

Updates Regarding CDPH Guidance for Schools and Student Vaccine Mandates Heading into the 2022-2023 School Year

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Written by:

Sloan R. Simmons
Partner
Sacramento Office
SSimmons@lozanosmith.com

Alyssa R. Bivins
Senior Counsel
Sacramento & Fresno Offices
abivins@lozanosmith.com

Davis C. Adams
Associate Attorney
Sacramento Office
dadams@lozanosmith.com

The California Department of Public Health (CDPH) recently updated its COVID-19 related guidance for K-12 schools for the 2022-2023 school year, which addresses and updates guidance on masking requirements, reporting, and paid leave. In addition, there are several related updates on the student vaccines front: Senate Bill (SB) 871 was withdrawn; Governor Newsom's vaccine mandate has been delayed until at least July 1, 2023; and vaccination requirements enacted by local education agencies continue to face various legal challenges.

Updated CDPH K-12 Guidance for the 2022-2023 School Year

On June 30, 2022, the CDPH released [updated guidance](#) for the 2022-2023 school year aimed at supporting safe, in-person learning in K-12 schools and mitigating the spread of COVID-19. This new guidance provides updates in several areas, most importantly in face mask usage, outbreak reporting requirements, and COVID-19 related supplemental paid sick leave.

Face Masks

The State's universal mask requirement for all K-12 schools ended as of March 11, 2022. Face masks are not required by the CDPH for 2022-2023, and therefore are at the discretion of local health departments and local districts. Currently, the CDPH strongly recommends that individuals in K-12 schools who develop symptoms or are exposed to COVID-19, wear face masks and get tested immediately. It is recommended that individuals who test positive for COVID-19 stay home for at least five days after the start of symptoms or the first positive test. After the conclusion of the five days, the individual may end their isolation if they no longer have symptoms and test negative. If the individual is unable to test, chooses not to test, or tests positive after day five, isolation can end after ten days, so long as the individual has gone 24 hours without a fever.

Individuals who are exposed to someone with COVID-19 should test within three to five days after exposure. Individuals who are exposed should wear a well-fitting mask around others for a total of ten days. If the individual develops symptoms, they should stay home and test immediately.

The new guidance provides that students and staff cannot be prevented from wearing a face mask as a condition of participation in educational services, unless wearing a mask would pose a safety hazard. Additionally, schools are required to develop and implement protocols aimed at providing face masks for students and staff who desire to use one.

Reporting COVID-19 Disease Burden to Local Authorities

Local educational agencies (LEAs) are required to continue reporting outbreaks. According to the applicable regulations, non-health care employers are required to report when three or more cases of COVID-19 have been identified within a 14-day period. School nurses qualify as health care providers. Therefore, school nurses are required to report any hospitalizations, deaths, and positive test results within 24 hours of identification.

Managing Individuals with Symptoms

California employers must provide supplemental paid sick leave for most employees through September 30, 2022. This includes circumstances in which employees are experiencing symptoms of COVID-19 and seeking a medical diagnosis, attending a vaccine appointment for themselves or a family member, or if an employee's child is isolating due to COVID-19.

State Public Health Officer Order "Vaccine Verification for Workers in Schools"

The CDPH's "test or vaccinate" order from August 11, 2021, is still in effect. The CDPH has provided a list of frequently asked questions (FAQ), available [here](#), around its preliminary K-12 testing framework for the 2022-2023 school year. This FAQ was last updated on June 22, 2022. As of that date, the CDPH stated that the August 11, 2021 order "remains in effect until otherwise noted."

Student Vaccine Mandates

Senate Bill 871

Senate Bill 871 would have required students attending California public schools to receive a COVID-19 vaccination prior to enrollment and did not include a personal belief exemption for the requirement. SB 871 has been withdrawn by its author, Senator Richard Pan.

Governor Newsom's Student "Vaccine Mandate"

What some have referred to as "Governor Newsom's student vaccine mandate" will not go into effect until after July 1, 2023. On October 1, 2021, Governor Newsom announced his intention to institute a vaccine mandate through the CDPH that would require all students in California to be vaccinated in order to participate in in-person instruction *upon full FDA approval of the vaccine for their grade span*. The vaccine mandate was expected to take effect in July 2022; however, the expected date was pushed back to July 1, 2023, to "ensure sufficient time for successful implementation of new vaccine requirements."

Federal and State Court Rulings regarding Vaccine Mandates

Lozano Smith's [2022 Client News Brief No. 5](#) covered two vaccine mandate challenges involving San Diego Unified School District (SDUSD). One lawsuit was filed in federal court. (*Doe v. San Diego Unified School Dist.*, U.S.D.C. Southern Dist. of Cal., Case No. 21-CV-1809-CAB-LL, 2021 WL 5396136.) The other was filed in San



Diego Superior Court. (*Let Them Choose v. San Diego Unified School Dist.*, San Diego County Super. Ct. Case No. 7-2021-00043172-CU-WM-CTL.) Since we last reported, there have been new developments in both cases.

In *Doe v. San Diego Unified School District*, a 16-year-old student and her parents alleged that the vaccine mandate violated the student's religious rights under the Free Exercise Clause of the United States Constitution. The trial court held that the vaccine mandate did not violate the Free Exercise Clause. The Ninth Circuit Court of Appeals also ruled in favor of SDUSD's implementation of the vaccine mandate, agreeing with the district court's reasoning. (*Doe v. San Diego Unified School Dist.* (9th Cir. 2021) 19 F.4th 1173.)

Following the ruling, the student petitioned the United States Supreme Court requesting an injunction preventing enforcement of SDUSD's COVID-19 vaccination requirement, or in the alternative, that the application to the Court be treated as a petition for certiorari (i.e., a request for review of the lower court ruling). On February 18, 2022, the Supreme Court denied the application without prejudice, "in light of changed circumstances." The Court reasoned that because SDUSD has delayed implementation of the vaccine mandate, and because SDUSD has not settled on the form that the policy would take, emergency relief was not warranted at the time. Using the same reasoning, the Court denied the student's request for a writ of certiorari.

In *Let Them Choose v. San Diego Unified School District*, the San Diego County Superior Court struck down SDUSD's vaccine mandate on State law grounds. The Superior Court reasoned that a COVID-19 vaccine mandate should follow the same process used for the ten current vaccine requirements for school children, each of which was added: "through legislative action, after careful consideration of the public health risks of these diseases, cost to the state and health system, communicability, and rates of transmission." SDUSD has appealed the Superior Court's judgment. As of this writing, the appeal has been fully briefed by the parties and awaits the scheduling of oral argument by the appellate court.

LAUSD Student Vaccine Mandate – Los Angeles Superior Court Ruling

Our [2022 Client News Brief No. 5](#) also covered the Los Angeles County Superior Court's ruling in *Children's Health Defense v. Los Angeles Unified School Dist.* (Los Angeles County Super. Ct. Case No. 21STCP03429.) There, the trial court ruled in favor of LAUSD's student vaccine mandate. The court noted that LAUSD's vaccine mandate *did not* require students to receive COVID-19 vaccinations. Rather, LAUSD's student vaccine mandate proposed to physically exclude unvaccinated children ages 12 and older from receiving in-person instruction and participating in extra-curricular activities. Under LAUSD's proposed plan, unvaccinated students would be transferred to independent study. Despite this ruling, LAUSD decided to delay implementation of its vaccine mandate.

On July 5, 2022, in a separate case regarding the same subject matter, the same Los Angeles Superior Court judge granted a petition barring LAUSD from implementing its student vaccine mandate. (*G.F. v. Los Angeles Unified School Dist.*, Los Angeles County Super. Ct. Case No. 21STCP03381.) The petition was brought by an LAUSD student. In that case, the trial court noted that in the earlier case, *Children's Health Defense*, the court had been persuaded that the vaccine mandate merely addressed the method of instruction and affected those who may be physically present on school grounds, and thus, LAUSD's vaccine mandate did not conflict with any existing law. However, the petitioners' evidence in the new case persuaded the court that the



vaccine mandate also dictates which students may be enrolled in a particular school within LAUSD, and the curriculum that those students may receive. As such, the court concluded that the vaccine mandate exceeded LAUSD's authority.

Largely mirroring the ruling on SDUSD's mandate discussed above, the court agreed with the petitioners that the Legislature intended to fully occupy the area of vaccines required for enrollment and continued attendance in K-12 schools. The court stated that the matter of vaccines required of schoolchildren has been so thoroughly covered by statutes within the Health and Safety Code that the field has become exclusively a matter of State concern. Therefore, the court found that LAUSD's vaccine mandate is preempted and void because there is a conflict between the resolution and the State law.

Takeaways

LEAs should review the new and updated CDPH COVID-19 school guidance for the 2022-2023 school year. In terms of student vaccine requirements, there is presently no State requirement on point; however, different courts have now struck down at least two local school districts' resolutions in this area. While the rulings addressed above are presently binding only upon the K-12 school districts involved in the litigation, other K-12 school districts should account for the rationale of these courts when considering their own student COVID-19 vaccination policies. School districts considering adopting student vaccination mandates should consult with legal counsel regarding the associated litigation risks.

If you have any questions about the updated CDPH guidance or any issue relating to vaccines or current masking or testing guidelines, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.