

**LEGAL WEBINAR:  
REOPENING/RE-CLOSING PUBLIC  
SCHOOLS DURING THE COVID-19  
PANDEMIC – PART 1**



# TODAY'S PRESENTERS

- Namita Brown, Fagen Friedman & Fulfrost, LLP
- Sarah Levitan Kaatz, Lozano Smith, LLP
- Josh Morrison, Atkinson, Andelson, Loya, Ruud  
& Romo
- Marie Nakamura, Dannis Woliver Kelley

# INTRODUCTION

- Legal Effect of Orders and Guidances
- Distance Learning
- Layoff and Release
- Liability
- Negotiations

# AUTHORITY TO ISSUE EXECUTIVE ORDERS

- Governor Newsom proclaimed a State of Emergency on March 4, 2020, when there were 53 confirmed cases of COVID-19 in California. Today, there have been over 330,000 confirmed cases statewide.
- During a State of Emergency, a Governor may suspend laws and issue executive orders necessary to carry out executive powers. (Government Code Sections 8567, 8571)
- To date, Governor Newsom has issued 47 Executive Orders, some of which are still in effect to begin the 2020-2021 school year

# AUTHORITY TO ADOPT PUBLIC HEALTH ORDERS

- Love v. Superior Court (1990) 226 Cal.App.3d 736
  - *It is . . . undisputed that the control of a communicable disease is a valid exercise of the state's police power.*
  
- In re Johnson (1919) 40 Cal.App. 242, 244
  - *The adoption of measures for the protection of the public health is universally conceded to be a valid exercise of the police power of the state, as to which the Legislature is necessarily vested with large discretion, not only in determining what are contagious and infectious diseases, but also in adopting means for preventing the spread thereof.*

# AUTHORITY TO ADOPT PUBLIC HEALTH ORDERS

- Health and Safety Code Section 120140:
  - Upon being informed by a health officer of any contagious, infectious, or communicable disease **the department may take measures as are necessary to ascertain the nature of the disease and prevent its spread.** To that end, the department may, if it considers it proper, take possession or control of the body of any living person, or the corpse of any deceased person.
- Health and Safety Code Section 120175:
  - **Each health officer** knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, **shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.**

# PUBLIC HEALTH GUIDANCE/ORDERS

- **CDPH Industry Guidance: Schools and School-Based Programs (June 5, 2020)**
  - Non-mandatory — “Should be implemented only with county health officer approval . . . .”
- **CDE: Stronger Together (June 8, 2020)**
  - Optional guidance.
- **CDPH Guidance for the Use of Face-Coverings (June 18, 2020)**
  - Mandatory — overrides contrary local orders.
- **CDC Considerations for K-12 Schools: Readiness and Planning Tool**
  - Optional “readiness and planning tool.”
- **SB 98**
  - Distance Learning authorized, in part, “as a result of an order or guidance from a state public health officer or a local public health officer”

# LOCAL PUBLIC HEALTH SCHOOL REOPENING GUIDANCE — SAMPLES

- Santa Clara County:
  - <https://www.sccgov.org/sites/covid19/Pages/school-guidance.aspx>
- Contra Costa County:
  - [https://www.cccoe.k12.ca.us/UserFiles/Servers/Server\\_1077313/File/News/Spotlight/CCCOE%202020-2021\\_School\\_Reopening6\\_22\\_2020FINAL.pdf](https://www.cccoe.k12.ca.us/UserFiles/Servers/Server_1077313/File/News/Spotlight/CCCOE%202020-2021_School_Reopening6_22_2020FINAL.pdf)
- Los Angeles County:
  - [http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening\\_K12Schools.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening_K12Schools.pdf)

# SB 98: IN-PERSON INSTRUCTION AND DISTANCE LEARNING

## ➤ Education Code Section 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.

## ➤ Education Code Section 43503.

- (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.

## ➤ Education Code Section 43504.

- (b) A local educational agency **shall offer in-person instruction to the greatest extent possible**.

# SB 98: DISTANCE LEARNING

## Distance Learning when offered must include:

- Daily live interaction with certificated employees and peers as part of regular instruction when feasible
- Daily tracking and weekly monitoring to verify participation and progress
- Access to connectivity and devices
- Content at a level substantially equivalent to in-person instruction
- Academic and other supports to students not performing at grade level
- Necessary accommodations for special education students and integrated instruction for English learners

# SB 98- LAYOFF AND RELEASE OF SCHOOL EMPLOYEES

- Layoff of custodial, nutrition and transportation employees shall not be implemented in 2020-21 putting action taken between May 2 and June 30 by school boards or the county superintendent at risk
- Release of custodial, nutrition and transportation employees may be for good cause only in 2020-21
- Certificated employees in positions requiring an administrative or supervisory credential may be subject to the “Summer Layoff” statute

# IS THERE INCREASED RISK ARISING FROM REOPENING SCHOOLS?

- Public entities, or their employees or officers, are not liable for their actions except where a statute imposes liability
- Immunity
- Waivers
- AB 1384 (O'Donnell)

# WHAT ARE ISSUES AT THE BARGAINING TABLE THIS SUMMER?

- Safety
- Distance Learning
- Leave of Absence/Non-Return to Work
- Training
- Scope of Representation
- MOU's- What should go in and what should be left out

# RESOURCES



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: CDE 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 it will take to reopen schools safely and effectively.

The Uncertain Road Ahead

csba

Download

The screenshot shows the CSBA website's COVID-19 resources page. It features a navigation bar with links to Updates, Resources, Media, Ask Questions, FAQ, Advocacy Kit, and Surveys. The main heading is 'COVID-19 News and Resources'. Below this are five icons representing Updates, Resources, Ask Questions, FAQ, and Advocacy kit. A yellow box contains a message of commendation for California's education leaders. Below that is a 'Recent Updates' section with a list of updates from June. On the right, there is a 'NEW: CSBA Schools Reopening Guidance' section with a thumbnail image of the report cover and a 'Download' button.



# UPCOMING WEBINARS

## **Making sense of the budget: What do deferrals mean for school finance?**

- **July 17 at 2 p.m.**
- The 2020–21 state budget relies more heavily on deferrals than at any point in California history. Learn how to use cash reserve programs to help you manage cash flow and bridge the gap while you await deferred payment from the state.

## **Legal webinar: Reopening/reclosing public schools during the COVID-19 pandemic, Part 2**

- **July 29 at 11 a.m.**
- This webinar will feature top education law attorneys discussing legal and equitable issues arising from reopening schools during the pandemic, including providing education and services to English learners and special education students. The panel will also discuss social distancing in schools and the new requirement for boards to adopt a Learning Continuity and Attendance Plan by Sept. 30, 2020.

Learn more and register at: [www.csba.org/webinars](http://www.csba.org/webinars)

**THANK YOU FOR JOINING US  
TODAY.**

