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LEGAL UPDATE

March 3, 2020

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin, General Counsel *CDC*
Kaitlyn A. Schwendeman, Schools Legal Counsel *KAS*
Subject: Quarantine and Issues Related to COVID-19
Memo No. 10-2020

As discussed in our Legal Update 02-2020 the Center for Disease Control (“CDC”) along with the California Department of Public Health (“CDPH”) are working with local County Departments of Health Services to provide guidance regarding responding to COVID-19. The purpose of this Legal Update is to provide guidance on the statutes and regulations governing this matter.

Health Officer Is Responsible for Providing Notification, Guidance, and Orders

Health and Safety Code §§ 120175 *et seq.* provide that each County in California shall have a Local Health Officer. For example, in Sonoma County the Health Officer is Dr. Celeste Philip. Health and Safety Code § 120175.5 provides:

- (a) During an outbreak of a communicable disease, or upon the imminent and proximate threat of a communicable disease outbreak or epidemic that threatens the public’s health, a local health officer shall do both of the following:
 - (1) **Promptly notify and update governmental entities** within the local health officer’s jurisdiction about communicable diseases listed in Section 2500 of Title 17 of the California Code of Regulations that may affect them, if, in the opinion of the local health officer, action or inaction on the part of the governmental entity might affect outbreak response efforts.
 - (2) **Make any relevant information available to governmental entities**, including, but not limited to, the locations of concentrations of cases, the number of residents affected, and the measures that the governmental entities should take to assist with outbreak response efforts.

- (b) In addition to the actions required under subdivision (a), the local health officer **may issue orders to other governmental entities** within the local health officer’s jurisdiction to take any



action the local health officer deems necessary to control the spread of the communicable disease.

(c) A local health officer that provides the notification and information to a governmental entity pursuant to subdivision (a), and the governmental entity that receives the notification and information, shall comply with all applicable state and federal privacy laws.
(Emphasis added).

Each County Health Officer is ultimately responsible for providing notification to school districts, guidance to school districts, and, if necessary, issuing orders to school districts and all persons in the County related to public health matters.

The County Office of Education (“COE”) and County Superintendent of Schools, while having authority over COE students and staff, does not have authority to issue orders to school districts. Rather COEs are in an excellent position to assist in the dissemination of information to school districts in the COEs’ respective County and to provide information to parents and the public.

Health and Safety Code § 120230 provides:

No instructor, teacher, pupil, or child who resides where any contagious, infectious, or communicable disease exists or has recently existed, that is subject to strict isolation or quarantine of contacts, shall be permitted by any superintendent, principal, or teacher of any college, seminary, or public or private school to attend the college, seminary, or school, except by the written permission of the health officer.

Thus, if the County Health Officer orders a school closed or certain individuals (students and/or staff) to be excluded from school, school districts (including COEs) are required to comply with the directives of the County Health Officer.

Districts Have Independent Legal Authority to Exclude Students and Staff

Students: Education Code § 48213 provides:

If a pupil is excluded from attendance pursuant to Section 120230 of the Health and Safety Code or Section 49451 of this code, **or if a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel**, the governing board is not required to send prior notice of the exclusion to the parent or guardian of the pupil. The governing board shall send a notice of the exclusion as soon as is reasonably possible after the exclusion.
(Emphasis added).

In addition, Education Code § 49451 provides:



A parent or guardian having control or charge of any child enrolled in the public schools may file annually with the principal of the school in which he is enrolled a statement in writing, signed by the parent or guardian, stating that he will not consent to a physical examination of his child. Thereupon the child shall be exempt from any physical examination, **but whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home and shall not be permitted to return until the school authorities are satisfied that any contagious or infectious disease does not exist.** (Emphasis added).

Therefore, school districts (including COEs) may exclude a student if there is a good reason to believe the student is infected with COVID-19 and school districts may require the parents of the student to provide a written note from a health care provider confirming the student is no longer contagious prior to the student being allowed to return to school. If a student is excluded from school, then the student's absence will be excused and the student should have the opportunity to complete all assignments and tests missed during the absence that can be reasonably provided and upon the satisfactory completion of the schoolwork within a reasonable amount of time the student should be provided full credit.¹

Staff: There are separate, but similar statutes that apply to certificated² and classified³ staff that allow for staff to be excluded from work "...whether or not the cause of absence arises out of and in the course of the employment of the employee, or because of quarantine which results from his contact with other persons having a contagious disease while performing his duties, or because of temporary inability to perform the services required of him because of illness, accident, or quarantine."

Governing boards of districts (and the County Superintendent of Schools for COEs) may, **but are not required** to grant leaves of absence to excluded employees and **may**, at their discretion, pay compensation at such a rate as determined by the school district. Pursuant to Education Code Sections 44987 and 45191, districts may require that the employee provide a written note from a health care provider confirming they are no longer contagious prior to the employee being allowed to return to work.

Please note, districts may have additional obligations regarding employee leaves pursuant to any applicable collective bargaining agreements and/or board policies, such as additional paid time off. We recommend that districts review these agreements and policies to ensure that they are acting in conformity with any obligations.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ Education Code § 48205(b).

² Education Code § 44964.

³ Education Code § 45199.