

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
DECEMBER 10, 2020**

SUBJECT

Stage 2 Stay Healthy Order Resolution

REFERENCE

March 23, 2020	Idaho State Board of Education (Board) approved a soft closure of all public schools in Idaho through April 20, 2020.
April 6, 2020	Board extended the public school soft closure through the remainder of the academic school year with the option of an earlier entry under certain criteria. Additional action included recommendations to the Governor on statutory provision suspensions, and waiver of the number of hours of instruction that make up a semester credit.
April 16, 2020	Board approved re-entry criteria following the soft closure of schools due to the coronavirus pandemic.
May 4, 2020	Board approved minimum requirements for school districts and charter schools to bring students back on campus after the soft closure.
July 9, 2020	Board approved the Idaho Back to School Framework.
August 17, 2020	Board received update on status of the public education system's (K-20) school/institution reopening status.
October 20, 2020	Board approves amendment to Idaho Back to School Framework, splitting the existing red level of infection into two levels of infection, orange and red.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Constitution Article IX, § 2
Sections 33-101, 33-116, Idaho Code

BACKGROUND/DISCUSSION

On November 14, 2020, Governor Little and the Director of the Idaho Department of Health and Welfare issued a Stage 2 Stay Healthy Order which prohibits public and private gatherings of more than 10 people, whether indoors or outdoors, and mandates that physical distancing and sanitation requirements including face coverings be followed at gatherings which are permissible. While "gatherings" do not include "educational activities" involving students taught by an educator in a school or equivalent setting, spectators at school events remain subject to the prohibition on gatherings of more than 10 people.

Some local school boards and charter schools are getting public pressure to open up extra-curricular activities to spectators in excess of 10 individuals. Doing so would be in violation of the Stage 2 Stay Healthy Order, which has the full force and effect of law.

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The State Board of Education (Board) has constitutional and statutory authority for the general supervision, governance and control of the public school system. This enables the Board to provide guidance and directives to public schools, including charter schools. The Board will consider a resolution directing schools to comply with the Stage 2 Stay Healthy Order.

IMPACT

Compliance with the Stage 2 Stay Healthy Order will help protect the opportunities for schools to provide students with in-person instruction and activities. Failure to comply could result in legal liability including a misdemeanor offense, loss of immunity from civil liability and/or code of ethics violations for certificated staff responsible for administration of school and district administration or failing to comply with state law.

ATTACHMENTS

Attachment 1 – Resolution

Attachment 2 – Stage 2 Stay Healthy Order

Attachment 3 – Joint Statement from Idaho Education Leaders

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Public schools have a responsibility for the health and welfare of their students and to maintain a healthy learning environment. In order to maintain a physical environment that allows students to come to school and benefit from in-person instruction it is critical the schools and their communities do their part in helping to blunt the spread of COVID-19. At this time during the pandemic there are communities where up until this point schools have been able to provide in-person or hybrid instruction, but are now being forced to transition school buildings or classrooms online. The primary cause for these transition are because more and more certificated and classified staff become sick and substitutes are no longer available for classroom instruction, or rates of infection spread are so high it is not safe to bring students to school. In addition to the education of our students, school administrators are responsible for the management of school facilities and the use of those facilities for extra-curricular events. If extra-curricular event are going to be able to continue without having a detrimental impact on students' access to in-person learning, it is critical that these event adhere to the Stage 2 Stay Healthy Order. Many communities are at a tipping point with health care resources. The Stage 2 Stay Health Order is based on science and designed to help curb the spread of COVID-19. Failure to follow the order jeopardizes the ability for schools to provide in-person instruction.

During the 2020 Extraordinary Legislative Session, the Legislature enacted Section 6-3403, Idaho Code, creating limited immunity from liability due to COVID-19. Willful disregard of any health order could result in the loss of the limited immunity established by Section 6-3403, Idaho Code.

Staff recommends approval.

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BOARD ACTION

I move to approve the Resolution set forth in Attachment 1, the title of which is as follows:

A Resolution Directing School District and Charter School Compliance with Stage 2 Stay Healthy Order.

Moved by _____ Seconded by _____ Carried Yes _____ No _____



A RESOLUTION DIRECTING SCHOOL DISTRICT AND CHARTER SCHOOL
COMPLIANCE WITH STAGE 2 STAY HEALTHY ORDER

WHEREAS, the general supervision of the public school system of the state of Idaho is vested in the State Board of Education pursuant to Article IX, §2 of the Idaho Constitution and Idaho Code § 33-101; and

WHEREAS, “all school districts in Idaho, including specially chartered school districts, shall be under the supervision and control of the State Board” pursuant to Idaho Code § 33-116; and

WHEREAS, the Governor of Idaho and Director of the Idaho Department of Health and Welfare have made findings in order to slow the spread of the COVID-19 virus and to protect public health and safety resulting in the Governor of Idaho and the Idaho Department of Health and Welfare issuing a modified Stage 2 Stay Healthy Order dated November 14, 2020; and

WHEREAS, healthcare access for all Idahoans is threatened by the alarming influx of COVID-19 patients in Idaho hospitals and the limitations of healthy nurses, doctors, and technicians to provide skilled care. While the State of Idaho and medical providers are doing everything possible to ensure there are enough staff and resources

to avoid a healthcare capacity crisis, the responsibility to slow the spread of COVID-19 in our communities and preserve healthcare access for all of us rests with the people of Idaho and the choices they make to protect themselves and their loved ones from this dangerous disease; and

WHEREAS, the Governor's stated priority is protecting opportunities for in-person instruction, and student participation in athletics and extracurricular activities; and

WHEREAS, the State Board of Education supports Governor Little and the numerous actions that prioritize Idaho's students and educators, and the steps he has taken to increase hospital capacity and flatten the curve; and

WHEREAS, the Stage 2 Stay Healthy Order *prohibits gatherings of more than 10 people, both public and private*, whether indoors or outdoors, and mandates that physical distancing be followed at those gatherings which are permissible; and

WHEREAS, although "gatherings" do not include "educational activities" involving students taught by an educator in a school or equivalent setting, *spectators at school events remain subject to the prohibition on gatherings of more than 10 people*; and

WHEREAS, there have been reports in the media that some schools and school districts are not adhering to the requirements and recommendations of the Stage 2 Stay Healthy Order, including maintaining six foot distancing, use of face coverings, and holding events which violate the prohibition on gatherings of more than 10 people; and

WHEREAS, the Stage 2 Stay Healthy Order has the full force and effect of law; and

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ATTACHMENT 1

WHEREAS, the Stage 2 Stay Healthy Order provides that “violation of any mandatory provision of this Order constitutes an imminent threat to public health. Violation of or failure to comply with a mandatory provision of this Order may constitute a misdemeanor punishable by fine, imprisonment, or both pursuant to Idaho Code § 56-1003(7)(c);” and

WHEREAS, actions taken by a school district, school or charter school in violation of the Stage 2 Stay Healthy Order may result in loss of immunity protection provided by the Coronavirus Limited Immunity Act (Idaho Code § 6-3401 *et seq.*); and

WHEREAS, violation of the Stage 2 Stay Healthy Order by an educator may result in the filing of a Code of Ethics complaint with the Professional Standards Commission pursuant to Idaho Code § 33-1209.

NOW, THEREFORE, BE IT RESOLVED, that the State Board of Education hereby directs school districts and charter schools to comply with the letter and spirit of the modified Stage 2 Stay Healthy Order, or any subsequent health order issued by the Governor, to slow the spread of the virus, protect public health and safety, and protect opportunities for in-person instruction and extracurricular activities for Idaho students.

ADOPTED and APPROVED by the Idaho State Board of Education, December _____, 2020.

Debbie Critchfield
President



STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
STAY HEALTHY ORDER

November 14, 2020

BUSINESSES AND GOVERNMENTAL AGENCIES MAY CONTINUE OPERATIONS AT PHYSICAL LOCATIONS IN THE STATE OF IDAHO.

ALL INDIVIDUALS, BUSINESSES, AND GOVERNMENTAL AGENCIES MUST ADHERE TO THE MANDATORY PORTIONS OF THE PHYSICAL DISTANCING AND SANITATION REQUIREMENTS DESCRIBED IN SECTION 3 OF THIS ORDER.

GATHERINGS OF MORE THAN 10 PEOPLE, BOTH PUBLIC AND PRIVATE, ARE PROHIBITED, INCLUDING ATTENDANCE AT EXTRACURRICULAR ACTIVITIES SUCH AS SPORTING EVENTS.

PATRONS OF BARS, NIGHTCLUBS, AND RESTAURANTS MUST REMAIN SEATED.

FACE COVERINGS ARE REQUIRED AT LONG-TERM CARE FACILITIES.

PEOPLE AT INCREASED RISK FOR SEVERE ILLNESS LIVING IN THE STATE OF IDAHO ARE STRONGLY ENCOURAGED TO STAY HOME AND LIMIT THEIR MOVEMENT OUTSIDE OF THEIR PLACE OF RESIDENCE.

The Governor and Director of the Idaho Department of Health and Welfare (“Director”) hereby issue this order of isolation pursuant to Article IV, § 5 of the Idaho Constitution and Idaho Law.

The Director is authorized by Idaho Code § 56-1003(7) “to impose and enforce orders of isolation and quarantine to protect the public from the spread of infectious or communicable diseases.”

This Order is effective as of 12:00 a.m. November 14, 2020 and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Governor and Director.

THE GOVERNOR OF IDAHO AND DIRECTOR OF THE IDAHO DEPARTMENT OF HEALTH AND WELFARE MAKE THE FOLLOWING FINDINGS:

The basis for this Order includes, but is not limited to, the following findings.

The virus that causes Coronavirus 2019 Disease (“COVID-19”) has resulted in a global pandemic, is present in Idaho, and has infected over 78,000 Idahoans, resulting in 749 deaths to date. The virus is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect public health and safety and safeguard the ability of public and private healthcare providers to handle an influx of new patients.

This Order is based on evidence of a significant increase of cases of COVID-19 within the State of Idaho; as well as, the advice and input of state epidemiologists, public health experts, and guidelines provided by the Centers for Disease Control and Prevention (“CDC”) and the White House. This order is also based on the scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the state places its citizens at risk for serious health complications, including death, from COVID-19.

Some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in transmission of the virus.

The most recent state report for Idaho from the White House Coronavirus Task Force states that “Idaho is in the red zone for cases, indicating 101 or more new cases per 100,000 population, with the 12th highest rate in the country. Idaho is in the red zone for test positivity, indicating a rate at or above 10.1%, with the 2nd highest rate in the country.” Test positivity and case rates in Idaho have risen in the past several weeks and are rising in most counties in the state. The current weekly percent positivity of PCR testing is 16.9%, the highest positivity in Idaho during the pandemic.

The White House report also states that “[b]etween Oct 31 - Nov 6, on average, 44 patients with confirmed COVID-19 and 7 patients with suspected COVID-19 were reported as newly admitted each day to hospitals in Idaho.” As a result, hospitals across the state of Idaho, including the Veterans Affairs Medical Center, are at or nearing capacity. In some instances, hospitals have diverted patients to other hospitals within the state and in neighboring states.

Local health districts have traced reported infections to gatherings of people, including school-related events, social gatherings, and recreational events. In the judgment of public health officials, reducing the size of these gatherings will reduce spread of the virus in communities and protect vulnerable Idahoans.

Since June 2020, there has been a significant and concerning increase in cases of COVID-19 among residents and staff at long-term care facilities in Idaho. Outbreaks often start with a staff member or a visitor and spreads to other staff members and residents. Many staff members and all residents of long-term care facilities are at a higher risk of severe complications associated with contracting COVID-19. Currently, 150 residential facilities have COVID-19 cases, and two long-term care facilities reported new outbreaks on November 10, 2020.

The scientific evidence shows that at this stage of the pandemic, it is necessary to slow virus transmission to protect Idaho's vulnerable population and to prevent the healthcare system from being overwhelmed. In consultation with state and federal epidemiologists and healthcare experts, this Order is intended to protect the lives and safety of Idahoans, preserve capacity in our healthcare system and slow the spread of COVID-19 by limiting public and private gatherings, requiring patrons to remain seated at bars and restaurants, mandating masks in long-term care facilities, and requiring individuals to maintain physical distancing whenever possible.

NOW, THEREFORE, THE GOVERNOR OF IDAHO AND IDAHO DEPARTMENT OF HEALTH AND WELFARE DIRECTOR ORDER:

1. **Gatherings.**

- a. Gatherings of more than 10 people, both public and private, are prohibited. People participating in gatherings of 10 or fewer people, while permitted, must adhere to the Physical Distancing and Sanitation Requirements in Section 3.
- b. As defined by the CDC, "gathering" means "a planned or spontaneous event, indoors or outdoors, with a small number of people participating or a large number of people in attendance such as a community event or gathering, concert, festival, conference, parade, wedding, or sporting event."
- c. **Bars, restaurants, and nightclubs.**
 - i. All patrons must remain seated while consuming food or drink or when otherwise remaining on the premises, except for when entering, exiting, or using the restroom;
 - ii. Seating must be arranged and maintained so that tables are spaced at least six feet apart; and
 - iii. Nightclubs may continue to operate as a bar but must comply with the requirements of this Section and this Order.

d. Exemptions.

- i. Gatherings for political expression and religious activities are not subject to the provisions of this Section; provided, however, that gatherings for purposes of political expression and religious activities must adhere to the Physical Distancing and Sanitation Requirements in Section 3 of this Order;
- ii. Gatherings as defined in this Section do not include “educational activities.” The term “educational activities” means activities involving students taught by an educator in a school or equivalent setting;
- iii. Gatherings of more than 10 members of the same household. Household is defined as an individual or a group of individuals who reside in the same residence.
- iv. Extra-curricular activities, including athletics, practice, matches, performances and games may continue. Participants necessary for the extra-curricular activity to occur include, but are not limited to, players, instructors, coaches, officials, and personnel to broadcast the activity. Attendance by non-participants, including spectators, remains subject to the requirements specified in this Order, including but not limited to, those identified in Sections 1(a) and 3; and
- v. Gatherings that received an exemption from a public health district prior to November 14, 2020, may occur subject to the requirements provided by the health district and the Stay Healthy Order dated October 27, 2020. This exemption is only valid for gatherings occurring prior to November 22, 2020.

2. Face Coverings at Long-Term Care Facilities.

- a. Anyone who enters a long-term care facility or campus who is not a resident must wear a face covering that covers their nose and mouth at all times.
- b. Exemptions. This requirement does not apply to:
 - i. Children under the age of 5;
 - ii. Any person while consuming food or drink;
 - iii. Any person with a diagnosed medical condition, mental health condition, or disability which prevents wearing a face covering; or
 - iv. Any person who is deaf or hard of hearing for purposes of communication, or any person communicating with a person who is deaf or hard of hearing.

3. **Physical Distancing and Sanitation Requirements.**

- a. Individuals not residing within the same household must maintain at least six-foot physical distancing from other individuals whenever possible.
- b. Individuals should:
 - i. Wash hands with soap and water for at least twenty seconds as frequently as possible or use hand sanitizer;
 - ii. Cover coughs or sneezes (into the sleeve or elbow, not hands);
 - iii. Regularly clean high-touch surfaces and not shake hands;
 - iv. Stay home if sick;
 - v. Wear face coverings while in public, especially when six-foot distancing is not always possible (e.g., inside businesses); and
 - vi. Follow additional protocols established in the Governor's Guidelines for Opening up Idaho published at <https://rebound.idaho.gov/>.
- c. Employers must:
 - i. Develop and implement measures to ensure employees and customers maintain at least six-foot physical distancing from other individuals whenever possible;
 - ii. Provide adequate sanitation and personal hygiene for employees, vendors, and patrons; and
 - iii. Frequently disinfect commonly touched and high-traffic areas and regularly clean those areas.
- d. Employers should:
 - i. Identify how personal use items such as masks, face coverings, and gloves may be required by employees, vendors, and/or patrons;
 - ii. Provide services while limiting close interactions with patrons;
 - iii. Identify strategies for addressing ill employees, which should include requiring COVID-19 positive employees to stay at home while infectious, and may include keeping employees who were directly exposed to the COVID-19 positive employee away from the workplace, and the closure of the business until the location can be properly disinfected;

- iv. On a case-by-case basis, include other practices appropriate for specific types of businesses such as telework where appropriate, screening of employees for illness and exposures upon work entry, requiring non-cash transactions, etc.; and
 - v. Implement additional protocols established in the Governor’s Guidelines for Opening up Idaho and the business-specific protocols published at <https://rebound.idaho.gov/>.
4. People at increased risk for severe illness should self-isolate. Because of the risk of the rapid spread of the virus, and the need to protect all citizens of the State of Idaho, this Order strongly encourages individuals at increased risk anywhere in Idaho to stay at home. Members of households with residents that are at increased risk should be aware that by returning to work or other environments where distancing is not always possible, they could carry the virus back home. Precautions should be taken to protect and isolate from residents at increased risk for sever illness.

People who are at higher risk for severe illness are defined by the CDC. Additional information is located at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- 5. The violation of any mandatory provision of this Order constitutes an imminent threat to public health. Violation of or failure to comply with a mandatory provision of this Order may constitute a misdemeanor punishable by fine, imprisonment, or both pursuant to Idaho Code § 56-1003(7)(c). The Governor and Director requests that the Sheriffs and Chiefs of Police in the State of Idaho, and Idaho State Police educate the public about this Order and ensure compliance with this Order.
- 6. This Order is effective as of November 14, 2020 at 12:00 a.m. and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Governor and Director.
- 7. The Stay Healthy Order dated October 27, 2020 is hereby rescinded.
- 8. To decrease the spread of COVID-19, the cities, counties, public health districts, school districts, and institutions of higher education within the State of Idaho may enact more stringent public health orders than those set out in this Order. Health orders issued by cities, counties, public health districts, school districts, or institutions of higher education that are more stringent than this Order remain valid.
- 9. Each county and each city must promptly provide copies of the Order as follows: (1) by posting the Order on its website, (2) by posting the Order at each county courthouse and each city hall, and (3) by providing a copy to any member of the public requesting it. The Order will also be posted on the website of the Department of Health and Welfare.


10. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:



BRAD LITTLE, GOVERNOR
STATE OF IDAHO

Dated: November 13, 2020



DAVE JEPPESEN, DIRECTOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

Dated: November 13, 2020



Joint Statement from Idaho Education Leaders

The pandemic has impacted almost every aspect of how we live, work, recreate and celebrate. From mundane tasks to once-in-a-lifetime events to medical emergencies, our engagement has been drastically changed.

Our students and educators are no exception. Their lives were turned upside down last spring when they were sent home to finish out their education in virtual environments. The spring high school and intercollegiate sports season was cut short which was devastating for student athletes. High school graduations and college commencement ceremonies were cancelled en masse. The list of missed opportunities goes on.

While the summer provided our schools, colleges and universities with some time to prepare for dramatically different instructional delivery and learning environments, educators and policymakers alike are deeply concerned about learning loss due to the disruptive paradigm shift.

Our top priority is to provide students the opportunity to be in school as much as is safely possible. For most students and families, in-person learning is preferred, and we know that extracurricular activities are vitally important to students and play an important role in developing the whole person. We can't fulfill this critical responsibility for our youth unless we can keep our students and educators healthy and safe.

We are advised and consistently reminded that schools are not the problem. Dr. Deborah Birx, United States Coronavirus Response Coordinator and Ambassador-at-Large, recently paid a visit to Idaho. In a meeting with state and local leaders she stated that public schools are not ground zero for virus transmission. In other words, schools are not "super spreaders."

Dr. Birx explained that the highest concentration of viral spread is happening in our communities. Gatherings where people are not maintaining adequate physical distancing and not wearing masks are the super spreaders. The quickest and most effective way to mitigate

this virulent spread is simply to follow the science-based public health protocols of washing hands, maintaining six feet apart and wearing a face mask. Adult behaviors do impact our ability to operate schools.

Idaho's confirmed cases are on a perilous trajectory. As education policy leaders, we urge and plead with communities large and small across Idaho to do their part to help our students be able to stay in school. The pandemic is not partisan. Enabling our students to go to school, with all the developmental and extracurricular opportunities it has to offer, is not partisan either. It is a moral and economic imperative.

We understand that we are living in a highly politically charged and polarized environment. We don't always get policy decisions right the first time, but we continually seek appropriate solutions and decisions. Even with the benefit of hindsight, there are no easy solutions to managing our way through this public health crisis. We want readers to remember and understand that every decision the State Board of Education and local school boards make are done in public meetings, with the best information available at the time. Members of these local boards are volunteers, your neighbors, who signed up to help make a difference for schools in their community, not to manage a pandemic. It's challenging to work through issues without the space our private businesses have to explore ideas and solutions without immediate, visceral public scrutiny. They are doing their best under incredibly challenging circumstances.

Finally, like you, we all have COVID fatigue. And like you, we have all experienced disappointment, grief, loss or fear to some degree as a result of this awful virus. We ask for your patience, kindness and spirit of cooperation as we work toward our mutual goals. We are doing our best to limit the spread of COVID-19 for public health and to preserve children's access to the full schooling experience. Please join us in doing everything you can to stop this pandemic.

Debbie Critchfield, President, Idaho State Board of Education
Sherri Ybarra, State Superintendent of Public Instruction, Idaho State Department of Education
Alan Reed, Chairman, Idaho Public Charter School Commission
Andy Grover, Executive Director, Idaho Association of School Administrators
Karen Echeverria, Executive Director, Idaho School Boards Association