



AUGUST 2020

NO. 20-08

Cohorts and Small Groups

CDPH Issues New Guidance for Services and Support at School

On August 25, 2020, the California Department of Public Health (CDPH) issued important cohorting guidance that sets minimum safety guidelines across a variety of sectors serving California youth, including both public and private schools. That same day, the State released companion FAQs to supplement the CDPH guidance with responses specific to school-based services and support. Both documents (collectively referred to herein as "Guidance") have raised nearly as many questions as they have answered. We have collected some of those questions and distilled them down to what we believe are several key takeaways for schools considering whether and how to bring back small cohorts onto school campuses.

Overview

Under the new Guidance, schools that are otherwise prohibited from providing in-person instruction under the CDPH July 17, 2020 COVID-19 and Reopening In-Person Learning Framework for K-12 Schools (July 17 Framework) are now explicitly authorized to offer small-group, in-person "specialized services, targeted services and support" for students. This applies to both elementary and secondary schools.

What Does this Mean for My District?

- The Guidance **does not impose a mandate** on any school or school system to provide in-person services. Any and all decisions regarding when and what permitted in-person services will be provided are explicitly left to the discretion of local school authorities.
- The Guidance **does not expressly permit in-person instruction** contrary to the conditions set forth in the July 17 Framework. Schools are authorized to provide "in-person child supervision and limited instruction, targeted support and services, and facilitation of distance learning." School-based targeted, specialized support and services, include and are not limited to occupational therapy, speech and language, medical, and behavioral services, along with educational support services as a part of targeted intervention strategy or assessment, including those related to English learner status, IEPs, RtI, and other required assessments. To the extent the July 17 Framework explicitly prohibits in-person instruction, the Guidance does not relax or otherwise alter such restrictions.
- The Guidance **does urge local educational agencies to prioritize** small-group cohorts to serve the **needs of students with disabilities, as well as English learners, and other identified "at-risk and high-need" students** (e.g. students experiencing further learning loss through or not participating in distance learning, students experiencing homelessness and/or abuse or neglect, and foster youth) when considering whether to offer small cohort in-person services.

What Should I Be Thinking About When Considering Bringing Back Small Cohorts Under the Guidance?

- Schools interested in providing specialized and targeted support services in-person and/or establishing cohorts will need the ability to staff these programs. A school's ability to staff in-person services may be impacted by existing labor agreements and any recently negotiated MOUs to the extent that they present potential limitations or operational barriers (including timing and/or conditions upon which employees may be required to return to work in-person).
- Consultation and collaboration with local public health authorities is also recommended to the extent any county-specific authorizations, conditions, and/or requirements might apply to your school's provision of in-person services or assessments. These could include precautions such as required employee COVID-19 viral testing, health department congregation limits that might apply to the school setting, etc.
- Decisions to implement in-person services or assessments may also implicate additional notice requirements and a duty to bargain with affected labor groups. Consultation with your labor counsel is recommended to ensure that sufficient time can be built into any proposed implementation plans to ensure good faith compliance with all collective bargaining obligations.
- To the extent that any students brought back in small cohorts might require ancillary services in order to facilitate and/or access the supports and/or services being provided, the availability and feasibility of providing such ancillary services (e.g. transportation, paraprofessional support, etc.) must also be carefully evaluated.

Again, the August 25, 2020 Guidance is only applicable to those schools that cannot reopen for in-person instruction pursuant to the July 17 Framework. The foregoing is thus intended to highlight areas of importance when considering how this Guidance will impact your programs and operations.

That said, we recognize that as with any guidance document, especially during this often changing environment, additional questions will arise based on local operations and conditions. To this end, and given that circumstances vary county to county as well as potentially school to school, we recommend that educational agencies consult with legal counsel to ensure that any proposed plans for bringing back small student cohorts are consistent with the Guidance as well as all other applicable state and local laws, regulations, labor contracts, and public health orders.

If you have any questions regarding this guidance and how it affects your agency, please call one of our six offices.

F3 NewsFlash® Written by:

Elizabeth Mori, partner

FRESNO | INLAND EMPIRE | LOS ANGELES | OAKLAND | SACRAMENTO | SAN DIEGO
www.f3law.com

This F3 NewsFlash® is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this legal development may apply to your specific facts and circumstances.

© 2020 Fagen Friedman & Fulfroost LLP All rights reserved, except that the Managing Partner of Fagen Friedman & Fulfroost LLP hereby grants permission to any client of Fagen Friedman & Fulfroost LLP to use, reproduce and distribute this NewsFlash intact and solely for the internal, noncommercial purposes of such client.