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OPEN! OPEN! OPEN!
aka: AB 86


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- Presenters may be working from home and apologize in advance for any child or canine interruptions. Thank you for your patience.
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YM&C Firm Overview



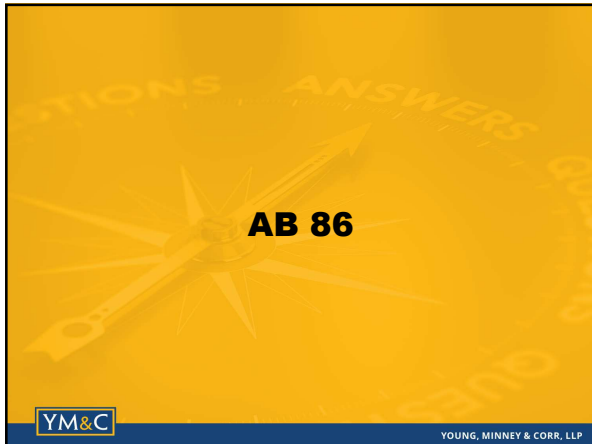
- Partners have over 100 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent most of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance



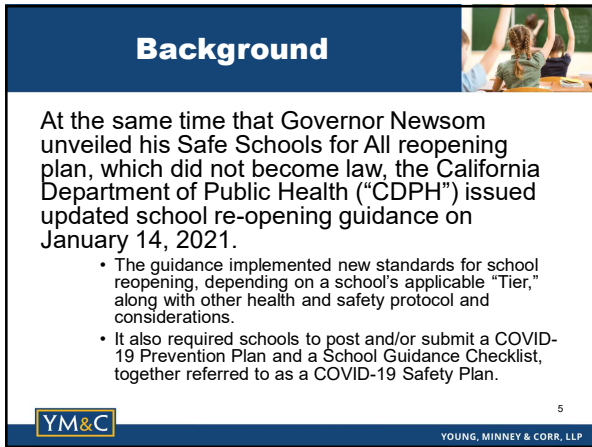
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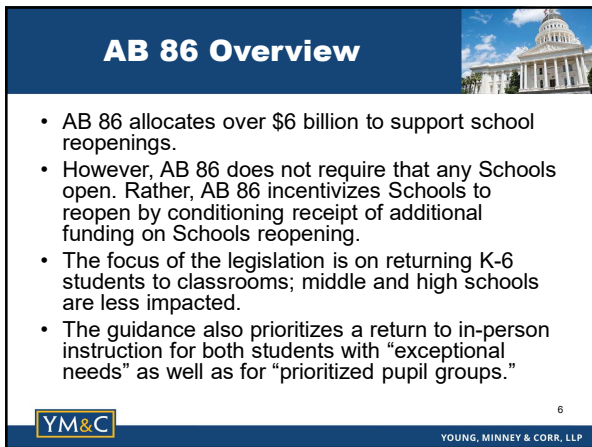
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AB 86 Critical Topics




- Requirements to Reopen.
- Requirements to qualify for additional funding.
- What it means to offer “in-person instruction.”
- Conditions and uses of the additional funding.


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AB 86 Critical Dates




- March 15, 2021:** The School must begin notifying the CDPH of information related to reopening.
- March 31, 2021:** Schools in the Purple Tier must either reopen or post a reopening plan by this date to avoid mandatory COVID-19 testing of students and employees.
- April 1, 2021:** Eligible schools must be offering in-person instruction within the parameters of AB 86 by this date to receive the full additional funding.
- May 15, 2021:** If a School does not offer in-person instruction within the parameters of AB 86 on or before this date, it will forfeit all additional funding under AB 86.
- June 1, 2021:** The School must “adopt at a public meeting a plan describing how the apportioned funds [pursuant to AB 86] will be used,” no later than this date.


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AB 86 Disclaimer




- While AB 86 has been passed by the State Legislature and signed into law by Governor Newsom, additional guidance may still be pending.
- The legislation specifically directs state and local public health authorities to issue guidance and enforce such legislation.
- As such, Schools could be subject to additional requirements, not necessarily required by AB 86.


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What is unchanged by AB 86



- If a school's county is in the Red, Orange, or Yellow Tier, the School can reopen for in-person instruction for all grade levels, so long as the County is in the Red Tier or lower.
 - Schools must also post their COVID-19 Safety Plan to their website at least five (5) days prior to reopening.
- CPDH School Reopening Guidance and Cohorting Guidance remain the same.


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What AB 86 Does Not Cover



- Collective Bargaining:
 - AB 86 does not require Schools consult with labor organizations before reopening.
 - Nevertheless, negotiations with unions must take place since resuming in-person instruction is a change in working conditions which the School cannot implement unilaterally. Unions will likely want to bargain over safety conditions for return, sick leave usage for work-related exposures, class sizes and working hours, among other topics.
- Consultations with Parents and Community Organizations:
 - CDPH guidance earlier this year required Schools provide proof of consultation with parent and community organizations regarding a School's reopening plan.
 - Such consultation is not required under AB 86. However, Schools in the Purple Tier should still consult with parent and community organizations prior to reopening, in an abundance of caution.
- Vaccinations:
 - AB 86 does not require vaccinations. However, it assists schools in making vaccinations available for its workforce.
- COVID-19 Testing:
 - AB 86 only requires that Schools implement asymptomatic surveillance testing of students and employees under limited circumstances.

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Requirements for ALL Schools




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Requirements for ALL Schools, Irrespective of Additional Funding




- The school must notify local health department within 24 hours after a COVID-19 case was on campus while infectious and provide the local health department with specific information.
 - The legislation then directs the local health department to “take the steps necessary to investigate, prevent, and control the spread of COVID-19.”

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Requirements for ALL Schools, Irrespective of Additional Funding




- As of March 15, 2021, every School “shall notify the [CPDH]” on or before the 2nd and 4th Monday of each month as to:
 - The number of pupils enrolled by schoolsite and district (if applicable);
 - For nonclassroom based charter schools, “the total number of pupils enrolled and the number of pupils attending each resource center”;
 - The number of pupils participating in full-time in-person instruction by schoolsite/district;
 - The number of pupils participating in a mix of in-person and distance learning, known as hybrid learning, by schoolsite and, if applicable, school district;
 - The number of pupils participating in distance learning by schoolsite and, if applicable, school district;

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Requirements for ALL Schools Under AB 86, Irrespective of Additional Funding



- The number of school employees who work onsite at a school by schoolsite and, if applicable, school district;
- The number of pupils being served in cohorts while the school is closed for in-person instruction and the support and services they are receiving;
- For school districts with school sites with pupils participating only in distance learning, the reasons why in-person instruction is not being offered and the barriers the schoolsite or school district faces in providing in-person instruction; and
- Any additional information requested by the State Department of Public Health.

– **The CDPH is charged with developing procedures for schools to report this information (i.e., additional guidance is pending) by Monday!**

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Requirements for ALL Schools Offering any In-Person Instruction

- Every school offering *any* in-person instruction for grades K-12 must post a COVID-19 Safety Plan (“CSP”) to its website.
- A CSP consists of:
 - A written, COVID-19 Prevention Plan (“CPP”), consistent with Cal/OSHA regulations, and
 - CDPH School Guidance checklist, “including descriptions of any planned periodic asymptomatic testing cadences for staff and pupils” (if applicable)
 - It is helpful to also have a COVID-19 Health and Safety Policy in place to identify general measures.

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Requirements for Schools that Are Not Open, but Plan to Reopen

- For schools in lower tiers that are not yet open, but later reopen:
 - Must post the CSP to their website “at least 5 days before **offering** in-person instruction.”
 - Note “offering,” not providing.
- For Schools in the Purple Tier:
 - Must submit its CSP to its local health department and CDPH “at least 5 days before **providing** in-person instruction.”
 - Note providing, not offering.
 - The local health department and CDPH will review and may identify deficiencies.
 - **Note:** Current CDPH guidance requires schools to wait seven (7) business days after submitting their documents before reopening.

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Reopening and Funding – “Instructional Support Grants”

- 2020-21 Money:
 - \$4,557,443,000.00 of it is apportioned to LEAs as follows:
 - » \$1,000.00 per homeless pupil enrolled.
 - » \$725 per pupil for state special schools
 - The funds remaining shall be apportioned proportionally on the basis of an LEA’s P-2 local control funding formula entitlement.
 - \$2,000,000,000 shall be apportioned to LEAs but **excluding non-classroom-based charter schools.**

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Reopening and Funding – “Instructional Support Grants”




An LEA's apportionment from the \$2 billion “shall be reduced” as follows if the School does not provide in-person instruction:

- **April 1, 2021 to May 15, 2021:**
 - A School's apportionment shall be reduced by 1 percent for each day of instruction provided for in the school calendar that the school does not provide in-person instruction, as identified in the school calendar adopted for the 2020–21 school year that is in effect on March 1, 2021.
- **If a school does not provide in-person instruction on or before May 15, 2021:**
 - “It shall forfeit all funds apportioned”

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Reopening and Funding – “Instructional Support Grants”




If a school starts, and then ceases to offer, in-person instruction in the 2020-2021 school year, it forfeits all funds. The legislation seems to allow an escape clause if the School is shut down due to an outbreak, or when otherwise ordered by public health authorities.

- “The scheduled school year is the adopted school calendar for the 2020–21 school year that is in effect on March 1, 2021.”

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“In-Person Instruction”



- Defined as “instruction under the immediate physical supervision and control of a **certificated employee** of the local educational agency while engaged in educational activities required of the pupil.”
 - Can include hybrid models offering fewer than five (5) days/week of in-person instruction if the LEA offers in-person instruction to the greatest extent possible.

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“In-Person Instruction”



- The definition of in-person instruction provides no clear roadmap for schools.
- Each school will have to determine what in-person instruction “to the greatest extent possible” means based on its individual situation.
 - There is no guidance to indicate whether offering any set amount of days or hours of in-person instruction will comply for purposes of funding.



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“Considered to Be Offering In-person Instruction” to Qualify for this Funding



If the school’s county is in the Purple Tier AND if it is neither open nor eligible to be open:

- Must offer “optional in-person instruction” pursuant to Cohort guidance to:
 - “All pupils who are individuals with **exceptional needs**,” and
 - “All **prioritized pupil groups**”
 - Subject to capacity – maximum practical capacity based on health and safety.
 - “Exceptional needs” (Education Code §56026):
 - » Student with an IEP



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“Considered to Be Offering In-person Instruction” to Qualify for this Funding



“Prioritized Pupil Groups”:

- Defined as:
 - » Pupils at risk for abuse, neglect, or exploitation
 - » Homeless pupils
 - » Foster youth
 - » English learners
 - » Pupils without access to a computing device, software, and high-speed internet necessary to participate in online instruction, as determined by the local educational agency
 - » Disengaged pupils.




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“Considered to Be Offering In-person Instruction” to Qualify for this Funding




For K-6 schools:

- If in the Purple Tier, and where consistent with CDPH guidance:
 - The School **must** offer “optional in-person instruction” to:
 - » All students with exceptional needs and prioritized pupil groups, pursuant to the Cohort guidance, and
 - » All pupils in grades K-2.
- When in the Red, Yellow, or Orange Tier:
 - The School must offer “optional in-person instruction” to:
 - » All students with exceptional needs and prioritized pupil groups, pursuant to the Cohort guidance,
 - » All pupils in grades K-2
 - » “All pupils in grade 3 through the highest elementary school grade, up to grade 6, inclusive.”

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“Considered to Be Offering In-person Instruction” to Qualify for this Funding




– For middle and high schools (grades 6-12), and when in the Purple Tier:

- Current reopening guidance does not allow for reopening, unless as part of the Cohort guidance for students with exceptional needs and for prioritized pupil groups.
- No financial incentives pursuant to AB 86 to bring back large-scale numbers of students.

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“Considered to Be Offering In-person Instruction” to Qualify for this Funding




For middle and high schools (grades 6-12), and when in the Red, Yellow, or Orange Tier

- The school must offer “optional in-person instruction” to:
 - 1) All students with exceptional needs and prioritized pupil groups, pursuant to the Cohort guidance, and
 - 2) All pupils in at least one full grade level.


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COVID-19 Testing Requirements




- To qualify for apportionment of the \$2 billion, and while in the Purple Tier, schools must conduct "asymptomatic testing for staff and pupils participating in in-person instruction consistent with the state-supported cadences" set by the CDPH.
 - This generally means requiring all staff and students to submit to asymptomatic surveillance testing every two (2) weeks.
- **Exceptions**
 - If on or before March 31, 2021, either:
 - The School is providing in-person instruction, OR
 - The School/Board has adopted a plan to provide in-person instruction AND publicly posted its CSP on its website.
 - If the School moves out of the Purple Tier.
- A school must "certify its compliance with offering in-person instruction using a CDE form, which will be made available on or before 5/1/2021.


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Implications for Non-classroom Based Charter Schools




- Non-classroom-based charter appear eligible for their apportionment of \$4,557,443,000.00 in funding under AB 86 (for homeless students).
- However, non-classroom-based charter schools are specifically excluded from the \$2 billion allocated to incentivize school reopenings this year (Learning Recovery funds).
- Not eligible for some allocated federal funds.


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Vaccines



- AB 86 explicitly does not provide any legal mandate for either employees or students to receive a vaccine for COVID-19 as a condition of returning to campus:
 - "This section shall not be construed as inferring that vaccination of school staff or pupils is a prerequisite for providing in-person instruction."
- However, the bill prioritizes "a set number of appointments for education sector staff."
- The bill also states that 10% of doses are reserved for "childcare and K-12 education sector staff."


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Conditions of Learning Recovery Funds (from the \$4.5B amounts)

Schools must implement a learning recovery program that:

- Provides supplemental instruction
- Provides support for social and emotional well-being, and
- Provides meals to:
 - pupils who are eligible for free or reduced-price meals
 - English learners
 - Foster youth
 - Homeless pupils
 - Pupils who are individuals with exceptional needs
 - Pupils at risk of abuse, neglect, or exploitation,
 - Disengaged pupils
 - Pupils who are below grade level, including, but not limited to, those who did not enroll in kindergarten in the 2020–21 school year
 - Credit-deficient pupils
 - High school pupils at risk of not graduating
 - Other pupils identified by certificated staff

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Conditions of Learning Recovery Funds (from the \$4.5B amounts)

Permissible uses of funds:

- Extending instructional learning time,
- Accelerating progress to close learning gaps, via:
 - Tutoring,
 - Learning recovery programs, and
 - Educator training.
- Integrated pupil supports,
- Community learning hubs,
- Supports for credit deficient pupils to complete graduation or grade promotion requirements and to increase/improve pupils' college eligibility,
- Additional academic services for pupils,
- Training for School staff on strategies, including trauma-informed practices, to engage pupils and families in addressing pupils' social-emotional health needs and academic needs.

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Conditions of Learning Recovery Funds (from the \$4.5B amounts)

Additional Conditions:

- Schools must use 10% to hire paraprofessionals, to provide "supplemental instruction and support through the duration of this program, with a priority for full-time paraprofessionals."
 - AB 86 is unclear as to what happens if a School cannot find any paraprofessionals to hire.
 - AB 86 is also unclear as to whether schools can permissibly "rehire" paraprofessionals in order to qualify for the additional funding
- Must use 85% of funds for expenditures related to in-person services.
 - Schools that have forfeited funding can use "up to 10% of funding" under Section 43521(b) in 2020-2021 School year "to support school reopening for instructional services related to learning loss."
 - Only 15% of funds can be used to support distance learning and preparing for in-person instruction.

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Conditions of Learning Recovery Funds (from the \$4.5B amounts)



Funding Plans:

- On or before June 1, 2021, a school which receives funds related to reopening "shall adopt at a public meeting a plan describing how the apportioned funds will be used in accordance with this section."
 - Within five (5) days of adoption, a charter school shall submit its plan to its chartering authority. A chartering authority shall send received plans to the Superintendent upon request.
 - Local educational agencies shall provide an opportunity for parents and schoolsite staff to be involved in the development of the plan."



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Conditions of Learning Recovery Funds (from the \$4.5B amounts)



- The State has 21 days to develop a template for schools' funding plans, which will incorporate all of the required elements, including:
 - A description of the School's plan for assessing the needs of its pupils
 - A description of the local educational agency's plan for informing the parents and guardians of all of its pupils requiring learning recovery supports of the availability of these opportunities, including in parents' and guardians' primary languages
 - A description of how the LEA involved parents and schoolsite staff, including classified and certificated staff, in the development of the plan
 - A description of how the local educational agency has planned supplemental instruction and support
 - The local educational agency's expenditure plan for funds received and how they will be coordinated with funds received from the federal Elementary and Secondary School Emergency Relief Fund
 - The expenditure plan shall include an indication of how much of the apportioned funds the LEA will allocate and expend for each allowable purpose and shall reflect both estimated and actual expenditures. Actual expenditures shall be reported when they are available.



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Federal Funding


THE ANSWER IS YES

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Sec. 100




- \$355,227,000 from the Federal Trust Fund and \$1,144,773,000 from the Coronavirus Relief Fund are appropriated to the SPI for allocation in the 2020–21 fiscal year to *eligible local educational agencies* in an equal amount per pupil with exceptional needs.
- \$2,855,227,000 from the Coronavirus Relief Fund is appropriated to the SPI for allocation in the 2020–21 fiscal year to LEAs based on supplemental and concentration grant numbers at P-2.
- \$539,926,000 from the General Fund and \$439,844,000 from the Coronavirus Relief Fund are appropriated to the SPI for allocation in the 2020–21 fiscal year to LEAs based on P-2 LCFF entitlement.

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Sec. 100




Timing:

- Funds apportioned to eligible LEAs from the Federal Trust Fund shall be used from March 13, 2020, to September 30, 2022, inclusive.
- Funds apportioned from the General Fund shall be used from March 1, 2020, to June 30, 2021, inclusive.
- Funds apportioned from the Coronavirus Relief Fund shall be used from March 1, 2020, to May 31, 2021, inclusive.
- **Note these funds can therefore be used to repay amounts already expended.**

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Sec. 100



Allowable uses:

- Address learning loss or accelerate progress to close learning gaps through learning supports that begin before the start of the school year and the continuation of intensive instruction and supports into the school year.
- Extend the instructional school year by extending the school year, increasing instructional minutes, or otherwise increase the amount of instructional time or services.
- Provide additional academic services for pupils including assessments, intensive instruction, and materials/technology.
- Provide integrated pupil supports to address other barriers to learning, such as the provision of health, counseling, or mental health services, professional development opportunities to help teachers and parents support pupils in distance-learning contexts, access to school breakfast and lunch programs, or programs to address pupil trauma and social-emotional learning.
- Address health and safety concerns, such as implementing testing, PPE, and cleaning/sanitizing costs.

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Sec. 3



Funding for preschool/childcare

- \$76,000,000 in CRRSA funding shall be allocated to existing state-subsidized alternative payment programs, including, but not limited to, alternative payment programs for migrant childcare and development programs to extend childcare services for essential workers, at-risk children, and children with disabilities or special health care needs whose individualized education programs or individualized family service plans include early learning and care services and who accessed childcare services pursuant to Senate Bill 89 and were unable to get ongoing childcare services through the additional funds provided.



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Some AB 86 Unanswered Questions



- Spring Break:
 - Will schools with a spring break scheduled in the first week of April miss out on additional funding?
- In-Person Instruction/Allowable Instruction Models
 - AB 86 is silent as to the floor for in-person instruction, other than offering in-person instruction "to the greatest extent possible."
- Enforcement
 - It is unclear as to both who will enforce AB 86, and how it will potentially be enforced.



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Required Action to Reopen



- If in the Purple Tier:
 - Complete the CSP, post it to the School's website, and submit it to the local health department and CDPH.
 - Wait seven (7) business days to see if the local health department or CDPH identifies any deficiencies.
 - If no deficiencies are identified, the School can reopen on the 8th business day.
- If in the Red Tier or lower:
 - Complete and post the CSP to the School's website.
 - If the School has not yet opened or reopened, the School must post the CSP to its website at least five (5) days prior to reopening.



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Required Action to Receive AB 86 Funding

- Complete and post a CSP.
- Consider what operations would be allowed depending on the School's applicable tier.
- Consider whether the School can facilitate reopening by April 1, 2021, to receive the full amount of funding.

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Additional Reopening Considerations

- COVID-19 Testing for Employees and Students:
 - Even if not required by AB 86, consider whether and how the School will implement COVID-19 Testing.
- COVID-19 Vaccinations:
 - Have a written policy in place, whether the School is mandating or encouraging employee vaccinations.
- Have general safety documents in place:
 - IIPP, COVID-19 Health and Safety Policy.
- Be prepared to provide exposure notifications:
 - The School must be up to date on all required exposure notification requirements pursuant to AB 685, SB 1159, AB 86, Cal/OSHA regulations, and CDPH guidance.
- Preparations for Potential Accommodations:
 - The School must consider how it will frame reopening to employees, how it will consistently handle accommodations, and any related collective bargaining issues.

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Summary

- AB 86 provides a more succinct path forward to reopen schools, additional funding for certain levels of in-person operations and allows some school operations to begin while counties remain in the state's most restrictive Purple Tier.
- However, there are many unanswered questions related to AB 86, including the levels of operations necessary to provide in-person instruction, enforcement, and a path forward for middle and high schools.

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