

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 1479 (Pan) – As Amended April 4, 2022

SENATE VOTE: 27-9

SUBJECT: COVID-19 testing in schools: COVID-19 testing plans.

SUMMARY: Requires the Department of Public Health (DPH) to coordinate COVID-19 testing programs in local educational agencies (LEAs) funded by federal resources or organized under the California COVID-19 Testing Task Force (Task Force). Requires DPH to expand its contagious, infectious, or communicable disease testing and other public health mitigation efforts to include prekindergarten, onsite after school programs, and childcare centers. Requires each LEA to create a COVID-19 testing plan that is consistent with guidance from DPH. Specifically, **this bill:**

- 1) Requires DPH to coordinate COVID-19 testing programs in LEAs funded by federal resources or organized under the Task Force. Requires DPH, in coordinating these COVID-19 testing programs, to provide supportive services related to the LEA testing plans described in 4) below and testing programs for teachers, staff, pupils, and surrounding communities that help LEAs reopen and keep LEAs operating safely for in-person learning. Requires the supportive services to include, but not be limited to, all of the following:
 - a) Technical assistance;
 - b) Vendor support;
 - c) Guidance;
 - d) Monitoring; and,
 - e) Testing education.
- 2) Requires DPH to expand its contagious, infectious, or communicable disease testing and other public health mitigation efforts to include prekindergarten, onsite after school programs, and childcare centers.
- 3) Requires, if the state secures additional federal funds through the United States Centers for Disease Control and Prevention's (CDC) Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases Program for the purposes of COVID-19 testing in LEAs, any federal funds to be expended before allocating state funds for the purposes described in subdivisions 1) and 2) above.
- 4) Requires each LEA to do the following:
 - a) Create a COVID-19 testing plan that is consistent with guidance from DPH; and,
 - b) Designate one staff member to report information on its COVID-19 testing program to DPH. Requires each school within a school district to designate one staff member to report information on its COVID-19 testing program to the school district. Permits each school within a school district to name a staff member to lead its COVID-19 testing program.

- 5) Requires all COVID-19 testing data to be in a format that facilitates a simple process by which parents and LEAs may report data to DPH.
- 6) Requires DPH to determine which COVID-19 tests are appropriate for use for the testing programs described in this bill.
- 7) Defines LEA to mean a school district, county office of education, or charter school serving pupils in kindergarten or any of grades 1 to 12, inclusive.
- 8) Makes implementation of this bill contingent upon an appropriation in the annual Budget Act or another statute for this purpose.

EXISTING LAW:

- 1) Establishes DPH, directed by a state Public Health Officer (PHO), to be vested with all the duties, powers, purposes, functions, responsibilities, and jurisdiction as they relate to public health and licensing of health facilities, as specified. Gives the PHO broad authority to detect, monitor, and prevent the spread of communicable disease in the state.
- 2) Permits certain school apportionments to be used for any purpose consistent with providing in-person instruction for any pupil participating in in-person instruction, including, but not limited to, COVID-19 testing, as specified.
- 3) Requires a health care service plan contract that covers medical, surgical, and hospital benefits, excluding a specialized health care service plan contract, to cover the costs for COVID-19 diagnostic and screening testing and health care services related to diagnostic and screening testing approved or granted emergency use authorization by the federal Food and Drug Administration (FDA) for COVID-19, regardless of whether the services are provided by an in-network or out-of-network provider.
- 4) Prescribes public health reporting requirements related to COVID-19 for including the development of a COVID-19 safety plan, as specified.

FISCAL EFFECT: According to the Senate Appropriations Committee, while the bill's provisions would be contingent upon an appropriation, it could trigger substantial Proposition 98 General Fund (GF) cost pressures each year. The bill lacks specificity on the testing plan requirements for LEAs so it is difficult to calculate a precise estimate. However, assuming each school district would need a minimum of one new position and \$150,000 to develop and administer a COVID-19 testing plan and complete the data reporting requirements, this bill could result in Proposition 98 GF costs in the hundreds of millions of dollars each year. These costs could be offset by other funds provided in the budget for similar activities, such as the Governor's Budget proposal for continued testing efforts.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, this bill is by students and for students to ensure their right to quality in-person education. Although vaccination remains the cornerstone of public health's response to COVID-19, testing at our schools is essential to preventing surges of the virus. At the federal level, key COVID-19 funding is lapsing due to

congressional inaction, which is why this bill is contingent on an appropriation that would fund COVID-19 testing for the 2022-23 fiscal year. This bill will help keep schools open and safe by ensuring schools have a plan to test for COVID-19 that is consistent with DPH guidance. California must have its own testing plans and resources to reassure school districts that we will support them no matter what.

- 2) **BACKGROUND.** COVID-19 is a viral respiratory illness caused by a new coronavirus. Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. COVID-19 was first reported in Wuhan, Hubei Province, China in November 2019. COVID-19 was declared a pandemic by the World Health Organization on March 11, 2020. COVID-19 can cause mild to severe illness; most severe illness occurs in adults 65 years and older and people of any age with serious underlying medical problems. Due to the severity of the COVID-19 crisis, on March 4, 2020, Governor Newsom issued an Executive Order declaring a state of emergency and on March 19, 2020, issued a stay at home order. According to the DPH website, as of June 1, 2022, 9,106,031 Californians have contracted COVID -19, and 91,006 have died from this virus. California has also administered 171,841,582 COVID-19 tests.

According to the FDA, COVID-19 can be diagnosed using diagnostic tests or antibody tests. Diagnostic tests can show if a person is currently infected with SARS-CoV-2, the virus that causes COVID-19. There are two types of COVID-19 diagnostic tests: a) Molecular tests, such as polymerase chain reaction (PCR) tests; or, b) antigen tests, often referred to as rapid tests. Antibody (or serology) tests look for antibodies in your blood that your immune system produced in response to SARS-CoV-2. Antibody tests should not be used to diagnose a current SARS-CoV-2 infection or COVID-19 and, at this time, should also not be used to check for immunity. Samples for antibody tests are typically collected by a doctor or other medical professional by taking blood from a finger stick or your vein.

- a) **Demand for Testing.** California and the rest of the nation struggled to meet the demand for testing which far outpaced the supply. According to a November 2021 DPH issue brief on the Valencia Branch Laboratory, early in the pandemic, when supply chains were stretched globally and access to testing modalities were limited, laboratories both private and public, contended for scarce resources. Despite a growing number of tests having approval from federal regulators, navigating the complex nature of test specifications (sensitivity, specificity, and turnaround times) remained a challenge. This patchwork left many states ill prepared to address the rise in community transmission rates, and eventually hospitalizations. It also illustrated the complexities in acquiring, distributing and administering COVID-19 tests, while the lack of access to testing further exacerbated long-standing health inequities in low-income, minority, and rural communities. Delays in the availability of the laboratory assay, early reported errors in test design, and an inconsistent and unstable supply chain from the CDC hindered state and local public health laboratories from scaling testing for months in early 2020. As with many states, California struggled to grow testing capacity and was able to perform only 2,000 tests per day in April, three months after the first case was diagnosed in the state. The early constraints in procuring swabs and specimen transport media further limited states from expanding testing. However, the consensus among public health experts was that testing and access to it was essential in changing the trajectory of the pandemic.

These challenges led California to establish the Task Force in order to increase capacity,

address supply chain disruptions, and expand specimen collection sites. The Task Force was charged by Governor Gavin Newsom to make COVID-19 testing timely, equitable and cost-effective. Bringing together the expertise of public, private, philanthropic, and academic partners set the foundation for California to begin increasing its capacity. By the end of June 2020 California regularly reached daily testing numbers of 80,000 to 90,000 tests per day, but this would prove to be insufficient to meet the summer surge that followed the Fourth of July holiday. Laboratory load balancing along with exacerbated supply chain constraints for reagents and plastics (pipettes, pipette tips, and test trays) placed new pressures on laboratories resulting in test turnaround times of three to seven days, when turnaround times ideally need to be within 24 to 48 hours to make testing an effective tool in slowing the spread of the virus. By October 2020, California averaged 125,000 tests per day.

- b) COVID-19 Public Health Guidance for K-12 Schools in California, 2021-22 School Year.** On March 12, 2022, DPH released a public health guidance for K-12 schools, which is designed to keep schools open for in-person instruction safely during the COVID-19 pandemic, consistent with current scientific evidence. According to the guidance, in-person schooling is critical to the mental and physical health and development of our students and the guidance is designed to help K-12 schools continue to formulate and implement plans for safe, successful, and full in-person instruction in the 2021-22 school year. It applies recommendations provided by the CDC and the American Academy of Pediatrics (AAP). Additional guidance, including additional requirements, may be issued by local public health officials and LEAs. Some components of the guidance include:
- i) Masks:** DPH strongly recommends that all persons wear masks in K-12 indoor settings, with some exemptions. Persons exempted from wearing a face covering due to a medical condition are strongly recommended to wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it. Schools must develop and implement protocols to provide masks to students who fail to bring a face covering to school and want to use one. In situations where use of masks is challenging due to pedagogical or developmental reasons, (e.g., communicating or assisting young children or those with special needs), a face shield with a drape may be considered instead of a mask while in the classroom;
 - ii) Physical distancing:** DPH recommends focusing on the other mitigation strategies provided in this guidance instead of implementing minimum physical distancing requirements for routine classroom instruction;
 - iii) Staying home when sick and getting tested:** Follow the strategy for Staying Home when Sick and Getting Tested from the CDC. Get tested for COVID-19 when symptoms are consistent with COVID-19. Advise staff members and students with symptoms of COVID-19 infection not to return for in-person instruction until they have met DPH criteria to return to school for those with symptoms; and,
 - iv) Screening testing recommendations:** DPH has a robust school testing program and subject matter experts available to support school decision making, including free testing resources to support screening testing programs (software, test kits, shipping,

- testing, etc.). Resources for schools interested in testing include: California's Testing Task Force K-12 Schools Testing Program, K-12 school-based COVID-19 testing strategies and Updated Testing Guidance; The Safe Schools for All state technical assistance portal; and, the CDC K-12 School Guidance.
- c) **Preliminary Testing Framework for K-12 Schools for the 2022-23 School Year.** On May 27, 2022, DPH published its preliminary testing framework for the 2022-23 school year. This framework indicated the following:
- i) Currently, California is offering an additional 15 million COVID-19 over-the-counter (OTC) tests to all county offices of education (COEs) for use by public and private school students and staff during the end-of-year and summer school period. DPH has communicated with COEs about this program, and COE distribution is well underway in most counties.
 - ii) Starting August 1, 2022, DPH will be able to offer more distributions of COVID-19 OTC tests to schools. Schools may use OTC tests to supplant on-site testing in many situations. Such efforts will be paired with ongoing statewide, schoolfocused educational materials to facilitate proper OTC use, particularly in communities with limited English proficiency, and/or lower health literacy.
 - iii) DPH recommends that antigen tests be considered the primary option for detecting COVID-19 in schools, compared to PCR tests. Both the professional, on-site antigen tests as well as the OTC at-home antigen tests have been effective in identifying persons who have infectious levels of all known variants of SARS-CoV-2. PCR tests are highly sensitive, but their utility is greatest as a confirmatory test in appropriate situations, and/or in clinical settings.
 - iv) DPH will continue to support professional on-site antigen testing programs in the 2022-23 schoolyear. However, the volume of anticipated on-site testing is likely to decrease with the increased availability and ease of OTC tests. DPH anticipates the workload for on-site testing to substantially decrease for the 2022-23 school year as OTC testing will often meet testing needs. Thus, state support for school-based testing staff (via End-to-End vendors and Personnel Grants) will be appropriately reduced.
- d) **SMARTER PLAN (Plan).** In February 2022, Governor Newsom launched the Plan as the next phase of the state's pandemic response. According to the Administration's announcement, the Plan's core pillars and preparedness metrics focus on lifesaving public health measures and strategies the state has successfully used to slow the spread and protect Californians. Recognizing that each variant brings with it unique characteristics relative to the specific conditions in our neighborhoods and communities, the Plan preserves needed flexibility and ensures the state has the resources and capabilities in place to tackle the COVID-19 challenges that lie ahead. The Plan is described as follows:
- Shots-** Vaccines are the most powerful weapon against hospitalization and serious illness. Under the Plan, California will maintain capacity to administer at least 200,000 vaccines per day on top of existing pharmacy and provider infrastructure;

Masks- Properly worn masks with good filtration help slow the spread of COVID-19 or other respiratory viruses. The state will maintain a stockpile of 75 million high quality masks and the capability to distribute them as needed;

Awareness- The state will continue to stay aware of how COVID-19 is spreading and evolving variants, communicate clearly how people should protect themselves, and coordinate state and local government response. California will maintain capability to promote vaccination, masking, and other mitigation measures in all 58 counties and support engagement with at least 150 community-based organizations;

Readiness- COVID-19 isn't going away and we need to be ready with the tools, resources and supplies that will allow us to quickly respond to protect public health and to keep the health care system well prepared. The state will maintain wastewater surveillance in all regions and enhance respiratory surveillance in the health care system while continuing to sequence at least 10% of positive COVID-19 test specimens. The state will also maintain the ability to add 3,000 clinical staff within two to three weeks of need and across various health care facility types;

Testing- Getting the right type of tests to where they are needed most. Testing will help California minimize the spread of COVID-19. California will maintain commercial and local public health capacity statewide to perform at least 500,000 tests per day – a combination of PCR and antigen;

Education- California will continue to work to keep schools open and children safely in classrooms for in-person instruction. The state will expand by 25% school-based vaccination sites supported by the state to increase vaccination rates as eligibility expands; and,

Rx- Evolving and improving treatments will become increasingly available and critical as a tool to save lives. The state will maximize orders for the most clinically effective therapeutic available through federal partnerships, ensuring allocations of effective therapeutics are ordered within 48-hours.

- e) **2021-22 Budget actions.** AB 128 (Ting), Chapter 21, Statutes of 2021, allocated \$319,675,000 to DPH for various programs related to the safe reopening of schools during the COVID-19 pandemic, including funds to support COVID-19 testing in schools allocated from the federal American Rescue Plan Act of 2021 (Public Law 117-2). AB 128 also permits augmentation of up to \$887,716,000 to support COVID-19 testing in schools allocated from those federal funds. AB 86 (Committee on Budget), Chapter 10, Statutes of 2021, allocates \$25 million GF for the Safe Schools For All Team to coordinate technical assistance, community engagement, increased transparency, and enforcement for public school health and safety during the COVID-19 pandemic.\
- f) **Free At-Home Rapid COVID-19 Tests.** In January 2022, the Biden Administration announced that every household could order four COVID-19 tests through the COVIDTests.gov website. Subsequently, an additional four tests was authorized for each household. On May 17, 2022, the Biden Administration announced that COVIDTests.gov is now open for a third round of ordering an additional eight free at-home tests, for a total of 16 tests kits for each household since the program began.

- 3) **DOUBLE REFERRAL.** This bill is double referred; upon passage in this committee, this bill will be referred to the Assembly Education Committee.
- 4) **SUPPORT.** Protect US, the sponsor of this bill states that this bill is fundamental in keeping schools open and safe. Sporadic school closures have taken a significant toll on the mental health and wellbeing of students, parents, and teachers over the past two years. To prevent this cycle of school openings and closures, we must develop a concrete statewide testing plan that ensures all students have access to a safe, in-person learning environment. With the onset of new variants and the federal government's inability to provide adequate resources and direction, it is clear that California must step up to the plate to keep our schools open and our students safe. The current patchwork of testing regimens throughout California schools has shown that schools without frequent testing suffer while those with concrete testing plans remain open and safe. In a study of over 200 California schools, the Public Health Institute found that on-site COVID-19 testing contributes to the safety of in-person learning and builds confidence in school safety for parents and staff, while a report from the Rockefeller Foundation found that weekly testing can reduce in-school infections by 50%. It is time we listen to the needs of our students, staff, and families by developing a statewide standard to keep our schools safe.
- 5) **OPPOSE UNLESS AMENDED.** A Voice for Choice Advocacy argues this bill is arbitrary, creates a burden on the already overstretched public schools and creates a one size fits all approach. A Voice for Choice Advocacy proposes that this bill include a sunset date, schools defer to local district guidelines rather than DPH guidelines, and that those with disabilities or medical/mental health issues who cannot test be allowed to opt out of testing, while still being allowed to attend school in-person.
- 6) **OPPOSITION.** The Association of California School Administrators (ACSA) opposes this bill and states that this bill would divert staff attention and limited funds away from students, and needlessly focus resources on COVID-19 testing efforts, despite it already being readily accessible to the public widely. ACSA believes health directives need to be shifted back to public health agencies so that schools can focus on student education. COVID-19 testing in particular, is now widely being done at home through rapid antigen testing. Kits can be requested through the White House website [COVIDtests.gov](https://www.covidtests.gov) and delivered directly to home addresses. DPH's support and guidance for schools is going in the opposite direction this bill and officials have explicitly told administrators to shift efforts to home-based testing. State testing infrastructure and support for LEAs has diminished since the Valencia Branch Laboratory closed and Testing Task Force office hours for LEAs have been reduced from twice weekly, to one hour a month. Furthermore, spending Proposition 98 funds on COVID-19 testing efforts takes critical dollars away from instruction and the core mission of public education. Mandating that each school and LEA in California have a dedicated staff member to report on COVID-19 testing programs would result in costs upwards of hundreds of millions of dollars. Staff time and attention would be diverted away from the core function of educating, at a time when students need targeted supports that include social and emotional health and academic interventions after distance learning challenges. ACSA recognizes that schools are trusted in communities, but given the wide availability of COVID-19 testing and the incredible needs of students, schools must keep their resources focused on education.

Protection of the Education Rights of Kids believes this bill imposes intrusive testing requirements. The Unity Project writes that COVID-19 tests have the potential to have false

positive results, as well as, false negative results; and, a false positive result, would be subjecting students to miss out on their education due to a faulty test. Educate. Advocate. writes that this bill redirects state funds to COVID-19 testing plans and then COVID-19 testing for schools that are overly burdened by staff shortages and need to focus on the primary goal of educating students. Children’s Health Defense - California Chapter states that they oppose this bill because there is no end date. Let Them Breathe and Reopen California Schools states now that California has decidedly entered the “endemic phase” of the COVID-19 pandemic, schools should be supported in their core mission of educating our state’s children. Schools should not be required to continue to allocate resources to operate COVID-19 testing clinics and engage in contact tracing and other mitigation measures for an endemic virus. Schools are not public health clinics and educators are not trained medical professionals or epidemiologists. Let Them Breathe and Reopen California Schools states that this bill shifts responsibility to operate COVID-19 testing clinics from local public health departments and medical facilities to schools and educators, imposes an undue burden on schools and their students, who will continue to suffer both academically, socially, and emotionally as a result of ongoing school-based restrictions. California Parent Power writes that routine testing of schoolchildren has not been shown to reduce the spread of COVID-19. Despite wide scale state testing programs for California schools during the 2021-22 school year, California experienced an unprecedented surge in COVID-19 cases more than twice as large as the surge in the Winter of 2020.

- 7) **RELATED LEGISLATION.** AB 2833 (Irwin) requires DPH to make plans to ensure that the laboratory infrastructure in the state is sufficient and prepared to scale up COVID-19 testing capacity, within a period of two calendar weeks, to 500,000 tests per day, and that the test results of at least 90% of COVID-19 tests are returned to the individual within 24 hours. AB 2833 is pending in Senate Health Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ProtectUS (sponsor)
 Advanced Medical Technology Association (ADVAMED)
 Berkeley Unified School District
 California Academy of Family Physicians
 California Federation of Teachers AFL-CIO
 California Medical Association
 California Pan - Ethnic Health Network
 California School Employees Association
 County Health Executives Association of California (CHEAC)
 GENup
 Ginkgo Bioworks
 Helix
 Primary. Health
 Public Health Institute
 Sacramento City Unified School District
 Safer Together
 Summerbio
 Teens for Vaccines INC.

Women's Foundation California

Opposition

Association of California School Administrators
California Health Coalition Advocacy
California Parent Power
California Parents United
Catholic Families 4 Freedom CA
Catholic Families for Freedom San Bernardino
Children's Health Defense California Chapter
Committee to Support Parental Engagement
Educate. Advocate.
Families for Opening Carlsbad Schools
Freedom Keepers United, CA Freedom Keepers
Hughson Unified School District
Let Them Breathe
Libertarian Party of California
Moms for Liberty, Yolo County
Natomas USD for Freedom
North Cow Creek Elementary School District
Protection of the Educational Rights for Kids
Reopen California Schools
San Joaquin County Liberty Coalition
Stand Up Sacramento County
The Unity Project
Towards an Internet of Living Beings
United California Patriots

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