopen—such as L.A. Unified—will have the op-
 15 tion of sending their children to private schools or charter schools that are open for in-
 16 person education. Furthermore, unlike the monitoring list, which Plaintiffs are power-
 17 less to influence, school districts are required to take parents’ views into consideration
 18 when deciding core educational issues, including whether to reopen for in-person in-
 19 struction. For example, in 2016, the California Legislature adopted a statute that,
 20 among other things, mandates “that a [school] district consult[] with its ... parents”
 21 when developing plans for “[s]tudent [a]chievement.” *An Overview of the Local Con-
 22 trol Funding Formula*, LEGISLATIVE ANALYST’S OFFICE (Dec. 2013),
 23 <https://lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf>; Cal. Educ. Code

24
 25
 26 ⁵ Plaintiffs have attested that they will send their children back to school for in-person
 27 education as soon as it is available. *See* ECF No. 28-1 at 7–9; *see, e.g.*, Hackett Supp.
 28 Decl. ¶ 10; Brach Supp. Decl. ¶ 5; Ziegler Supp. Decl. ¶ 8; Ruiz Supp. Decl. ¶ 7. In-
 deed, Plaintiff Petrilla has already transferred his child to a private school that ob-
 tained a waiver for in-person education. Petrilla Supp. Decl. ¶ 4. If public schools reo-
 pen, he will immediately send his child back for in-person education. *Id.* ¶ 7.

1 §§ 42238.02, *et seq.* Indeed, “[p]arental [i]nvolvement” is one of the eight “priority ar-
 2 eas” under California’s public education system. LEGISLATIVE ANALYST’S OFFICE, *su-*
 3 *pra*, Fig. 8. Consequently, enjoining the Order would not leave Plaintiffs completely
 4 at the mercy of independent actors because Plaintiffs can petition their school districts
 5 to reopen for in-person instruction—a view widely shared by a majority of parents,
 6 *see, e.g.*, Brach Decl. ¶ 13—the “practical consequence” of an injunction would thus
 7 be to “significant[ly] increase the likelihood” that Plaintiffs’ schools will open for in-
 8 person education this Fall. *Utah v. Evans*, 536 U.S. 452, 464 (2002).

9 Because Plaintiffs easily satisfy the basic requirements for standing, there is no ob-
 10 stacle preventing this Court from reaching the merits of Plaintiffs’ claims.

11 **II. PLAINTIFFS WERE NOT REQUIRED TO EXHAUST ADMINIS-** 12 **TRATIVE REMEDIES BEFORE FILING SUIT**

13 While a plaintiff must generally exhaust administrative remedies before bringing
 14 claims under the IDEA or otherwise seeking “adequate education for disabled youth”
 15 under other laws, *Doe ex. rel. Brockhuis v. Arizona Dep’t of Educ.*, 111 F.3d 678,
 16 680–81, 685 (9th Cir. 1997) (citing 20 U.S.C. § 1415(e)(2), (f)), there are exceptions
 17 for both the ADA/Rehabilitation Act claims and the IDEA claims that apply here. *See*
 18 *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1302–03 (9th Cir. 1992).

19 **First**, when a plaintiff brings claims under federal laws other than the IDEA—such
 20 as the ADA or Rehabilitation Act—they must exhaust the IDEA’s administrative rem-
 21 edies *only* when they are “seeking relief that is also available” under the IDEA. 20
 22 U.S.C. § 1415(l); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 754 (2017). “[T]he only
 23 ‘relief’ the IDEA makes ‘available’ is relief for the denial of a [free and appropriate
 24 public education or] FAPE.” *Id.* at 754–55. A free and appropriate education consists
 25 of “special education” and “related services. 20 U.S.C. § 1401(9); *Endrew F. ex rel.*
 26 *Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 994 (2017). “‘Special education’
 27 is ‘specially designed instruction ... to meet the unique needs of a child with a disabil-
 28 ity’; ‘related services’ are the support services ‘required to assist a child ... to benefit
 from’ that instruction.” *Id.* (citing 20 U.S.C. §§ 1401(26), (29)).

1 Just because a plaintiff's claims are "'educational' in nature" or "fall[] within the
 2 general 'field' of educating disabled students" does not mean that they are subject to
 3 the IDEA's exhaustion requirement. *Fry*, 137 S. Ct. at 752 & n.3 (citing with ap-
 4 proval *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 874 (9th Cir. 2011) (en banc)).
 5 "[T]he IDEA guarantees individually tailored services, while Title II [of the ADA]
 6 and § 504 [of the Rehabilitation Act] promise non-discriminatory access to public in-
 7 stitutions." *Id.* at 756. There may be "some overlap in [the] coverage" of these laws,
 8 but these "statutory differences . . . mean that a complaint brought under Title II and
 9 § 504 might [] seek relief for simple discrimination, irrespective of the IDEA's FAPE
 10 obligation." *Id.* For example, a wheelchair-bound student need not exhaust the IDEA's
 11 administrative remedies before asking her school to install a ramp so that she can ac-
 12 cess the school's educational services. *Id.* Likewise, a student with an "expressive
 13 communication disorder" may ask that he be allowed to utilize a "letter board" in class
 14 without first exhausting the IDEA's administrative remedies, *Duncan v. San Dieguito*
 15 *Union High Sch. Dist.*, 2019 WL 4016450, at *1–*4 (S.D. Cal. Aug. 26, 2019).

16 The Supreme Court in *Fry* suggested "asking a pair of hypothetical questions" to
 17 determine "whether the gravamen of a complaint against a school concerns the denial
 18 of a FAPE, or instead addresses disability-based discrimination." 137 S. Ct. at 756.
 19 "First, could the plaintiff have brought essentially the same claim if the alleged con-
 20 duct had occurred at a public facility that was *not* a school? And second, could an
 21 *adult* at the school . . . have pressed essentially the same grievance?" *Id.* (emphasis in
 22 original). If the answers are "yes," then the complaint is "unlikely" to be about the de-
 23 nial of a FAPE and therefore not subject to the IDEA's exhaustion requirement. *Id.*

24 Here, Plaintiffs' claims under the ADA and Rehabilitation Act are not subject to
 25 the IDEA's exhaustion requirement because those claims do not "seek[] relief for the
 26 denial of a free and appropriate public education"—"special education" and "related
 27 services," 20 U.S.C. § 1401—but instead seek reasonable accommodations to permit
 28 them to receive instruction on the same terms as non-disabled students. *Fry*, 137 S. Ct.
 at 754–55. Plaintiffs' ADA and Rehabilitation Act claims invoke the rule that when a

1 neutral policy “burdens [disabled] persons in a manner different and greater than it
 2 burdens others,” that policy “discriminates against [those individuals] by reason of
 3 their disability.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996). Thus, un-
 4 der both the ADA and the Rehabilitation Act, “educational institutions are required to
 5 provide a disabled student with reasonable accommodations to ensure that the institu-
 6 tion’s requirements do not discriminate on the basis of the student’s disability.” *Zukle*
 7 *v. Regents of Univ. of California*, 166 F.3d 1041, 1046 (9th Cir. 1999).

8 Plaintiffs ask that they be given a reasonable accommodation allowing them to ac-
 9 cess their education in person because, as a result of their disabilities, they are unable
 10 to access their education online. The Order’s online-only education mandate burdens
 11 Z.R. and other disabled children “in a manner different and greater than” other chil-
 12 dren. *Crowder*, 81 F.3d at 1484; ECF No. 28-1 at 23–24. As Plaintiff Ruiz explained
 13 in her declaration, because of his disability, Z.R. “cannot sit still and [] does not have
 14 the ability to understand commands through an online format.” Ruiz Decl. ¶ 6.

15 Ramirez explained that, because of her child’s disability, he “cannot tolerate distance
 16 learning and he basically shut down.” Ramirez Decl. ¶ 9. And Plaintiff Hawkins ex-
 17 plained that, as a result of his son’s disability, “the online format [for instruction] was
 18 difficult for him to follow and to comprehend, and he struggled a lot.” Hawkins Decl.
 19 ¶¶ 5, 11. Thus, like the wheelchair-bound student seeking a ramp or the communica-
 20 tion-impaired student seeking use of a letter board, Plaintiffs seek reasonable accom-
 21modation to ensure equal access to public education: namely, to access their instruc-
 22tion in person. This is “relief for simple discrimination, irrespective of the IDEA’s
 23FAPE obligation.” *Fry*, 137 S. Ct. at 756.

24 Application of *Fry*’s “hypothetical questions” confirms the conclusion that Plain-
 25tiffs seek relief other than for the denial of a FAPE. *Id.* A plaintiff could “have
 26brought essentially the same claim if the alleged conduct had occurred at a public fa-
 27cility that was *not* a school.” *Fry*, 137 S. Ct. at 756. For example, if state law required
 28local public libraries to provide their services only online, a disabled adult who was
 burdened “in a manner different and greater than” others by this requirement could

1 seek in in-person access to the services under the ADA and Rehabilitation Act.
 2 *Crowder*, 81 F.3d at 1484. Likewise, “an *adult* at the school” could “press[] essen-
 3 tially the same grievance” as the Plaintiffs here. *Fry*, 137 S. Ct. at 756. If a disabled
 4 teacher is burdened by the remote-instruction requirement “in a manner different and
 5 greater than” other teachers, that teacher could bring a claim under the ADA and Re-
 6 habilitation Act, albeit likely under the employment-related sections of those statutes.
 7 *Crowder*, 81 F.3d at 1484. Thus, Plaintiffs’ ADA and Rehabilitation Act claims do not
 8 “‘seek[]’ relief available under” the IDEA and are not subject to the IDEA’s exhaus-
 9 tion requirement. *Fry*, 137 S. Ct. at 754–57.

10 ***Second***, claims for relief normally available under the IDEA may nevertheless be
 11 exempt from exhaustion. *See Hoeft*, 967 F.2d at 1302–03 (IDEA’s “exhaustion re-
 12 quirement is not a rigid one, and is subject to certain exceptions.”). In determining
 13 whether an exception applies, a court’s “inquiry is whether pursuit of administrative
 14 remedies under the facts of a given case will further the general purposes of exhaus-
 15 tion and the congressional intent behind the administrative scheme.” *Id.* at 1303.
 16 These purposes are to “allow[] for the exercise of discretion and educational expertise
 17 by state and local agencies, afford[] full exploration of technical educational issues,
 18 further[] development of a complete factual record, and promote[] judicial efficiency
 19 by giving these agencies the first opportunity to correct shortcomings in their educa-
 20 tional programs for disabled children.” *Id.*

21 Courts recognize that “there are situations in which exhaustion serves no useful
 22 purpose” and is therefore not required. *Hoeft*, 967 F.2d at 1303. First, exhaustion is
 23 not required when “it would be futile to use the due process procedures.” *Id.* (citation
 24 omitted). Second, exhaustion is not required when the challenged policy is one “of
 25 general applicability that is contrary to the law.” *Id.* at 1303–04 (citation omitted).
 26 Third, exhaustion is not required when “it is improbable that adequate relief can be
 27 obtained by pursuing administrative remedies.” *Id.* at 1304 (citation omitted). “Ad-
 28 ministrative remedies are generally inadequate where structural, systemic reforms are

sought.” *Id.* at 1309. For example, when a policy is “enforced at the highest administrative level, so that the only meaningful remedy is through the courts,” exhaustion is not required. *Id.* at 1305; *see, e.g., J.S. ex rel. N.S. v. Attica Cen. Schls*, 386 F.3d 107, 115 (2d Cir. 2004); *New Mexico Ass’n for Retarded Citizens v. State of N.M.*, 678 F.2d 847, 850–51 (10th Cir. 1982); *King v. Pine Plains Cent. Sch. Dist.*, 918 F. Supp. 772, 781 (S.D.N.Y. 1996) (“administrative hearing officers . . . generally do not have the authority to set new policies or to alter existing ones,” so “requiring a parent to exhaust his administrative remedies when he is challenging a generally applicable policy or procedure would be futile”); *Cordero by Bates v. Penn. Dept. of Educ.*, 795 F. Supp. 1352, 1362–63 (M.D. Penn. 1992); *Scaggs v. New York Dept. of Educ.*, No. 06-CV-0799, 2007 WL 1456221, at *6–*8 (E.D.N.Y. May 16, 2007) (collecting cases).⁶

Plaintiffs are exempt from the IDEA’s exhaustion requirement for multiple, independently sufficient reasons. As an initial matter, resort to administrative remedies here would not serve the purposes of exhaustion. *See Hoeft*, 967 F.2d at 1303. The Order is tantamount to a state law prohibiting nearly every school in the State of California from providing in-person educational services to children: there is no room for the “discretion . . . by state and local agencies” and no ability for “these agencies . . . to correct shortcomings in their educational programs for disabled children.” *Id.* The Order is simply a blanket ban on all in-person educational services that no state or local agency may override. *See Jackie S. v. Connelly*, 442 F. Supp. 2d 503, 519 (S.D. Ohio 2006) (exhaustion not required for challenge to administrative rule); *Jacky W. v. New York City Bd. of Educ.*, 848 F. Supp. 358, 361 (E.D.N.Y. 1994) (exhaustion not required for challenge to state law); *see also Handberry v. Thompson*, 446 F.3d 335,

⁶ *Doe* is consistent with this line of cases. In that case, the agency was unaware of the problems at its facility and, “[o]nce alerted to its oversight by the lawsuit, . . . took steps to begin to remedy it.” 111 F.3d at 682. Thus, *Doe* did not involve “issues of law or policy.” *Id.* at 683. Instead, the plaintiffs’ claims boiled down to numerous factual disputes about whether, as to each individual plaintiff class member, the facility had denied him or her a FAPE. *Id.* Because there was no policy at issue, but rather only individualized determinations based on specific facts, the court held that plaintiffs’ claims were not systemic and exhaustion was required. *Id.*

1 344 (2d Cir. 2006) (plaintiffs did not need to exhaust when alleging an “absence of
2 any services whatsoever”).

3 Exhaustion is not required here because “it would be futile to use the due process
4 procedures.” *Hoelt*, 967 F.2d at 1303. The issues created by the Order cannot be
5 solved by filing complaints with school districts or the State Department of Education,
6 as the entities have no authority to override the Order. *See* Cal. Educ. Code
7 §§ 56500.2; 56500.3.⁷ Likewise, “it is improbable that adequate relief can be obtained
8 by pursuing administrative remedies” because Plaintiffs’ IDEA claim is systemic,
9 *Hoelt*, 967 F.2d at 1304. Providing Plaintiffs relief requires an injunction barring De-
10 fendants from enforcing the Order, which is “structural relief that only a court can or-
11 der.” *Doe*, 111 F.3d at 683. Plaintiffs claim that the *entire educational regime* created
12 by the Order—online-only instruction and services—violates the IDEA because
13 schools simply cannot provide free and appropriate public education to disabled stu-
14 dents without *some amount* of in-person contact. *See* ECF No. 28-1 at 21–22.⁸ Physi-
15 cal and occupational therapy, explicitly required by the IDEA, 20 U.S.C. § 1401(26),
16 cannot be provided remotely. Nor can countless other kinds of “specialized” instruc-
17 tion. *E.R.K. ex rel. R.K. v. Haw. Dept. of Educ.*, 728 F.2d 982, 990 (9th Cir. 2013);
18 *see, e.g.*, Walker Decl. ¶¶ 4-5, 7.⁹ Thus, Plaintiffs’ claim that state law (in the form of
19

20 ⁷ *Paul G. by & through Steve G. v. Monterey Peninsula Unified Sch. Dist.*, 933 F.3d
21 1096 (9th Cir. 2019), did not overrule Ninth Circuit precedent clearly holding that ex-
22 haustion is not required when “the hearing officer lacks the authority to grant the relief
23 sought.” *Hoelt*, 967 F.2d at 1304 (citation omitted). As *Hoelt* explained, this excep-
24 tion is spelled out explicitly in the legislative history of the IDEA. *Id.* (quoting
H.R.Rep. No. 296, 99th Cong., 1st Sess. 7 (1985)).

25 ⁸ This challenge to a statewide policy asks “only questions of law,” *Hoelt*, 967 F.2d at
26 1305, specifically, whether an online-only education system fails, as a matter of law,
to comport with the requirements of the IDEA.

27 ⁹ While Plaintiffs have not asserted class claims, courts have held that claims were
28 systemic even when plaintiffs did not bring class actions. *See, e.g., King*, 918 F. Supp.
at 781–82; *Scaggs*, 2007 WL 1456221, *6–8; *see also J.S.*, 386 F.3d at 110, 113–15
(plaintiffs had withdrawn their motion for class certification pending appeal).

the Order) creates a system of special education that fails to comport with the IDEA falls squarely within the exceptions to the IDEA's exhaustion requirements. *See Hoeft*, 967 F.2d at 1302–04; *Handberry*, 446 F.3d 335; *J.S.*, 386 F.3d 107; *New Mexico Ass'n for Retarded Citizens*, 678 F.2d 847; *Jackie S.*, 442 F. Supp. 2d 503; *King*, 918 F. Supp. 772; *Jacky W.*, 848 F. Supp. 358; *Cordero*, 795 F. Supp. 1352; *Scaggs*, 2007 WL 1456221 (collecting cases).

III. EVIDENCE CONFIRMS THAT THE ORDER IS IRRATIONAL.

Recent evidence confirms that the criteria the state is using to place counties on the monitoring list are irrational. CDPH has never calculated the severity of influenza or other respiratory disease by focusing on positive test results. Kaufman Supp. Decl. ¶¶ 5-7. Yet nearly all of the counties on the monitoring list are included solely because they currently exceed the case rate of 100 per 100,000 residents over 14 days. *See Cicchetti Supp. Decl.* ¶ 11. That metric is biased because it is directly correlated with the number of *tests performed*, not with risks posed to the wider community. *Id.* ¶¶ 6-7. Moreover, since the majority of people infected are asymptomatic, positive results do not indicate an increased burden on the healthcare system. Kaufman Supp. Decl. ¶ 11. Use of case counts is also irrational because a positive test does not indicate that a person is infectious—indeed, a person can test positive 80 days after contracting the disease, long after they have ceased to be infectious—and the PCR test often yields positive results when people have merely had *contact* with the virus but are neither sickened nor infectious. *Id.* ¶ 13. The only metric that reliably indicates whether the disease is actually spreading dangerously is hospitalization rates. *Cicchetti Supp. Decl.* ¶ 12. But if that were the only metric used, *zero counties* would currently be on the monitoring list. *Id.* ¶ 13. And even if the state were to include the metrics measuring the availability of ICU beds and ventilators, only 7 counties would be on the list as of August 25, 2020. *Id.* ¶ 16. Because it is both irrational and cruel to deprive Plaintiffs' children of in-person education based on meaningless and biased data, this Court should issue a preliminary injunction barring Defendants from enforcing the Order, and return responsibility for school reopenings to local educators.

1
2 Date: August 25, 2020
3

Respectfully submitted,
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IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

MATTHEW BRACH, et al.,

Plaintiffs,

v.

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

Defendants.

Case No 2:20-cv-06472 SVW (AFMx)

**SUPPLEMENTAL
 MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 OPPOSITION TO PRELIMINARY
 AND/OR PERMANENT
 INJUNCTION (Dkt. 28)**

Date: September 10, 2020
 Time: 1:30 p.m.
 Courtroom: 10A - Telephonic
 Judge: The Honorable Stephen
 V. Wilson
 Trial Date: Not set
 Action Filed: 7/21/2020

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INTRODUCTION

The Court requested supplemental briefing on two issues: (1) whether Plaintiffs have Article III standing; and (2) whether Plaintiffs Christine Ruiz, Z.R., Brian Hawkins, Marianna Bema, and Ashley Ramirez’s claims under the Individuals with Disabilities Education Act (IDEA) fall within exceptions to the exhaustion mandate described in *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303-1304 (9th Cir. 1992). See ECF No. 48. The Court also requested that the parties submit any further evidence on whether a preliminary and/or permanent injunction should issue.

Plaintiffs lack Article III standing to bring their claims challenging Governor Newsom’s Executive Order N-60-20 and the July 17, 2020 Order by the California Department of Public Health regarding school openings (collectively, “State Order”). Defendants’ Request for Judicial Notice, Exs. E, F, ECF No. 36. Specifically, the parent-Plaintiffs lack standing because they fail to show that they suffered a particularized injury in fact as a result of the State Order. All Plaintiffs fail to show that there is a causal connection between the alleged injury of their schools offering distance learning and the State Order. Moreover, Plaintiffs have not shown it is likely that, even if the Court were to enjoin the State Order, the Court’s action would redress their alleged injury, since their children’s schools would not necessarily re-open for in-person instruction as a result.

In addition, the claim for violation of the IDEA and related federal-disability statutes, brought by four plaintiff-parents and one child, fails because none of these plaintiffs exhausted their administrative remedies—as they themselves concede—and no exception to the exhaustion requirement applies.

PLAINTIFFS FAIL TO MEET THE REQUIRED ELEMENTS TO ESTABLISH ARTICLE III STANDING

To state a case or controversy under Article III, a plaintiff must establish “standing.” *Ariz. Christian Sch. Tuition Org. v. Winn*, 536 U.S. 125, 133, 131 S.Ct.

1 1436, 179 L.Ed.2d 523 (2011); *accord Lujan v. Defs of Wildlife*, 504 U.S. 555, 560,
 2 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (“standing is an essential and unchanging
 3 part of the case-or-controversy requirement of Article III”). Standing requires three
 4 elements: (1) an “injury in fact;” (2) “a causal connection between the injury and
 5 the conduct complained of;” and (3) the likelihood “that the injury will be
 6 ‘redressed by a favorable decision.’ ” *Lujan*, 504 U.S. at 560-61; *Ariz. Christian*
 7 *Sch. Tuition Org.*, 536 U.S. at 134. This standing inquiry must be “especially
 8 rigorous” when reaching the merits of the dispute would force a court to decide
 9 whether actions taken by the executive or legislative branches are unconstitutional.
 10 *Raines v. Byrd*, 521 U.S. 811, 819-20, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997).

11 **I. THE PARENT-PLAINTIFFS CANNOT ESTABLISH A PARTICULARIZED**
 12 **INJURY-IN-FACT**

13 To establish Article III standing, Plaintiffs must identify a “concrete and
 14 particularized” injury to themselves and may not assert claims on behalf of
 15 others. *Lujan*, 504 U.S. at 560. Plaintiffs here are, with one exception, the parents
 16 of students, rather than the students themselves, and the parent-plaintiffs cannot
 17 show that they, personally, have been “injured” by the State Order. Although case
 18 law has recognized parental standing in certain school-related contexts,¹ standing
 19 has not been extended to parents where, as here, the challenge is to methods of
 20 instruction. For example, in *Caldwell v. Caldwell*, 545 F.3d 1126, 1133 (9th Cir.
 21 2008), the Ninth Circuit held that a parent of public school children lacked standing

22 ¹ See, e.g., *Valley Forge Christian College v. Am. United for Separation of*
 23 *Church & State*, 454 U.S. 464, 486 n.22 (1982) (parents’ children subjected to
 24 unwelcome religious exercises); cf., *Sch. Dist. of Abington Twp. v. Schempp*, 374
 25 U.S. 203, 224 n. 9, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963) (parents standing to raise
 26 First Amendment challenge to public school prayer policy); *Grove v. Mead Sch.*
 27 *Dist. No. 354*, 753 F.2d 1528, 1532 (9th Cir. 1985) (parent standing where
 28 challenged policy affects right to religious training of child); See also
Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 718-19,
 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) (parent standing to challenge policies
 impacting school admissions based on race; *Liddell v. Special Admin. Bd. of*
Transitional Sch. Dist. of City of St. Louis, 894 F.3d 959, 965–66 (8th Cir. 2018)
 (parent standing to challenge policies school funding).

1 to challenge the University of California’s instruction on evolution. *See also Shaw*
 2 *v. Stroud*, 13 F.3d 791, 805 (4th Cir. 1994) (lack of parental standing to sue over
 3 governmental action that affected family relationship only incidentally).

4 Here, the educational harm parent-Plaintiffs allege—which Defendants
 5 dispute—does not extend to the parents: the State Order’s directives guide the
 6 school instruction that their children will receive. They therefore cannot establish
 7 an injury that affects *them*, as opposed to their children, “in a personal and
 8 individual way” in any event. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02
 9 (1983). “Abstract injury is not enough. The plaintiff must show that he ‘has
 10 sustained or is immediately in danger of sustaining some *direct* injury’ as the result
 11 of the challenged official conduct and the injury or threat of injury must be both
 12 ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’” *Id.* (emphasis added)
 13 (citations omitted).² The parent-Plaintiff declarations confirm that their claimed
 14 “injury” is, in fact, their worry that their *children* are being adversely impacted by
 15 the lack of social interaction and direct teacher contact, not that they, themselves,
 16 are being personally harmed by distance-learning requirements. See, e.g., Brach
 17 Decl. ¶¶ 7-8, ECF No. 28-23; Petrilla Decl. ¶ 15, ECF No. 28-24; Beaulieu Decl. ¶¶
 18 14-16, ECF No. 28-25. Because the parent-Plaintiffs cannot establish that they are
 19 being imminently threatened with an injury-in-fact, they lack standing to sue.

20 **II. PLAINTIFFS CANNOT ESTABLISH A CAUSAL CONNECTION BETWEEN**
 21 **THEIR ALLEGED INJURY AND THE CHALLENGED STATE ORDER, OR**
 22 **THAT THEIR ALLEGED INJURY WILL BE REDRESSED BY THE INJUNCTIVE**
RELIEF THEY SEEK

23 Even if the parent-Plaintiffs had alleged a cognizable injury-in-fact, all
 24 Plaintiffs fail to establish that the State Order precluding in-person instruction in
 25 schools in counties on the State’s monitoring list, absent a waiver, caused the

26 ² Where, as here, parent-Plaintiffs seek declaratory relief, they must similarly
 27 establish standing by showing “that there is a substantial controversy, between
 28 parties having adverse interests, of sufficient immediacy and reality to warrant
 issuance of a declaratory judgment.” *Scott v. Pasadena Unified Sch. Dist.*, 306
 F.3d 646, 658 (9th Cir. 2002) (citations omitted).

1 alleged “injury” of their children receiving distance-learning at their schools.
2 Plaintiffs also cannot show that, even if this Court enjoins the State mandates on
3 distance learning, affected children will be permitted to return to school for in-
4 person learning. Specifically, none of the Plaintiff-parent declarations submitted
5 establish—nor could they—that their specific school or school district would return
6 to offering solely in-person instruction during the Fall semester of the 2020-2021
7 school year. To the contrary, the evidence available to date suggests the opposite.

8 “In cases where a chain of causation ‘involves numerous third parties’ whose
9 ‘independent decisions’ collectively have a ‘significant effect’ on plaintiffs’
10 injuries,” the Supreme Court and the Ninth Circuit have found the causal chain “too
11 weak to support standing at the pleading stage.” *Maya v. Centex Corp.*, 658 F.3d
12 1060, 1070 (9th Cir. 2011) (quoting *Allen v. Wright*, 468 U.S. 737, 759 (1984)); *see*
13 *also Shankar v. United States Dep’t of Homeland Sec.*, No. 13-CV-01490 NC, 2014
14 WL 523960, at *5 (N.D. Cal. Feb. 6, 2014) (standing turns on establishing injury-
15 in-fact that fairly can be traced to the challenged action of the defendant, and not an
16 injury resulting from the independent action of a third party.)

17 Like causation, redressability is difficult to demonstrate when the independent
18 actions of third parties affect the plaintiffs’ alleged injury, because pleading actions
19 by third party “would almost necessarily be conclusory and speculative.” *Levine v.*
20 *Vilsack*, 587 F.3d 986, 997 (9th Cir. 2009); *see also Lujan*, 504 U.S. at 568-571
21 (plaintiffs failed to demonstrate redressability where third parties’ independent
22 actions could affect whether requested relief would remedy injury).

23 Here, there are numerous third parties not before the court with independent
24 authority to make decisions that impact whether a school opens for distance
25 learning or in-person instruction. Plaintiffs, therefore, cannot establish that the
26 State Order “caused” their complained-of injury or that enjoining the State Order
27 would redress their alleged harm. First, even in the absence of a State Order, local
28 public health officers have the authority to require schools to provide distance

1 instruction to address the COVID-19 pandemic. Cal. Health & Saf. Code,
 2 §120175. Pursuant to that authority, in counties or cities with high rates of
 3 COVID-19, such public health officers may decide to issue their own similar order
 4 requiring schools to offer distance learning until COVID-19- rates in the area have
 5 decreased. Plaintiffs have failed to establish that, in the absence of the State Order,
 6 their local public health officer would permit in-person instruction.

7 Second, school districts, charter schools, and private schools retain the
 8 authority to decide not to open for in-person instruction irrespective of a State or
 9 local order. For example, on July 13, 2020, *before* the July 17, 2020 State Order
 10 was issued, the Los Angeles and San Diego Unified School Districts had already
 11 announced that they would be starting the 2020-2021 school year with distance-
 12 only learning. Declaration of Darin Wessel Ex. TT. Additional school districts
 13 followed, announcing that they would open the 2020-2021 school year with
 14 distance-only learning, including San Francisco Unified, Sacramento Unified, Long
 15 Beach Unified, Santa Ana Unified, and Oakland Unified, to name a few. *Id.*, Exs.
 16 UU, VV. At least some of the plaintiff-parents have children who appear to attend
 17 school at San Diego Unified and Long Beach Unified. See First Am. Compl. ¶¶ 9,
 18 11, Beaulieu Decl. ¶ 3).³ Accordingly, parent-Plaintiffs have failed to demonstrate
 19 that the State Order caused such districts to start the school year with distance
 20 learning, or that the injunctive relief they seek will actually result in their children
 21 immediately returning to entirely in-person instruction.⁴

22 ³ Because many of the Plaintiffs fail to allege which school district or school
 23 their children are enrolled at, Defendants cannot establish with certainty at this time
 24 which children are in schools that made the decision to start school with distance-
 25 only learning regardless of the State Order.

26 ⁴ Plaintiffs have not submitted admissible evidence establishing that the
 27 schools their children attend will, in fact, immediately reopen for in-person
 28 instruction even if it were permitted. Although a couple of the parent-plaintiffs state
 the desire for their schools to reopen, and that their school has taken steps to be
 ready to safely reopen, they have not produced evidence beyond conclusory
 assertions that schools are not open because of the State Orders and inadmissible
 hearsay supporting that contention. *See, e.g.*, Brach Decl. ¶¶ 3, 9-13; Hackett Decl.
 ¶ 6; First Am. Compl. ¶ 14, ECF No. 9. At best, the First Amended Complaint

1 Because third parties, including local governments and schools, are authorized
 2 to make independent decisions that will determine whether schools in the state are
 3 able to open for in-person instruction, Plaintiffs cannot establish that the State
 4 Order “caused” their injury. Similarly, Plaintiffs cannot establish that enjoining the
 5 State Order would necessarily result in their children’s schools being immediately
 6 re-opened for in-person instruction. Thus, Plaintiffs fail to meet the requirements
 7 for Article III standing, and their claims should be dismissed.

8 **NO EXCEPTION TO THE REQUIREMENT TO EXHAUST**
 9 **ADMINISTRATIVE REMEDIES PRIOR TO BRINGING A CLAIM FOR**
 10 **VIOLATION OF THE IDEA APPLIES HERE**

11 As explained in Defendants’ Opposition to Temporary Restraining Order, ECF
 12 No. 35, Plaintiffs’ claim for violation of the IDEA, Americans with Disabilities Act
 13 (ADA), and section 504 of the Rehabilitation Act fails because they did not exhaust
 14 administrative remedies and no exception to the exhaustion requirement applies.
 15 See *id.* at 22:15-24. There are three recognized exceptions to the requirement to
 16 exhaust the due-process administrative remedy: (1) it would be futile to exhaust
 17 administrative remedies, (2) the educational agency has adopted a policy or pursued
 18 a practice of general applicability that is contrary to law, or (3) it is improbable that
 19 adequate relief can be obtained by pursuing administrative remedies. *Doe v.*
 20 *Arizona Dep’t of Educ.*, 111 F.3d 678, 681, 683-684 (9th Cir. 1997) (finding
 21 exhaustion not excused); *Hoelt*, 967 F.2d at 1303 (same). Here, Plaintiffs argue
 22 they are exempt from the exhaustion requirement under the first two exceptions.
 23 Reply in Support of TRO at 10:9-18, ECF 40. But, as discussed below, those
 24 exceptions do not apply here.

25 _____
 26 alleges that the private school Roger Hackett’s son attends “is willing to offer both
 27 in-person and distance learning options based on the preference of the parents”
 28 First Am. Compl. at 8:4-5. But his declaration does not state that his son’s school
 would immediately open for in-person instruction but for the State Order. See
 Hackett Decl., ECF No. 28-30.

1 **I. EXHAUSTING ADMINISTRATIVE REMEDIES WOULD NOT BE FUTILE**
 2 **HERE**

3 Plaintiffs first argue that it would be futile to file complaints *with the CDE*
 4 because CDE could not grant their requested relief. Reply at 9:11-13. This
 5 mischaracterizes IDEA's administrative exhaustion requirement, which mandates
 6 completion of a formal, due-process hearing at the Office of Administrative
 7 Hearings (OAH), not submission of an informal compliance complaint with CDE.
 8 20 U.S.C. §1415(i)(2)(A).⁵ Plaintiffs' argument regarding CDE's alleged lack of
 9 authority is thus irrelevant to the issue of futility.

10 Pursuing a due-process hearing *with OAH*⁶ would not be futile based on the
 11 numerous well-established reasons that justify the exhaustion requirement in the
 12 first place. Exhaustion of available administrative remedies is critically important
 13 to the effective determination of claims and the scope of any remedy related to
 14 individual harm: the exhaustion requirement serves the important purposes of
 15 affording the parties and the courts the benefits of agency expertise in preliminarily
 16 reviewing and ruling on a disputed matter, and ensuring the compilation of an
 17 adequate record for potential judicial review—assuming judicial review is not
 18 obviated by the administrative proceedings. See *Hoelt*, 967 F.2d at 1303; *Doe v.*
 19 *Arizona Dep't of Educ.*, 111 F.3d 678 (9th Cir. 1997). Exhaustion permits a
 20 determination in the first instance of fact-intensive issues critical to the ultimate
 21 legal determination: whether the challenged facts support a finding of a denial of a
 22 free appropriate public education (FAPE), and, if so, what student-specific remedies
 23 are appropriate under the circumstances. (*Id.*) Without that type of detailed review

24 ⁵ The IDEA makes no provision for judicial review of such compliance
 25 complaints at all, *Fairfield-Suisun Unified Sch. Dist. v. Cal. Dept. of Educ.*, 780
 26 F.3d 968, 970-971 (9th Cir. 2015), so such proceedings do not fulfill the IDEA's
 27 judicial review requirement. 20 U.S.C., § 1415(i)(2)(A).

28 ⁶ During the COVID-19 pandemic, OAH has continued to hear due-process
 claims for denial of FAPE, including based on issues related to distance learning.
 Calomese Decl. ¶ 7. Thus, any contention by Plaintiffs that they have been
 precluded from pursuing administrative remedies due to the pandemic is flatly
 contradicted by the evidence.

1 and analysis from an examiner with subject-matter expertise on the relevant issues,
2 the parties and the Court would be hamstrung in their ability to meaningfully assess
3 and rule on Plaintiffs' claims.

4 Here, each Plaintiff failed to obtain an underlying determination by OAH that
5 a FAPE was denied to their child. Each asserts different allegations about their own
6 child's experience with distance learning and the alleged failure of their school to
7 provide required services under their Individualized Education Program (IEP).
8 Specifically, Z.R. and the relevant parents allege in the FAC and their declarations
9 that he/their students have IEPs and that their schools failed to provide certain
10 services required under their respective IEPs during distance learning in the Spring
11 of 2020. First Am. Compl. ¶¶ 15, 16, 18, 21; Ruiz Decl. ¶¶ 4-6, 8, 11-13, 15-18;
12 Hawkins Decl. ¶¶ 4-11; Bema Decl. ¶¶ 12; Ramirez Decl. ¶¶ 8-9. These allegations
13 are all factually different from each other, and each would thus require a unique
14 analysis by an administrative law judge (ALJ) of whether a FAPE was denied under
15 the particular circumstances alleged, and based on each student's IEP. *See id.*

16 Availing themselves of a due-process hearing would have been beneficial to
17 Plaintiffs for several reasons. Parents-Plaintiffs allege that their children were not
18 provided required services under their IEPs and that their children are unable to
19 access education through distance learning, and one of them alleges she had to pay
20 for private tutors for her sons. Ruiz Decl. ¶¶ 5, 9, 13-17; Ramirez Decl. ¶¶ 8-9;
21 Bema Decl. ¶¶ 11-12; Hawkins Decl. ¶¶ 4, 9-11. If Plaintiffs had pursued their
22 claims of denial of FAPE at an OAH hearing, they could have received individual
23 remedies that would have adequately addressed their particular concerns, including
24 reimbursement for private tutoring costs and/or provision of compensatory
25 education services. See 20 U.S.C. 1415(e)(2), 1415(i)(2)(C)(iii); *Forest Grove v.*
26 *T.A.*, 557 U.S. 230, 243-244 n. 11 (2009) (ALJ may award appropriate relief); *Sch.*
27 *Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 339-371 (1985)
28 (reimbursement); *Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1496 (9th

1 Cir. 1994) (compensatory education). Thus, any argument that adequate relief
 2 cannot be obtained by pursuing administrative remedies fails given the undisputed
 3 ability of an ALJ to award targeted relief to address their specific concerns about
 4 their school district's alleged denial of services required under their child's IEP
 5 during distance learning, including reimbursement and compensatory education.

6 Additionally, the U.S. Department of Education's Office of Special Education
 7 Programs (OSEP) provided two informal guidance letters in March 2020, which
 8 state that school districts should attempt to provide FAPE "to the greatest extent"
 9 possible during the COVID-19 pandemic, that this may include distance learning,
 10 and that school districts should work closely with families to determine the
 11 appropriate provision of IEP services. See Declaration of Heather Calomese, ¶¶ 6,
 12 8, Exs. RR at 2, SS at 2. The OSEP guidance also recognizes that local education
 13 agencies (LEAs) may be obligated to provide compensatory education to students
 14 denied FAPE as a result of school closures. *Id.*, Exs. RR at 2-3, SS at 2-4. The
 15 Supreme Court has held that when the IDEA is ambiguous—as it arguably is here
 16 because it is silent on a means of providing FAPE during a pandemic—courts may
 17 defer to such OSEP letters in interpreting school-district obligations. *Honig v. Doe*,
 18 484 U.S. 305, 325 n. 8 (1988). Thus, an ALJ analyzing whether a student was
 19 denied a FAPE during Spring 2020 would likely apply OSEP's "to the greatest
 20 extent possible" standard in making the individualized determination on a student's
 21 claim of denial of a FAPE.⁷

22 ⁷ Plaintiffs argue that a plaintiff need not exhaust administrative remedies
 23 when alleging an "absence of any services whatsoever," Reply at 15:14-15, citing
 24 *Handberry v. Thompson*, 446 F.3d 335, 344 (2d. Cir. 2006). *Handberry* is
 25 inapposite: it was a class-action filed on behalf of all adult inmates at Rikers Island
 26 jail eligible for various educational services challenging "the absence of any
 27 services whatsoever." *Id.* Indeed, in reaching its conclusion, the court expressly
 28 distinguished such class-wide systemic challenges from "challenges with respect to
 the content of a particular student's Individualized Education Plan." *Id.* Here, in
 contrast, Plaintiffs bring the claims in their individual capacities only and allege
 their children did not receive all the services normally provided under their IEPs
 during the school closures. See First Am. Compl. ¶¶ 15, 16, 18, 21; Ruiz Decl. ¶¶ 4-
 6, 13; Hawkins Decl. ¶¶ 9-11; Bema Decl. ¶ 12; Ramirez Decl. ¶¶ 8-9. In light of

1 Finally, as this Court correctly recognized in denying Plaintiffs’ request for a
 2 temporary restraining order, TRO Order at 12, under *Paul G. v. Monterey*
 3 *Peninsula Unified Sch. Dist.* 933 F.3d 1096, 1101-1102 (9th Cir. 2019), seeking
 4 relief at OAH against the respective school districts that Plaintiffs’ children attend
 5 would not have been futile to their effort to pursue injunctive relief against
 6 Defendants because a finding of denial of FAPE at OAH could potentially form the
 7 predicate for a systemic claim in court in an appropriate case. And, as explained
 8 below, absent a predicate finding by OAH that the students were, in fact, denied
 9 FAPE, Plaintiffs are foreclosed from pursuing a broader claim for relief.

10 **II. THE “SYSTEMIC CLAIMS” EXCEPTION DOES NOT APPLY HERE TO** 11 **EXCUSE PLAINTIFFS FROM THE EXHAUSTION MANDATE**

12 Plaintiffs also argue that they are excused from exhausting available
 13 administrative remedies because their claim is a “systemic” challenge to a practice
 14 of general applicability that is contrary to the law, and thus allegedly not subject to
 15 the exhaustion requirement. Reply at 10:13-18 (*citing Hoeft*, 967 F.2d at 1302–03).

16 As this court correctly recognized, TRO Order at 12-13, Plaintiffs’ reliance on
 17 the “systemic” violation is foreclosed by Ninth Circuit precedent, for several
 18 reasons. First, there has been no preliminary determination by an ALJ that any
 19 student in this matter has been denied a FAPE by any school district. In *Paul G.*,
 20 the Ninth Circuit held that the court was unable to determine if CDE’s alleged
 21 systemic failure was contrary to law until an 18-to-22-year-old plaintiff could first
 22 establish at OAH that he or she was denied a FAPE due to the denial of an in-state
 23 residential placement. 933 F.3d at 1102. Second, a claim is only “systemic . . . if it
 24 concerns the integrity or reliability of the IDEA dispute resolution procedures
 25 themselves, or requires restructuring the education system itself in order to comply

26 _____
 27 OSEP’s COVID-19-related guidance, if it was not possible for a school district to
 28 provide certain in-person services due to health risks in the aftermath of emergency
 school closures, the individualized determination of whether this violated FAPE in
 a particular circumstance is appropriately determined by an ALJ, and exhaustion is
 thus required.

1 with the dictates of the Act.” *Id.* (internal quotation omitted). Because Plaintiffs
2 failed to avail themselves of the administrative hearing process, they cannot
3 plausibly satisfy the first condition. Nor can they establish the second condition,
4 foremost because the obligation for schools to deliver FAPE remains in place and
5 the administrative process—as described above—is capable of redressing instances
6 where an individual student may be denied FAPE as a result of school closures.
7 *See Doe By & Through Brockhuis v. Arizona Dep’t of Educ.*, 111 F.3d 678, 682 (9th
8 Cir. 1997) (holding that a claim is not systemic if “it involves only a substantive
9 claim having to do with limited components of a program” and “the administrative
10 process is capable of correcting the problem”).

11 Here, although Plaintiffs argue that their IDEA claim challenges the State
12 Order that affects “every student,” this claim is nonetheless brought by individual
13 plaintiffs who allege that *their children’s schools* did not provide them required
14 services under their IEPs during distance learning. Because this is a highly
15 individualized and fact-specific inquiry, the question of whether these children have
16 been denied a FAPE must be determined, in the first instance, by a hearing officer.
17 *Paul G.*, 933 F.3d at 1101-1102; *S.B. v. California Dep’t of Educ.*, 327 F. Supp. 3d
18 1218, 1256, 1258-59 (E.D. Cal. 2018). Furthermore, unlike *Hoelt*, this issue does
19 not involve a pure question of law that would not benefit from the development of a
20 complete administrative record. *Hoelt*, 967 F.2d at p. 1303. Plaintiffs’ argument is
21 further undermined by the fact that they have not alleged that all special education
22 students in the state have been denied a FAPE by their school districts during
23 distance learning. Nor could they, given the wide variety of needs of students with
24 disabilities, and the differing ways that different school districts provide IEP
25 services during distance learning. Calomese Decl. ¶¶ 7-9.

26 Finally, Plaintiffs cannot show they are entitled to prospective injunctive relief
27 against the State Order. The California of Department of Public Health recently
28 issued guidance specifying the conditions in which small “groups of children and

youth” may receive “in-person child supervision and limited instruction, targeted support services, and facilitation of distance learning” from adults “in controlled, supervised, and indoor environments.” Wessel Decl. Ex. XX. Schools otherwise prohibited from reopening for in-person instruction under the State Order are covered by the new guidance. *Id.*, Exs. XX, YY. Accordingly, under currently operative state health directives, schools otherwise prohibited from reopening for in-person instruction may serve students on-site if they maintain cohorts of no more than 14 children or youth and two supervising adults and prevent the cohorts from physically interacting, and may provide one-to-one specialized services outside those cohorts. *Id.*, Ex. XX.⁸ Plaintiffs rest their allegations of denial of a FAPE on the fact that their schools operated entirely remotely after closing last spring. Under the recent guidance, it is beyond dispute that the State Order authorizes schools to provide special education and related services in-person, on campus, if necessary to provide a FAPE under a child’s IEP.

CONCLUSION

For the reasons set forth above, Plaintiffs lack Article III standing and failed to exhaust their administrative remedies. Their lawsuit should be dismissed.

Dated: August 25, 2020

Respectfully submitted,

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⁸ CDE guidance from Spring 2020 also addressed how schools can provide small group and one-on-one, in-person instruction to students with disabilities in certain circumstances, notwithstanding school closures. Calomese Decl. ¶¶ 7-9.

CERTIFICATE OF SERVICE

Case Name: *Brach v. Newsom, et al.*

No. 2:20cv06472 SVW (AFMx)

I hereby certify that on August 25, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

1. **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PRELIMINARY AND/OR PERMANENT INJUNCTION (Dkt. 28)**
2. **SUPPLEMENTAL DECLARATION OF JAMES WATT, M.D., M.P.H. (w/ Exhibits PP – QQ)**
3. **DECLARATION OF HEATHER CALOMESE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PRELIMINARY INJUNCTION AND/OR PERMANENT INJUNCTION (w/ Exhibits RR – SS)**
4. **DECLARATION OF DARIN L. WESSEL IN SUPPORT OF SUPPLEMENTAL OPPOSITION TO PRELIMINARY AND/OR PERMANENT INJUNCTION AND ATTACHED EXHIBITS (w/ Exhibits TT – YY)**
5. **DECLARATION OF RACHAEL MAVES IN SUPPORT OF DEFENDANTS' OPPOSITION TO PRELIMINARY AND/OR PERMANENT INJUNCTION**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 25, 2020, at San Francisco, California.

N. Codling
Declarant

/s/ N. Codling
Signature

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-06472-SVW-AFM	Date	9/1/2020
Title	<i>Matthew Brach et al. v. Gavin Newsom et al.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: ORDER VACATING PRELIMINARY INJUNCTION/PERMANENT INJUNCTION HEARING AND SETTING SUMMARY JUDGMENT BRIEFING SCHEDULE

The Court believes that this matter may be appropriately resolved by summary judgment. The Court therefore vacates the hearing date currently set for Plaintiff's Motion for Preliminary Injunction/Permanent Injunction.

The Court has the power to enter summary judgment sua sponte. *See Norse v. City of Santa Cruz*, 629 F.3d 966, 971 (9th Cir. 2010) ("District courts unquestionably possess the power to enter summary judgment sua sponte, even on the eve of trial."). However, the Court must "giv[e] notice and a reasonable time to respond" and "identify[] for the parties material facts that may not be genuinely in dispute." Fed. R. Civ. P. 56(f)(3); *see also Arce v. Douglas*, 793 F.3d 968, 976 (9th Cir. 2015) (internal citation and quotation marks omitted) (a district court considering summary judgment sua sponte must ensure that "the party against which summary judgment is granted has already had a full and fair opportunity to ventilate the issues.").

In its Order Denying Plaintiffs' Application for a Temporary Restraining Order, the Court has explained in detail its view of Plaintiffs' likelihood of success on the merits. Dkt. 51.

As to Plaintiffs' Due Process claim, the Court explained in its Order that Defendants are likely to prevail on a threshold legal issue – the absence of a fundamental right to minimum public education – that would preclude an injunction on this ground whatever the facts may show. *Id.* at 6-8.

Initials of Preparer

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-06472-SVW-AFM	Date	9/1/2020
Title	<i>Matthew Brach et al. v. Gavin Newsom et al.</i>		

As to Plaintiffs' Equal Protection claim, the Court has not been apprised of any dispute about the scope of in-person learning restrictions or Defendants' asserted rationale. Accordingly, if the Court is satisfied that Defendants' stated rationale is rationally related to their goal, then – regardless of the ultimate truth or validity of its assumptions – the Court may conclude “that plaintiffs have no chance of success on the merits ... regardless of what facts plaintiffs might prove during the course of the litigation.” *Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1087 (9th Cir. 2015). Under rational basis review, “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.” *Id.* (quoting *FCC v. Beach Commc'ns*, 508 U.S. 307, 315 (1993)); *see also id.* at 1085 (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992)) (“[A] legislative classification must be upheld [where] the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker.”). “Where there are ‘plausible reasons’ for legislative action, ‘our inquiry is at an end.’” *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004) (quoting *Beach Commc'ns*, 508 U.S. at 313-14).

The Court notes that the record provided by Defendants at this point is likely sufficient to survive rational basis review – especially in light of the deference owed in the context of a public health emergency to Defendants under *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *See* Dkt. 51, at 4-5. It may even be appropriate at this point for the Court to conclude that Plaintiffs have failed to state a claim given the publicly asserted rationale for in-person learning restrictions. *See Angelotti Chiropractic*, 791 F.3d at 1087-88 (reversing district court’s denial of motion to dismiss Equal Protection claim based on report in legislative history); *Mayfair House, Inc. v. City of West Hollywood*, 2014 WL 12599838, at *6-*7 (C.D. Cal. 2014) (granting motion to dismiss Equal Protection claim based on findings explicitly incorporated into city ordinance).

However, without a legislative or administrative record that could be evaluated on a motion to dismiss, it may be necessary for the Court to consider the additional detail provided in the declarations of Dr. James Watt, Chief of the Division of Communicable Diseases at the California Department of Public Health, in adjudicating Plaintiffs' Equal Protection claim. *See* Dkt. 35-1, 54-1. These post hoc declarations may properly be considered on rational basis review. *See RUI One Corp.*, 371 F.3d at 1155 (quoting *Beach Commc'ns*, 371 F.3d at 1155) (“[I]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”); *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) (citing *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980)) (explaining that “deference to post-hoc explanations [is] central to

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-06472-SVW-AFM	Date	9/1/2020
Title	<i>Matthew Brach et al. v. Gavin Newsom et al.</i>		

rational basis review”). For this reason, the Court has determined that summary judgment may be a more appropriate procedure for resolving this claim.

Similarly, the Court is unaware of any disputed facts material to the applicability of IDEA’s exhaustion requirements. Plaintiffs do not allege that they have exhausted administrative remedies. *See* Dkt. 55, at 6-12; Dkt. 40, at 9-10. Summary judgment is likely appropriate on this issue because “whether exhaustion is required under the IDEA is a question of law.” *C.C. by and through Ciriacks v. Cypress Sch. Dist.*, 2010 WL 11603053, at *2 (C.D. Cal. 2010).

The Court recognizes its obligation under Rule 56(f) to give Plaintiffs “notice and a reasonable time to respond” before considering a sua sponte grant of summary judgment against it. Fed. R. Civ. P. 56(f). Therefore, the Court will allow Plaintiffs to file an opposition to a sua sponte grant of summary judgment within 14 days of the issuance of this Order. Defendants will have 10 days to respond. At that point, the Court will take its sua sponte consideration of summary judgment under submission along with Plaintiffs’ Motion for a Preliminary Injunction.

To ensure a “full and fair opportunity to ventilate the issues,” *Arce*, 793 F.3d at 976 (citation omitted), the parties will be permitted to supplement the record and make any arguments regarding the Court’s consideration of summary judgment to resolve Plaintiffs’ claims.

IT IS SO ORDERED.

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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **MATTHEW BRACH**, an individual,
21 *et al.*,

22 Plaintiffs,

23 v.

24 **GAVIN NEWSOM**, in his official ca-
25 pacity as the Governor of California, *et*
26 *al.*,

27 Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
SUA SPONTE GRANT OF
SUMMARY JUDGMENT**

Judge: Hon. Stephen V. Wilson
Courtroom: 10A

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INTRODUCTION

Apparently unmoved by the disastrous consequences of last Spring's experiment with school closures, Defendants have closed schools in dozens of counties across the state this Fall, condemning millions of California students to weeks, months, and possibly a full year of so-called "distance learning," which for many is the same as "no learning." Defendants have attempted to justify this policy as an essential public health measure, but the evidence in the record overwhelmingly confirms that children are *not* at serious risk from COVID-19 and do *not* present a substantial risk of transmission to adults. Plaintiffs have also presented evidence that the metrics the state is using to determine whether a county will be in Tier 1 (formerly, the monitoring list) are arbitrary and irrational because the majority of individuals who test positive are asymptomatic and *not* infectious, and thus pose no public health risk. But notwithstanding the Order's devastating consequences and utter irrationality, this Court's Minute Order issued on September 1, 2020, indicated that the Court was inclined to grant summary judgment *sua sponte* to Defendants. For several reasons, Plaintiffs respectfully urge the Court to reconsider.

First, although the Court has expressed doubts about whether there is a constitutional right to a basic minimum education, the Supreme Court has not foreclosed such a right, and the Ninth Circuit has affirmatively stated that education is at least a "quasi-fundamental right." *United States v. Harding*, 971 F.2d 410, 412 n.1 (9th Cir. 1992) (citing *Plyler v. Doe*, 457 U.S. 202, 217–18 (1982)). The Ninth Circuit's conclusion is amply supported by the historical record, and many courts and scholars have recognized that education is an essential pillar of ordered liberty. Although Defendants contend—in the face of all evidence to the contrary—that distance learning can provide a basic minimum education to Plaintiffs and millions of other California children, any factual dispute about whether the Orders infringe on Plaintiffs' fundamental rights precludes a grant of summary judgment.

1 Second, even assuming that education is something less than a fundamental
 2 right, it is, at minimum, an important right that requires a more searching form of ra-
 3 tional basis review than the toothless standard courts have applied to run-of-the-mill
 4 economic regulations. *See Desoto CAB Co., Inc. v. Picker*, 228 F. Supp. 3d 950, 957
 5 (N.D. Cal. 2017). Plaintiffs should thus be given the opportunity to develop the record
 6 and test Defendants’ purported justifications for their unprecedented decision to close
 7 schools across the state.

8 Third, Defendants have not disputed that the orders violate the ADA, Rehabili-
 9 tation Act, and IDEA. Instead, they have argued that Plaintiffs have failed to exhaust
 10 administrative remedies. As Plaintiffs have explained, however, a hearing officer
 11 could not order a school to provide in-person education in the face of the Governor’s
 12 Orders, and exhaustion is not required where it would be futile or where, as here, the
 13 challenge is to a systemic barrier to education. To the extent there is a factual dispute
 14 about whether the Orders discriminate against Plaintiffs’ children on the basis of their
 15 disabilities or deny them a Free and Adequate Public Education, summary judgement
 16 is plainly inappropriate.

17 Because Plaintiffs have presented overwhelming evidence showing that the or-
 18 ders violate their children’s constitutional and statutory rights, the Court should de-
 19 cline to grant summary judgment to Defendants—regardless of how it resolves Plain-
 20 tiffs’ motion for preliminary injunction—and allow the parties to develop the record
 21 for a fulsome evidentiary hearing.

22 BACKGROUND

23 This Court is aware of the facts identified in Plaintiffs’ previous filings. *See*
 24 ECF Nos. 28-1; 40. Plaintiffs thus focus on new developments since the Court denied
 25 Plaintiffs Application for Temporary Restraining Order. On August 25, the California
 26 Department of Public Health released new guidance on “cohorts,” permitting “in-per-
 27

son child supervision and limited instruction, targeted support services, and facilitation of distance learning” for small groups of children under certain circumstances.¹ On September 4, the California Department of Public Health updated its “Cohorting Guidance.”² This guidance permits schools to provide in-person services in groups of up to 16 individuals—14 children and 2 adults—called “cohorts.” *Cohorting Guidance*. The guidance allows for the provision of instruction and other “specialized and targeted support services,” including “occupational therapy services, speech and language services, and other medical services, behavioral services, [and] educational support services.” *Cohorting FAQs* at 3.

On August 28, the State Public Health Officer issued an order eliminating the county monitoring-list and replacing it with a tier-based system.³ The order provides that any previous order referring to the county-monitoring list “shall refer to those counties falling within Tier 1” of the new tier-based system. *Id.* The tier-based system, in turn, relies only on “Adjusted Case Rate” and “Testing Positivity” to determine the tier.⁴ The system adjusts a county’s positivity rate if the county is “testing [] above the state average.” *Id.* “If a county’s adjusted case rate for tier assignment and test positivity measure fall into two different tiers, the county will be assigned to the more restrictive tier.” *Id.* A county must “remain in a tier for a minimum of three weeks before being able to advance to a less restrictive tier.” *Id.* Additionally, the State plans to

¹ See *Guidance for Small Cohorts/Groups of Children and Youth*, California Dep’t of Pub. Health (Aug. 25, 2020); *Providing Targeted Specialized Support and Services at School*, California Dep’t of Pub. Health (Aug. 25, 2020); ECF No. 54-3, Exs. XX and YY.

² *Guidance for Small Cohorts/Groups of Children and Youth*, California Department of Public Health (Sept. 4, 2020) (hereinafter “*Cohorting Guidance*”); *Providing Targeted Specialized Support and Services at School* (Sept. 4, 2020) (hereinafter “*Cohorting FAQs*”), <https://tinyurl.com/yy673trv>.

³ *Statewide Public Health Officer Order*, California Dep’t of Pub. Health (Aug. 28, 2020), <https://tinyurl.com/y3z6xdww>.

⁴ *Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe*, California Dep’t of Pub. Health (Sept. 2, 2020), available at <https://tinyurl.com/y4bjr3np>.

1 establish unspecified “health equity measures,” which counties will be required to
 2 meet “to advance a less restrictive tier,” and unspecified “measures addressing health
 3 outcomes.” *Id.* The guidance also provides that counties must move back to a more re-
 4 strictive tier “if [the] county's adjusted case rate and/or test positivity has been within
 5 a more restrictive tier for two consecutive weekly periods.” *Id.* To set the initial tiers,
 6 “effective on Monday, August 31, 2020,” CDPH used data from the two reporting pe-
 7 riods prior to August 28. *Id.* As of September 15, 2020, 30 counties were in Tier 1.⁵

8 STANDARD OF REVIEW

9
 10 In considering whether to grant summary judgment, “the inferences to be drawn
 11 from the underlying facts ... must be viewed in the light most favorable to the party
 12 opposing the motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Sum-
 13 mary judgment cannot be granted where a “genuine dispute as to any material fact”
 14 exists. Fed. R. Civ. P. 56(a). A genuine issue of material fact exists “if the evidence is
 15 such that a reasonable jury could return a verdict for the non-moving party.” *Anderson*
 16 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Rule 56 is explicit that, in determin-
 17 ing whether summary judgment is appropriate, the court is limited to the “materials in
 18 the record.” Fed. R. Civ. P. 56(c)(1)(A); *see also Easley v. City of Riverside*, 765 Fed.
 19 App’x 282, 284 (9th Cir. 2019) (en banc) (reversing *sua sponte* grant of summary
 20 judgment because “there were disputed issues of fact” based on the record evidence).

21 ARGUMENT

22 I. *Sua Sponte* Summary Judgment Is Inappropriate Because Plaintiffs Have 23 Not Had an Opportunity to Take Discovery

24 Although courts have “power to grant summary judgment *sua sponte*,” the
 25 Ninth Circuit has cautioned that “it is generally inappropriate for a court to issue such
 26 a final judgment on the merits of a claim at the preliminary injunction stage.” *Arce v.*
 27 *Douglas*, 793 F.3d 968, 976 (9th Cir. 2015). This is because “it is unlikely that the
 28

⁵ *Blueprint for a Safer Economy*, available at <https://covid19.ca.gov/safer-economy/>.

merits of a claim will be fully ventilated at the early stage of litigation at which a preliminary injunction is normally addressed.” *Id*; see also *Pugh v. Goord*, 345 F.3d 121, 125 (2d Cir. 2003) (reversing *sua sponte* dismissal because “preliminary injunction motion papers should not be treated as if they were a response to a motion for summary judgment”).

A *sua sponte* grant of summary judgment is inappropriate here—regardless of how the Court rules on Plaintiffs’ motion for preliminary injunction—because Plaintiffs have not yet had the opportunity to take discovery. Specifically, Plaintiffs have not been able to depose Dr. Watt regarding his testimony that schools should be closed because it is “possible” that children “may” transmit SARS-CoV-2. ECF No. 35-1 ¶ 26. Nor have Plaintiffs had the opportunity to request documents and communications Defendants relied on to formulate the challenged policies. Discovery would likely reveal that Defendants *knew* that the challenged orders would deprive millions of children of an adequate minimum education, thus defeating any contentions they have made to the contrary in this litigation.

Plaintiffs should also be afforded the opportunity to take third-party discovery from the relevant school administrators, teachers, and special education counselors who could support Plaintiffs’ claims that the orders are depriving their children of an adequate minimum education and violating their children’s statutory rights under the ADA, Rehabilitation Act, and IDEA. In short, before granting summary judgment to either party the Court should give Plaintiffs an opportunity to develop the record.

II. Plaintiffs Have Article III Standing

As Plaintiffs have explained, they satisfy all three elements for Article III standing—“injury in fact,” “causal connection,” and “redress.” See ECF No. 55 at 1-6; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Defendants’ arguments to the contrary are unpersuasive.

First, Defendants contend that there is no concrete injury when a parent challenges a “method[] of instruction.” ECF No. 54 at 2 (citing *Caldwell v. Caldwell*, 545

1 F.3d 1126 (9th Cir. 2008)). But in *Caldwell* the court held that a parent lacked stand-
 2 ing to bring an Establishment Clause claim to vindicate *her own* asserted interest to
 3 “informed participation”—not the constitutional rights of her child. *Id.* at 1133. Here,
 4 by contrast, Plaintiffs seek to vindicate their children’s constitutional rights to due
 5 process and equal protection, and their statutory rights under the disability laws. *See*
 6 *Tourgeman v. Collins Fin’l Servs., Inc.*, 755 F.3d 1109, 1114–15 (9th Cir. 2014) (the
 7 “injury required by Art. III” may exist either through statutory or constitutional viola-
 8 tions).

9 Second, Defendants contend that Plaintiffs’ declarations do not—and could
 10 not—establish that any specific school or school district would return to offering
 11 solely in-person instruction during the Fall. ECF No. 54 at 4. But Plaintiffs do not
 12 have to demonstrate with *certainty* that their children’s schools would open if the Or-
 13 der is enjoined. It is enough that an injunction would increase the “likelihood” that
 14 their children would receive an adequate minimum education. *See Mayfield v. United*
 15 *States*, 599 F.3d 964, 971 (9th Cir. 2010). Giving each school and school district the
 16 *freedom* to reopen for in-person instruction, whether through a hybrid model or full-
 17 time, would unquestionably increase the likelihood that Plaintiffs’ injuries will be re-
 18 dressed. And while local officials “may decide to issue their own similar order requir-
 19 ing schools to offer distance learning,” *id.* at 5, standing does not turn on hypothetical
 20 actions other government actors may take in the future. *See Vill. of Arlington Heights*
 21 *v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 261–62 (1977).

22 **III. *Jacobson* Does not Require This Court to Defer to Defendants’ Proffered** 23 **Justifications for the Orders**

24 In its decision denying a TRO, this Court stated that *Jacobson v. Massachusetts*,
 25 197 U.S. 11 (1905), required it to afford Defendants’ Orders a “presumption of consti-
 26 tutionality.” ECF No. 51 at 5. But the deferential standard the Supreme Court applied
 27 to the public health measure in *Jacobson* does not apply here. “As the Supreme Court
 28 has observed, ‘[t]he Constitution was adopted in a period of grave emergency ... and
 its limitations on the powers of the States were determined in the light of emergency,

1 and they are not altered by emergency.” *County of Butler v. Wolf*, 2020 WL 5510690,
 2 at *10 (W.D. Pa. Sept. 14, 2020) (quoting *Home Bldg. & Loan Ass’n v. Blaisdell*, 290
 3 U.S. 398, 425 (1934) (first alteration in original)).

4 To begin, *Jacobson* has been superseded by the modern “tiered levels of scru-
 5 tiny.” *Id.*, at *13. “[W]hen the Supreme Court elaborates a new standard for analyzing
 6 a constitutional claim, [courts] use [the] most recent formulation, rather than the
 7 framework from a decision for a different constitutional claim, made by a different
 8 claimant, in a different state, facing a different public health emergency in a different
 9 century.” *Bayley’s Campground, Inc. v. Mills*, 2020 WL 2791797, *8 (D. Me. May
 10 29, 2020). The proper basis for evaluating Defendants’ policies are through “ordinary
 11 canons of scrutiny ... rather than a lesser emergency regimen.” *Butler*, 2020 WL
 12 5510690 at *1.⁶

13 Moreover, while “[c]ourts are generally willing to give temporary deference to
 14 temporary measures aimed at a fleeting crisis,” *id.* at *9, the *Jacobson* standard (as ap-
 15 plied today) is “ill-suited for long-term and open-ended emergencies like the one in
 16 which we currently find ourselves.” Wiley, *Coronavirus, Civil Liberties, and the*
 17 *Courts*, at 182. “[T]he ongoing and indefinite nature of” restrictions meant to prevent
 18 the spread of COVID-19 “weigh[s] strongly against application of a more deferential
 19 level of review” because such “restrictions—while expedient in the face of an emer-
 20 gency situation—may persist long after immediate danger has passed.” *Butler*, 2020
 21 WL 5510690 at *1, 8.

22 Even if *Jacobson* controls the analysis here, the Supreme Court made clear in in
 23 that decision that deference applies only when public health conditions render the
 24 state’s policy a “necessit[y].” 197 U.S. at 28. But the Court did not hold that it was ap-
 25

26
 27 ⁶ At the time *Jacobson* was written, the Supreme Court’s standard for evaluating the
 28 reasonableness of a public health policy “was far more robust than what we tend to
 think of today as ... rational basis review.” Lindsay F. Wiley & Stephen I. Vladek,
Coronavirus, Civil Liberties, and the Courts: The Case Against ‘Suspending’ Judicial
Review, 133 HARV. L. REV. F. 179, 191 (2020).

1 appropriate to defer to *the State's characterization* of the public health circumstances al-
 2 legedly justifying the State's action. On the contrary, the Court reviewed the "record"
 3 and concluded that smallpox "was prevalent to some extent in the City of Cambridge"
 4 and noted that the State's public health measure—mandatory vaccination—was the
 5 method "most usually employed to eradicate that disease." *Id.* at 27-28. The Court
 6 stressed, however, that if a local community sought to "protect itself against an epi-
 7 demic threatening the safety of all" in "an arbitrary, unreasonable manner," or if it
 8 took actions "far beyond what was reasonably required for the safety of the public," a
 9 court would be "authorize[d] or compel[led] to interfere for the protection" of those
 10 harmed by the State's action. *Id.* at 28.

11 Here, Plaintiffs have presented overwhelming evidence that Defendants' un-
 12 precedented decision to close schools across the state is arbitrary, unreasonable, and
 13 completely out of proportion to the risks posed by in-person schooling. Plaintiffs' ex-
 14 perts have presented uncontroverted evidence that children are extremely unlikely to
 15 be sickened or die from COVID-19, and that children are not significant transmitters
 16 of the disease. ECF No. 28-4 ¶¶ 11–16; ECF No. 28-3 ¶¶ 22–27, 37–39; ECF No. 28-
 17 8 ¶¶ 5–6; ECF No. 28-9 ¶¶ 5, 7–8; ECF No. 28-7 ¶¶ 23–25; ECF No. 28-5 ¶¶ 6–9, 14–
 18 16; ECF No. 28-11 ¶ 5; ECF No. 28-10 ¶¶ 5–10; ECF No. 52 ¶¶ 4–6; ECF No. 55-2
 19 ¶¶ 3–4. Indeed, Defendants have not identified a single documented case anywhere in
 20 the world of a child transmitting the disease to a teacher. Closing schools based on
 21 Defendants' irrational metrics therefore "go[es] far beyond what [is] reasonably re-
 22 quired for the safety of the public." *Jacobson*, 197 U.S. at 28; *see also Roberts v.*
 23 *Neace*, 958 F.3d 409, 414-15 (6th Cir. 2020) ("While the law may take periodic naps
 24 during a pandemic, we will not let it sleep through one.").

25 *Jacobson* deference is also inappropriate "if a statute purporting to have been
 26 enacted to protect public health ... has no real or substantial relation to [that] object[],
 27 or is, beyond all question, a plain, palpable invasion of rights secured by fundamental
 28 law." 197 U.S. at 31. Defendants' school closure orders violate Plaintiffs' fundamen-
 tal right to education, their right to equal protection under the law, and their statutory

rights. The orders also “ha[ve] no real or substantial relation” to protecting public health because at no “point in this litigation” have Defendants “attempted to support [their] policy choice with expert or medical evidence.” *Adams & Boyle P.C. v. Slatery*, 956 F.3d 913, 926 (6th Cir. 2020).

In all events, Defendants’ orders subvert *Jacobson*’s underlying principle—that public health authorities should “not permit the interests of the many to be subordinated to the wishes or convenience of the few.” 197 U.S. at 29. Whereas in *Jacobson* the public health authorities sacrificed one person’s liberty to protect thousands of citizens against a deadly outbreak of small pox, Defendants here are sacrificing the well-being of millions of school children to protect a small number of vulnerable individuals who *might* receive the virus from a child and suffer an adverse reaction—individuals who could easily be protected through more targeted measures. *Jacobson* does not authorize public health authorities to sacrifice the many for the few; nor does it require courts to defer when state or local governments elevate the “wishes or convenience” of politically connected groups over the vital interests of millions of powerless citizens. *Id.* Accordingly, *Jacobson* does not counsel in favor of deference here.

IV. The Court Should Not Grant Summary Judgment to Defendants on Plaintiffs’ Fourteenth Amendment Claims

The Fourteenth Amendment protects substantive rights that are not expressly enumerated within the Bill of Rights. *See, e.g., Obergefell v. Hodges*, 576 U.S. 644, 663 (2015); *Roe v. Wade*, 410 U.S. 113, 152–53 (1973). “[T]he Due Process Clause specially protects those fundamental rights and liberties which are, objectively deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal citations and quotation marks omitted). The right to a basic minimum education, deeply rooted in our nation’s history and essential for the preservation of ordered liberty, is such a right. Because Defendants are not entitled to summary judgment on Plaintiffs’ due process and equal protection claims as a matter of law—and because there is, at minimum, a material

dispute as to whether the Orders deprive Plaintiffs of an adequate minimum education—the Court should resolve these claims on the merits after further factual development and an evidentiary hearing.

A. The Constitution Protects the Fundamental Right to a Basic Minimum Education.

In its order denying Plaintiffs’ application for a TRO, this Court concluded that Plaintiffs were unlikely to succeed on the merits of their substantive due process claim because “the Supreme Court has not recognized such a right.” ECF No. 51 at 6. But although the Supreme Court has not *yet* recognized a right to basic education, it has deliberately left open that question, observing in cases post “*Rodriguez and Plyler*” that “this Court has not yet definitively settled the question [of] whether a minimally adequate education is a fundamental right.” *Papasan v. Allain*, 478 U.S. 265, 285 (1986); *accord Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 466 n.1 (1988) (Marshall, J., dissenting) (noting that the issue “remains open today”). And, importantly, the Ninth Circuit has gone one step further in recognizing that “access to public education” is *at least* a “‘quasi-fundamental’ right[],” the deprivation of which requires “a heightened level of scrutiny.” *Harding*, 971 F.2d at 412 n.1. Regardless, the Supreme Court need not settle the question before courts recognize the right. *See, e.g., Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 991–95 (N.D. Cal. 2010); *accord Obergefell*, 576 U.S. at 663 (“There [] have been many thoughtful District Court decisions [including *Perry*] addressing same-sex marriage—and most of them [] have concluded same-sex couples must be allowed to marry.”). This Court should make explicit what the Ninth Circuit has recognized: access to a basic minimum education is a constitutional right that requires application of a heightened level of scrutiny.

1. Basic Education is Deeply Rooted in Our Nation’s History

From the beginning of our nation, education has been regarded as critical for our republic to survive and flourish. As John Adams wrote, “[t]he education of a nation instead of being confined to a few schools and universities for the instruction of the few, must become the national care and expense of the formation of the many.”

David McCullough, JOHN ADAMS 364 (2001). Thomas Jefferson stated that each citizen would need “to know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates and to notice their conduct with diligence, with candor and with judgment.” THOMAS JEFFERSON, *The University of Virginia* (1818), in THE COMPLETE JEFFERSON 1097 (Saul Padover ed., 1943). The Founders’ commitment to broad-based education was also reflected in a stipulation in the Land Ordinance of 1785, enacted by the Congress of the Confederation, which required each new town to set aside “the lot No. 16 ... for the maintenance of public schools within the said township.” *Papasan*, 478 U.S. at 268 (citing 1 Laws of the United States 565 (1815)). Public schooling became systemic and universal in most states starting in the 1830s when the combination of rapid industrialization, population growth, mobility, and immigration fueled a broad-based “common school” movement to implement a free public school system dedicated to moral education and good citizenship. Carl Kaestle, PILLARS OF THE REPUBLIC: COMMON SCHOOLS AND AMERICAN SOCIETY 1780–1860 (1983).

Before the Civil War, virtually none of the Southern states required universal public education, but Congress conditioned readmission to the Union on inclusion in the state constitution of a provision guaranteeing public education. Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1089–95 (2019). By 1868, the year that the Fourteenth Amendment was ratified, more than three-quarters of States recognized an affirmative right to public school education. Steven G. Calabresi & Michael W. Perl, *Originalism and Brown v. Board of Education*, 2014 Mich. St. L. Rev. 429, 449–63, 556 (2014) (cataloging all State constitutional provisions as of 1868). This is significant because “Article V of the federal Constitution requires a three-quarters consensus of the states to amend the Constitution.” *Id.* at 443; *see id.* at 444. Such pervasive state constitutional recognition at the time the Fourteenth Amendment was ratified “objectively” establishes the fundamental nature of this right. *Glucksberg*, 521 U.S. at 720–21, 723; *see also McDonald v. City of Chi-*

1 *cago*, 561 U.S. 742, 777–78 (2010) (plurality opinion) (citing similar historical analy-
 2 sis for the proposition that Second Amendment “right to keep and bear arms was also
 3 widely protected by state constitutions at the time when the Fourteenth Amendment
 4 was ratified,” and thus was incorporated against the states through the Fourteenth
 5 Amendment); *Town of Greece v. Galloway*, 572 U.S. 565, 609-10 (2014) (Thomas, J.,
 6 concurring) (assessing scope of the Free Exercise Clause, as incorporated against the
 7 states through Fourteenth Amendment, based on State constitutions circa 1868).

8 Significantly, by 1875, every state in the union but one had a clause in its con-
 9 stitution calling for universal public education. Black, *supra*, at 1094. In the century
 10 following the ratification of the Fourteenth Amendment, thirteen new states sought ad-
 11 mission to the Union, all of which included education mandates in their constitutions.
 12 *Id.* at 1093. Accordingly, for more than a century, *every state* has had compulsory ed-
 13 ucation laws. Barry Friedman & Sara Solow, *The Federal Right to an Adequate Edu-*
 14 *cation*, 81 Geo. Wash. L. Rev. 92, 127 (2013) (“By 1918, education was compulsory
 15 in every state of the union.”). Children throughout California and the nation are thus
 16 compelled to attend school full time (or be home-schooled). *See* Cal. Ed. Code, §
 17 48200, *et seq.* History and practice make clear that this requirement is justified by the
 18 unique importance of education and its deep roots in this Nation’s history and tradi-
 19 tion. As the Supreme Court explained in *Brown v. Board of Education*, “education is [
 20] the most important function of state and local governments,” as demonstrated by our
 21 “[c]ompulsory school attendance laws and the great expenditures for education.” 347
 22 U.S. 483, 493 (1954); *see Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“The Ameri-
 23 can people have always regarded education and acquisition of knowledge as matters
 24 of supreme importance which should be diligently promoted.”).

25 **2. Basic Education is Implicit in the Concept of Ordered Liberty**

26 It is equally clear that the right to basic education is “implicit in the concept of
 27 ordered liberty,” such that “neither liberty nor justice would exist if [it was] sacri-
 28 ficed.” *Glucksberg*, 521 U.S. at 721. The foundation of American liberty is our written

1 Constitution. *See Marbury v. Madison*, 5 U.S. 137, 176-78 (1803) (declaring “a writ-
 2 ten constitution” to be “the greatest improvement on political institutions” that came
 3 before the American experiment). Likewise, under our written Constitution, laws must
 4 be published in writing before they may be executed to constrain liberty. *See* U.S.
 5 Const. art. I §§ 9–10 (prohibiting the enactment of any “ex post facto law” by Con-
 6 gress or state legislatures). Thus, a basic education enabling citizens to read, under-
 7 stand, and decode our governing texts is at the heart of our nation’s concept of ordered
 8 liberty.

9 The Founding Fathers recognized that basic education is essential if liberty and
 10 justice were to survive our republican form of government, and that schools would be
 11 “needed to produce well-informed protectors of republican government.” Alan Taylor,
 12 *The Virtue of an Educated Voter*, AM. SCHOLAR (Sept. 6, 2016), [https://ti-](https://tinyurl.com/yylju4ys)
 13 [nyurl.com/yylju4ys](https://tinyurl.com/yylju4ys). As Benjamin Rush explained, “[i]f the common people are igno-
 14 rant and vicious, a republican nation can never be long free.” *Id.* The Supreme Court
 15 specifically recognized in *Plyler v. Doe* “the importance of education in maintaining
 16 our basic institutions,” noting that “education has a *fundamental* role in maintaining
 17 the fabric of our society.” 457 U.S. 202, 221 (1982) (emphasis added).

18 State supreme courts have recognized the same. Since 1973, there have been
 19 cases regarding the equity and adequacy of education in at least 45 of the 50 states.
 20 Michael A. Rebell, FLUNKING DEMOCRACY: SCHOOLS, COURTS AND CIVIC PARTICIPA-
 21 TION 50 (2018). Thirty-two of those states’ highest courts have held that “preparation
 22 for capable citizenship is the primary purpose or a primary purpose of” education. *Id.*
 23 at 57. No state court has denied the proposition. *Id.* And many of these courts dis-
 24 cussed in detail the specific skills, knowledge, experiences, and values afforded by a
 25 basic education that is required for civic participation. *Id.* at 57–61. As Professor Bal-
 26 kin of Yale Law School explained, “[W]hen lots of different states from different parts
 27 of the country agree that these rights deserve protection, they are more likely to be
 28 rights with special constitutional value that all governments are supposed to protect.”
 Jack M. Balkin, LIVING ORIGINALISM 210 (2011); *accord Obergefell*, 576 U.S. at 662-

1 63, 676 (referring to the significance of the fact that there has “been extensive litigation in state and federal courts”).

2
3 Basic education is also a prerequisite for conduct and activities that form the basis of our citizenship. For example, basic education is critical to participation in the
4 political process, including knowledgeable and informed voting, comprehending ballot initiatives, and engaging in political speech and discourse. *See Citizens United v. FEC*, 558 U.S. 310, 339 (2010) (“The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (“[T]he Constitution protects the
5 right to receive information and ideas.”); *Wisconsin v. Yoder*, 406 U.S. 205, 221
6 (1972) (“[S]ome degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom
7 and independence.”). In fact, “the Constitution presupposes the existence of an informed citizenry prepared to participate in governmental affairs.” *Island Trees*, 457
8 U.S. at 876 (Blackmun, J. concurring).

9
10 Education is also critical for preparing citizens to perform jury service, which the Supreme Court has recognized as the “most significant opportunity to participate
11 in the democratic process” except for “voting,” which also requires an informed citizenry. *Powers v. Ohio*, 499 U.S. 400, 407 (1991); *Island Trees*, 457 U.S. at 868
12 (“[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students
13 for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”). In short, the historical and fundamental importance of basic education in our republic is well established.

3. Basic Education is Consistent with Other Constitutional Rights and Comports with Local Autonomy in Public Education

In its order denying Plaintiffs’ application for a TRO, this Court expressed “doubts” about recognizing a fundamental right to a basic minimum education because substantive due process rights “*generally*” protect individuals from government action deemed intrusive, and because the manner in which public education is provided is traditionally committed to local state control. ECF No. 51 at 6–7 (emphasis added). Neither observation undermines the constitutional right to basic education.

First, in *Obergefell*, the Court recognized a substantive due process right to same-sex marriage, a legal union that confers certain *benefits* under state law. 576 U.S. at 663-70. As the Court explained, failing to provide same-sex couples with “the constellation of benefits that the States have linked to marriage” deprives them of their fundamental right to marriage. *Id.* at 670. *Obergefell* thus stands for the proposition that states cannot deny individuals benefits that form the core of a fundamental right. Indeed, the Court has held that the Constitution requires States to provide various other goods and services to individuals in a broad array of situations, including medical care to persons in police custody, *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983), medical care to inmates, *Estelle v. Gamble*, 429 U.S. 97 (1976), counsel to criminal defendants, *Gideon v. Wainwright*, 372 U.S. 335 (1963), and recourse when the state creates a danger, *Penilla v. City of Huntington Park*, 115 F.3d 707, 710 (9th Cir. 1997) (per curiam). To be sure, the Bill of Rights and Fourteenth Amendment *primarily* defend individual liberty against government encroachment, but the Supreme Court has taken a broader view of fundamental rights.

Second, while the Court is undoubtedly correct that the manner of providing public education is “generally ‘committed to the control of state and local authorities’” *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005), those local authorities may not deprive children of the right to a minimum education altogether. Indeed, although marriage laws are also generally committed to State control, someone ex-

cluded from the institution by race, child support arrears, prisoner status, or sexual orientation has a constitutional claim redressable in federal court. *Obergefell*, 576 U.S. at 664-65, 675.⁷

B. The Order Burdens Plaintiffs’ Fundamental Rights and Cannot Survive Heightened Scrutiny

Plaintiffs’ due process and equal protection claims under the Fourteenth Amendment invoke the same fundamental right to a basic minimum education. When a constitutional right has been impaired, or unequally denied, the State must justify that burden under heightened scrutiny. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (substantive due process); *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (equal protection); *cf. Karnoski v. Trump*, 926 F.3d 1180, 1189, 1201 (9th Cir. 2019) (“[T]he district court should apply a standard of review that is more than rational basis but less than strict scrutiny” when reviewing claims involving “equal protection and substantive due process guarantees.”). Here, the Order unquestionably burdens the fundamental right to a basic minimum education—and does so unequally—and Defendants cannot satisfy *any* form of heightened scrutiny.

1. The Order Burdens Plaintiffs’ Fundamental Rights

As *Plyler* makes clear, depriving children of “a basic education ... den[ies] them the ability to live within the structure of our civic institutions, and foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” 457 U.S. at 223. That is precisely what Defendants are doing here because the Order functionally denies Plaintiffs and millions of other students across the State—including minority children and families of limited economic means—of the opportunity to attain an education. Defendants have not disputed that

⁷ This Court also concluded that the Order does not deprive Plaintiffs of a basic minimum education on a “permanent basis.” ECF No. 51 at 7–8 (citing *Plyler*, 457 U.S. at 223). But the Supreme Court has recognized that the “total exclusion from the education process for more than a trivial period” can violate the Constitution. *Goss v. Lopez*, 419 U.S. 565, 576 (1975). The “period” in *Goss* lasted days, *id.* while the exclusion here has already lasted for several weeks and appears likely to last for several months.

virtual learning results in functionally no education for many special needs, minority, low-income, English-language-learners, and rural students, nearly one million of whom have or will start the school year without the ability to log into a virtual classroom. ECF No. 54-3 Ex. WW at 1; Doc. 36 Ex. KK at 1. And even for those children that do have access to the necessary technology, distance learning has been (and continues to be) woefully inadequate. *See* ECF No. 28-4 ¶¶ 19–21; ECF No. 28-9 ¶¶ 6, 9; ECF No. 28-8 ¶ 7; ECF No. 28-5 ¶¶ 19–37; ECF No. 28-11 ¶ 6; ECF No. 28-12 ¶¶ 5–8; ECF No. 28-13 ¶¶ 6–12; ECF No. 28-15 ¶¶ 10–12; ECF No. 28-16 ¶ 9; ECF No. 28-17 ¶¶ 9–19; ECF No. 28-18 ¶¶ 8–13; ECF No. 28-19 ¶¶ 4–13; ECF No. 28-21 ¶¶ 4–9; ECF No. 28-24 ¶ 10; ECF No. 28-25 ¶¶ 6–16; ECF No. 28-27 ¶¶ 4–12; ECF No. 28-28 ¶¶ 3–8; ECF No. 28-29 ¶¶ 4–7; ECF No. 28-32 ¶¶ 4–8, 11–12; ECF No. 28-34 ¶¶ 3–6; ECF No. 28-36 ¶¶ 9–16; ECF No. 28-31 ¶¶ 5–17; ECF No. 55-5 ¶¶ 5–6; ECF No. 55-6 ¶ 6; ECF No. 55-7 ¶¶ 4–9; ECF No. 55-8 ¶¶ 5–6. By denying Plaintiffs’ children their right to a basic minimum education, and doing so on an unequal basis, Defendants have burdened Plaintiffs’ constitutional rights to due process and equal protection and thus bear the burden of showing that the orders are narrowly tailored to support the government’s asserted interest in preventing the spread of COVID-19.

2. Even Assuming that the State Has a Compelling Government Interest in Combatting the Spread of COVID-19, The Order Is Not Narrowly Tailored

An act passes strict scrutiny only if it “is narrowly tailored to serve a compelling government interest.” *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997). Here, the Order cannot survive strict scrutiny because closing every school in counties labeled “Tier 1” (formerly those counties on the monitoring list) is plainly not the least restrictive means of arresting the spread of COVID-19, and Defendants have never contended otherwise. As Plaintiffs have explained, Children are neither sickened by the disease nor transmit it. *See* ECF No. 28-1 at 9–11 (discussing medical evidence of COVID-19 spread among children). Closing schools will thus have a negligible impact on the public health system or the spread of the disease in the community. To the extent Defendants are attempting to protect those teachers who

1 may be most susceptible to an adverse reaction from the disease—whether because of
 2 age, preexisting conditions, or weakened immune systems—Defendants could have
 3 utilized several less restrictive means of protecting them, including allowing those in-
 4 dividuals to work remotely or providing enhanced equipment at school for the most
 5 vulnerable. Defendants’ decision to choose the bluntest possible instrument for ad-
 6 vancing its interest dooms the orders under strict scrutiny.

7 The Order also flunks less-exacting forms of heightened review. *See Harding*,
 8 971 F.2d at 412 n.1 (“access to public education” is a right that requires “a heightened
 9 level of scrutiny”). “Heightened scrutiny,” according to the Ninth Circuit, “requires
 10 something more than traditional rational basis review.” *SmithKline Beecham Corp. v.*
 11 *Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014). In *SmithKline*, the Ninth Circuit ex-
 12 plained that when courts apply “heightened scrutiny” they do “not consider the possi-
 13 ble post-hoc rationalizations for the law.” *Id.* at 480 (citing *Witt v. Dep’t of Air Force*,
 14 527 F.3d 806, 817 (9th Cir. 2008)). On the contrary, courts look to the “actual pur-
 15 poses of the law.” *SmithKline*, 740 F.3d at 481–82. In other words, courts consider
 16 facts and not “hypothetical justifications.” *Id.* Second, courts must ask whether the
 17 government’s “legitimate purpose” in fact “justif[ies]” the challenged regulation. *Id.*
 18 at 482 (emphasis in original) (citing *United States v. Windsor*, 570 U.S. 744, 770, 775
 19 (2013)). As a result, *SmithKline* expressly rejected the “‘strong presumption’ in favor
 20 of the constitutionality of laws and the ‘extremely deferential’ posture toward govern-
 21 ment action that are the marks of rational basis review.” 740 F.3d at 483 (citing Erwin
 22 Chemerinsky, *CONSTITUTIONAL LAW* 695 (4th ed. 2013)).

23 Defendants cannot satisfy heightened scrutiny here. The asserted purpose of the
 24 Order is to limit the spread of COVID-19 and prevent hospitals from being over-
 25 whelmed. *See* ECF No. 36 Ex. A. But there is no evidence that reopening schools will
 26 result in increased hospitalizations or even widespread transmission of the disease. As
 27 Plaintiffs have explained, the scientific evidence confirms that children are not at risk
 28 of being sickened or killed by COVID-19. ECF No. 28-1 at 9–11. Indeed, *only one*

1 minor in California has died from COVID-19 since the virus began spreading in Janu-
 2 ary and February. Children also account for a vanishingly small percentage of total
 3 hospitalizations. ECF No. 28-8 ¶ 5. Children in hard-hit areas, such as Los Angeles,
 4 are just as unaffected by the virus as children in rural parts of the state. And because
 5 children do not play a significant role in transmitting the virus to adults, ECF No. 28-5
 6 ¶ 23, teachers in Los Angeles County are just as safe as teachers in any other county.
 7 Indeed, they are significantly safer than essential workers in many other professions
 8 who have daily contact with large numbers of adults. While Plaintiffs’ numerous pub-
 9 lic health experts have provided exhaustive declarations discussing every major scien-
 10 tific study on child transmissions, Defendants’ lone expert fails to highlight *any* scien-
 11 tific studies. Instead, Dr. Watt opines only that “it is *possible* that in the school setting,
 12 as in other settings, asymptomatic transmission *may occur*.” Watt Decl. ¶ 26 (empha-
 13 sis added). That speculation is plainly insufficient to show that the Order is narrowly
 14 tailored to support any legitimate government interest.

15 **3. Defendants Cannot Satisfy Even Rational Basis Review**

16 Even if this Court were to apply rational basis review, the Order would still not
 17 pass constitutional muster. “[T]he precise level of review under the rational basis test
 18 is subject to some variation.” *Desoto*, 228 F. Supp. 3d at 957. In some instances, “the
 19 government’s actual motivation and justification (not just any conceivable basis) may
 20 be explored under ‘a more searching form of rational basis review.’” *Id.* at 957–59 (ci-
 21 tations omitted). Courts use a “more searching form of rational basis” review “where
 22 important but not fundamental rights or sensitive but not suspect classifications are in-
 23 volved.” *United States v. Pickard*, 100 F. Supp. 3d 981, 1005 (E.D. Cal. 2015); *see*
 24 *also Dairy v. Bonham*, 2013 WL 3829268, at *5 n.4 (N.D. Cal. July 23, 2013) (col-
 25 lecting cases using “rational basis with a bite” in situations in which “important but
 26 not fundamental rights” are involved, including *Plyer v. Doe*). There is no question
 27 that access to basic education is, at minimum, an “important” right, thus subjecting the
 28 order to rational basis with a bite.

Defendants cannot satisfy that standard because school closures have no connection to Defendants’ asserted public health rationale, *see supra*, and because the state is using completely arbitrary criteria to deprive Plaintiffs of their important right to education. Counties are placed in Tier 1—the most restrictive classification resulting in school closures—based on “adjusted case rates” and “testing positivity,” but there is no rational basis for using these metrics as a grounds for public policy. “PCR testing is regularly used in public health to help allocate government resources around the nation,” but “it was never intended to be used to make public health decisions as to which industries could remain open and which had to be closed.” Kaufman Decl. Opp. SJ. ¶13

The most glaring problem with the PCR tests is that an individual can test positive more than 80 days after encountering the virus—weeks after that person ceases to be infective. ECF No. 55-3. ¶ 8; *See also* Kaufman Decl. Opp. S.J. ¶ 8 (citing BBC article). A recent New York Times article has indicated that up to 90% of people testing positive in some states may not be infective—*i.e.*, although they have traces of the virus in their bodies, they cannot transmit the disease to others.⁸ Indeed, CDPH itself recognizes that “proof of a negative test should not be required prior to returning to the workplace after documented COVID infection” because “PCR tests can remain positive long after an individual is not infectious.”⁹ “Rather, symptom- or protocol-based criteria should be used in determining when an employee is safe to return to the workplace.” *Id.* It is striking that while CDPH does not believe a positive test result should keep that particular patient from going to work, it is using the same tests to keep “children across the state of California from returning to school.” Kaufman Decl. Opp. SJ. ¶ 11. Moreover, many individuals who *are* positive may take multiple tests, and every positive test result they receive is counted by the state as a new case. *Id.* ¶ 9.

⁸ Apoorva Mandavilli, *Your Coronavirus Test is Positive. Maybe It Shouldn’t Be*, NY TIMES (Sept. 9, 2020, 9:28 AM), <https://tinyurl.com/yymmcdf>.

⁹ California Dep’t of Pub. Health July 14, 2020 “Update COVID-19 Testing Guidance,” <https://tinyurl.com/y42pw9bt>.

1 A county can thus be placed in Tier 1 even when there is *no* meaningful community
2 spread occurring.

3 Public health experts agree that the “most reliable metric for determining
4 whether a county is experiencing spread is hospitalization” rate. ECF No. 55-4 ¶ 12;
5 ECF No. 55-3 ¶ 7 (“Death rates and hospitalization by age groups has been the main
6 driver in determining the weekly status of infectious disease within the State of Cali-
7 fornia for decades.”). Hospitalizations of positive and suspected patients have de-
8 creased dramatically since late July,¹⁰ indicating that the public health emergency has
9 abated, but Defendants’ updated Blueprint for reopening inexplicably eliminated hos-
10 pitalizations as a metric.¹¹ In short, the Orders have irrationally closed schools based
11 on case counts and positivity rates that do not indicate anything meaningful about the
12 state of public health in a given county.

13 **V. Summary Judgment Is Not Appropriate On Plaintiffs’ Statutory**
14 **Claims And, If It Is, It Can Only Be In Favor Of Plaintiffs**

15 As Plaintiffs have explained, they are not required to exhaust their ADA, Reha-
16 bilitation Act, or IDEA claims. Defendants’ arguments that Plaintiffs were required to
17 exhaust do not carry the day. On the merits, Defendants have not disputed any of
18 Plaintiffs’ evidence supporting their ADA and Rehabilitation Act claims, and there-
19 fore *Plaintiffs* should be entitled to summary judgment on those claims. Defendants
20 similarly have not disputed any of Plaintiffs’ arguments about the failure of a remote-
21 only education system to satisfy the requirements of the IDEA. And to the extent that
22 Defendants contend CDPH’s new guidance relating to cohorts has remedied Plaintiffs’
23 injuries (which it has not) that is an issue of material fact that makes summary judg-
24 ment inappropriate.

25 Plaintiffs’ claims under the ADA and Rehabilitation Act seek a reasonable ac-
26 commodation of in-person instruction, which is not relief that is also available under
27 the IDEA. *See* ECF No. 55 at 11–14. As the Supreme Court explained in *Fry*, not
28

¹⁰ COVID-19: Hospitals, <https://tinyurl.com/y3r4otzv>.

¹¹ *Blueprint for a Safer Economy*, <https://covid19.ca.gov/safer-economy/>.

every case involving disability discrimination in the provision of education is subject to the IDEA's exhaustion requirement. *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 752 & n.3, 755–58 (2017). Because the “gravamen” of Plaintiffs’ ADA and Rehabilitation Act claims does not seek relief for the denial of special education and related services, those claims are not subject to the IDEA’s exhaustion requirement. ECF No. 55 at 11–14. Thus, summary judgment in favor of Defendants on these claims is inappropriate.

As to Plaintiffs’ IDEA claims, the Order and CDPH’s new guidance on cohorts set the policy for the entire State’s education system. Thus, Plaintiffs claims are “systemic,” challenging statewide orders with the force of law. And for the same reasons that Plaintiffs were not required to exhaust administrative remedies before challenging the original Order, they are not required to exhaust administrative remedies before arguing that the updated guidance does not solve the violations caused by the Order. *Id.* While answering the question of whether this new statewide regime still violates the IDEA may require some determinations of fact—for example, whether the limitations on the number and size of cohorts prevent schools throughout the State from providing required services to disabled students—courts analyzing systemic claims are frequently faced with issues of fact. *See, e.g., Handberry v. Thompson*, 2015 WL 10570793, at *1–*3 (S.D.N.Y. Dec. 2, 2015), *report and recommendation adopted*, 2016 WL 1268265 (S.D.N.Y. Mar. 31, 2016) (describing fact-finding process engaged by the court, including the use of a special master). Indeed, in order to determine whether a system or policy violates the IDEA, a court will often need to make at least some factual determinations about the system or policy and its effect. *See J.S. ex rel. N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 113–15 (2d Cir. 2004) (chronicling “systemic” cases alleging that certain policies violated the IDEA).

In their supplemental brief, Defendants make a number of arguments that exhaustion is required, but each is meritless. ECF No. 54 at 7-12. As an initial matter, Defendants do not dispute that Plaintiffs’ ADA and Rehabilitation Act claims are not subject to the IDEA’s exhaustion requirement. *Id.*; *see Ramirez v. Ghilotti Bros. Inc.*,

1 941 F. Supp. 2d 1197, 1210 & n.7 (N.D. Cal. 2013) (failure to respond constitutes a
 2 concession) (collecting cases). And while Defendants make much of the difference be-
 3 tween the Department of Education and a hearing officer, Defendants never once ar-
 4 gue that a hearing officer would have “the authority to grant the relief sought,” *Hoelt*
 5 *v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1304 (9th Cir. 1992) (citation omitted),
 6 that is, statewide, systemic relief. ECF No. 54 at 7-12. Exhaustion is not required
 7 when plaintiffs bring claims seeking systemic relief. *See* ECF No. 55 at 6-11.

8 Attempting to avoid this clear conclusion, Defendants suggest that reimburse-
 9 ment and compensatory education will be sufficient to remedy the obvious, wide-
 10 spread violations of the IDEA caused by the Order. ECF No. 54 at 8-11. As an initial
 11 matter, Plaintiffs are not seeking reimbursement or compensatory education for the
 12 IDEA violations that have already occurred. Plaintiffs are seeking to enjoin ongoing,
 13 systemic violations of the IDEA. The mandate of the IDEA is for States *to provide*
 14 special education and related services to disabled children. *Endrew F. ex rel. Joseph*
 15 *F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 993 (2017) (citing 20 U.S.C.
 16 § 1412(a)(1)). Parents of disabled children should not be forced to seek out these ser-
 17 vices on their own and then seek reimbursement from the State. More importantly, as
 18 Plaintiffs argue, the skills and education lost during this extended and indefinite pe-
 19 riod cannot easily, if ever, be recouped, making the harm from school closures irrepa-
 20 rable. ECF No. 28-1 at 24-25.

21 Defendants also cite to *Paul G. v. Monterey Peninsula Unified Sch. Dist.*, 933
 22 F.3d 1096, 1101–02 (9th Cir. 2019), to suggest that a decision by a hearing examiner
 23 is a prerequisite to filing a systemic challenge under the IDEA. ECF No. 54 at 10-11.
 24 But that has never been the law and, indeed, is flatly contrary to *Hoelt* and *Porter v.*
 25 *Bd. of Trustees of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064 (9th Cir. 2002),
 26 as well as countless decisions from other jurisdictions holding that plaintiffs need not
 27 exhaust when the hearing officer cannot grant the relief sought. *See King v. Pine*
 28 *Plains Cent. Sch. Dist.*, 918 F. Supp. 772, 781 (S.D.N.Y. 1996) (“[A]dministrative
 hearing officers . . . generally do not have the authority to set new policies or to alter

existing ones,” so “requiring a parent to exhaust his administrative remedies when he is challenging a generally applicable policy or procedure would be futile”); *see also Parent/Prof’l Advocacy League v. City of Springfield, Massachusetts*, 934 F.3d 13, 27 (1st Cir. 2019) (collecting cases); *Attica Cent.*, 386 F.3d at 113–15; *New Mexico Ass’n for Retarded Citizens v. State of N.M.*, 678 F.2d 847, 850–51 (10th Cir. 1982); *Jackie S. v. Connelly*, 442 F. Supp. 2d 503, 519 (S.D. Ohio 2006); *Jacky W. v. New York City Bd. of Educ.*, 848 F. Supp. 358, 361 (E.D.N.Y. 1994); *Cordero by Bates v. Penn. Dept. of Educ.*, 795 F. Supp. 1352, 1362–63 (M.D. Penn. 1992); *Scaggs v. New York Dept. of Educ.*, 2007 WL 1456221, at *6–*8 (E.D.N.Y. May 16, 2007) (collecting cases).

Defendants also argue that bringing Plaintiffs’ challenge before an administrative hearing officer would “permit a determination in the first instance of fact-intensive issues critical to the ultimate legal determination: whether the challenged facts support a finding of a denial of a FAPE, and, if so, what student-specific remedies are appropriate under the circumstances.” ECF No. 54 at 7. To be sure, such finding could be useful in “‘textbook’ cases presenting issues involving individual children,” *J.S. ex rel. N.S.*, 386 F.3d at 114, but as Plaintiffs have repeatedly explained, this is not a “textbook” case because “the complaint does not challenge the content of Individualized Education Programs, but rather the [State’s] total failure” to provide disabled children with a free and appropriate public education. *Id.* at 115.¹² Such a complaint clearly falls within the exception to the exhaustion requirement for challenges seeking systemic relief. *Id.*; *see also Parent/Prof’l Advocacy League*, 934 F.3d at 27; *Handberry v. Thompson*, 446 F.3d 335, 344 (2d Cir. 2006); *New Mexico Ass’n for Retarded Citizens*, 678 F.2d at 850–51; *Jackie S.*, 442 F. Supp. at 519; *King*, 918 F. Supp. at 781; *Jacky W.*, 848 F. Supp. at 361; *Cordero by Bates*, 795 F. Supp. at 1362–63; *Scaggs*, 2007 WL 1456221, at *6–*8 (collecting cases). Indeed, one cannot imagine a

¹² No court has ever held that a plaintiff must bring a systemic challenge as a class action. ECF No 54 at 9–10 n.7, 11. Indeed, individual plaintiffs frequently bring facial challenges to laws and regulations. *See, e.g., City of Chicago v. Morales*, 527 U.S. 41, 49–50 (1999); *Bowen v. Yuckert*, 482 U.S. 137, 142–45 (1987).

1 claim more systemic than a challenge to a law closing every school in 30 counties.

2 On the merits, if summary judgment is appropriate on Plaintiffs' ADA and Re-
 3 habilitation Act claims, it is appropriate only *in favor* of Plaintiffs. Defendants have
 4 not disputed that Plaintiff Z.R. and the children of Plaintiffs Ruiz, Hawkins, Bema,
 5 and Ramirez are persons with disabilities as defined by the ADA. Nor have they dis-
 6 puted that distance learning burdens these children "in a manner different and greater
 7 than" other children. *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996). And
 8 Defendants have not disputed that this burden would be alleviated by the "reasonable
 9 accommodation" of allowing these children to receive their instruction in person. Be-
 10 cause Defendants have not even disputed any the elements of Plaintiffs' prima facie
 11 case for discrimination under the ADA and Rehabilitation Act—much less offered any
 12 evidence—this court should grant summary judgment to Plaintiffs on these claims.

13 Similarly, Defendants do not dispute that statewide school closures violate the
 14 IDEA. Moreover, there is no public-health exception to the federal disability statutes.
 15 There exists in the law a "general principle that courts will not second-guess the pub-
 16 lic health and safety decisions of state legislatures acting within their traditional police
 17 powers." *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996). "However, when
 18 Congress has passed antidiscrimination laws such as the ADA which require reasona-
 19 ble modifications to public health and safety policies, it is incumbent upon the courts
 20 to insure that the mandate of federal law is achieved." *Id.* Thus, when the State prof-
 21 fers as a justification for its actions the protection of the public against a disease, dis-
 22 trict courts must make "findings of fact regarding the nature of the [] disease, the ex-
 23 tent of risk posed by the disease, and the probability that the infected [] would spread
 24 it." *Id.* at 1486. Thus, at the very least, a factual dispute exists as to whether the new
 25 system of education created by the cohorting guidance passes muster under the IDEA,
 26 making summary judgment inappropriate.

27 CONCLUSION

28 For the foregoing reasons, the Court should not grant summary judgment *sua*
sponte and should allow Plaintiffs to develop the factual record.

1 Respectfully submitted,
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3
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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **MATTHEW BRACH**, an individual,
21 *et al.*,

22 Plaintiffs,

23 v.

24 **GAVIN NEWSOM**, in his official
25 capacity as the Governor of California,
26 *et al.*,

Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**SUPPLEMENTAL DECLARATION
OF MARIANNE BEMA**

Judge: Hon. Stephen V. Wilson

Courtroom: 10A

1
2 I, Marianne Bema, declare:

3 1. I am a resident of Los Angeles County, California.

4 2. I am a single mother with three school-aged children, all of who have IEPs.

5 3. I received an email from the school superintendent Ben Drati on
6 September 10, 2020 concerning special education students and English learners.

7 4. The September 10th email states that teachers and staff may return to
8 school to implement distance learning.

9 5. The email also says that waivers for opening elementary schools are not
10 being permitted.

11 6. The email discusses the limited in-person cohort guidance for special
12 education students, and even though the LA County Department of Public Health
13 (LACDPH) approved districts to start as early as September 14th, the superintendent
14 says that “the implementation of necessary protocols will take some time” and that the
15 “plan provides for a maximum of 10% of the usual student population allowed to be on
16 campus at any one time with restrictions.”

17 7. The email notes that “Any district taking advantage of this opportunity
18 would have to satisfy the safety protocols set forth by the county before opening.”

19 8. So, even though the state and county seem to allow the cohort guidance,
20 the email does not set a date for children to return.

21 9. Then, the next day on September 11, 2020 I received another email
22 (“second email”) from the superintendent, Dr. Ben Shrati.

23 10. The second email mentions the recall of a survey regarding distance
24 learning.

25 11. The second email was extremely confusing and concerning.

26 12. The second email mentions a date of November for return to in-person
27 learning, but then also says “it is highly unlikely that any substantive changes will occur
28 before the end of the first semester.”

1 13. Regarding in-person learning for students with IEPs, the second email
2 states that even though LACDPH released new guidelines that provide a return to
3 additional in-person instruction - that does not include my district, Santa Monica
4 Malibu Unified School District (SMMUSD).

5 14. The email also says the school cannot accommodate both an in-person and
6 distance learning model simultaneously: “The staff who are currently assigned to teach
7 distance learning are the same staff who will teach in-person within the hybrid model. It
8 is not possible for secondary staff to teach both in-person and teach in our current
9 distance learning model at the same time. There may be some areas where we can use
10 SMMUSD teachers to provide distance learning in a format similar to the present
11 configuration. Those areas of instruction might include general subjects such as English
12 or some math classes. But, to put it more simply, in a hybrid model we do not have
13 enough staff to maintain the distance learning model we are currently providing. No
14 school district in our area has the staffing or funding levels to provide that sort of
15 instructional model (hybrid and distance learning as currently structured).

16 15. This email makes it sounds like parents have to choose either all in-person
17 or all-distance learning.

18 16. I then received another email during the evening of September 14, 2020
19 from the Santa Monica-Malibu Director of Special Education (“third email) that again
20 mentioned the 10% cap on persons present on each school campus and that children
21 who ride the school bus must sit one child, per every other seat on the school bus
22 (drastically reducing the amount of children who will be able to be transported to
23 school).

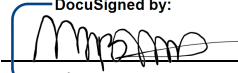
24 17. The third email mentions that vulnerable children will be phased onto the
25 school campus first, and that children with IEPs will be brought to campus “for some
26 services in a later phase.”

27 18. I still maintain that it is best for my children to be enrolled in in-person
28

1 learning, where my children can pay proper attention to trained teachers, and socialize
2 appropriately in-person as opposed to at home and distanced learning.

3 19. I also do not understand why my children cannot attend in-person using the
4 cohort plan now, which is supposed to be a special accommodation for students with
5 IEPs.

6 I declare under penalty of perjury, under the laws of the United States of
7 America, that the foregoing is true and correct and is executed this 15th day of
8 September 2020, at Los Angeles County, California.

9
10 DocuSigned by:

11 Marianne Bema
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