



San Diego County Office of Education Main Campus
6401 Linda Vista Road, San Diego, CA 92111
858-292-3500 | www.sdcoe.net

December 14, 2020

VIA E-MAIL TO:
YChang@cta.org

Mr. York Chang
CTA Staff Attorney
California Teachers Association
11745 East Telegraph Road
Santa Fe Springs, California 90670

Re: Response to Cease and Desist Letter re School Re-Openings

Dear Mr. Chang:

Thank you for speaking with me over the past several days concerning the Cease-and-Desist letter sent to Dr. Paul Gothold and Mr. Bob Mueller dated December 9, 2020.

Since your letter has been referred to me for review and reply, I have had an opportunity to explore the factual basis of your letter and the allegations contained therein, in addition to clarifying the position of the San Diego County Office of Education (SDCOE) and what we have done in support of that position.

Although I have responded to you via email on most of these issues, just for clarification we are providing the following information to formally respond to your letter.

In your letter you stated that SDCOE “Improperly Condoned Unlawful In-Person Instruction in Purple Tier Districts, Despite Rising Public Health Threats and a Lack of District Capacity to Safely Reopen”. As I stated to you on December 9 and 10, 2020, your belief is in error and does not accurately reflect the position of SDCOE. Likewise, the factual basis upon which you have made your determination is also unsubstantiated. In further support of this position, we received a copy of a statement today clearly indicating that San Dieguito School District is **not** following the advice or guidance of SDCOE. (Attachment A)

The SDCOE has provided guidance on school reopening which we believe is consistent with the California Department of Public Health (CDPH) guidance for schools. The partial emails provided to you by others do not reflect the full breath of conversations held around this issue. On several occasions, Mr. Mueller and SDCOE staff verbally provided information and sent emails addressing this issue and reiterated that we believe our advice follows CDPH, but also highlighting the difference and advising districts of the same.

Some districts have decided to follow the direction provided by the San Diego County Department of Public Health (County) as the county is the lead agency; others have followed the CDPH guidance shared by SDCOE. As I discussed with you Thursday, December 10, 2020, pertinent emails on this subject are attached for your reference. (Attachment B) These emails clearly indicate that SDCOE is following and providing guidance consistent with the CDPH issued rules on reopening contained in its July 2020 Reopening Framework and School Guidance.

As we further discussed, we do not disagree that “Purple Tier Districts May Not Use Small Cohort Operations to Open In-Person to All Students”. Any assertion or representation to the contrary is simply not accurate and again, a misrepresentation of our position.

We take particular exception to your intimation that SDCOE is somehow willfully denying the CDPH orders concerning “reopened” and reopening schools. To make such a statement based on hearsay and non-verified information is irresponsible and certainly not evidencing an interest in ascertaining the truth of the matter and addressing any concerns you may have. Had your office communicated with either me or the superintendent, you would have learned that there is a difference between the County of San Diego and the San Diego County Office of Education and known to address your concerns accordingly. Nonetheless, going forward, I appreciate your willingness to discuss potential issues with us beforehand.

In response to the emails, you sent December 10 and 11, 2020, let me again clarify that SDCOE has absolutely no authority to compel a district to follow any guidelines. School districts are completely independent public agencies that do not fall under the jurisdiction of any county office of education absent specific legislative authority. If districts are not complying with CDPH guidance, then their non-compliance is inconsistent with our guidance. We emphatically do not condone any district not following CDPH guidelines, however, when the County of San Diego provides a different opinion, districts have the option of following it over any objections we may have. The most we can do is to continue to point out the difference in opinion between the county and the SDCOE. Please know that in response to the difference of opinion we have with the county, we have been informed that they will be seeking clarification from CDPH. I have replied directly and further to your other emails so I will not restate those responses here.

Next, I did not say that the General Counsel's Office provided any letter(s) to the County of San Diego. Our office has not provided advice directly to districts and no letters have been sent by the General Counsel's Office; all correspondence on this issue has come from SDCOE staff. Copies of the emails from Mr. Mueller and staff to the county concerning their position are attached as indicated above. We have challenged the advice given by the county and they have represented that they are seeking clarification from CDPH. Once the county notifies us of CDPH's response, we will share the response with local school districts in writing. A link is also imbedded herein below that will give you access to all of our guidance.

Link: [District Resources page](#), Communications to Superintendents

Finally, as I discussed with you, the December 9, 2020, letter from your office puts SDCOE in a bad light and misrepresented our position. We have asked for a letter of clarification and correction, to which you have so graciously agreed to provide.

We appreciate your willingness to clarify any misstatements and open the lines of communication, we will reiterate our position to districts.

If you need any additional information or have any questions or concerns, please do not hesitate to contact me at akonigar@akaesq.com or at (951) 662-6026.

Regards,



Adrienne Konigar-Macklin
Firm General Counsel
San Diego County Office of Education
Law Offices of Adrienne Konigar & Associates

Attachment A

Statement in Response to CTA/SDFA Cease and Desist Letter

On Wednesday, December 9, 2020, The California Teachers Association emailed the San Dieguito Union High School District a letter on behalf of the San Dieguito Faculty Association demanding the district cease and desist from further expansion of our reopening. The basis for this demand, they assert, is that the district, by expanding reopening while San Diego County is in the Purple Tier, is unlawful and contrary to the guidance issued by the California Department of Public Health. Attached to the district letter was one that was sent to the San Diego County Office of Education that asserted they were responsible for giving school districts incorrect advice about expanding reopening plans.

The district did not, and is not, relying on advice from the SDCOE for our expanded reopening plans. The controlling authority regarding whether schools can open or expand openings in San Diego County is the Public Health Officer, Dr. Wooten. She issues orders, which we are required to follow. We have been in constant contact with her staff and rely on them for guidance. The Chief Resilience Officer for San Diego County is responsible for compliance and he has assured us that unless a written clarification comes from CDPH that changes San Diego County's interpretation of existing guidance, we can continue to expand our reopening. If we do receive updated guidance from San Diego County that indicates we must pause or change our expanded reopening plans, we will comply.

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December 14, 2020

Attachment B

From: Bob Mueller <bmueller@sdcoe.net>
Date: November 12, 2020 at 7:49:56 AM PST
To: "Johnston, Gary" <Gary.Johnston@sdcounty.ca.gov>
Cc: "Gordon, Katherine" <Katherine.Gordon@sdcounty.ca.gov>, Music Watson <music.watson@sdcoe.net>
Subject: RE: CDPH FAQ

Hi Gary,

I'm not sure the example of 10 students was intended to be viewed as an upper limit, but we will give the following answer in response to questions on this topic:

"The county has advised us the litmus test they are using is that if a school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum, its in-person instruction. The school can continue to expand its in-person instruction via its phased reopening plan."

I do worry that school and district level disputes about reopening could center on the answer provided in the FAQ.

Bob Mueller
Duty Officer / Assistant Incident Commander
Emergency Operations
San Diego County Office of Education
Cell: [760-458-3729](tel:760-458-3729)

SDCOE Response to CTA Cease and Desist
December 14, 2020

From: Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>
Sent: Tuesday, November 10, 2020 6:34 PM
To: Bob Mueller <bmueller@sdcoe.net>
Cc: Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>; Music Watson <music.watson@sdcoe.net>
Subject: RE: CDPH FAQ

Bob,

First off...do we have any school claiming we're "in-person" with only 10 students being instructed?

We're focused less on FAQs and more on the existing documents – formal guidance documents.

A small private school could get severely and negatively impacted by such a statement / FAQ...

The litmus test we're using is that if a school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum, its in-person instruction. The school can continue to expand its in-person instruction via its phased reopening plan.

SF

GSI

Gary S. Johnston
Chief Resilience Officer / Agency Representative / County COVID-19 Reopening Lead
San Diego County Office of Emergency Services
[5580 Overland Ave., Ste. 100, San Diego, CA 92123](https://www.sdcounty.ca.gov/5580-Overland-Ave-Ste-100-San-Diego-CA-92123)
gary.johnston@sdcounty.ca.gov
Office: [858.715.2213](tel:858.715.2213) | Mobile: [858.357.6109](tel:858.357.6109)
www.readysandiego.org | www.sdcountyemergency.com | www.sdcountyrecovery.com
<image001.png>

For local information and daily updates on COVID-19, please visit www.sandiegocounty.gov/coronavirus.html. To receive updates via text, send **COSD COVID19** to **468-311**.

<image002.png>

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SDCOE Response to CTA Cease and Desist
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From: Erin Richison <erin.richison@sdcoe.net>

Sent: Friday, December 11, 2020 10:44 AM

To: kbaas@ramonausd.net; Paul Dautremont <pdautrem@guhdsd.net>; Tiffany Campbell <tiffany.campbell@smusd.org>; mercedes.lovie@oside.us; April Moore <amoore@euhsd.org>; Osborne, Carol <caosborne@powayusd.com>; robertson.me@vcpusd.org; Eric Brown <eric.brown@meusd.k12.ca.us>; dlemaster@powayusd.com; DeWitt Nicole <ndewitt@sandi.net>; Bob Mueller <bmueller@sdcoe.net>; Jeanette Chien <jeanette.chien@sdcoe.net>; Dan Wolfson <dawolfson@sdcoe.net>; Jeff Warshaw <jeff.warshaw@sdcoe.net>; Brian Butler <brian.butler@sdcoe.net>; Richard Carreon <richard.carreon@sdcoe.net>

Subject: Follow Up on 12.10.20 Secondary Assistant Superintendents Meeting

Good morning,

Thank you all for attending yesterday. I wanted to make sure you continued to have access to the [activity sheet](#) for the resources that were shared from Oceanside and San Diego Unified. I added the slides Nicole shared on policy and the resources Dr. Lovie shared on messaging.

In addition, Bob provided his slides for your reference (see attached) and sent some language and links to the sources in his slide presentation (see below).

These are basically all screenshots from the following sources:

Slide 2: [Blueprint for a Safer Economy](#) - Scroll to the bottom of the page and click on San Diego County.
Slides 3: [ICU Regions](#) – Scroll to the bottom of the page and click on the Southern California Region.
Slides 4 – 8 are from the County of San Diego’s [Daily Status Update](#). If this link doesn’t work, go to [Coronavirus in San Diego County](#), scroll to the bottom of the page and look for Daily Status Update.

On the question of what constitutes being reopened, the criteria articulated by the California Department of Public Health (CDPH) and the County of San Diego do not appear to be in agreement. On Oct. 20, the CDPH updated their [Aug. 3 FAQ](#), and included following question and answer:

What does it mean for a school to be “open” under the school reopening framework?

The school reopening framework set the rules for when “[s]chools and school districts may reopen for in-person instruction.” The term “open” or “reopen,” as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to “open” or “reopen” (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. **Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” under the [July 17](#) framework.** For example, a school serving 10 students for in-person instruction under the cohorting guidance is not “open” for in-person instruction, since such operations are permitted regardless of the school reopening framework.

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The County of San Diego has advised SDCOE that the litmus test they are using is that “if a school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum, its in-person instruction. The school can continue to expand its in-person instruction via its phased reopening plan.”

The County is aware that their position is in dispute and tells us that have requested clarification to the CDPH. School leaders whose schools have not clearly crossed the threshold described in the CDPH answer should proceed with caution when evaluating the reopening status of their schools and when making plans for expansion. In the absence of further guidance from the CDPH its hard to reconcile the County’s position with theirs. Whether the CDPH says more or not, they establish the standard we’re accountable to.

I hope you all have a restful break. Please reach out if our team can support you before we meet at the end of January.
Erin

Erin Richison, Ed.D.
Senior Director, District and School Improvement
Learning and Leadership Services
San Diego County Office of Education
Phone: [858-295-8978](tel:858-295-8978)
Cell: [619-889-2357](tel:619-889-2357)
Email: erin.richison@sdcoe.net

SDCOE Response to CTA Cease and Desist
December 14, 2020

From: "Gordon, Katherine" <Katherine.Gordon@sdcounty.ca.gov>
Date: December 7, 2020 at 3:44:46 PM PST
To: Bob Mueller <bmueller@sdcoe.net>, Music Watson
<music.watson@sdcoe.net>, "Johnston, Gary"
<Gary.Johnston@sdcounty.ca.gov>
Subject: RE: School Reopening Slide

We will hold on presenting this slide until we get a clear answer.

From: Bob Mueller <bmueller@sdcoe.net>
Sent: Monday, December 7, 2020 11:07 AM
To: Music Watson <music.watson@sdcoe.net>; Johnston, Gary
<Gary.Johnston@sdcounty.ca.gov>; Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>
Subject: RE: School Reopening Slide

I'll go ahead and draft the question and get it to you.

From: Music Watson <music.watson@sdcoe.net>
Sent: Monday, December 7, 2020 11:06 AM
To: Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>; Bob Mueller <bmueller@sdcoe.net>;
Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>
Subject: RE: School Reopening Slide

Given the need for clarification from CDPH, I would strongly encourage you to NOT include the slide below, or even to spend time trying to fix it until we have a clear answer.

I know you're not a fan of the CDPH answer, Gary, but if that's the answer, that's what we need to be telling people. Is there something we can do to expedite getting an answer from CDPH so that we can move forward with one response?

Music Watson, APR
Chief of Staff
San Diego County Office of Education
Office: [858-295-6625](tel:858-295-6625)
Cell: [619-818-6507](tel:619-818-6507)
@SanDiegoCOE

Please note my new office phone number. Thank you for updating your records!

SDCOE Response to CTA Cease and Desist
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From: Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>
Sent: Monday, December 7, 2020 10:59 AM
To: Bob Mueller <bmueller@sdcoe.net>; Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>
Cc: Music Watson <music.watson@sdcoe.net>
Subject: RE: School Reopening Slide

We're at the point that we need to reachout to the CDPH and get them to clarify and or edit their FAQ.

With the onslaught of questions I am receiving concerning the Regional Stay At Home Order, I have no time to craft the question we'd need to convey to CDPH to get a clear and concise answer.

If Katie and / or Bob could give it a crack...get something started, I'll roll in soonest.

Prior to that, if we want to get on the phone / zoom to further discuss the action plan to remedy this "gap" in clarity...I'm good with that...but not today, please!

GSI

SDCOE Response to CTA Cease and Desist
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From: Bob Mueller <bmueller@sdcoe.net>
Sent: Monday, December 7, 2020 10:51 AM
To: Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>; Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>
Cc: Music Watson <music.watson@sdcoe.net>
Subject: RE: School Reopening Slide

Katie and Gary,

I am very concerned about sharing this definition without also providing the CDPH FAQ answer that appears to set a different standard. School leaders need to be able to consider both answers, consult with key decision makers and take a stance that they can defend. Limiting the answer to what is portrayed below is incomplete and misleading. If all we give is what is displayed below, we run the risk of setting school leaders up for a big fall.

Bob Mueller
Duty Officer / Assistant Incident Commander
COVID-19 Emergency Operations

<image003.png>

Coordinator, Special Projects
San Diego County Office of Education
[858-298-2071](tel:858-298-2071) (new number)

SDCOE Response to CTA Cease and Desist
December 14, 2020

From: Rodriguez, KellyAnne <KellyAnne.Rodriguez@sdcounty.ca.gov>
Sent: Monday, December 7, 2020 9:50 AM
To: Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>; Bob Mueller <bmueller@sdcoe.net>; Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>; Thihalolipavan, Sayone <Sayone.Thihalolipavan@sdcounty.ca.gov>; Coleman, Thomas <Thomas.Coleman@sdcounty.ca.gov>; Lichtenstein, Gregg <Gregg.Lichtenstein@sdcounty.ca.gov>
Subject: School Reopening Slide

Hi team,

I am trying to pull together an image to help schools understand when they can and cannot offer in person learning. Can you all review and make sure it meets all points? The goal is to have this as a slide for the K12 telebriefing tomorrow.

<image004.png>

KellyAnne Rodriguez MPH, Community Health Program Specialist
Family Health and Preventive Services Unit
Public Health Services – Maternal, Child and Family Health Services
Cell: [619-433-8434](tel:619-433-8434)

COVID-Education@sdcounty.ca.gov
Education Sector, K-12 Support
County of San Diego COVID-19 Response

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[Coronavirus-sd.com/K12Schools](https://coronavirus-sd.com/K12Schools)

[Coronavirus-sd.com/CollegesandUniversities](https://coronavirus-sd.com/CollegesandUniversities)

<[image005.jpg](#)>

From: Bob Mueller <bmueller@sdcoe.net>
Date: December 4, 2020 at 7:51:53 AM PST
To: Mercedes Lovie <mlovie@icloud.com>
Subject: County and CDPH on "reopened"

Hi Mercedes,

The CDPH provided the following answer on reopening in this [FAQ](#):

What does it mean for a school to be “open” under the school reopening framework?

The school reopening framework set the rules for when “[s]chools and school districts may reopen for in-person instruction.” The term “open” or “reopen,” as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to “open” or “reopen” (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” under the [July 17](#) framework. For example, a school serving 10 students for in-person instruction under the cohorting guidance is not “open” for in-person instruction, since such operations are permitted regardless of the school reopening framework.

The County of San Diego’s answer is a bit different. They’ve advised us the litmus test the County is using to determine if a school was reopened while in the red tier is that the school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum. If this is the case the school can continue to expand its in-person instruction via its phased reopening plan. (Activities that constitute reopening of a school site do not constitute reopening of all district sites. Only those where in person instruction was actually occurring,)

In both answers I think the standard for “in person” is a teacher and students who are present physically in the same space engaged in teaching and learning. That being said I am concerned that the standard the county presents is not a close match with what the CDPH has outlined.

Schools that have reopened

- Are required to follow is the [industry guidance for schools and school based programs](#), and
- Phased reopening at each reopened site can continue.

For schools that have not reopened, work with small stable cohorts can continue, and be expanded, following the more restrictive [small cohort guidance](#). This [FAQ](#) on the cohort guidance is also very helpful.

SDCOE Response to CTA Cease and Desist
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Bob Mueller
Duty Officer / Assistant Incident Commander
COVID-19 Emergency Operations Coordinator, Special Projects
San Diego County Office of Education
[858-298-2071](tel:858-298-2071) (new number)

SDCOE Response to CTA Cease and Desist
December 14, 2020

From: Bob Mueller <bmueller@sdcoe.net>
Date: November 16, 2020 at 8:31:00 PM PST
To: "Johnston, Gary" <Gary.Johnston@sdcounty.ca.gov>
Cc: Music Watson <music.watson@sdcoe.net>
Subject: Re: Superintendent Feliciano

Thanks Gary. I'm glad you are in contact with him.

Sent from my iPad

On Nov 16, 2020, at 6:54 PM, Johnston, Gary <Gary.Johnston@sdcounty.ca.gov> wrote:

I replied Bob...just never got to you apparently.

I was in a bad area coverage wise.

I just replied to David (and Dr Wooten).

Essentially here is what I indicated:

"The FAQ is indicating that even if in Tier 1/Purple, a school can use the State's Guidance Related to Cohorts (cohort guidance) to conduct in-person instruction for small groups ("16 individuals total"), but that action does not permit a school to implement a broader / school-wide reopening for in-person instruction while in Tier 1/Purple.

The cohort guidance was designed to support schools, families, students in providing guidance for necessary in-person child supervision and limited instruction, targeted support services, and facilitation of distance learning in small group environments for a specified subset of children and youth. This guidance essentially helped alleviate the lack of day care and day camp opportunities for families and schools managing distance learning / hybrid models. Finally, the guidance clearly highlights (in BOLD) that "**Guidance and directives related to schools, child care, day camps, youth sports, and institutions of higher education are not superseded by this document and still apply to those specified settings.**"

The State COVID-19 and Reopening In-Person Learning Framework for K-12 schools is a State "guidance and directive related to schools" and it places no number or limit on the number of students necessary to initiate in-person instruction for a given school when in a Tier that permits reopening for in-person instruction (Tier 2 / Red).

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While in Tier 2/Red (and subsequent to 14 days in that Tier), many schools / districts initiated phased reopening plans, some of which commenced their in-person instruction with special needs students – often a limited number of students that informed the schools reopening plans for greater numbers of students / grades.

Again, if a school had not initiated its in-person instruction while in Tier 2, it CAN conduct small group / cohort in-person instruction per the State cohort guidance, but it cannot use/manipulate that guidance to “reopen” in-person instruction school-wide.”

Not sure if that clears things up for some / most...but the big problem is how the bloody FAQ was worded.

I'll see what is response is and keep you posted...

SF

GSI

Gary S. Johnston
Chief Resilience Officer / Agency Representative / County COVID-19 Reopening Lead
San Diego County Office of Emergency Services
[5580 Overland Ave., Ste. 100, San Diego, CA 92123](https://www.sdcountyemergency.com)
gary.johnston@sdcounty.ca.gov
Office: [858.715.2213](tel:858.715.2213) | Mobile: [858.357.6109](tel:858.357.6109)
www.readysandiego.org | www.sdcountyemergency.com | www.sdcountyrecovery.com
<image001.png>

From: Bob Mueller <bmueller@sdcoe.net>
Date: November 12, 2020 at 3:41:46 PM PST
To: "Osborne, Carol" <caosborne@powayusd.com>
Subject: Purple Impact on Reopening

Carol,

Gary Johnston, chief resiliency officer for the County of San Diego has advised us the litmus test they are using to determine if a school was reopened while in the red tier is that the school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum. If this is the case the school can continue to expand its in-person instruction via its phased reopening plan. (Activities that constitute reopening of a school site do not constitute reopening of all district sites. Only those where in person instruction was actually occurring,)

The question and answer I shared with you from the [FAQ](#) is included below.

What does it mean for a school to be “open” under the school reopening framework?

The school reopening framework set the rules for when “[s]chools and school districts may reopen for in-person instruction.” The term “open” or “reopen,” as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to “open” or “reopen” (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” under the [July 17](#) framework. For example, a school serving 10 students for in-person instruction under the cohorting guidance is not “open” for in-person instruction, since such operations are permitted regardless of the school reopening framework.

If your district considers its schools to be reopened based on the county’s standard, the guidance the sites are required to follow is the [industry guidance for schools and school based programs](#), and phased reopening at each reopened site can continue.

If you believe the sites should not be considered reopened, work with small stable cohorts can continue, and be expanded, following the more restrictive [small cohort guidance](#). If you go this route, this [FAQ](#) will be helpful.

Bob Mueller
Duty Officer / Assistant Incident Commander
Emergency Operations
San Diego County Office of Education
Cell: [760-458-3729](tel:760-458-3729)

From: Bob Mueller <bmueller@sdcoe.net>
Date: November 12, 2020 at 4:12:27 PM PST
To: Erin Richison <erin.richison@sdcoe.net>
Subject: RE: Question from Secondary Leaders meeting

Hi Erin,

The CDPH provided the following answer on reopening in this [FAQ](#):

What does it mean for a school to be “open” under the school reopening framework?

The school reopening framework set the rules for when “[s]chools and school districts may reopen for in-person instruction.” The term “open” or “reopen,” as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to “open” or “reopen” (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” under the [July 17](#) framework. For example, a school serving 10 students for in-person instruction under the cohorting guidance is not “open” for in-person instruction, since such operations are permitted regardless of the school reopening framework.

The County of San Diego’s answer is a bit different. They’ve advised us the litmus test the County is using to determine if a school was reopened while in the red tier is that the school is providing in-person instruction for a portion of its student body, and that instruction is provided by a certified teacher and based on a formal curriculum. If this is the case the school can continue to expand its in-person instruction via its phased reopening plan. (Activities that constitute reopening of a school site do not constitute reopening of all district sites. Only those where in person instruction was actually occurring,)

If your district believes some or all of its sites are reopened based on the county’s standard...

- the guidance their sites are required to follow is the [industry guidance for schools and school based programs](#), and
- phased reopening at each reopened site can continue.

If you believe the sites should not be considered reopened, work with small stable cohorts can continue, and be expanded, following the more restrictive [small cohort guidance](#). Leaders that go this route will find this [FAQ](#) helpful.

Does this help?

SDCOE Response to CTA Cease and Desist
December 14, 2020

Bob Mueller
Duty Officer / Assistant Incident Commander
Emergency Operations
San Diego County Office of Education
Cell: [760-458-3729](tel:760-458-3729)

SDCOE Response to CTA Cease and Desist
December 14, 2020

From: Bob Mueller <bmueller@sdcoe.net>
Sent: Tuesday, November 10, 2020 4:54 PM
To: Johnston, Gary <Gary.Johnston@sdcounty.ca.gov>
Cc: Gordon, Katherine <Katherine.Gordon@sdcounty.ca.gov>; Music Watson <music.watson@sdcoe.net>
Subject: CDPH FAQ

Gary,

The following question and answer in the [CDPH Schools FAQ](#) has me concerned.

What does it mean for a school to be “open” under the school reopening framework?

The school reopening framework set the rules for when “[s]chools and school districts may reopen for in-person instruction.” The term “open” or “reopen,” as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to “open” or “reopen” (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not “open” under the [July 17](#) framework. **For example, a school serving 10 students for in-person instruction under the cohorting guidance is not “open” for in-person instruction, since such operations are permitted regardless of the school reopening framework.**

The meaning I take from this is that schools whose on campus services have been consistent with the work that is described in the [August 3](#) cohort guidance have not initiated in person instruction on a broad enough scale to be considered reopened for in person instruction.

What is the county’s interpretation?

Respectfully,

Bob Mueller
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From: Bob Mueller <bmueller@sdcoe.net>
Date: December 7, 2020 at 3:23:32 PM PST
To: "Lawless, Andrea" <andrea.lawless@sduhsd.net>
Cc: "covid-education@sdcounty.ca.gov" <covid-education@sdcounty.ca.gov>
Subject: RE: Clarification of open?

Hi Andrea,

Dr. Gothold asked me to respond to your question. Unfortunately I don't have an easy answer for you.

The California Department of Public Health (CDPH) and the County of San Diego have both provided answers on what it means for a school to be considered "reopened for in person instruction" per the [July 17](#) reopening framework.

The CDPH included the following question and answer in their [schools FAQ](#):

What does it mean for a school to be "open" under the school reopening framework?

The school reopening framework set the rules for when "[s]chools and school districts may reopen for in-person instruction." The term "open" or "reopen," as used in the framework, refers to operations that are permitted only if the county satisfies the eligibility requirements for schools to "open" or "reopen" (i.e., red tier for 14+ days). This is in contrast to activities permitted under the Cohorting Guidance even for schools that are not permitted to reopen under the [July 17](#) school reopening framework. Schools that were operating only in the manner permitted under the Cohorting Guidance are therefore not "open" under the [July 17](#) framework. For example, a school serving 10 students for in-person instruction under the cohorting guidance is not "open" for in-person instruction, since such operations are permitted regardless of the school reopening framework.

The County of San Diego has informed us that the litmus test they're using to determine if a school was reopened while in the red tier is that the school was providing in-person instruction for a portion of its student body, and that instruction was provided by a certified teacher and based on a formal curriculum. Their position is that if this was the case the school can continue to expand its in-person instruction via its phased reopening plan even when the county is in the purple tier. The County also notes that activities that constitute reopening of an individual school site do not constitute reopening for all district sites. The only sites considered reopened are those where in person instruction was actually occurring.

We (SDCOE) have asked the County to verify their stance with CDPH. The apparent lack of consistency between the CDPH and County answers puts superintendents and school boards in the difficult position considering both answers, and weighing their implications while attempting to chart a course forward for their schools.

SDCOE Response to CTA Cease and Desist
December 14, 2020

I have copied the County of San Diego's education sector staff in case they have anything to add.

I hope this information is helpful.

Bob Mueller
Duty Officer / Assistant Incident Commander
COVID-19 Emergency Operations