

**LEGAL WEBINAR:
REOPENING/RE-CLOSING PUBLIC
SCHOOLS DURING THE COVID-19
PANDEMIC – PART 2**



TODAY'S PRESENTERS

- Ernest Bell, Partner, Atkinson, Andelson, Loya, Ruud & Romo
- Jan Tomsy, Partner, Fagen Friedman & Fulfrost, LLP
- Marcy Gutierrez, Partner, Lozano Smith, LLP
- William Tunick, Partner, Dannis Woliver Kelley

INTRODUCTION

- The impact of SB 98 on special education
- Learning loss and compensatory education
- Child find during the pandemic
- Continuity plan, liability, and guidance on opening

THE IMPACT OF SB 98 ON SPECIAL EDUCATION



IN-PERSON EDUCATION

- **Must** offer to the “greatest extent possible”
- Definition:
 - “Immediate physical supervision/control” of “certificated employee ...”
 - “While engaged in educational activities...”
- In compliance with health/safety orders

DISTANCE LEARNING (DL) - MAY

- *May* offer DL
 - School/LEA basis
 - Three categories of students
- *May* include:
 - Interaction- see next slide, this is mandatory
 - Instruction
 - Check-ins through computers/phones
 - Audio/video instruction
 - Printed material incorporating assignments

DL MUST INCLUDE

- **Must** include:
 - Access to connectivity and devices
 - Grade level content - equivalent to in-person instruction
 - Academic and other supports designed to address needs of pupils performing below grade level, and designated and integrated instruction in English language development
- Special Education/Related Services required by IEP, and accommodations necessary to ensure IEP can be implemented in DL
- **Daily live interaction required** with certificated employees and peers
 - Internet/telephone/other means

REDUCED MINUTES

- In-Person Instruction
 - Instructional minutes - based on time scheduled under immediate **physical supervision** of certificated employee
- DL Instruction
 - Instructional time - based on time value of assignments as **determined by certificated employee**
- Must document
 - Daily participation for each pupil/each school day for DL
 - In a weekly engagement record - daily participation & tracking assignments

EMERGENCY PLANS

- IEP must include a description of how IEP will be provided under emergency conditions when instruction can't be provided to pupil for **more than 10 school days**
- The description must address:
 - Special education and related services
 - Supplementary aids and services
 - Transition services
 - ESY services

LEARNING LOSS AND COMPENSATORY EDUCATION



LEARNING LOSS/COMPENSATORY CLAIMS

- There is an expectation that many students will experience learning loss and academic regression during school closure
- In implementing “vigorous” distance learning, consider creating opportunities outside the school day for remediation

LEARNING LOSS/COMPENSATORY CLAIMS

- For students with IEPs, this may be an area of significant litigation
- Parents are entitled to file against districts, seeking compensatory services for services lost due to district error
- May import that analysis here based on USDE's March 12, 2020 guidance

LEARNING LOSS/COMPENSATORY CLAIMS

- Prepare for such claims:
 - Carefully document provision of IEP-based services, including efforts to provide them
 - Monitor each student's progress
 - Parent communication is key: proactive, clear, thoughtful, responsive
 - Prepare to assess when students return and to analyze student's progress or regression then

CHILD FIND DURING THE PANDEMIC



CHILD FIND DURING THE PANDEMIC

- What is child find?
 - For an introduction: BP 6164.4.
- Increase in signs of suspected disability?
 - <https://time.com/5870478/children-mental-health-coronavirus/?fbclid=IwAR2mkS8fZMBA2Z2kJGpuroOh3qGsY5qxEXb-BjzhzglwvdkQtvYHTF7gdvo>
- Increase in rate of evaluations?
 - “Didn’t SB 117 effectively toll timelines for new assessments?”
 - Will there be an increased rate of students found eligible for special education?

CHILD FIND DURING THE PANDEMIC

- Assessment challenges include:
 - Overwhelmed assessors
 - Can assessors appropriately measure students' functioning if:
 - They cannot interact with students (particularly young ones) face-to-face?
 - Classroom observations are impossible?
 - Standardized measures cannot be administered remotely?

CHILD FIND DURING THE PANDEMIC

- What do school board members need to consider:
 - The need for universal mental health curriculum and supports
(<https://www.cde.ca.gov/ls/he/hn/sandlmentalhealth.asp>)
 - Staff training in counseling and mental wellness support
 - Parent training
 - Support assessors

CONTINUITY PLAN, LIABILITY, & GUIDANCE ON OPENING



LEARNING CONTINUITY AND ATTENDANCE PLAN

- In lieu of LCAP for 2020-21
- No later than *September 30*, adopt plan addressing:
 - Learning model(s)
 - Learning loss
 - Mental health of students/staff
 - Professional development
 - Pupil outreach
 - School nutrition

DEVELOPMENTS REGARDING LIABILITY

- Limited *tort* liability
- Limitations on insurance coverage
- Prospect of legislation now uncertain
- Focus on orders/guidance, implementation, and documentation

GOVERNOR'S REOPENING "FRAMEWORK"

- District may open *if*:
 - Not put on watchlist
 - Off watchlist for 14 days
 - Waiver for elementary schools granted by local health officer after "consultation" with labor, parent and community organizations
- Once open:
 - Exclude case and exposed contacts (likely classroom)
 - School closure *may* be appropriate where 5% or more are positive within 14 days
 - Superintendent *should* close district if 25% or more of schools have closed within 14 days

CDPH & CDC ISSUES MULTIPLE GUIDANCES

- CDPH/Cal-OSHA (July 17)
 - Closures part of efforts to reduce transmission
 - Provides prerequisites for opening
 - Does not prohibit distance learning/hybrid models
- CDC (July 23)
 - Most children infected by family members, not at school
 - 6.6% of cases are under the age of 18
 - School closures increase risk of family conflict and violence and worsen achievement gaps

GUIDANCE ON USE OF MASKS

➤ CDPH/Cal-OSHA

- Strongly encouraged 2 years – 2nd grade
- Required for 3rd grade – high school
- Required for staff

➤ CDC

- Recommended in most situations
- “May be considered” where students are at least 6 feet apart, recess, band/choir
- Policy to address bullying around using/not using masks

GUIDANCE ON SOCIAL DISTANCING, TESTING, AND SCREENING

➤ Social Distancing:

- CDPH – Distancing in transportation/movement; staff desks at least six feet from students
- CDC – Distancing of at least six feet, where feasible

➤ Testing of students and staff:

- CDPH – periodic staff testing
- CDC – not recommending testing


➤ Symptom screening:

- CDPH – screening for all entering a facility
- CDC – not recommending at schools, but daily at home

QUESTIONS?



RESOURCES



Relentless Advocacy. Consistent Leadership. Indispensable Research.

California School Boards Association

HOME VIDEOS PLAYLISTS CHANNELS DISCUSSION ABOUT

LEGAL WEBINAR Reopening public schools during the COVID-19 pandemic – Part 1
California School Boards Association • 136 views • 1 day ago
Part 1 of this webinar series will feature top education law attorneys from CSBA's premier affiliate law firms discussing the legal effect on local educational agencies of the orders and guidances ...

Making sense of the 2020 budget ▶ PLAY ALL
CSBA's webinar series comprising of live webinars detailing the stages of this years budget and the affects it will have on California schools.

School Budget ALERT 1:29:17 **The Uncertain Road Ahead** 1:44:55 **School Budget ALERT** 1:22:48

Making Sense of the Budget: What the latest changes... California School Boards Asso... 264 views • 2 weeks ago

The Uncertain Road Ahead: Real world applications of... California School Boards Asso... 174 views • 1 month ago

May Budget Revision Webinar (5/14/20) California School Boards Asso... 189 views • 1 month ago

COVID-19 Webinar Series ▶ PLAY ALL
CSBA is committed to providing updates and tools that help navigate the COVID-19 crisis. Please join us for a series of recorded webinars on vital topics during school closures due to COVID-19.

COVID-19 Webinar Series 1:31:01 **COVID-19 Webinar Series** 1:28:35 **COVID-19 Webinar Series** 1:34:51 **COVID-19 Webinar Series** 1:36:46 **COVID-19 Webinar Series** 1:32:57

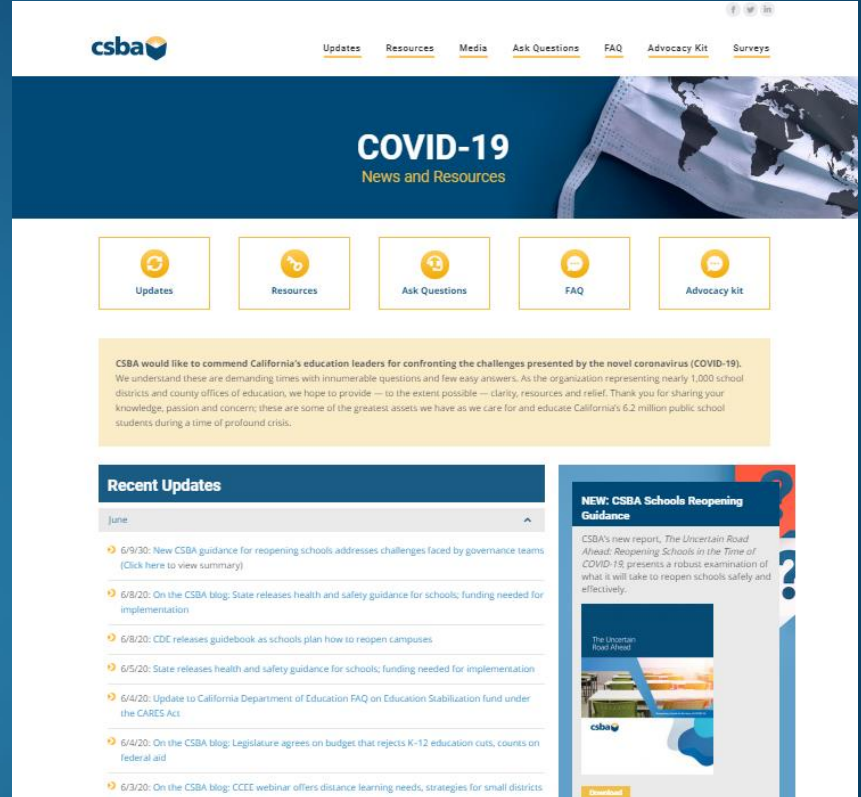
Governance and Guidance in the Age of COVID-19 California School Boards Asso... 25 views • 1 month ago

Open Board Meetings in a World of School Closures California School Boards Asso... 18 views • 1 month ago

Going the Distance to Bridge the Digital Divide California School Boards Asso... 8 views • 1 month ago

Special Education in Extraordinary Times California School Boards Asso... 29 views • 1 month ago

Supporting Student Well-Being from Afar California School Boards Asso... 56 views • 1 month ago



csba

Updates Resources Media Ask Questions FAQ Advocacy Kit Surveys

COVID-19 News and Resources

Updates Resources Ask Questions FAQ Advocacy kit

CSBA would like to commend California's education leaders for confronting the challenges presented by the novel coronavirus (COVID-19). We understand these are demanding times with innumerable questions and few easy answers. As the organization representing nearly 1,000 school districts and county offices of education, we hope to provide — to the extent possible — clarity, resources and relief. Thank you for sharing your knowledge, passion and concern; these are some of the greatest assets we have as we care for and educate California's 6.2 million public school students during a time of profound crisis.


Recent Updates

June

- 6/9/20: New CSBA guidance for reopening schools addresses challenges faced by governance teams (Click here to view summary)
- 6/8/20: On the CSBA blog: State releases health and safety guidance for schools; funding needed for implementation
- 6/8/20: CDC releases guidebook as schools plan how to reopen campuses
- 6/5/20: State releases health and safety guidance for schools; funding needed for implementation
- 6/4/20: Update to California Department of Education FAQ on Education Stabilization fund under the CARES Act
- 6/4/20: On the CSBA blog: Legislature agrees on budget that rejects K-12 education cuts, counts on federal aid
- 6/3/20: On the CSBA blog: CCEE webinar offers distance learning needs, strategies for small districts

NEW: CSBA Schools Reopening Guidance

CSBA's new report, *The Uncertain Road Ahead: Reopening Schools in the Time of COVID-19* presents a robust examination of what a will take to reopen schools safely and effectively.



youtube.com/csbavideo

csba.org/coronavirus



UPCOMING WEBINARS

Big decisions: Distance learning and reopening schools for medium and large districts

- **August 4 at 10:00 a.m.**
- CSBA is hosting a diverse panel of school board members from across the state to discuss the challenges of reopening schools and distance learning.

Small districts, big challenges: Distance learning and reopening schools as a small district and county office of education

- **August 4 at 2:00 p.m**
- Small districts have a unique set of challenges with reopening schools. CSBA is hosting a diverse panel of school board members from across the state to discuss the challenges of reopening schools and distance learning.

Strengthening the K-12 STEM Teacher Pipeline in California

- **August 6, 2020 2:00 p.m.- 3:30 p.m.**
This webinar will discuss some short and long-term strategies LEAs can use to increase the recruitment and retention of STEM teachers. We will highlight some successful in-state and out-of-state programs that seek to grow their own teacher pipelines. Finally, we will provide some questions board members can ask to address shortages within their LEA.

Learn more and register at: www.csba.org/webinars

**THANK YOU FOR JOINING US
TODAY.**

