

No. 20-56291

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MATTHEW BRACH, ET AL.

Plaintiffs-Appellants,

v.

GAVIN NEWSOM, ET AL.

Defendants-Appellees,

On Appeal From The United States District Court
For The Central District of California
Case No. 2:20-cv-06472-SVW-AFM
The Honorable Stephen V. Wilson

PLAINTIFFS-APPELLANTS' REQUEST FOR JUDICIAL NOTICE

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Appellants hereby request that the Court take judicial notice of Appellees' December 30, 2020, policy statements on reopening schools. See Exhibits 1–4 attached to Declaration of Robert E. Dunn (“Dunn Decl.”).

BACKGROUND

This case involves a challenge to government orders that have prevented schools across California from providing in-person education to millions of children since March of 2020. In the district court, Defendants-Appellees (the “State”) attempted to justify the challenged orders barring in-person education on the ground that it was too “risky” to open schools in communities with high COVID-19 rates. 2-ER-102. Although COVID-19 does not pose a significant danger to school-age children, 2-ER-234 ¶ 12, the State asserted that there was a “growing consensus” that children were “susceptible to infection by COVID-19 and transmission,” and that “current positive rate data may not accurately reflect the actual rate of infection of children and the transmission between children and adults because testing of children is sparse and children may have less severe symptoms or be asymptomatic.” 2-ER-102; 2-ER-41. The State argued that it was thus rational to close schools because, in the words of the State’s lone epidemiological expert, “[i]t is *possible* that in the school

setting, as in other settings, asymptomatic transmission *may occur*.” 2-ER-110–11 ¶ 26 (emphasis added).

The district court granted *sua sponte* summary judgment to the State on December 1, 2020. 1-ER-2. In denying Plaintiffs’ due process and equal protection claims, the district court first concluded that Plaintiffs’ children do not have a fundamental, or even quasi-fundamental, right to a basic minimum education. 1-ER-11–13. The court, relying on the assertions of the State’s expert, then concluded that the State’s school-closure orders satisfied rational basis review because “Defendants have set forth plausible policy reasons for limiting in-person learning in Tier 1 counties with higher rates of confirmed COVID-19 cases and higher positivity rates.” 1-ER-14.

On December 30, 2020—mere days before Plaintiffs filed their Opening Brief in this Court—the Governor issued a press release announcing the State’s Safe Schools for All Plan. Ex. 1.¹ The California Department of Public Health (“CDPH”) published three supporting

¹ *Governor Newsom Unveils California’s Safe Schools for All Plan*, Off. of Governor Gavin Newsom (Dec. 30, 2020), <https://tinyurl.com/y7ugmwj6>.

documents: a “Summary” of the plan; the “Rationale” for the plan; and an “Evidence Summary.” Exs. 2–4.² As Plaintiffs explained in their Opening Brief, these documents directly contradict assertions the State and its expert made in the district court. *See* Appellants’ Op. Br. at 25–29.

ARGUMENT

This Court should take judicial notice of the statements made by the Governor and CDPH on December 30, 2020. A court may take judicial notice of “a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *Harris v. County of Orange*, 682 F.3d 1126, 1131–32 (9th Cir. 2012). “[M]atters of public record” may be judicially noticed. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). The public record includes “governmental documents” such as bulletins, reports, and policies. *U.S. v. Camp*, 723 F.2d 741, 744 n.** (9th Cir. 1984) (collecting cases). Judicial

² *Summary: California’s Safe Schools for All Plan*, Cal. Dep’t of Pub. Health (Dec. 30, 2020) (hereinafter *Summary*), <https://tinyurl.com/y7otzspy>; *Rationale: California’s Safe Schools for All Plan*, Cal. Dep’t of Pub. Health (Dec. 30, 2020) (hereinafter *Rationale*), <https://tinyurl.com/y9tbpa4x>; *Evidence Summary: TK-6 Schools and COVID-19 Transmission*, Cal. Dep’t of Pub. Health (Dec. 30, 2020) (hereinafter *Evidence Summary*), <https://tinyurl.com/y22mxztr>.

notice may be taken “at any stage of the proceedings,” Fed. R. Evid. 201(c), including on appeal, as new “developments . . . may affect [the Court’s] consideration of the various issues presented.” *Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir. 1971).

Exhibits 1 through 4 are properly subject to judicial notice. These Exhibits are official statements by State Defendants and constitute public records. The fact that the Appellees’ have issued these policy statements is thus “not subject to reasonable dispute.” Fed. R. Evid. 201(b). To be clear, Plaintiffs do not ask the Court to take judicial notice of the *truth* of those statements, which involve scientific conclusions based on numerous epidemiological studies conducted around the world.³ Rather, Plaintiffs ask the Court to take judicial notice of the fact that State Defendants now *agree* with Plaintiffs’ experts that schools can be reopened safely—even in communities where the disease is still circulating.

The documents may affect the Court’s consideration of the various issues presented in this case. The State’s asserted rationale for keeping

³ Plaintiffs’ experts have already demonstrated that the scientific evidence overwhelmingly shows that children are at little risk from COVID-19 and are not a substantial transmission vector of the disease. *See* Appellants’ Op. Br. at 17–20 (discussing expert testimony).

schools closed is directly relevant to Plaintiffs' Equal Protection and Due Process claims. And the State's recent admission that schools can be reopened safely—based on scientific studies Plaintiffs presented to the district court in August and September 2020—demonstrates that the State lacks even a rational basis for continuing to bar Plaintiffs' children from attending school in person. *See* Appellants' Op. Br., 58–69. The State's recent admissions also confirm that the school closure orders challenged here are not narrowly tailored to advance the State's asserted interest in combatting the spread of COVID-19—thus dooming the orders under any form of heightened review.

Judicial notice of these documents would not prejudice the State. First, these are the State's own documents, so the State was presumably aware of the information included in them long before they were made public on December 30, 2020. Second, Plaintiffs discussed these documents extensively in their Opening Brief, *see* Appellants' Op. Br. at 25–29, 60, 67, thus providing the State a fair opportunity to address them in its Answering Brief.

CONCLUSION

For the reasons set forth above, Plaintiffs ask this Court to take judicial notice of the attached Exhibits.

Respectfully Submitted,

/s/ Robert E. Dunn

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February 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Robert E. Dunn

ROBERT E. DUNN

CERTIFICATE OF COMPLIANCE

This Request for Judicial Notice complies with the type-volume limitation of Circuit rules 27-1(1)(d) and 32-3(2) because it contains 1,109 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 27-1(1)(d).

Pursuant to Federal Rule of Appellate Procedure 27(d)(1)(E), this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 Century Schoolbook 14-point font.

/s/ Robert E. Dunn
ROBERT E. DUNN

February 2, 2021

**DECLARATION OF ROBERT E. DUNN IN SUPPORT OF
REQUEST FOR JUDICIAL NOTICE**

I, Robert E. Dunn, declare as follows:

1. I am admitted to practice in the State of California and represent Plaintiffs in this case. I have personal knowledge of the facts stated below, and if called to testify, could and would testify competently to these facts.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the press release published by the Office of Governor Gavin Newsom on December 30, 2020: *Governor Newsom Unveils California's Safe Schools for All Plan*, available at <https://tinyurl.com/y7ugmwj6>.

3. Attached hereto as **Exhibit 2** is a true and correct copy of *Summary: California's Safe Schools for All Plan*, Cal. Dep't of Pub. Health (Dec. 30, 2020), available at <https://tinyurl.com/y7otzspy>.

4. Attached hereto as **Exhibit 3** is a true and correct copy of *Rationale: California's Safe Schools for All Plan*, Cal. Dep't of Pub. Health (Dec. 30, 2020), available at <https://tinyurl.com/y9tbpa4x>.

5. Attached hereto as **Exhibit 4** is a true and correct copy of *Evidence Summary: TK-6 Schools and COVID-19 Transmission*, Cal.

Dep't of Pub. Health (Dec. 30, 2020), available at <https://tinyurl.com/y22mxztr>.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed in San Jose, California, on February 2, 2021.

/s/ Robert E. Dunn
Robert E. Dunn

EXHIBIT 1

Governor Newsom Unveils California's Safe Schools for All Plan

Published: Dec 30, 2020

Governor outlines framework to continue and expand safe in-person instruction in early spring, including a \$2 billion early action proposal to support school safety measures

Governor's plan is built on four pillars: Funding to Support Safe Reopening; Safety & Mitigation Measures for Classrooms; Hands-on Oversight & Assistance for Schools; and Transparency & Accountability for Families & School Staff

Governor also announces Dr. Naomi Bardach, a UCSF pediatrician and expert on school safety for COVID-19, as the leader of a cross-agency Safe Schools for All Team

SACRAMENTO – Governor Gavin Newsom today released the State Safe Schools for All plan, California's framework to support schools to continue operating safely in-person and to expand the number of schools safely resuming in-person instruction. Informed by [growing evidence](#) of the decreased risks and increased benefits of in-person instruction – especially for our youngest students – Governor Newsom is advancing a strategy that will help create safe learning environments for students and safe workplaces for educators and other school staff. The plan was developed in partnership with the Legislature, and the Governor will propose an early action package to ensure schools have the resources necessary to successfully implement key safety precautions and mitigation measures. Components of the plan will be launched in the coming weeks.

“As a father of four, I know firsthand what parents, educators and pediatricians continue to say: in-person is the best setting to meet not only the learning needs, but the mental health and social-emotional needs of our kids,” said Governor Newsom. “In the midst of this pandemic, my Administration is focused on getting students back into the classroom in a way that leads with student and teacher health. By focusing on a phased approach with virus mitigation and prevention at the center, we can begin to return our kids to school to support learning needs and restore the benefits of in-person instruction. It's especially important for our youngest kids, those with disabilities, those with limited access to technology at home and those who have struggled more than most with distance learning.”

The Administration's strategy focuses on ensuring implementation and building confidence by bringing back the youngest children (TK-2) and those who are most vulnerable first, then phasing in other grade levels through the spring. This phased-in return recognizes that younger children are at a lower risk of contracting and transmitting COVID-19. At the same time, distance learning will remain an option for parents and students who choose it and for those whose health status does not allow them to return to school in the near term. Please find additional details about the rationale behind the plan [here](#).

California's Safe Schools for All framework to safe reopening of in-person instruction is built on four pillars:

- 1. Funding to Support Safe Reopening:** The Budget will propose for immediate action in January, \$2 billion to support safety measures – including testing, ventilation and PPE – for schools that have resumed in-person instruction or phasing in of in-person instruction by early spring.
- 2. Safety & Mitigation Measures for Classrooms:** To further ensure health and safety in the classroom, the Administration will support implementation of key health measures. This will include frequent testing for all students and staff, including weekly testing for communities with high rates of transmission; masks for all students and staff, including distribution of millions of surgical masks for school staff; improved coordination between school and health officials for contact tracing; and prioritization of school staff for vaccinations.
- 3. Hands-on Oversight & Assistance for Schools:** Dr. Naomi Bardach, a UCSF pediatrician and expert on school safety, will lead the Safe Schools for All Team, a cross-agency team composed of dedicated staff from CDPH, Cal/OSHA, and educational agencies. The Team will provide hands-on support to help schools develop and implement their COVID-19 Safety Plans. These supports include school visits and walk-throughs as needed, webinars and training materials and ongoing technical assistance.
- 4. Transparency & Accountability for Families and Staff:** A state dashboard will enable all Californians to see their school's reopening status, level of available funding and data on school outbreaks. Additionally, a web-based “hotline” will empower school staff and parents to report concerns to the Safe Schools for All Team, which will lead to escalating levels of intervention beginning with technical assistance and ending with legal enforcement.

Please find additional details about the components of the plan [here](#).

“These four pillars will serve as tools to safely guide our state's return to in-person instruction and protect the health of students, educators and all school staff,” said CHHS Secretary Dr. Mark Ghaly. “As a pediatrician and father, I know schools are the best place our kids can be and the positive impact in-person learning has on their overall health and well-being.”

Throughout the course of the COVID-19 pandemic, Governor Newsom has prioritized the health and safety of California's children and educators. He has worked tirelessly to ensure that learning continues, whether it is taking place in a living room or a classroom. Within 72 hours of the first school closures, the State of California issued guidance for schools to provide instruction through distance learning. Beginning in May, the state also issued guidance regarding key school safety precautions and has continued to update the guidance, including pathways – regardless of county tier status – for all schools to serve elementary school students via waivers and to serve students with disabilities and others via stable cohorts. The Newsom Administration has also worked to build a pipeline of PPE and get critical supplies into the hands of students and educators and to bridge the Digital Divide with device donations, pledges from internet service providers and an executive order marshaling cross-agency resources to solve longer-term barriers to connectivity. In partnership with the Legislature, Governor Newsom secured \$5.3 billion for California schools and fought hard to make sure that those funds were distributed equitably, taking into account school demographics and needs of students with disabilities and other student populations disproportionately impacted by the pandemic.

Governor Newsom has also prioritized students with special needs. The federal Individuals with Disabilities Education Act, which entitles children with disabilities to special education and related services through an Individualized Educational Program (IEP), has not been suspended during the COVID emergency. The budget enacted in June included trailer bill language (SB 98) making clear that distance learning must include required special education and related services for eligible students and that schools must determine what accommodations are necessary to ensure that required IEP services can be delivered in a distance learning environment. Thus, the state expects, and state law requires, schools implementing distance learning must deliver services required under IEPs.

Leaders and advocates react:

“This framework is a positive step forward in ensuring that every child – regardless of where they may live or be enrolled in school – has the ability to receive quality instruction in California. Students learn and perform at their best in person, and parents across the state are anxious to ensure that their kids don’t fall further behind due to the pandemic. I share the Governor’s goal of returning to in-person instruction as quickly and as safely as possible, and look forward to continue working with the Administration on this important issue,” said Senator Connie M. Leyva (D-Chino), Chair of the Senate Education Committee.

“Offering as many California students in-person instruction as safely and as quickly as possible must be a team effort. All of us agree that, even during a global pandemic, learning is non-negotiable, and students learn best when they can be safely receiving instruction in school. The Governor’s plan is a first step towards reopening schools safely and I look forward to further discussions with him and the Legislature on this critical issue,” said Assemblymember Patrick O’Donnell (D-Long Beach), Chair of the Assembly Education Committee.

“A safe return of kids to the classroom is on the wish list of countless California families, and Governor Newsom’s Safe Schools for All Plan paves the way. The plan is rooted in science, health and safety – all key tenets to any conversation about returning to in-person instruction,” said California State PTA President Celia Jaffe.

“Getting our kids back to school safely must be the top priority for our state and guide our reopening policy. School is an essential service for millions of California children and their families, especially in lower-income communities where we are seeing higher rates of adverse health impacts tied to prolonged time away from the classroom. Getting schools reopened quickly and safely is an issue of equity. CMA stands ready to help policy makers and educators find ways to prioritize the needs of our children and their families, while ensuring that educators and kids are able to return to the classroom safely,” said Shannon Udovic-Constant, MD, Chair of the California Medical Association Board of Trustees.

“CSEA is appreciative of the governor’s continued commitment to safe reopening of California schools. Our members do the critical work of ensuring our students are healthy, safe, and ready to learn. Our Association President, Board of Directors, members, and staff look forward to continuing our partnership with state and district leaders to get our schools opened safely at the appropriate time, considering the needs of students, families, school employees, and our local communities,” said Keith Pace, Executive Director of the California School Employees Association.

“The pandemic and remote learning are delivering a double dose of harm to California public education. Black and Brown students especially are falling further behind academically and socio-emotionally and the school system as a whole is losing credibility with the public, despite heroic efforts. The solution to both problems is getting students back on campus safely, in person with their teachers and their peers. The proposal announced today holds real promise to accelerate that effort and to avoid surrendering the whole year as lost to the pandemic,” said Public Advocates Managing Attorney John Affeldt.

“I am in full support of Governor Newsom’s plan to reopen schools in California. We now have evidence from other countries and states that if we take the proper precautions we can open schools safely in several communities. The plan he has developed is sound and based on the best research available for keeping children and adults safe,” said Pedro Noguera, Dean of the USC Rossier School of Education.

For more information about the components of the plan, please click [here](#).

For more information about the rationale behind the plan, please click [here](#).

For more information about the science underpinning the plan, please click [here](#).

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EXHIBIT 2

Throughout the course of the COVID-19 pandemic, Governor Newsom has prioritized the health and safety of California's children and schools. As a father of four, Governor Newsom agrees with parents, educators, policymakers, and pediatricians that in-person is the best setting to meet not only the core learning needs of students, but also their mental health and social-emotional needs. It's especially important for our youngest kids, students with disabilities, and those already disproportionately impacted by the pandemic. Resuming in-person instruction is critical for kids, families, and communities throughout the state.

The safety of staff and students is foundational. With growing evidence that the right precautions can effectively stop the spread of COVID-19 in schools—especially in elementary schools—the Administration is committed to doing everything it can to make in-person instruction in schools safe for students and staff. Developed in partnership with the Legislature, the Administration's plan focuses on ensuring careful implementation and building confidence by supporting schools to bring back the youngest children (TK-2) and those who are most disproportionately impacted first, then phasing in other grade levels through the spring, as conditions allow. This phased-in approach recognizes that younger children are at a lower risk of contracting and transmitting COVID-19, with core safety measures in place.

At the same time, distance learning will remain an option for parents and students who choose it and for those whose health status does not allow them to return to school in the near term.

Today, Governor Newsom pledges to advance, with the Legislature, California's Safe Schools for All Plan, built on four pillars:

1. **Funding.** The Budget will propose for immediate action in January, \$2 billion for the safe reopening of schools beginning in February, with a priority for returning the youngest children (TK-2nd grade) and those who are most disproportionately impacted first, then returning other grade levels to in-person instruction through the spring. These funds will provide approximately \$450 per student to school districts offering in-person instruction and will be weighted for districts serving students from low-income families, English learners and foster youth.
2. **Safety & Mitigation.** To further ensure health and safety in the classroom, the Administration will focus on implementation of key measures, including testing, PPE, contact tracing, and vaccinations.
 1. **Testing.** The Administration will support frequent COVID-19 testing for all school staff and students, including weekly testing at schools in communities with high rates of transmission. For example, any interested public school will be on-boarded to the state-owned Valencia Branch Lab for PCR tests at one-third the market rate and the State will establish a hotline to help schools implement testing.
 2. **PPE.** All staff and students in schools are required to wear masks. Furthermore, surgical masks will be recommended for school staff, and the Administration will distribute millions of surgical masks to schools at no cost. The Administration has also enabled schools to leverage state-negotiated master contracts for PPE to reduce costs and streamline supply chains.
 3. **Contact Tracing.** Schools will continue to be on-boarded onto the School Portal for Outbreak Tracking (SPOT) to improve collaboration between school and health officials, and members of the state contact tracing workforce will be deployed to improve communication with schools.
 4. **Vaccinations.** School staff will be prioritized in the distribution of vaccines through the spring of 2021.
3. **Oversight & Assistance.** Dr. Naomi Bardach, a UCSF pediatrician and expert on COVID-19 transmission in schools, will lead the Safe Schools for All Team, a cross-agency team composed of dedicated staff from CDPH, Cal/OSHA, and educational agencies. The Team will provide hands-on support to help schools develop and implement their COVID-19 Safety Plans. These supports include school visits and walk-throughs as warranted, webinars and training materials, and ongoing technical assistance.

4. **Transparency & Accountability.** A state dashboard will enable all Californians to see their school's reopening status, level of available funding, and data on in-school transmissions. Additionally, a web-based "hotline" will empower school staff and parents to report concerns to the Safe Schools for All Team, which will lead to escalating levels of intervention, starting with technical assistance and ending with legal enforcement.

California's Safe Schools for All Plan provides the support and accountability to establish a clear path to minimize in-school transmissions and enable, first, a phased return to in-person instruction, and then ongoing safe in-person instruction.

EXHIBIT 3

Protecting the safety and wellbeing of California's children throughout the COVID-19 pandemic has been a top priority of the Newsom Administration. The benefits of in-person instruction are plain to see, especially for our youngest students and students disproportionately impacted by the pandemic. Now, with growing evidence that the right precautions can effectively stop the spread of COVID-19 in schools—particularly in elementary grades—the Administration is committed to doing everything it can to support students and staff to safely return to in-person instruction.

We have learned a great deal since the beginning of the pandemic, and both national and international studies demonstrate the relatively low risks and high benefits of educating students in classrooms—especially for elementary grades.

With the Right Precautions, We Can Minimize Transmissions in Schools—Especially in Elementary Grades

Research across the globe shows that children get COVID-19 less often than adults, and when they do get sick, they get less sick than adults. Population-wide studies in Italy and Spain using antibody tests, which indicate whether a person has been infected at any point previously, find that children have lower rates of infection compared to adults.

In studies of open schools in America and around the world, children do not seem to be major sources of transmission—either to each other or to adults. In fact, the greatest risk in school settings comes from adults transmitting it to other adults, often in settings like breakrooms where we sometimes let down our guard. One study in Australia of 10 early childhood centers and 15 schools (>6000 people) found low rates in the schools overall (1.2%), and an adult-to-adult transmission rate almost 15 times higher than child-to-child transmission.

The growing body of evidence is particularly strong for lower risks associated with elementary schools. For example, a study analyzing elementary schools in a heavily impacted region of France found that the risks of transmission inside schools were approximately the same as outside schools. The lower risks associated with younger grades is likely due to, among other reasons, the fact that younger people produce fewer ACE-2 receptors—COVID's doorway into human cells.

Even in communities with many COVID cases, we do not see many outbreaks in schools. That's because the right precautions can stop outbreaks before they start. Evidence shows that schools with the right mitigation strategies have been able to prevent in-school transmission among students and staff.

We know what works. We can stop the spread in schools by layering and carefully implementing mitigation strategies, including masks, cohorting, proper ventilation, washing hands, testing and symptom screening.

For more information, please refer to Evidence Summary: TK-6 Schools and COVID-19 Transmission (California Department of Public Health)

In-Person Instruction Is Critical for Learning and Growth—Especially in Elementary Grades

While California has made great strides in distance learning—and this option will remain for parents and students who choose it and for those whose health status does not allow them to return to school in the near term—remote learning is still very challenging for many students and their caregivers. In a recent survey by the Alliance for

Children's Rights, 42% of caregivers reported that they are not comfortable supporting youth in their care with technology needs, and 39% of caregivers reported that they are not comfortable providing academic support to the youth in their care during distance learning.

Older students are better equipped to manage technology and benefit from distance learning, but younger students—especially TK-2—are less equipped. Furthermore, the social-emotional skills cultivated in the youngest grades are foundational for future wellbeing. In the classroom, students learn not only academic skills, but social and emotional skills as well. In a classroom of peers led by an expert teacher, students learn to listen and focus, to share, to wait their turn, to encourage others and to allow others to encourage them. They also begin to learn skills such as self-awareness, social awareness, self-management and responsible decision-making that will carry them through life.

There are also immediate health-related benefits for children who are provided in-person instruction, including lower rates of anxiety and depression, higher rates of immunizations, and other positive indicators of public health and wellbeing. These benefits are particularly critical for foster youth, homeless youth, and other students disproportionately impacted by the pandemic, for whom school provides safety and stability. In-person instruction also helps school staff to detect and address child abuse and neglect. For example, the state observed a roughly 40% drop in child welfare referrals following the stay-at-home orders in March 2020 compared to spring averages from the prior year.

Conclusion

Through careful implementation of safety measures and by phasing in our youngest students—who are at lowest risk and stand to benefit the most from in-person settings—we can build experience, confidence, and trust that our schools can be both safe workplaces and safe learning environments.

EXHIBIT 4

COVID-19

Related Links:

- Safe Schools for All Summary
- Safe Schools for All Rationale

Evidence Summary: TK-6 Schools and COVID-19 Transmission

This is a summary document of the evidence thus far that informs safe and successful in-person instruction in TK-6 schools in the context of the COVID-19 pandemic. The overall topics covered include: frequency of infection in elementary-aged students; why they get it less often and with less severe disease than adults; transmission patterns in elementary-school aged students; transmission patterns in TK-12 schools; and the evidence for COVID-19 transmission mitigation strategies particular to the school context.

This summary is not comprehensive, but focuses on the best evidence we have to inform us regarding the safety of in-person instruction for TK-6 students. The studies cited are chosen for their rigor, rather than because they support a specific position regarding whether or not it is safe to be open. We have learned a considerable amount since March 2020 regarding schools, through scientific studies of schools or camps that have been open in the U.S. or internationally. Because change is the only constant in the COVID-19 pandemic, we will continue to gather and monitor the evidence carefully, to inform safe and successful schooling.

Why Children Get COVID-19 Less Frequently and Have Less Severe Disease

In epidemiological studies globally and nationally, the evidence suggests that children seem to get COVID-19 less frequently than adults. Originally it was thought that they might be less frequently diagnosed due to less testing because children are more often asymptomatic or have less severe symptoms. However, population-wide studies in Iceland and Spain using antibody tests that assess prior infection at any time find that children have lower rates of infection compared to adults.

There are two general explanations for why children get COVID-19 less frequently and have less severe disease compared to adults. The first is that they produce fewer ACE-2 receptors. Essentially, ACE-2 receptors are the doorway into human cells for SARS-CoV-2, the virus that causes COVID-19. A study from May 2020 showed that elementary students produce fewer ACE-2 receptors than middle and high school-aged students, who produce fewer receptors than receptors adults. Consequently, children have fewer doorways into the body for the virus, which leads to fewer infections and less severe infections for those who catch the virus.

The other explanation is that, because children's immune systems are used to fighting off common colds, they are better primed to fight off COVID-19. Other viruses in the same family (coronaviruses) as the SARS-CoV-2 virus cause the common cold. Since they are in the same family of virus, some parts of the virus, including something called the S2 spike, are very similar. There is a study of children from 2011-2018 (before SARS-CoV-2 appeared) that shows that more children (ages 1-16) had antibodies against the S2 spike than young adults (17-25), likely because they have coughs and colds from other coronaviruses more often than adults. It is likely a combination of these two phenomena—ACE-2 receptor production and pre-existing antibodies to other coronaviruses—that explain why children get disease less frequently and less severely.

Children with COVID-19 Most Often Get It from a Household Contact

When children do get COVID-19, the predominant pattern of transmission is to get the infection from an adult household contact (someone the child lives with at home who has COVID-19). High rates of household infection from adults to children have been seen in studies from Chicago, India, Greece, Australia, Switzerland, South Korea, and China. This has been seen even in settings where schools were open. For instance, a study of 10 early childhood centers and 15 schools (>6000 people) found low rates in the schools overall (1.2%) and >90% of cases were from the community, not from in-school transmission.

Transmission Among or from Students Is Uncommon

A recent study in the Morbidity and Mortality Weekly Report (MMWR) from the Centers for Disease Control and Prevention (CDC) found that for students, going to schools was not associated with having a positive COVID-19 test, but that social gatherings were—including weddings, parties, and playdates. This likely reflects the more controlled school environment leading to a low risk of transmission. It may also be that families who were going to these types of higher-risk social gatherings may have had other higher risk behavior such as decreased mask use.

The study from Australia mentioned above investigated the cases where there was transmission in school. It found that, of children who tested positive—a low number relative to the total number of students—only 0.3% had had contact with another child who was positive (child-to-child transmission). Child-to-adult transmission occurred only 1% of the time. In contrast, adult-to-child transmission occurred 1.5% of the time, and adult-to-adult transmission was 4.4%, almost 15 times higher than child-to-child transmission. This was in the context of masks not being encouraged at the time in Australia, though small groups and physical distancing recommendations were in place. The higher risk of adults transmitting to others compared to children transmitting to others is likely due to adults getting COVID-19 more often than children and youth, and adults having worse symptoms like cough, which makes it easier to transmit the virus.

These data suggest that adult-to-adult transmission is the most likely scenario for in-school transmission. This indicates that we have more control over in-school transmission, since adults are more likely to be able to adhere to policies for mitigation strategies such as masking and physical distancing. To achieve low in-school transmission, school communities will need to remain focused on ensuring places like teacher/staff break rooms are well-controlled and on effectively implementing the core mitigation strategies for staff as well as for students.

Low Risk of Transmission in Elementary Schools

The data indicate that the risk of transmission in elementary schools can be low. Two studies from early in the pandemic in Oise, one of the most heavily affected areas of France, focused on elementary schools and the local high school. Both studies examined the presence of antibodies (evidence of prior infection) to the SARS-CoV-2 virus in students and staff who had been attending the open schools without any precautions (e.g., masking, distancing) in place. The high school study showed evidence of potential spread within the school, with 43% of teachers, 59% of other school staff, and 38% of students with antibodies, compared to community prevalence of 9%. The elementary school study included six schools and >500 students, with only 9% of students, 7% of teachers, and 4% of non-teaching adults with antibodies, very similar to community prevalence. The lower transmission in the elementary schools likely reflects the lower infection rates and lower severity of illness in elementary students. However, it also likely reflects the much higher rates of student mixing in a traditional high school curriculum. This highlights why a modified high school curriculum that creates stable groups can substantially mitigate the risk of widespread in-school transmission in high schools.

Lessons About What Not to Do

In addition to the studies above, a study from a middle and high school in Israel after re-opening in May illustrates the need for mitigation strategies to support safe schools. The school re-opened in May, with no physical distancing measures in place. Due to a heat wave, they stopped requiring masking for two days and had closed windows with air conditioners. During the two days without masking or proper ventilation, two symptomatic cases were in the school, leading to an outbreak across more than 100 students and staff. This study highlights the risk of spread without mitigation strategies—teaching us what not to do. Core strategies include masks, physical distancing, enhanced ventilation with open windows and without strong inward-directed air currents, and symptom screening.

Testing Students and Staff with Symptoms Can Prevent Outbreaks

Though approximately 40% of children do not have symptoms of COVID-19, symptom screening will still identify children with a higher likelihood of COVID-19 compared to students without symptoms. Screening students and staff and excluding those with symptoms creates a system for preventing possibly infectious people with COVID-19 from coming to school, thereby avoiding or breaking the chain of in-school transmission. One potential option for getting cleared to return to school after having symptoms includes getting tested. So, in addition to helping to prevent in-school transmission, the screening and testing of symptomatic students and staff provides ongoing data about COVID-19 in school communities.

Core Mitigation Strategies

The successful approach to preventing transmission in schools leverages layers of safety strategies. Core strategies include: masks; physical distancing; small, stable groups; hand hygiene; ventilation; screening for symptoms or close contact; and asymptomatic testing. Each layer provides additional protection and, when used together, have been associated with low or zero transmission, even in communities with high COVID-19 prevalence (paper in-press at *Pediatrics*). A modeling study examined the efficacy of different mitigation

strategies to prevent in-school COVID-19 transmission. The study compared the efficacy of masking, monthly and weekly testing of teachers and students, and stable groups of students and staff, examining each strategy alone and then examining combinations of strategies. The authors looked at how much each strategy could decrease the proportion of symptomatic infections for teachers in high schools, middle schools and elementary schools, and for students, and for household members of students or teachers. They found that masks alone and stable cohorts alone were more effective than even weekly testing of students and teachers. This illustrates again the importance of masks and stable cohorts.

In Summary:

Though the evidence continues to evolve, we know more now than we did in July regarding how to prevent transmission in schools. We have learned from examples of what works and what does not work. Core mitigation strategies are necessary for safe and successful schooling. If those mitigation strategies are implemented as several layers of safety, elementary schools can be safe workplaces for teachers and other staff and safe learning environments for children.

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