

1 **IN-PERSON LEARNING AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jordan D. Teuscher**

5 Senate Sponsor: Todd D. Weiler

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions regarding in-person learning requirements and test to stay
10 programs within public schools.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ suspends a test to stay program requirement;
- 14 ▶ amends provisions regarding the computation of the case threshold that triggers the
15 test to stay program requirement;
- 16 ▶ clarifies when a student may return to school during a test to stay event;
- 17 ▶ provides additional procedural requirements for the application of an exception to
18 an in-person learning requirement; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 This bill provides revisor instructions.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **26-6-42**, as enacted by Laws of Utah 2021, Chapter 435

28 **53G-9-210**, as last amended by Laws of Utah 2021, First Special Session, Chapter 7

29 **Utah Code Sections Affected by Revisor Instructions:**

30 26-6-42, as enacted by Laws of Utah 2021, Chapter 435

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 26-6-42 is amended to read:

34 **26-6-42. Department support for local education agency test to stay programs --**
35 **Department guidance for local education agencies.**

36 (1) As used in this section:

37 (a) "Case threshold" means the same as that term is defined in Section 53G-9-210.

38 (b) "COVID-19" means the same as that term is defined in Section 53G-9-210.

39 (c) "Local education agency" or "LEA" means the same as that term is defined in
40 Section 53G-9-210.

41 (d) "Test to stay program" means the same as that term is defined in Section
42 53G-9-210.

43 (2) At the request of an LEA, the department shall provide support for the LEA's test to
44 stay program if a school in the LEA reaches the case threshold, including by providing:

45 (a) COVID-19 testing supplies;

46 (b) a mobile testing unit; and

47 (c) other support requested by the LEA related to the LEA's test to stay program.

48 (3) The department shall ensure that guidance the department provides to LEAs related
49 to test to stay programs complies with Section 53G-9-210, including the determination of
50 whether a school meets a case threshold described in Subsection 53G-9-210(3).

51 (4) Subsection (2) regarding the requirement to support an LEA's test to stay program
52 does not apply after the effective date of this bill unless the test to stay requirement is triggered
53 under Subsection 53G-9-210(2)(c).

54 Section 2. Section 53G-9-210 is amended to read:

55 **53G-9-210. Requirement for in-person instruction -- Test to stay programs --**
56 **Face coverings.**

57 (1) As used in this section:

58 (a) "Case threshold" means as applicable, the number of students in a school, or
59 percentage of students in a school who meet the conditions described in Subsection (3).

60 (b) "COVID-19" means:

61 (i) severe acute respiratory syndrome coronavirus 2; or

62 (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.

63 (c) "Estimated incubation period" means a period of time that the Department of
64 Health identifies as the number of days between exposure and symptom onset for a given
65 variant of COVID-19.

66 [~~(c)~~] (d) "Extracurricular activity" means the same as that term is defined in Section
67 53G-7-501.

68 [~~(d)~~] (e) "Face covering" means a mask, shield, or other device that is intended to be
69 worn in a manner to cover the mouth, nose, or face to prevent the spread of COVID-19.

70 [~~(e)~~] (f) "In-person instruction" means instruction offered by a school that allows a
71 student to choose to attend school in-person at least four days per week if the student:

72 (i) is enrolled in a school that is not implementing a test to stay program; or

73 (ii) (A) is enrolled in a school that is implementing a test to stay program; and

74 (B) meets the test to stay program's criteria for attending school in person.

75 [~~(f)~~] (g) "Local Education Agency" or LEA means:

76 (i) a school district;

77 (ii) a charter school, other than an online-only charter school; or

78 (iii) the Utah Schools for the Deaf and the Blind.

79 [~~(g)~~] (h) "School" means a school other than an online-only charter school or an
80 online-only public school.

81 (i) "Remote learning" means learning that occurs through technology that provides
82 synchronous and asynchronous learning experiences that maximize student learning and
83 instructional time.

84 [~~(h)~~] (j) "Test to stay program" means a program through which an LEA provides
85 testing for COVID-19 for students during an outbreak of COVID-19 at a school in order to:

86 (i) identify cases of COVID-19; and
87 (ii) allow individuals to attend school in person who:
88 (A) test negative for COVID-19 [~~to attend school in person.~~] during the test to stay
89 program; or
90 (B) are cleared to return to school after the estimated incubation period.
91 (2) (a) An LEA shall:
92 (i) except as provided in Subsection (2)(b), beginning on March 22, 2021, ensure that a
93 school offers in-person instruction; and
94 (ii) if the determination described in Subsection (2)(c) has been made, require a school
95 that reaches the case threshold to:
96 (A) fulfill the requirement described in Subsection (2)(a)(i) by initiating a test to stay
97 program for the school; and
98 (B) provide a remote learning option for students who do not wish to attend in person.
99 (b) [~~The~~] Beginning January 31, 2022, the requirement to provide in-person instruction
100 described in Subsection (2)(a) does not apply for a temporary period of remote learning within
101 an LEA or a given school within an LEA if:
102 (i) the COVID-19 case rates within one or more schools within the LEA have
103 surpassed the case threshold;
104 (ii) the local governing board requests application of the exception by delivering to the
105 governor, the president of the Senate, the speaker of the House of Representatives, and the state
106 superintendent of public instruction [~~jointly concur with an LEA's~~] a letter that details:
107 (A) information regarding the case threshold requirement described in Subsection
108 (2)(b)(i);
109 (B) the local governing board's assessment that due to public health emergency
110 circumstances within the LEA or given school, the risks related to in-person instruction
111 temporarily outweigh the value of in-person instruction[-];
112 (C) a public meeting of the local governing board in which the board voted to request
113 the exception described in this Subsection (2)(b);

114 (D) a specific and temporary period of time for which the local governing board seeks
115 a pivot to remote learning within the LEA or given school; and

116 (E) the measures the local governing board will implement for the LEA or given school
117 to return to in-person learning following the identified temporary remote learning period; and

118 (iii) the governor, the president of the Senate, the speaker of the House of
119 Representatives, and the state superintendent of public instruction jointly confer and approve,
120 or approve with modifications, the request described in Subsection (2)(b)(i).

121 (c) The requirement to initiate a test to stay program described in Subsection (2)(a)(ii)
122 only applies if, in consultation with the Department of Health, the governor, the president of
123 the Senate, the speaker of the House of Representatives, and the state superintendent of public
124 instruction jointly determine that a variant of COVID-19 currently affecting the public
125 education system is of a type that testing and isolation under a test to stay program would be
126 effective in mitigating the harmful public health effects of the variant.

127 (3) (a) For purposes of determining whether a school has reached the school's case
128 threshold, a student is included in positive cases for the school if the student:

129 (i) within the preceding [~~14 days~~] number of days equal to the estimated incubation
130 period:

131 (A) attended at least some in-person instruction at the school; and

132 (B) tested positive for COVID-19; and

133 (ii) did not receive the student's positive COVID-19 test results through regular
134 periodic testing required to participate in LEA-sponsored athletics or another LEA-sponsored
135 extracurricular activity.

136 (b) (i) A school with 1,500 or more students meets the case threshold if at least 2% of
137 the school's students meet the conditions described in Subsection (3)(a).

138 (ii) A school with fewer than 1,500 students meets the case threshold if 30 or more of
139 the school's students meet the conditions described in Subsection (3)(a).

140 (4) (a) An LEA may not test a student for COVID-19 who is younger than 18 years old
141 without the consent of the student's parent.

142 (b) An LEA may seek advance consent from a student's parent for future testing for
143 COVID-19.

144 (5) An LEA, an LEA governing board, the state board, the state superintendent, or a
145 school may not require an individual to wear a face covering to attend or participate in
146 in-person instruction, LEA-sponsored athletics, or another LEA-sponsored extracurricular
147 activity, or in any other place on the campus of a school or school facility after the end of the
148 2020-2021 school year.

149 **Section 3. Effective date.**

150 If approved by two-thirds of all the members elected to each house, this bill takes effect
151 upon approval by the governor, or the day following the constitutional time limit of Utah
152 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
153 the date of veto override.

154 **Section 4. Revisor instructions.**

155 The Legislature intends that the Office of Legislative Research and General Counsel, in
156 preparing the Utah Code database for publication, replace the reference in Section
157 [26-6-42](#) from "the effective date of this bill" to the bill's actual effective date.