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## Legal Update: Amended Temporary Restraining Order in *A.A. v. Newsom*

As reported on the [CSBA blog](#), on March 15, 2021, Superior Court Judge Cynthia A. Freeland issued a Temporary Restraining Order (TRO) in *A.A. v. Newsom, et al*, a lawsuit brought by several students against six school districts in San Diego County, Gov. Gavin Newsom and key members of his COVID-19 response team (state defendants). The students successfully challenged the constitutionality of the school reopening framework and guidance issued by the California Department of Public Health on Jan. 14, 2021 (CDPH Framework), which resulted in the TRO. CSBA is providing this update because, on March 16, 2021, the State Defendants filed a motion to seek clarification of the order from Judge Freeland. Based on that motion, on March 17, 2021, Judge Freeland issued an **“Amended Order.”** **The TRO no longer prohibits application and enforcement of the *entire* CDPH Framework.**

In the original TRO issued March 15, 2021, Judge Freeland temporarily “restrained” the state defendants from enforcing or applying the CDPH Framework to any local educational agency. (Judge Freedland also issued other orders specific to the school district defendants.) The Amended Order better reflects Judge Freedland’s analysis in the original order, including her analysis of the CDPH Framework’s disparity between reopening for in-person instruction for students in grades transitional kindergarten through six versus students in grades seven through 12. As we noted in the blog post, Judge Freeland found that the CDPH Framework’s provision that students in grades seven through 12 remain in distance learning, while LEAs could offer in-person instruction to students in transitional kindergarten through grade six, unconstitutionally denied the fundamental right to education to students in grades seven through 12. The initial order appeared to restrain the enforcement or application of the CDPH Framework in its entirety.

The Amended Order confirmed CSBA’s analysis that the order as to the CDPH Framework applies to LEAs statewide because it specifically enjoins state actors from applying and enforcing the CDPH Framework statewide. However, Judge Freedland’s Amended Order significantly narrowed the original order with respect to the enforcement and application of the CDPH Framework. **Specifically, Judge Freedland stated that the TRO does not**

**apply to the entire CDPH Framework and, thus, to many of the COVID-19 mitigation measures. Rather, the order only applies to certain provisions of the CDPH Framework.** Those include provisions that prohibited schools in counties in the “Purple Tier” from offering in-person instruction to students in grades seven through 12, the definition of “reopen for in-person instruction,” and classroom space rules regarding space between student chairs, including the requirement that student chairs be at least 4 feet apart. **Although the TRO restrains the state defendants from imposing the CDPH Framework’s requirement for distance between student chairs and other provisions, it does not restrain them from enforcing other mitigation strategies set forth in the CDPH Framework.**

As a precaution, board members should note that the state defendants may still issue recommendations on the above topics. The TRO prohibits only binding requirements in those areas identified by Judge Freedland. In fact, the Amended Order states that it does not prevent the state defendants from issuing non-binding guidance or recommendations on any subject matter.

#### **Many sections of CHPH Framework still in effect**

Moreover, the remaining sections of the CDPH Framework continue to apply to LEAs, whether they are requirements or recommendations. This includes, but is not limited to, COVID-19 mitigation strategies such as face coverings, staff training, limiting sharing, adequate ventilation, hand hygiene, cleaning and disinfection, symptom and close contact exposure screening, exclusion of students and staff where there is close contact or symptoms, adult distancing requirements, surveillance screening, testing, and reporting positive COVID-19 cases. LEAs should continue to implement infection mitigation strategies to create the safest possible school environment for students and staff.

The parties will return to court on April 1, 2021 (originally March 30, 2021), at which time Judge Freedland will decide whether to issue a preliminary injunction. On that date, Judge Freedland could maintain, modify or overturn the Amended Order issued on March 17, 2021.

**This just in:** On March 19, 2021, the [CDC revised its classroom distancing guidance](#). The guidance provides that 3 feet of distance between students is acceptable for elementary students regardless of the level of community spread. However, for grades seven through 12, CDC recommends 3 feet of distance only where community spread is low, moderate or substantial. If community spread is high, the recommended distance is 6 feet. Thus, CDC continues to make a distinction between secondary and elementary grade levels, which is currently prohibited in California under the TRO issued by Judge Freedland.



