

SCHOOLS ARE
OPENING FOR
IN-PERSON
LEARNING:
WHAT NOW?

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CAVEAT

The information contained herein is up to date as of 5/19/2021. Everything is changing very rapidly!

Please check the following regularly for up-to-date information:

- Vanaman German LLP website at www.vanamangerman.com.
- Family Focus Resource Center website at <https://www.csun.edu/family-focus-resource-center>

WHAT WE KNOW FOR SURE

- ❖ Federal law has not changed. The Individuals with Disabilities Education Act (IDEA) remains in full force and effect.
- ❖ State law allowed for an exemption of time to conduct assessments, but that extension ended on July 1, 2020. Current state law does not provide districts with any extensions or exemptions from conducting assessments and holding IEP.
- ❖ What is your district doing or not doing?

ALL SCHOOLS IN LAUSD ARE OPEN FOR IN-PERSON LEARNING

- ❖ However, not all students have returned to schools. Many parents opted to keep their children on distance learning through the end of this school year.
- ❖ The numbers of students returning to in-person have varied in different socio-economic areas of LA with less students returning in elementary schools to in-person in lower socio-economic areas.
- ❖ The opposite is true for middle and high school students.
- ❖ "If 90% of the people on a school campus are children who haven't yet been vaccinated, the safest thing to do is to test everyone, children and adults, before they start school and regularly thereafter. And that's exactly what we're doing at schools in Los Angeles Unified." Austin Beutner

SAFETY PROTOCOLS

1. Frequent COVID Testing
2. Wearing Masks
3. Social Distancing
4. Hand Washing
5. Small Cohorts
6. Hybrid Programs

LAUSD REQUIREMENTS

- ❖ Everyone on a school campus will be required to have a negative COVID test no earlier than one week before returning. Go to <https://achieve.lausd.net/covidtestingppt> for a list of available testing sites and to schedule a test.
- ❖ Once students and staff have returned to school, they will all need to participate in the periodic COVID testing program at their school site.
- ❖ Everyone will have to answer some basic health questions, similar to what we have to answer when entering public places like grocery stores and restaurants. Everyone will also get their temperature taken.
- ❖ LAUSD worked with Microsoft to develop the Daily Pass web app to help speed the process. This online tool is a one-stop shop for staff and families where you can schedule COVID tests, view test results, answer the required daily health check questions, and more. You can watch a video about the Daily Pass here: <https://achieve.lausd.net/dailypass>.

CONTINUING TO PROVIDE FAPE

- ❖ Schools have a duty to continue to provide students with disabilities a Free Appropriate Public Education(FAPE) and therefore must not exclude students from school sites and in-person educational environments if their disability prevents them from wearing a mask.
- ❖ Schools must continue to adhere to least restrictive environment requirements, including educating students with disabilities with their nondisabled peers to the maximum extent appropriate (34 Code of Federal Regulations §300.114).

MASK REQUIREMENT EXEMPTIONS

Recently, the California Department of Education has been made aware of instances where students with disabilities may have been inappropriately excluded from educational environments for the inability to wear a face covering. The purpose of this notice is to remind local educational agencies (LEA) of state and federal guidance requiring face coverings, including allowable exemptions, in order to avoid implementing policies that may result in a denial of a free and appropriate public education (FAPE).

Source: <https://www.cde.ca.gov/sp/se/lr/om021121.asp>



MASK REQUIREMENT EXEMPTIONS

Face Covering Must be Used. With Following Exemptions. The face covering guidance recognizes that there are some people who cannot wear a face covering for a number of different reasons.

- ❖ Under age 2,
- ❖ Have a medical or mental health condition or disability that would impede them from properly wearing or handling a face covering,
- ❖ Students with a communication disability, or when it would inhibit communication with a person who is hearing impaired.
- ❖ Those with communication disabilities or caregivers of those with communication disabilities can consider wearing a clear mask or cloth mask with a clear panel when appropriate.
- ❖ Persons exempted from wearing a face covering as confirmed by school district health team and therapists, must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Source: January 14, 2021, the California Department of Public Health (CDPH) published the *COVID–19 and Reopening In-Person Instruction Framework & Public Health Guidance for K–12 Schools in California, 2020–2021 School Year* at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Consolidated_Schools_Guidance.pdf

LAUSD MASK ACCOMMODATION APPLICATION

- ❖ LAUSD has a form for parents and medical professionals to complete in order to apply for a mask accommodation or exemption: [PARENT REQUEST FM ACC-EXEMPT PROCESS LAUSD_04-22-21.pdf](#)
- ❖ Educating a student who is unable to wear a mask outside and away from other students is discriminatory and a complaint should be filed with the Office of Civil Rights in San Francisco
- ❖ Office for Civil Rights, San Francisco Office U.S. Department of Education 50 Beale Street, Suite 7200 San Francisco, CA 94105 Fax: 415-486-5570 Telephone: 415-486-5570 . The OCR office in San Francisco handles all of the complaints for people who attend public school in California.
- ❖ www.myschoolmyrights.com/complaint-ocr/

Vaccine Requirement Exemptions (maybe)

Whitlow v. California (2016)

Whitlow v. California, 203 F.Supp. 4d 1079 (C.D. California 2016), as it cites:

“If []children are covered by the IDEA, they are exempt from vaccination...SB277 provides three exemptions to the vaccination requirements at issue: One for medical reasons, Cal. Health & Safety Code 12030(a), one for children in a ‘home-based private school or... an independent study program[,]’ Cal. Health & Safety Code 120335(f), and one for students who qualify for an individualized education program, or IEP. Cal Health & Safety Code 120335(h).”



VACCINE REQUIREMENTS



Pfizer's COVID-19 vaccine is authorized by the FDA for people aged 12-15. It was found to be safe and effective in protecting children as young as 12 in clinical trials.

"This broader authorization of this COVID-19 vaccine for younger people will help California build on our huge success vaccinating the majority of the population 16 and up. The COVID-19 vaccine is free for all Californians, regardless of insurance and immigration status. You will not be asked about your immigration status when you receive the vaccine."

Source: <https://covid19.ca.gov/vaccines/#California's-vaccination-plan>

REGRESSION

- ❖ Compensatory Education Services for a denial of a Free Appropriate Public Education (FAPE).
- ❖ Recoupment: Whose fault is it anyway? Does it even matter?
- ❖ LAUSD has developed a plan to address learning loss in all students due to the pandemic. All students will require tailored teaching to address learning loss.
- ❖ Students with disabilities may be able to address their learning loss through the same tailored instruction given to their general education peers. But, to the extent that their disability prevents them from recovering and recouping quickly, then students with disabilities may require additional instruction to continue making progress appropriate considering their circumstances.

HOW DO WE MEASURE REGRESSION?

- ❖ Parent documentation.
- ❖ Previous assessment results compared with new assessment results.
- ❖ Progress or lack thereof on goals and objectives.
- ❖ Documentation of what services/supports on the student's IEP were provided during shutdown and what services/supports were not provided as well as documentation indicating the student's ability to access those services.
- ❖ Services that could have reasonably been offered but were not during shutdown result in claim for compensatory education.

PENDING LEGISLATION

1. AB 967: Provides a fund for Districts to, "prevent and intervene early in conflicts, conduct voluntary alternative dispute resolution, and provide services to pupils with disabilities relating to individually determined impacts to learning associated with COVID-19 pandemic school disruptions..." Currently the bill is in the Appropriations Committee for consideration and hearings.
2. AB 104: Requires school districts to notify parents that they may request that their child be retained in the grade that their child was in for the 2020/2021 school year. Also allows parents of high school students to petition to change a letter grade to a pass/fail for any class in which they were enrolled for the 2020/2021 school year. Currently in the State Senate in the education Committee.

CDC UPDATE – LAST WEEK

❖ May 12, 2021:

- ❖ If you are fully vaccinated, you can resume activities that you did prior to the pandemic.
- ❖ Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by law.

❖ BUT – May 15, 2021:

- ❖ Schools in the United States should continue to use masks for the 2020-2021 academic year as all students will not be fully vaccinated, the U.S. Centers for Disease Control and Prevention (CDC) said on Saturday.
- ❖ The CDC in its latest guidance said all kindergarten through grade 12 schools "should implement and layer prevention strategies and should prioritize universal and correct use of masks and physical distancing."