



FAQ Regarding School District Legal Considerations on Reopening Schools

1. Are school districts required to follow public health orders and Executive Orders?

Executive Orders issued to address the COVID-19 pandemic carry the weight of the law under the California Emergency Services Act (“ESA”). (Gov. Code, §§ 8550 – 8669.7.) Executive Order N-33-20 ordered that, “all residents are directed to immediately heed the current State public health directives.” Thus, State public health directives issued by the California Department of Public Health also carry the weight of the law under the ESA. Law enforcement is empowered to enforce County public health orders, giving them the weight of law. (Health & Saf. Code, § 120175; Gov. Code, §§ 26602, 41601.) Guidance from the California Department of Education (“CDE”) is not controlling, but is critical information in determining whether the District’s safety measures are reasonable.

2. What are the consequences for not following the Executive Orders or public health orders for reopening schools?

Failure to follow the Executive Orders, public health orders or other laws may result in a loss of funding or exposure to legal challenges. Executive Orders and Senate Bill 117 (2020) (“SB 117”) created waivers for various legal requirements to protect funding for the 2019-2020 school year, so long as school districts followed the terms of the Executive Orders. There may be similar changes by the Governor and Legislature for the 2020-2021 school year and it will be critical for school districts to follow applicable legal requirements to preserve full funding.

3. What standard of care is owed to students in developing a reopening plan?

A school district and its employees have the duty to exercise reasonable care in the supervision of students. Care must be taken to foresee and avoid any situation that could be potentially dangerous, even if the precise injury has never occurred before. Schools generally have a duty to enforce the rules and regulations necessary for their protection, and to take reasonable steps to protect its students where it knows of certain risks to students. “It shall be the duty of anyone in charge of a public or private school, kindergarten, boarding school, or day nursery to report at once to the local health officer the presence or suspected presence of any of the communicable diseases.” (Cal. Code Regs., tit. 17, § 2508.) Taking these concepts together, the District is working carefully to ensure students are safe in any reopening plan.

4. What must a school district consider in its reopening plan for employees returning to work?

Employers have a general duty to provide a safe working environment and “do every other thing reasonably necessary to protect the life, safety, and health of employees.” (Lab. Code, § 6401.) The California Division of Occupational Safety and Health, (“Cal/OSHA”), which enforces workplace safety standards, issued Interim General Guidelines on Protecting Workers from COVID-19 (<https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html>). The Cal/OSHA Interim Guidelines detail requirements for employers to provide a safe work environment.

The District is carefully following applicable law and collaborating with labor partners to ensure its policies and practices support employee safety. The District is also coordinating with its workers’ compensation insurance carrier to ensure its reopening plan ensures employee safety in light of Executive Order N-62-20, which creates a presumption that workers who contract COVID-19 contracted the illness at work.