



## **EMAIL PRESS RELEASE**

### **CONTACT INFORMATION:**

Dr. Curt Dubost  
Superintendent

[cdubost@pasoschools.org](mailto:cdubost@pasoschools.org)

FOR IMMEDIATE RELEASE NOVEMBER 16, 2020

I am writing to update the community regarding the current status of return to school after we return from Winter Break.

At the outset, I would like to thank the community, teachers, administration and our school board for their collaborative and problem solving approach during a time of great challenge and stress in public education.

As you may know, the District voted on October 6, 2020 to move to in-person hybrid for all students. The reopening plan was phased-in at the various District sites. Elementary schools have successfully commenced their hybrid reopening. At that meeting the Board voted also to return all secondary schools with the hybrid option on January 5, 2021. It was understood when the vote was made that the District would be serving struggling secondary students both on and off campus as needed during the period between the meeting and January 5, 2021.

Since that meeting, San Luis Obispo County returned to the Purple Tier of the Governor's Blueprint for a Safer Economy. Prior to the return to the Purple Tier, the District's understanding from Public Health was that a phased in reopening plan for a site would be considered a reopening if the county returned to Purple and would allow for return of secondary students as planned.

The District has continually advocated that position based on that understanding as shown on the correspondence included in this release. Recently, public health has indicated support for this position. This development may allow the District to resume in person instruction for secondary schools, even while in the Purple Tier, provided it complies with all health and safety protocols detailed in its reopening plan and sufficient staffing.

At this week's Board meeting, the Board of Trustees voted 7-0 to direct administration to continue with its reopening of secondary sites. They specifically endorsed that any return of secondary school teachers to hybrid while in the Purple Tier be entirely voluntary. The Board would appreciate hearing from interested parties.

Throughout the pandemic the unanimous position of the District Board has been and continues to be that all actions should be in accordance with County Health Department guidance. The Board and administration have also taken a position very candidly with the community and its labor partners to challenge any direction that seemed indefensible or arbitrary and to work in cooperation with, not at odds, with our teachers association. The vague and ever changing guidelines coming from the state and public health have been messy so I fully understand the position taken by the Teachers Association that they would like to discuss this further in negotiations and look forward to meeting with them to discuss and hopefully join with them in demanding more consistent and legally defensible state guidance as well as indemnification.

As it presently stands, our understanding is that public health does support our position that we have commenced our phased in reopening. As such, based on that understanding, we are proceeding with planning to attempt to provide in-person hybrid instruction to all students, who so opt in January. This in-person instruction is contingent upon voluntary secondary staffing being available.

In recognition of the additional concerns of the community and teachers of continuing secondary opening while in the Purple Tier, we have taken the position that the teacher return to in person during that period be strictly voluntary. We are working to meet with PRPE to facilitate that choice and determine how much hybrid in person instruction can safely be provided at the secondary level. As soon as we receive an update, we will promptly communicate to the community.

Given all of the uncertainty I cannot give you any guarantee of how much in person learning will begin in January at secondary schools. I can only promise you of the safe return of all students and staff to as much in person learning as we can safely provide remains our highest priority. Whatever happens it will not affect Home School nor the Distance Learning. I have also attached copies of my introductory statement Wednesday, my letter to Dr. Borenstein and her response, and our letter to State Superintendent Thurmond to which we have yet to hear a response

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December 4, 2020

Dr. Penny Borenstein, MD, MPH  
Health Officer/Public Health Director  
County of San Luis Obispo Public Health Department  
2191 Johnson Avenue  
San Luis Obispo, CA 93401

**Re: Continued Reopening of Flamson Middle School, Lewis Middle School and Paso Robles High Schools**

Dear Dr. Borenstein:

First, let me sincerely thank you for your hard work, patience, and recognition of the difficulties that schools have faced in these last nine months. I particularly appreciate how helpful and responsive you have been to me and to Paso Robles schools.

I must request additional clarity on the County of San Luis Obispo Public Health Department's position concerning the continued implementation of the Reopening Schools Guide (reopening plan) for Paso Robles Schools, as approved on July 23, 2020 and September 22, 2020 (attachment 1). This plan was submitted to your office for input and approval and was approved. Based on this Plan, and the Board of Trustees began the carefully phased timeline to safely reopen our various district school sites. At issue in this letter specifically, is the continued reopening of Daniel Lewis Middle School, George Flamson Middle School, Paso Robles High School, and our two alternative high schools, Liberty and Independence (together, "District Middle School and High School Sites").

As you can see from the attached Board of Trustees Meeting Minutes from September 22, 2020 (attachment 2) the Board voted to reopen the District Middle and High School sites as well as all the District elementary sites. The Board began the reopening process of the District Middle School and High School Sites by approving a plan to first bring "struggling students" back for in-person instruction on the District Middle School and High School Site campuses. Importantly, that phase of reopening for these sites went beyond the cohorts already being served (English as a Second Language [ESL], Special Education, etc., which also commenced in September). The District administration then pursued negotiations with its labor partners to implement the commencement of the reopening by serving struggling students as shown on the attached MOU (attachment 3), negotiated with the teacher's union. The District began implementing this instruction and these additional services at the District Middle and High School Sites on November 2, 2020, prior to the County returning to the purple tier on November 16, 2020. The District continued our phased reopening with staggered start times for TK-K (November 2), Grades 1-2 (November 16), and Grades 3-5



(November 30), and athletic reviewed conditioning – as reviewed and approved by your office. All public health guidance was followed with absolute fidelity.

The District Middle School and High School Sites rolled out their Reopening Plan in this fashion based on your representations to Superintendents at various meetings, as well as the applicable written guidelines (attachment 4). It was our clear understanding, as frequently confirmed by you and your office, that once the process to reopen sites was reviewed by your office and permitted to proceed, voted upon by the board and once roll-out had commenced, that process **WOULD NOT** be reversed – absent a total shutdown by the State.

This was our understanding until Friday, November 13, 2020, as I recall, when I understood you to announce that your discretion in the approval process had been overridden by state direction. It was not clear what the source of such “direction” was or what had changed since earlier guidance had been given. It was only then that we were advised of your position that we could continue reopening our District Middle School and High School Sites only if a full grade at a site had commenced in-person learning.

Existing state law and published CDPH guidelines that the District relied upon in designing its Reopening Plan do not support this change in your position and guidance. State law, per Education Code §43506, requires that schools should offer in-person instruction to the greatest extent possible. The framework for K-12 schools in California outlines standards for when schools should open and close for in-person instruction (attachment 5). Within those standards, local public health officials and school officials are asked to collaborate to make decisions *tailored to the needs of the community*. Per the California Department of Public Health, so long as a school site reopened when its county was not on the purple tier monitoring list, **it is not now required to close**. This is further supported by language in the CDPH FAQs, which provide that “if a school has opened when its county was not...on the monitoring list...the school will not be required to close if the county reenters the monitoring list”. See FAQs (attachment 6). Thus, based on a clear application of the CDPH Guidelines, the District Middle School and High School Sites should have the ability to continue their reopening rollouts.

A review of the current guidelines establishes that you **do** have the discretion to authorize the district to continue to implement reopening. The CDPH FAQs cited above substantiate this intent of the regulations. It states, “if a school was implementing a phased reopening...while the county was in the red tier, the school site may continue their phased reopening when the county reverts back to the purple tier *if authorized by a local health officer.*”

As shown on the Minutes to the Board meeting and the Memorandum of Understanding, the District Middle School and High School Sites opened in early November to certain students. At a minimum then, these five school sites were implementing a phased reopening while the County was in the red tier and may continue that phased reopening with your authorization.



Moreover, the district's reopening schedule was designed with health and limiting the spread of COVID to staff and students as a top priority. The plan focused first on getting the students most in need back on campus. The plan also allowed for cleaning and safety protocols to be tested and approved before the entire grade spans returned. The district began conducting mandatory staff COVID-19 testing and remains committed to the safety of staff and students as its top priority. **This was a prudent reopening rollout District wide and at the relevant sites, and entirely consistent with your recommendations and guidance and with the written CDPH guidelines.** We should not be penalized for our caution.

It is important to note that there is nothing in the guidelines stating that reopening must consist of a complete grade span.

As such, with your authorization as the Public Health Officer, the district should be able to offer in-person middle school and high school education to its middle and high school students as detailed under the plan.

**The district believes it is of utmost importance that we return as many students to in-person learning as wish to attend.** It is well documented that students are struggling with unprecedented mental health concerns. Our students are struggling academically as well. The district has 43% of high school students with at least one "F" grade and 31.1% with multiple failures. This is about double a normal year. Despite our best efforts, these numbers continue to worsen and standardized test data confirms both here and around the nation that students are not progressing academically, particularly in mathematics.

Additionally, we have concerns about the manner in which the county and public health is applying the guidelines to our sites, as opposed to how it is being applied to the private school sites. We understand that Mission College Preparatory High School was allowed to re-open as it had commenced its reopening, just like Paso Robles High School and our alternative sites. St. Rose Catholic School has opened through Grade 8 and has the ability to remain open. Mission College Preparatory High School is a smaller site with significant socio-economic differences from Paso Robles. To our knowledge, Mission College Preparatory High School is not being asked to stop their reopening. The Middle School and High School sites in Paso Robles developed a reopening plan that is just as, if not more, safety-focused than the plan developed at Mission College Preparatory High School. For example, Paso Robles has already been testing staff at regular intervals in strict adherence to your office guidelines. We have swiftly dealt with any tracing and isolation of any staff or student positives. Please see the detailed narrative of our most recent positive test and the District response (attachment 7).

Additionally, as you know, the Paso Robles district consists of significant numbers of students in constitutionally protected classes. Approximately 53% of the district students are of high needs (Foster, Homeless, low socio-economic, and second language). The closure of the



District Middle School and High School Sites that had commenced their reopenings would have a disparate impact on students who are included in protected classes. To put it mildly, this raises significant constitutional concerns. All available research and state statistics confirm that minority children and children living in poverty are all at exponentially greater risk of academic loss during distant learning.

It is therefore the district's position that the County of San Luis Obispo Public Health Department has no rational basis for treating Mission College Preparatory High School and St. Rose Catholic School differently from Paso Robles High Schools. Allowing Mission College Prep to continue to reopen but not allowing Paso Robles High School to continue its reopening is discriminatory, arbitrary, and has a disparate impact on students that are in protected classes such as racial minorities. It potentially violates the Equal Protection Clauses of the Constitutions of both the United States and the State of California.

Finally, recent communications from your office suggested that the rationale behind your change in position regarding reopening stemmed from an interpretation of language contained in CDPH "FAQs" (not regulations), which were published in late October. However, your office's interpretation of those guidelines is erroneous.

Firstly, FAQs are not law. Nor are they regulations. At most, they are interpretive guidelines for the actual regulations. Secondly, the FAQs cited do not support your office's revised position. The FAQs merely state that schools that were doing only cohort-based services – **as opposed to having commenced a site-specific reopening** – were not "reopened." The FAQs do not state or suggest that a reopening designed to meet the safety protocols in the cohort guidance is not acceptable.

The consequences of any other interpretation would be absurd. For example, a small school's full program, if enrollment was small enough, could entirely comply with the safety protocols that were included in the cohort guidance. Under the reading suggested by your office of the FAQ answer, such a site might be precluded from re-opening because the small class sizes would be consistent with cohort guidance. To construe the guidelines in this manner actually would disincentivize schools from minimizing exposure, limiting group size, and maximum safety and protection. This is clearly not what the language intended.

As explained above, Paso Robles had reopened these school sites while the County was in the red tier, beyond the cohort-based services it had been providing prior to commencing its reopening of the sites.

Additionally, we received an email from your office indicating a revised position from public health that for a site to have commenced reopening, it must have had a complete grade opened. We can find no authority in the law, the guidelines, or even the supporting FAQs to support that position. The applicable regulation makes no mention of grade spans or grades. The FAQs regarding the regulations merely give the opening of a grade span as an *example*





of a “phased reopening”. This is in no way a mandate that an entire grade span be opened for a school site to be considered “re-open.”

In the case of Paso Robles, the “phased reopening” consisted of bringing back students identified as struggling first, which is a rational use of safety resources for a school district with 3,753 students at five middle and high school sites.

In summation, for the foregoing reasons, it is the district’s formal position that it has, in fact, commenced the reopening of its high schools and middle school, and that the district is legally entitled to continue this reopening under the CDPH guidelines.

We welcome your input on how to continue the reopening in the safest manner possible. We want to continue a productive relationship with the County to serve our students. They are in desperate need of schooling, and again we honor and respect your efforts to assist our schools and their students.

For the foregoing reasons, we hereby formally ask that you to exercise your authority to allow our middle school and high school sites to continue their reopening, as planned and previously approved by your office.

We look forward to your response. If at all possible, we would appreciate a response by December 8, 2020, so that our new Board of Trustees may review it and consider our options moving forward at our December 15, 2020, meeting. I again thank you for all you have done and continue to do in this most difficult of situations.

Sincerely,

Dr. Curt Dubost  
Superintendent

cc: Dr. James Brescia, San Luis Obispo County Superintendent of Schools  
San Luis Obispo County District 1 Supervisor John Peschong  
Board of Trustees, Paso Robles Joint Unified School District

Attachments:

1. PRJUSD Reopening Schools Guide
2. September 22, 2020 Board of Trustees Meeting Minutes
3. PRJUSD & PRPE MOU Struggling Students Interventions
4. CDPH Industry Guidance – Schools – Updated August 3, 2020
5. CDPH Reopening In-Person Learning Framework – Dated July 17, 2020
6. CDPH Schools Guidance FAQs – Updated October 20, 2020
7. PRJUSD Response to December 1, 2020 Positive COVID-19 Test



**COUNTY OF SAN LUIS OBISPO HEALTH AGENCY**  
**PUBLIC HEALTH DEPARTMENT**

**Michael Hill** *Health Agency Director*

**Penny Borenstein, MD, MPH** *Health Officer/Public Health Director*

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December 15, 2020

Dr. Curt Dubost  
Superintendent Paso Robles Joint Unified School District  
cdubost@pasoschools.org  
Sent via email. No hard copy to follow.

Re: Response to 12/4/20 letter concerning reopening

Dear Curt,

I am writing in response to your letter dated December 4, 2020 concerning the reopening of schools in the Paso Robles Joint Unified School District. Despite the inflammatory claims made in the letter, I believe our communications since have been productive and have enabled us to reach an agreement.

I understand that the District's intent was a phased reopening when it planned to bring back struggling students for in-person instruction. In most cases, however, such specialized in-person instruction would be considered a cohort under the [Guidance for Small Cohorts/Groups of Children and Youth](#) and permitted during any tier, including the most restrictive Purple Tier. The State does not consider activities permitted under the Purple Tier to be "open" for in-person instruction, since such operations are permitted regardless of the county's tier status.

I've considered your explanation and the additional Board documentation you provided last week, and I will accept your assertion that those schools within the District that brought back select students for in-person instruction during the time the county was in the Red Tier (10/6/20 to 11/15/20) may be considered "reopened" and may continue to bring back more students for in-person instruction in the Purple Tier.

This is only applicable to individual school sites that reopened. Schools in the District that did not open for in person instruction and not under the Elementary School Waiver may not reopen until the county is back in the Red Tier for two weeks.

The reopening plans provided to us included out-of-date reopening schedules and the more recent information the County Office of Education shared with us indicated that Liberty and Paso Robles High Schools and Flamson and Lewis Middle Schools are not currently open and plan to reopen in January. Given this inconsistent information, I am asking you to please send me documentation of in-person classroom attendance for each of the District middle and high schools to be considered reopened.

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**Public Health Department**

2191 Johnson Avenue | San Luis Obispo, CA 93401 | (P) 805-781-5500 | (F) 805-781-5543

[www.slopublichealth.org](http://www.slopublichealth.org)



Your December 4, 2020 letter questioned my and my Department's abilities to understand and implement the California Department of Public Health (CDPH) guidelines. That is a fair opinion as we are fallible humans. However, as a County Health Officer who is in regular communications with CDPH leadership and with my peers across the state, I feel confident that I am well informed about the State's guidance and intention on this subject. Furthermore, I believe you have been able to ascertain from all of my public statements that I can be counted on to apply criteria more favorably to schools serving economically disadvantaged students.

In closing, it is my sincere hope that our relationship will return to the mutually respectful and supportive one we have shared. Frustrations are understandably high as schools, parents, students, and even public health workers are faced with unprecedented challenges. Our intent is not to be another challenge, but to help you reduce the risks of COVID-19 transmission in the school environment and ultimately protect your staff, students, their family members.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Penny Borenstein". The signature is fluid and cursive, with the first name "Penny" and last name "Borenstein" clearly distinguishable.

Penny Borenstein, MD, MPH  
Health Officer

Cc: Dr. James Brescia, San Luis Obispo County Superintendent of Schools San Luis Obispo County  
District 1 Supervisor John Peschong  
Board of Trustees, Paso Robles Joint Unified School District



## By email and regular mail

California Department of Education  
The Honorable Tony Thurmond  
State Superintendent of Public Instruction  
1430 N Street, Suite 5602  
Sacramento, CA 95814-5901

### **Re: Potential liability of school districts for not providing appropriate education as a result of COVID-19 shutdowns or in the event of reopening**

Dear Mr. Thurmond:\*

All students have a right to an education under Article IX of the California Constitution. Many also have a right under federal law to a "free appropriate public education" (FAPE) pursuant to Sec. 504 of the Rehabilitation Act of 1973 (29 USC § 705) and corresponding federal regulations.

Despite the admirable dedication of our staff and the extraordinary effort they have put into distance instruction since our schools shut down more than eight months ago, our students' overall academic performance continues to suffer substantially. For example, near the end of the first half semester of this school year, approximately half of our high school students had at least one F, a number much greater than in a normal school year.

There has also been a major increase in students suffering from depression, many to the point of needing medication. A local pharmacist mentioned just recently in a conversation with one of our School Board members that she has seen a marked increase in prescriptions for Prozac for teenagers. It is safe to assume that the increase in psychological issues among our students has also led to an increase in the number of students entitled to a FAPE under federal law. A relatively recent [article](#) in the August 2020 issue of *Pediatrics*, the official journal of the American Academy of Pediatrics, sums up the situation: "The COVID-19 school closures pose an imminent threat to child health and wellbeing, particularly for those living in poverty."

There is a substantial body of international data showing that reopening schools most likely does not turn them into "super spreaders". For example, a New York Times [article](#) from October 22, 2020 reported, "researchers once feared that school reopenings might spread the virus through communities. But so far there is little evidence that it's happening."

The Paso Robles Joint Unified School District ("PRJUSD") and presumably every other school district in our state, therefore, now finds itself confronted with a classic dilemma in which there is no good option.

On the one hand, we can follow the recommendations/directives of state and local health officials and keep the schools shut down, except for the lower grades that are already in hybrid mode. We then run a material risk that parents and students could take legal action against the PRJUSD based on the argument that the district is denying them a FAPE, and/or is failing to satisfy the

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\* This letter has been copied by email to the parties in the attached list since they may also be able to provide advice and assistance. The email version of this letter contains hyperlinks to the referenced articles in the press.



requirements under the California Constitution. This risk might be amplified due to the fact that there is no apparent justification for shutting down some schools' grades 6 – 12, while allowing others, based solely on the date they began reopening, to operate at least in the hybrid mode.

Unfortunately, our school district, as well as districts throughout California, have experienced extremely costly litigation in the past challenging our District's definition and method of providing a FAPE. There is a well-established community of lawyers eager to file such actions against already financially fragile districts such as ours. The legal fees for just a few cases would seriously affect our operating budget, even if the district prevailed on the merits. Financial failure cannot be an option.

On the other hand, if we reopen our schools we run the risk that a member of our staff or more likely an older relative of one of our students might contract COVID-19 and commence legal action against the PRJUSD for damages. Our initial impression is that such proceedings would be more difficult for a plaintiff than in the alternative scenario described in the preceding paragraph. However, the legal costs would again be extremely high, even if we successfully defend ourselves against such an action.

Your department and/or other state agencies have presumably already examined the legal issues arising under both scenarios. Therefore, I would appreciate it if you could provide assistance to us in clarifying the legal issues, preferably by providing a copy of a legal memorandum that has thoroughly analyzed the situation. If there is such a memorandum but there is a reason to keep its detail confidential, please provide at least some guidance on the legal issues and especially potential civil liability of the school districts. If no such legal memorandum has yet been prepared, it would certainly be useful to conduct a comprehensive legal analysis of these issues, and we request that you do so as soon as possible.

One final point: It might be appropriate for the both the executive and legislative branches in our state government to consider excluding or limiting liability of school districts, and/or holding school districts harmless in the event of such litigation.

The PRJUSD school board is scheduled to have its first meeting with the newly elected members on December 15, and these are issues which we will immediately address. In light of scheduling to set the agenda for that meeting, I would appreciate it if you and/or any of the other agencies copied on this letter could provide at least an initial response on the substance of the legal issues by **Tuesday, December 8, 2020**.

Thank you very much for any assistance you can provide us in these difficult times.

Best regards,

Dr. Curt Dubost  
Superintendent



**PASO ROBLES**  
JOINT UNIFIED SCHOOL DISTRICT  
THE DISTRICT OF EXCELLENCE

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**Copies to:**

Dr. James Brescia, SLO County Superintendent of Schools

Dr. Penny Borenstein, MD, MPH, SLO County Public Health Director

Mayor Steve Martin, City of Paso Robles

Governor Gavin Newsom

Attorney General Xavier Becerra

Senator Dianne Feinstein

Congressman Salud Carbajal

State Assembly Member Jordan Cunningham

PRJUSD Board of Trustees

