



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.

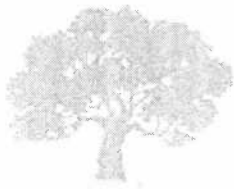
Finally, recent communications from your office suggested that the rationale behind your change in position regarding reopening stemmed from an interpretation of language contained in CDPH "FAQs" (not regulations), which were published in late October. However, your office's interpretation of those guidelines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



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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

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* 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 re-open 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.

Public Health Department

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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.

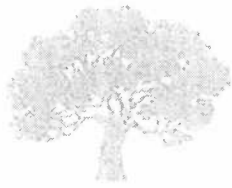
In closing, it is my sincere hope that our relationship will return to the mutually respectful and supportive one we have shared. Frustrations are understandably high as schools, parents, students, and even public health workers are faced with unprecedented challenges. Our intent is not to be another 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 a long horizontal stroke at the end.

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



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December 22, 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

Dear Dr. Borenstein:

This letter and attached documents shall serve as a response to your letter dated December 15, 2020 and as a follow-up to our conversation yesterday.

In your December 4, 2020 letter you point out that more recent information shared by the San Luis Obispo County Office of Education suggested that secondary sites were not open. The letter does not identify what information was shared with you by the County Office and as such, we cannot speak to whether such information is accurate or is not consistent with any information provided by the District.

In any event, this letter is intended to follow up with your request for documentation of in-person classroom attendance for each of our secondary sites. As indicated in our December 4, 2020 correspondence to your office, in addition to the attendance of special education students, homeless and foster youth, English learners also returned for some in-person schooling before the District returned to the Purple Tier. The District Board voted on the Reopening Plan and as a part of its rollout, while still in the first semester and the Red Tier, we also began serving struggling students as detailed in the MOU we previously shared with you. As indicated in that MOU, the struggling students worked with teachers both virtually and in-person as selected voluntarily by the teacher.

As I hope you remember me saying to you in our conversation with Dr. Brescia about our position on reopening, I did not know at that time which teachers did the work with students remotely and which worked with them in-person pursuant to the struggling students' MOU. In that conversation I specifically mentioned the preponderance of instruction to struggling students was indeed not in-person. I said I wanted to be totally up front with you on this. It was my understanding you remained open to our position. We apparently do not have complete formal attendance records. However, in an attempt to respond to your inquiry, we asked each site principal to summarize how many students returned for work as struggling students in-person. The information provided by the site principals is detailed on the attached worksheet.



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As you can see, at the Middle School and Alternative Education sites, it appears that students participated to some degree in-person with the struggling student interventions. It does appear that at the High School, there is no data showing that struggling students returned to campus for any of the work with teachers.

I reiterate the District's position is that regardless of whether the individual teachers elected to instruct the struggling students on campus or remotely, the fact that it was available and open and that it was a part of the Board-adopted phased-in rollout shows this was a part of our reopening. We respectfully reiterate that it is our position that the guidelines give you discretion to approve our continued rollout and that this information provides no rational basis for a finding that somehow it is less safe for students to attend in-person. We fail to see how safety in January at the Middle Schools or High School would somehow be affected if more students had come on campus last November.

We thank you for your cooperation and we look forward to an update on your position on whether we have commenced reopening and whether the District has the discretion to continue with a hybrid plan in January. We are hoping to present updated information to the Board at a special meeting early next week and we look forward to your response.

I hope you have a joyous holiday with your family and that you get to rest.

Sincerely,

Curt Dubost, Ed.D.
Superintendent

Attachment

c: Paso Robles JUSD Board of Trustees
James Brescia, Ed.D., County Superintendent of Schools

LOCATION	Email Address	Special Education Students on your Campus: Please add the following details: How many SPED students were on your campus, from what programs, which teachers served the students? How frequently did they attend?	Students with English Learner needs on your Campus: Please add the following details: How many ELL students were on your campus, from what programs, which teachers served the students? How frequently did they attend?	Students for CTE on your Campus: Please add the following details: How many CTE students were on your campus, from what programs, which teachers served the students? How frequently did they attend?	Homeless and Foster needs on your Campus: Please add the following details: How many Homeless and Foster students were on your campus, from what programs, which teachers served the students? How frequently did they attend?	Students who were struggling who came on for services on your Campus: Please add the following details: How many struggling students were on your campus, from what programs, which teachers served the students? How frequently did they attend?	Any other students on campus? Purpose? Who did they meet with? Frequency?
PRHS	awoverton@pasoschools.org	~15-30 were attending daily in the ALC and TLC programs served by the teachers of those program. We had one teacher providing in person tutoring for ~5 students on their caseload.	25 students were offer, ~10-12 were attending daily until we had to cancel due to staff isolation. Only the newcomers teacher and aid provide this support.	~60-80 were scheduled to attend including Bearkittens, Welding, BITA, and Healthcare Practicum. 4 CTE teachers of the above programs were involved.	None, unless they belong to one of the groups listed below.	None	N/A
Flamson	tdvincent@pasoschools.org	10, Paraeducators supported students not teachers, twice a week	10, Newcomer Program, paraeducator supported not teacher, attended twice a week	0		0 3 total after school, 1 SpEd & 1 Gen Ed with Derickson, 1 Gen Ed with Menke, Derickson 1x week, Menke was 1 time event	Music support, 4 students after school, Lindquist, 1x week after November 10
ALT ED High School and Homeschool Middle School	dsharon@pasoschools.org	13 of 17 ISP students with Blaise Smith attending in cohorts of 3-4 students attending twice a week, 5 of 18 kids between IHS/LHS with Stephanie DeQuattro (some 5th year seniors who have graduated) coming once a week, approx. 3 of 26 in PRISC with Soto, Carmanatti (coming in once every other week).	Out of the 5 ELs at IHS, 24 at LHS, and 13 at PRISC, most are getting help from their SDAI teacher, Melissa Flickinger and para support from Kathy Lynette (virtually). The IHS and PRISC students were too few for ELAC and have signed waivers but do receive virtual support. I would estimate 2-3 of the students coming for in-person support at IHS with Karen Bockleman and Musik Sanchez are EL. They come in approx. every other week for support.	No students in Alt. Ed are coming to campus for CTE. Any of our T students (enrolled at PRHS) would be included in their numbers.	Without a list of individual students from teachers and cross referencing with Aeries, it would be difficult to determine which of our 12-20 students coming to campus for support are Homeless/Foster. I would conservatively estimate 1 student. The frequency would be bi-weekly and most likely with Stephanie DeQuattro as a 5th year graduate. All of our 5th year students either graduated Semester 1 or were dropped. (Unless they were SPED or Homeless/Foster.	At our various programs we had approximately 12-20 (Gen. Ed. students) coming to our main campus (or a satellite campus) for in-person tutoring support: IHS: 6, PRISC: 6, LHS: 2	Some students came for technical assistance from our IT para (Patti Lucas) or to pick supplies. This was a one shot site visit. We do not have ongoing students coming onto campus for any other activities other than signing contracts, picking up/dropping off work packets, work permits, transcripts, etc.
Lewis Middle School	kwpayne@pasoschools.org	TLC - 12 ALC-14 (Every day) Daily Resource Support- 8	3 students- 1 hour per week	0		0 Total of 30 students on Tuesday and Thursday afternoons from 2:30-3:30	2 Yearbook Students, 2 Leadership Students



COUNTY OF SAN LUIS OBISPO HEALTH AGENCY
PUBLIC HEALTH DEPARTMENT

Michael Hill *Health Agency Director*

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

December 28, 2020

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

Re: Response to 12/22/20 letter concerning reopening

Dear Curt,

In my last correspondence with you, I requested documentation of in-person classroom attendance for each of the District middle and high schools to be considered reopened. I received a summary estimate of the small number of students designated as either special education, English learners, or struggling who are receiving some in-person instruction while the schools are closed to in-person classes.

This information supports my original understanding that your secondary schools provided targeted in-person services to those students most in need. I continue to support such actions by your District because they fall under the [Guidance for Small Cohorts/Groups of Children and Youth](#), which is permitted during any tier, including the most restrictive Purple Tier.

However, I cannot fully support your claim that it should not matter if students actually received in-person instruction, and instead what matters is if a campus was "available" to be open for in-person instruction. As I have communicated on previous occasions, that while I support safe reopening of schools even at the higher grades where possible, I am unwilling to contravene the State rules.

I am acutely aware of the devastating educational, social, and economic impact this pandemic is causing our community. I have also been one of the more flexible Health Officers in our state because our county's transmission rates and hospitalizations were manageable. That is no longer the case. Our county, like most of California, is experiencing an alarming surge of new infections and serious illness from COVID-19.

There is a new plan that will be unveiled shortly from the State that will enable schools to reopen safely in the coming months using grant funding for those jurisdictions that can achieve a case rate that exceeds the Purple Tier metric. Please stay tuned for that information.

Respectfully yours,

Penny Borenstein, MD, MPH
Health Officer

Public Health Department

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