

CASH Webinar

The Risks and Liabilities Anticipated in Opening School

Julie Arthur, CASH Chair, Palm Springs USD

Jeff Becker, CASH Vice Chair, Office of the Fresno Co. Supt. Of Schools



June 11, 2020

HOUSEKEEPING

- All Attendees are muted.
- If you would like to ask a question, please use the Chat feature.
 - Make sure you are messaging **“All Panelists and Attendees”** by using the drop down.
- This Webinar is being recorded and will be made available to CASH Members for future reference.



THE RISKS IN WELCOMING STUDENTS BACK TO CLASS IN THE 2020-2021 SCHOOL YEAR

Anthony De Maria, The De Maria Law Firm
Robert Kretzmer, Self-Insured Schools of California
Eva Chavez, Merced County Office of Education

The Risks in Welcoming Students Back to Class in the 2020- 2021 School Year



DEMARIA
LAW FIRM

Potential Liability Risks Returning to Campus After COVID-19

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Potential Liability Risks Returning to Campus After COVID-19: **Premises Liability**

- There is a potential liability risk if students are compelled to return to campus and contract COVID-19.
- Under California Education Code §48200, students are required to attend school under state compulsory education laws.
- Throughout the Education Code, school districts are charged with keeping campuses safe. See, for example, California Education Code § § 32280-32289; § 44807.

Potential Liability Risks Returning to Campus After COVID-19: **Premises Liability**

- The potential liability exposure is whether a dangerous condition, of which the district knows or should know, exists on school property. CACI No. 1000, et seq.
- The school has a duty to discover, remedy, and warn against unsafe conditions. See *Rowland v. Christian* (1968) 69 Cal.2d 108, 119.
- Among other factors, the court will take into consideration the likelihood of harm, the probable seriousness of such harm, whether the school knew or should have known about such harm, and the difficulty in protecting against the harm. See *Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 372.

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Potential Liability Risks Returning to Campus After COVID-19: **Premises Liability**

- A release or waiver for student education activities is likely unenforceable due to compulsory education laws. See, e.g. *Gavin W. v. YMCA of Metropolitan Los Angeles* (2003) 106 Cal.App.4th 662, 676 where a court found that a release of liability for a daycare was invalid as a matter of law because parents have to use a daycare's services in order to go to work.
- Additionally, no known applicable immunities for the school district if we expose students at this time.

Potential Liability Risks Returning to Campus After COVID-19: **Premises Liability**

- However, waivers and releases may be enforceable for voluntary activities. For voluntary activities, the standard would be the same as general premises liability previously discussed.
- However, note that not all voluntary activities are treated the same. See, e.g., *Lee v. Weisman* (1992) 505 U.S. 577 where the U.S. Supreme Court treated graduation as a rite of passage and granted higher protections to students.

Potential Liability Risks Returning to Campus After COVID-19: **Special Education**

- There is a risk of exposure to potential liability where schools are not able to meet the needs and provide free and appropriate education under a student's IEP or 504 Plan.
- There is likely going to be an increase in disputes over services provided under IEPs, which will result in an increase in administrative hearings.
- Under Section 504, for a student to collect damages in court, a school's denial of a free and appropriate education must be intentional or done with deliberate indifference. See *Mark H. v. Hamamoto* (9th Cir. 2010) 620 F.3d 1090.

SELF-INSURED SCHOOLS OF CALIFORNIA

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WHERE WE ARE TODAY

The California Department of Public Health reports that as of June 8, 2020, there were 133,489 total COVID-19 confirmed cases. Individuals aged 0 to 17 account for 8,509 of those cases or 6%. Compared to other segments of the population, to date our K through 12 school children have been effected less significantly.

CDPH

The California Department of Public Health (CDPH) released COVID-19 Industry Guidance for Schools and School Based Programs on June 5, 2020. The release can be located at [COVID19.CA.GOV](https://www.cdph.ca/COVID19) The Overview of the document indicates the document is to be considered as “**guidelines and considerations**” for the purpose of preparing to resume in-person instruction. (Page 2)

CDPH RELEASE OF JUNE 5, 2020

The Overview in the document asks each district and school site to consider whether staff, students and families have the tools, information, resources and ability to successfully adhere to the new measures.

(Page 2)

CDPH RELEASE OF JUNE 5, 2020

The CDPH asks that districts continue to consult with their county health officers who are monitoring and providing advice on local conditions. Collaboration with the district's county office of education is encouraged.

(Page 4)

CDPH RELEASE OF JUNE 5, 2020

The CDPH encourages all staff to use cloth face coverings and suggests that teachers can use face shields, if available, which enable younger students to see their teachers' faces. (Page 6)

CDPH RELEASE OF JUNE 5, 2020

The CDPH encourages districts to think of ways to reduce the likelihood of site resources being shared or touched. The example of drinking fountains on a school sites was used. Districts should consider suspending use of the fountains and consider using reusable water bottles. (Page 6)

CDPH RELEASE OF JUNE 5, 2020

The CDPH recommends that districts encourages limiting the use of shared playground equipment in favor of physical activities that require less contact with surfaces. (Page 7)

CDPH RELEASE OF JUNE 5, 2020

The CDPH encourages districts to pay attention to minimizing contact between students, staff, families and the community at the beginning of the day and at the end of the school day. (Page 8)

CDPH RELEASE OF JUNE 5, 2020

The CDPH reiterates the importance of knowing COVID-19 symptoms:

Fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat and a new loss of taste or smell.
(Page 12)

LIABILITY CONSIDERATIONS

It is important that you as a representative of your district, consult with your administrative counsel to obtain their opinion as to how the CDPH Release of June 5, 2020, will be interpreted. As noted earlier the document is referred to as presenting “guidelines and considerations”. However, as SISC’s panel counsel has advised, these could also be setting the standard on which your district’s conduct will be judged.

COVERAGE CONSIDERATIONS

It is also important that your district check with its liability insurance provider for comment on how it is anticipated the provider will respond to a Claim for Damages or Suit that is served upon the district. Some, but not all, coverage documents exclude coverage for damages resulting from organic pathogens. Viruses can be included in the definition of organic pathogen in the memorandum of coverage or policy. Keep in mind this is a relatively new and developing area and the answer may not be provided instantly.

SUMMARY

Review the CDPH Release of June 5, 2020

Consult with your administrative counsel regarding their interpretation of the CDPH Release and the implications for potential liability exposures to your district.

Check with your district's insurance provider as to how they will respond to the tender of a Claim for Damages or Suit.

SCHOOL OPENING RISKS FOR STUDENT/STAFF: ASSUMPTIONS, CONSIDERATIONS & EXPECTATIONS

Don Ulrich

CASH Immediate Past Chair, Clovis USD

COVID-19

School Opening Risks for Students and Staff
Assumptions, Considerations, and Expectations



Don Ulrich, Ed.D.
Deputy Superintendent



Maintaining Learning Culture

- Safety of our students and staff
 - Commitment to students and student learning
 - Communicating the vision of safety and quality instruction
 - Sense of teamwork, empathy, and can-do spirit



Establish Safety Protocols

- Square foot per student & social distancing requirements
- Health Screening
 - Taking temperatures for students & staff
 - Testing
- Social distancing and current instructional pedagogies



Evolution of Instructional Pedagogies

- Teacher as facilitator
- Student discovery and problem solving
- Active inquiry
- Project based
- Group work
- Flexible time and work-spaces



What Does Instruction Look Like in August, 2020?

- Split schedule – 50% of our students on campus at one time
- Some blending learning
- Flexibility
- Co-curricular activities?
- Navigating “guidelines” vs “mandates”
 - Local decisions



Other Concerns

- Will parents opt out?
- ADA is public school's funding
- Will the state issue some type of compromise ADA requirements?
- California School's are facing 8% funding cut for 20-21
- Will we have augmented funding from Feds for COVID mitigation?
- District liability



Liability

- Students with Special Needs (IEP Accountability)
- COVID infections of students and/or staff



Conclusions

- Maintaining Learning Culture
- What “can” we do as opposed to what we “can’t” do
- Leadership/teacher/staff/student/community
 - Partnership
 - Collaboration
 - Communication



Questions?



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LEARNING FROM THE HEALTH CARE INDUSTRY IN PLANNING RE-ENTRY

Jeff Johnson, PBK

Dr. Mark Johnson, Center for Disease Control

Wellness Design & Healthy Schools

Introduction

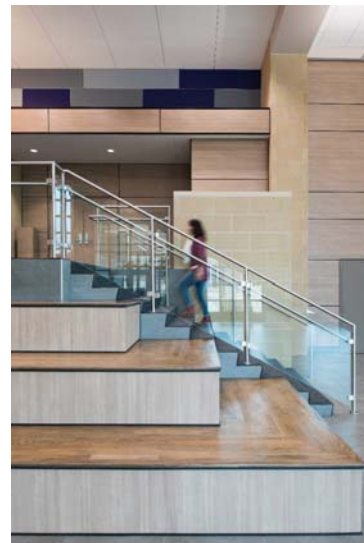


Jeff Johnson
PBK \ Wellness Design Thought Leader

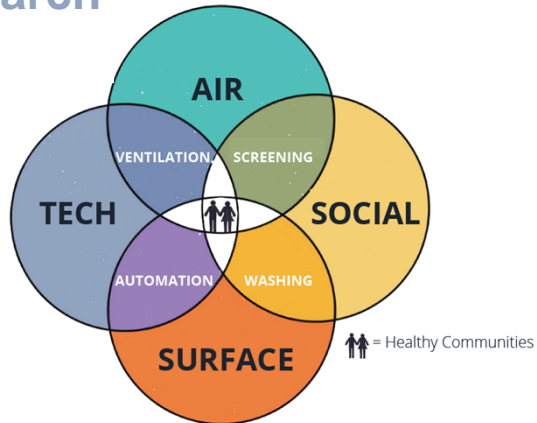
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Where We Are Today

- COVID-19 has upended life and we will continue to feel the impact for years to come
- The schools you all return to will look, feel, and operate differently than they did prior to March of this year

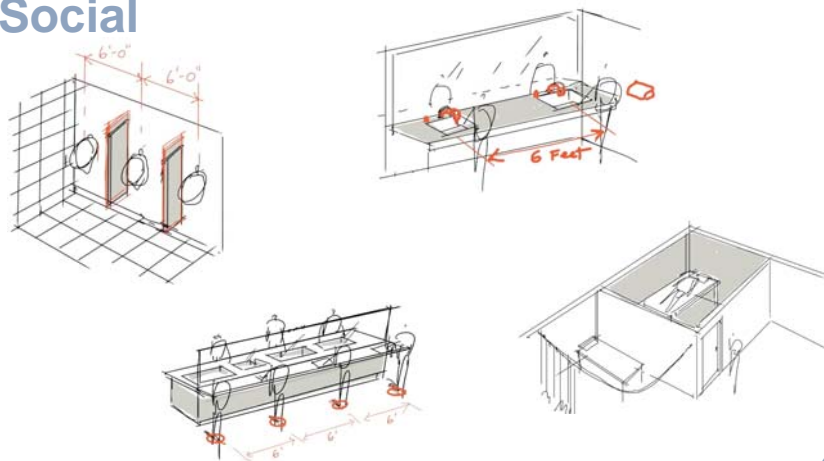


Our Research



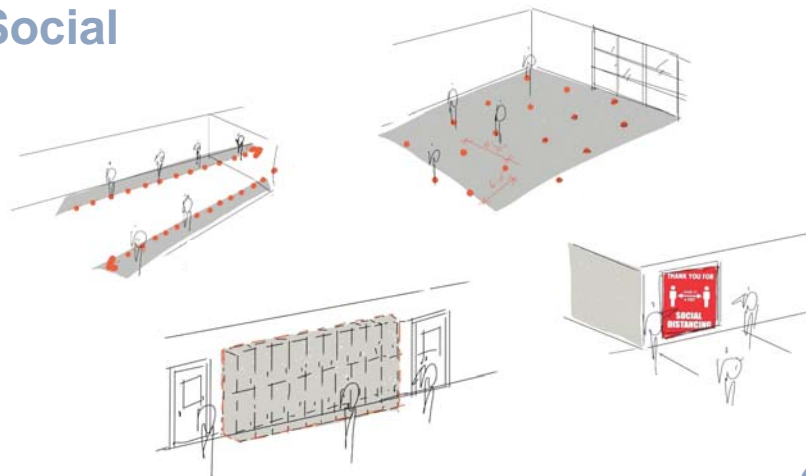
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Social



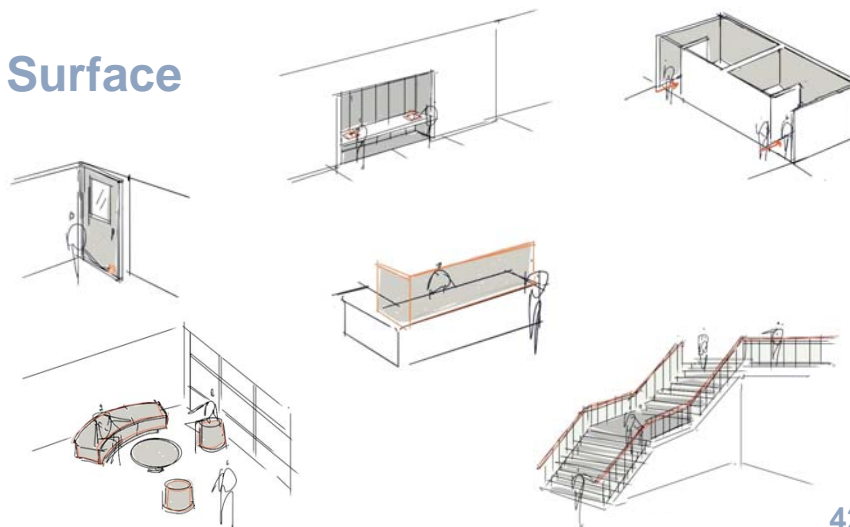
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Social



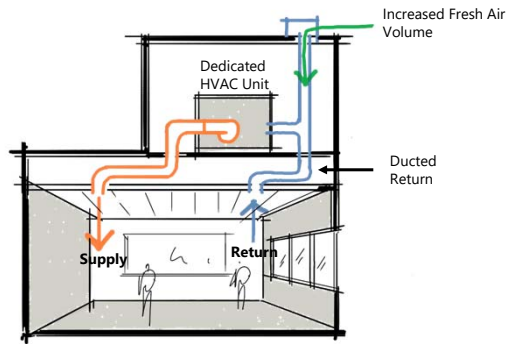
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Surface



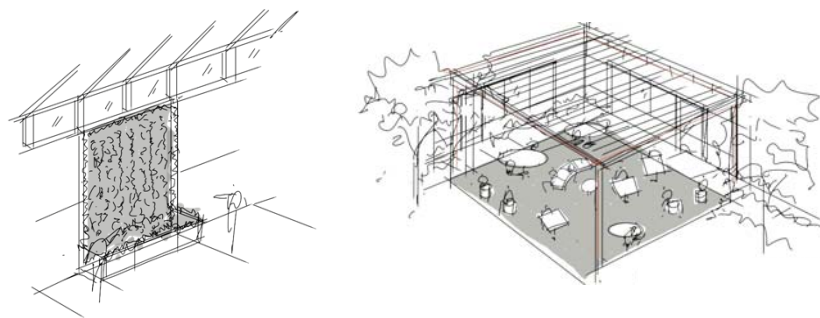
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Air | Light



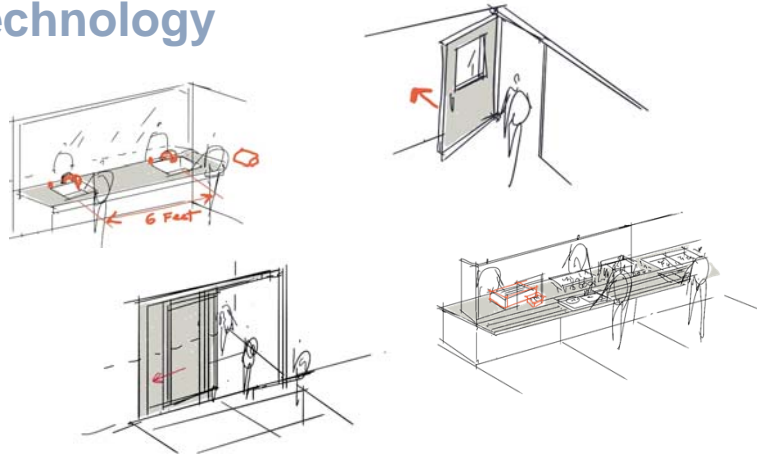
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Air | Light



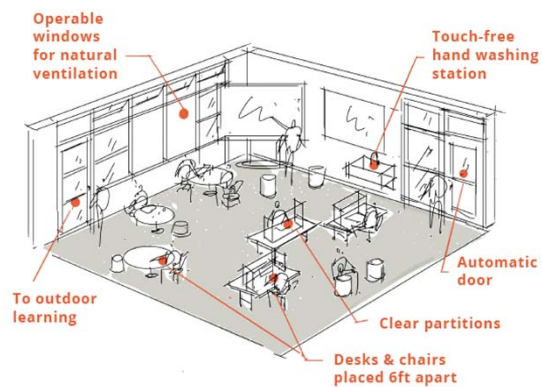
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Technology



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The Comprehensive Classroom



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Discussions with **Public Health Agencies**

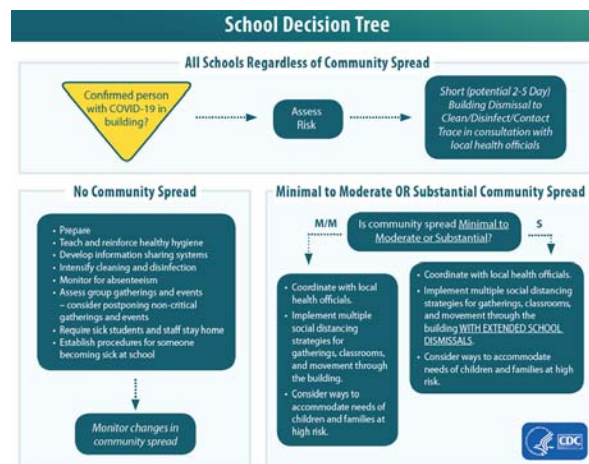
- CDC Guidance for School Administrators
- California Dept. of Public Health- Guidance for Schools
- USEPA Indoor Air Quality Tools for Schools
- CDC Guidelines for Environmental Infection Control in Healthcare Facilities

Dr. Mark Johnson, CDC/ATSDR Regional Director-Chicago;
 Adjunct Associate Professor, Univ. of Illinois School of Public

Health

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CDC Interim Guidance for Administrators of US K-12 Schools and Child Care Programs

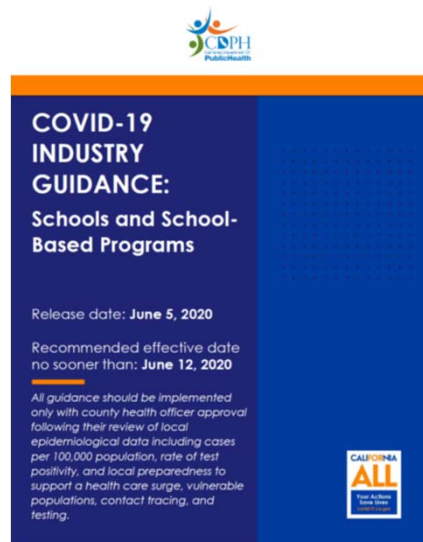


<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

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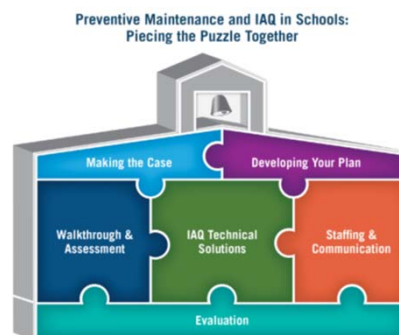
California Dept. of Public Health

- Directory of County Health Officers for local guidance
- Healthy Hygiene Practices
- Intensify Cleaning, Disinfection, and Ventilation
- Implementing Distancing Inside and Outside the Classroom
- Maintain Healthy Operations
- <https://covid19.ca.gov/pdf/guidance-schools.pdf>



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USEPA- Indoor Air Quality Tools for Schools: Preventive Maintenance Guidance



https://www.epa.gov/sites/production/files/2019-03/documents/epa_oria_iaq-tfs_preventive-maintenance-guidance_2019_final-508.pdf

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CDC Guidelines for Environmental Infection Control in Health-Care Facilities

- Air-Handling Systems
- Construction, Renovation, Remediation, Repair, and Demolition
- Infection-Control and Ventilation Requirements
- Controlling the Spread of Waterborne Microorganisms
- Cleaning and Disinfecting Strategies for Environmental Surfaces
- Carpeting and Cloth Furnishings

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Emergency Response & Recovery

- Crisis and Recovery: COVID-19 vs Natural Disasters
 - Crisis
 - Recovery

Result: **Collaboration** from government, private, and nonprofit organizations, students, teachers, and administrators for better solutions long-term

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A Systematic Approach

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Short Term

- Reopening
 - Case by case – every district is unique
 - Decision made at local level
- Which preventative measures are immediate priority?
- Developing a mindset to prepare for the “new normal”
 - Use student and parent input
 - Reinforce behaviors at home

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Long Term

- How can we take the challenges and solutions experienced in 2020 to develop best practices for the future?

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Ideas as You Begin **First Steps**

- Identify appropriate resources to provide guidance
- Develop collaborative partnerships
- Learn from experience
 - What solutions are districts finding successful? How do they incorporate public health resources, design best practices, educational and curricular components?

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Collaborative Solutions

CDC, Local Agencies, School Districts

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Resources

- ▶ **CDC Guidance on Childcare, Schools and Youth Programs**
 - ▶ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>
- ▶ **California Dept of Public Health**
 - ▶ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx>
 - ▶ <https://covid19.ca.gov/pdf/guidance-schools.pdf>
- ▶ **California Dept of Education**
 - ▶ <https://www.cde.ca.gov/ls/he/hn/coronavirus.asp>
- ▶ **California School Nurses Organization**
 - ▶ <https://www.csno.org/>
- ▶ **Healthy Schools: PBK Wellness Design Whitepaper**
 - ▶ https://pbk.com/assets/media_library/Healthy%20Schools%20Whitepaper%20CA.pdf
- ▶ **Building Well:**
 - ▶ https://leafengineers.com/wp-content/uploads/2020/05/Building-Well-LEAF-Whitepaper_CAK12.pdf

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THANK YOU!

Any questions?

For more information contact Jeff Johnson

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909-937-9200

Questions & Answers

- Please use the Chat feature on your screen to ask questions.
 - Make sure you are messaging “All Panelists and Attendees” by using the drop down.

JUNE WEB-SHOPS

Bonds, Bond Refinancings, Certificates of Participation, Leases and Funding Alternatives in the Pandemic

Part One

Tuesday, June 16, 2020
10:00 a.m. – 12:15 p.m.

Part Two

Friday, June 19, 2020
10:00 a.m. – 12:15 p.m.



Visit cashnet.org for more information.
Stay safe out there!

-CASH

UPCOMING WEB EVENTS

Thank you for attending today's webinar.

Please mark your calendars for these future dates and topics:

Thursday, June 18, 2020
10:00 a.m. – 12:15 p.m.

**FEMA Disaster Funding:
Counting Every Dollar**



Stay safe out there!
-CASH

Disclaimer About Event Materials: The presentation materials utilized for this event were prepared by individual presenters. As with all CASH events, the presentation and materials are not intended to constitute legal advice. School district and county office of education personnel should consult with legal counsel for advice on specific issues and applications of any laws.