

Ensuring California’s Charter Schools Respond Effectively to the Threat & Impacts of Coronavirus (COVID-19): Understanding Legal Considerations and Taking Proactive Measures

To assist charter schools in initially assessing the multitude of impacts on public schools resulting from the COVID-19 virus, YM&C has developed the following non-exhaustive initial general guidance. Such guidance does not constitute legal advice but is solely intended to assist charter schools in developing and executing comprehensive preparedness plans. For specific legal advice under the particular facts of your school’s situation, legal counsel should be consulted. Based upon the current information available, we recommend consideration of the following initial issues:

- **Sources of Up-to-Date Information**

Local, state, and federal health authorities and governmental agencies (California Department of Education (“CDE”), California Department of Public Health, and the Governor’s Office) have issued and will continue to issue regular updates and guidance regarding COVID-19. The latest guidance from the California Department of Public Health and the CDE is linked here:

https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/School%20Guidance_ADA%20Compliant_FINAL.pdf

To receive regular updates, consider regularly checking the following websites along with your county department of health:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
<https://www.cde.ca.gov/ls/he/hn/coronavirus.asp>
<https://www.gov.ca.gov/newsroom/>
<https://www.cdc.gov/>

- **Exclusion of Students and Employees from School Campuses**

Local, state, and federal health authorities are providing guidance and directives regarding the exclusion of certain students and staff from campus for fourteen (14) days from the day of their last exposure. These currently include students, teachers, and staff who present with fever and/or respiratory infection symptoms; those who have traveled over the course of the last fourteen (14) days to an area identified by the Center for Disease Control as Level 3 (currently China, Iran, Italy, and South Korea (for regular updates, check:

<https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>); and those who have been in close contact with someone diagnosed with COVID-19.

Further, Education Code Sections 49451 and 48213 and Section 202 of Title 5 of the California Code of Regulations allow for the exclusion of any student whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease or the continued presence of the student would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel. Similar provisions of the Health & Safety Code exist to prohibit students and teachers who reside in a quarantined area from coming on to campus (Health & Safety Code Section 120230).¹

Schools may also consider excluding all non-essential visitors from campuses (e.g., vendors, delivery services etc.). Almost all meetings with parents could be held telephonically or through video conference. In addition, schools should consider curtailing all school-wide gatherings such as assemblies, dances, etc.

- **School Closure**

Local, state, and federal authorities will provide guidance and directives surrounding school closure. Currently, no school or school district has been directed to close, but several have done so voluntarily. The State Department of Public Health guidance has offered scenarios in which closure should be considered. Each circumstance is different, and we strongly suggest consultation with local health authorities, your charter authorizer, and legal counsel in considering a school closure.

In anticipation of the possible need for school closure and to avoid any delay, a board resolution should be considered giving the lead administrator the authority to close school in alignment with local, state, and federal guidance and directives. Such board resolution should consider the extension of the school calendar to accommodate the possible temporary closure, and authorize the lead administrator to take any and all other necessary actions to address any policy or operational issues implicated by the unexpected closure of the school (i.e. policy amendments, contract negotiations, etc.). YM&C can assist you in preparing a board resolution for this purpose.

- **Apportionment Impacts of School Closure**

Should your charter school make the decision to close, the Education Code provides a safe harbor for school funding if the school is unable to maintain a 175-day school year. Education Code Section 41422 provides that a charter school that is prevented from operating for at least 175 days because of epidemic (among other things) shall receive the same apportionment from the State as it would have received had it not been so prevented. It is critical to note that Section 41422 will require a charter school to demonstrate to the satisfaction of the State Superintendent of Public Instruction that its circumstances have met the requirements of Section 41422 through affidavits of

¹ A student or employee's race or ethnicity cannot justify exclusion from school. All schools have an obligation to protect their students and staff from unlawful discrimination.

members of the governing board and the County Superintendent. As such, a voluntary closure, outside of the guidance of the local, state, or federal health authorities, may not meet the requirements of Section 41422.

- **Independent Study²**

For Excluded Students

Independent study is a viable option to offer to students excluded due to COVID-19. However, it is important to note that current law requires that independent study always be optional. As such, no student can be required to engage in independent study. In order to collect apportionment for a student on independent study, a charter school must follow all strict requirements related to independent study, which include, but are not limited to the adoption of a board policy, a fully executed written agreement for each student which aligns with legal requirements and the adopted board policy, the collection of work samples, and the maintenance of appropriate contemporaneous records of attendance. Further, each student that engages in independent study must be assigned a supervising credentialed employee.

Excluded students can also be included in classroom instruction telephonically or through video conference. However, it is important to note that current law would still consider this synchronous instruction to be “independent study” and thus subject to independent study laws. In considering this option, consult with legal counsel to ensure appropriate compliance with applicable employment and independent study law. **Failure to comply with independent study law can result in a complete loss of ADA funding for each student on independent study.**

Independent Study In Lieu of School Closure

It is possible that a charter school could consider offering independent study instead of a school closure. However, as noted above, current law requires that independent study always be voluntary and the strict legal requirements noted above would apply school-wide. As a result, a charter school could not mandate school-wide independent study, and average daily attendance could suffer as a result. In considering this option, consult with legal counsel as such a decision could be a violation of the terms of your approved charter, could change the characterization of your charter from “classroom-based” to “nonclassroom-based,” which carries significant fiscal implications, and applicable employment laws must be considered as well.

In Case of Closure

Apportionment cannot be collected through independent study on days that the charter school is not in session under current law. However, if a charter school wished to

² It is possible that the Governor will adopt emergency orders which will temporarily suspend the strict requirements of independent study (and other laws) in order to allow more students to continue to receive instruction if excluded from campus or due to school closure. Our Office will be working with the Governor’s Office to suggest emergency orders that will encompass charter schools.

provide independent study instruction for students during a school closure in order to maintain instruction *without claiming ADA*, it may lawfully do so.

- **Employee Considerations**

If an employee is ill or is required to care for an ill family member, a charter school must allow the employee to use any accrued paid sick leave that is available. If an employee does not have available accrued paid leave, then time off for illness is unpaid. A charter school should refrain from taking disciplinary action against an employee who is absent from work due to COVID-19 illness or exposure or other unidentified illnesses pursuant to the charter school's sick leave policy, and may consider offering employees additional paid leave given the unique circumstances of this outbreak. Any additional paid leave must be offered on an equitable, nondiscriminatory basis to employees. In the event a collective bargaining agreement controls employment conditions, changes to such conditions cannot be unilaterally implemented and must be negotiated.

A charter school may prohibit employees who are exhibiting symptoms of COVID-19 or another illness from reporting to work. If the employee wishes to report to work, and the charter school is directing the employee not to, then the charter school will be required to place the employee on a paid administrative leave until the employee is deemed fit for duty. While employers are generally not permitted to order medical exams of employees, they are permitted to require employees to establish their fitness for duty when the employee poses a threat to health or safety. However, the charter school must bear any costs associated with the employee obtaining a clearance to return to work. Employment laws pertaining to all of these issues are complex and nuanced. Consult with legal counsel prior to taking any employment action to ensure compliance with applicable laws.

The above general guidelines may vary depending on the specific policies maintained by your school.

- **Special Education Services:**

If a student who is excluded due to COVID-19 has an IEP, the student's IEP team should convene to discuss the provision of services during the period of exclusion. Virtual or home-based services might be an appropriate option; the U.S. Department of Education has provided guidance that an alternate method of service delivery during temporary emergency measures, defined generally as ten (10) school days or less, does not constitute a change of placement and does not require a revision to the IEP. If some or all services cannot be provided during a period of exclusion, compensatory services must be determined and provided after the student returns. Consult with legal counsel to discuss individual student exclusions to ensure appropriate compliance with applicable special education laws.

- **Sanitation and Cleaning Procedures**

Follow your school safety plan, illness and injury prevention plan, and/or applicable local, state, or federal guidance or directives regarding the sanitation of school facilities and the instruction to students and employees regarding hand-washing, and other illness prevention. Informing students and staff about best practices around hand washing, keeping hands away from faces, staying at home in case of illness, and other recommended hygiene efforts can help protect your school community against the spread of infectious diseases. Some options for sharing this information with your school community are having teachers discuss these practices in class and through school-wide announcements.

Should you have any questions about this Legal Alert, please contact Jerry Simmons (jsimmons@mycharterlaw.com), or Lisa Corr (lcorr@mycharterlaw.com) at 916-646-1400. You can also [view past Legal Alerts here](#).

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