



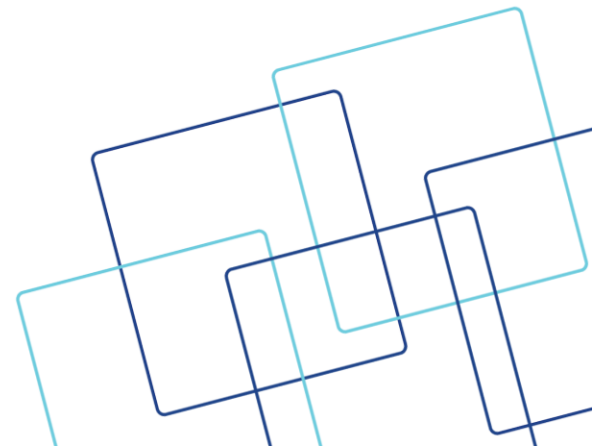
**Lozano Smith**  
ATTORNEYS AT LAW

# Face Covering Requirements for the 2021-22 School Year

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Turlock Unified School District

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# Overview

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CDPH Mandatory Guidance

Face Covering Exemptions  
and Protocols

Anticipated and Potential  
Consequences for Non-  
compliance

Recent Litigation

New Guidance?

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# COVID-19 Guidance for Schools

# Obligation to Follow Public Health Orders

Last school year, public health orders, directives, and guidance were legally mandated due to language contained within Governor executive orders issued under the California Emergency Services Act (“ESA”).

Many COVID-19 related requirements, including the requirement to follow public health orders, directives, and guidance were rescinded by the Governor in June 2021.

These were replaced by a State Public Health Officer order issued on June 11, 2021, that became effective on June 15, 2021 with no expiration date.

# Obligation to Follow Public Health Orders

The **State Public Health Officer** has authority under the Health and Safety Code to take measures as may be necessary to prevent the spread of a communicable disease.

The **CDPH** has authority under the Health and Safety Code to adopt and enforce regulations requiring strict or modified isolation or quarantine if necessary to protect public health from a contagious, infectious, or communicable disease.

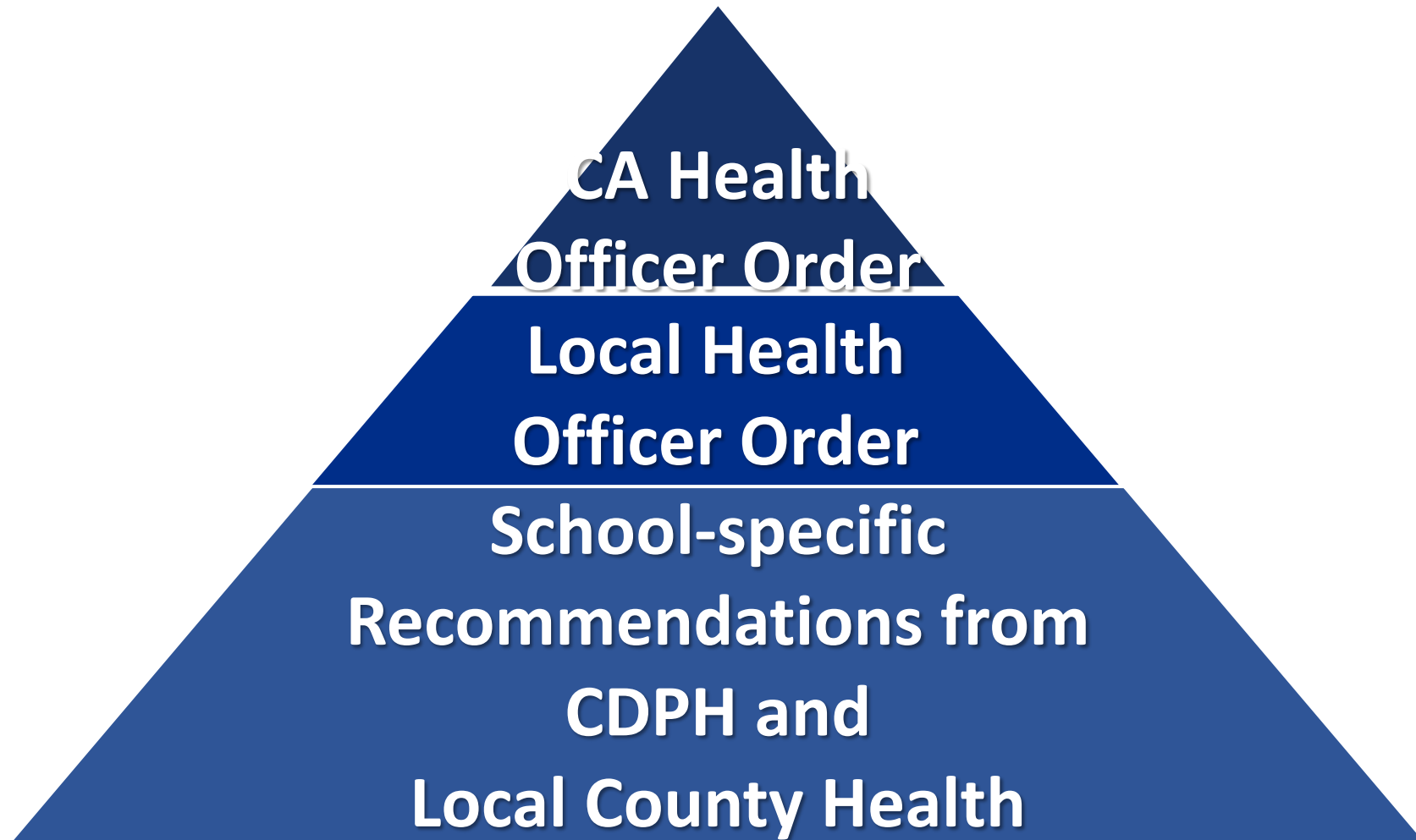
**Local health officials** have authority under the Health and Safety Code to issue orders deemed necessary to control the spread of a communicable disease.

# June 11, 2021 State Public Health Officer Order

Requires all individuals to follow:

1. The CDPH face covering guidance;
2. The CDPH mega events guidance; and
3. Any amended guidance for K-12 schools

# Hierarchy of Public Health Orders and Guidance



# 2021-22 CDPH School Guidance

On July 12, 2021, CDPH released COVID-19 Public Health Guidance for K-12 Schools in California, 2021-22 School Year.

- Students must wear face coverings indoors.
- Adults must wear face coverings whenever sharing indoor space with students.
- These requirements are subject to exemptions.



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# Exemptions and Protocols

# Face Covering Exemptions (May Still Need to Wear Face Shield with Drape)

- Children younger than 2 years old
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask
- Persons who are hearing impaired or communicating with a person who is hearing impaired, and the ability to see the mouth is essential for communication
- “In limited situations where a face covering cannot be used for pedagogical or developmental reasons”

# Face Covering Protocols

The 2021-22 CDPH School Guidance provides that “[s]chools must develop and implement local protocols to provide a face covering to students who inadvertently fail to bring a face covering to school to prevent unnecessary exclusions” and “schools should offer alternative educational opportunities for students who are excluded from campus because they will not wear a face covering.”

CDPH and CDE have provided no guidance on what these protocols should look like and how to address existing legal requirements and fiscal impacts of other alternative programs like independent study.

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# Consequences of Not Enforcing Mandate

# Anticipated and Potential Consequences of Not Following Law

Includes, but not limited to:

- Liability exposure (student and staff claims)
- Misdemeanor charges
- Public health order to close school(s)
- Loss of future COVID-19 related public funding
- Parent, staff, and student concerns about safety
- Cal/OSHA investigation



# Recent Litigation



# Schools May Be Treated Differently by Health Orders

Ninth Circuit decision regarding reopening restrictions: *Brach v. Newsom* (July 23, 2021)

The Court held that the State's (CDPH) restrictions on schools, even though they were different in scope and severity from other businesses and entities, were rational to justify keeping schools closed.

This decision may be used to justify CDPH face mask regulation, which is arguably less severe a restriction than school closure.

# Open Schools California / Let Them Breathe Lawsuit

Lawsuit by parent groups against the State filed in San Diego County.

- Advocates for mask choice.
- Expresses concerns about student anxiety and depression due to the pandemic.
- Provides citations to scientific studies about the risks and issues with masks for children, including low risk of transmission between children.

CDPH responded publicly to the lawsuit by stating: “the data and science is unequivocal — there’s no substitute for in-person instruction, and California’s COVID-19 prevention strategies are the best way to fully open our schools while protecting students and staff.”



# New Guidance



## July 27, 2021 CDC Guidance

CDC issued new guidance, stating that fully vaccinated individuals should, “[t]o maximize protection from the Delta variant and prevent possibly spreading it to others, wear a mask indoors in public if you are in an area of substantial or high transmission.”

CDC also updated its K-12 Schools guidance and added a recommendation to implement “universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.”

Although the District is not required to follow CDC guidance, this likely will affect subsequent CDPH guidance.

# New CDPH Guidance Expected When?

CDPH has indicated that it may update its guidance based on any further CDC changes to its K-12 guidance and/or prior to November 1, 2021.

It is unclear whether CDPH will issue further guidance changes in light of the rise of Delta variant cases and/or the push from some school district communities advocating for more local discretion based on local conditions.

# Takeaways

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- Follow CDPH and local county orders – these are legal requirements and failure to adhere to them may result in consequences.
- Set a good example for kids by directing community concerns to the source of the laws.
- Train staff on face mask protocols.
- Limit visitors on campus and ensure they follow health and safety rules.
- Be on the lookout for new guidance.



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