

San Diego judge temporarily blocks state from enforcing school reopening rules



Morgan Yang, 9, center, and Lucy Riddle, 10, display signs urging officials to open schools during a protest on Sept. 23, 2020, in front of the Carlsbad School district headquarters.
(Bill Wechter/for The San Diego Union-Tribune)

By [KRISTEN TAKETA](#)

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A San Diego County judge issued a temporary restraining order Monday blocking California from enforcing a wide swath of rules that limit and regulate school openings, saying that the state has denied children their right to an education by forcing many to stay in online learning.

Judge Cynthia Freeland granted the restraining order to a group of North County parents [who sued several state leaders](#) last month to overturn the [school reopening framework rules](#) that the state issued in January. The lawsuit argued that the rules

were unfairly preventing schools from reopening and that children are suffering because of school closures.

Freeland also temporarily overturned the [state's denials of requests](#) by Poway Unified, San Dieguito Union High and Carlsbad Unified to reopen their middle and high schools for regular in-person instruction while San Diego County is in the purple tier.

“With the mental health effects resulting from (or being exacerbated by) remote learning, one can conclude that disparate treatment being experienced by children affected by the January 2021 Framework is depriving those same children of a fundamental benefit of education,” Freeland said in the [restraining order](#).

Lee Andelin, attorney for the parent plaintiffs, said the restraining order appears to block the state from applying its January framework rules to schools statewide, not just local schools.

“The way we read the judge’s order, it’s not limited to San Diego County,” Andelin said.

Parents celebrated the judge’s decision and said it proved their point, that online learning has failed children and created inequities between schools that were forced to stay closed and schools that have already been open since the fall.

“We’re thrilled,” said Scott Davison, co-director of the Parent Association in Carlsbad and an attorney who helped with the lawsuit. “It was just an amazing decision and basically kind of a win on all counts, and a huge validation of our position that remote learning is a failure, that education is a constitutional right and that these kids have been denied their right to an education with remote learning.”

California Health and Human Services spokesman Rodger Butler said in an email that all San Diego County middle and high schools would get to reopen for in-person instruction on Wednesday anyway, because of the county’s improvements in COVID case rates and vaccine distribution. The county is expected to enter the red tier on Wednesday.

“California has and will continue to accelerate the safe reopening of schools by increasing access to vaccines for school staff, ensuring ample resources to implement key safety measures, and reducing COVID-19 transmission rates,” Butler said. “We will continue to lead with science and health as we review this order and assess our legal options with a focus on the health and safety of California’s children and schools.”

The state’s January framework prohibited middle and high schools from reopening while their county is in the most-restrictive purple tier. It also required schools that reopened to have at least four feet of distance between students in classrooms.

Parents argued the tier rule unfairly prevents schools from reopening at a time when many children are suffering from depression, learning loss and other harms they say are being worsened by school closures.

They also argued that the four-foot distance rule makes it practically impossible for middle and high schools to reopen for full-time, in-person learning because it limits how many students can be in a classroom at a time.

When the framework was issued in January, it had [forced many school districts](#), including several North County districts, to postpone their plans to expand reopening of their middle and high schools.

Judge Freeland agreed with parents that the January framework was “selective in its applicability, vague in its terms, and arbitrary in its prescriptions,” according to the temporary restraining order.

In San Diego County, some school districts and many private schools have been open since early fall. But any schools that did not open by the time San Diego County fell into the purple tier in mid-November have been forced to stay closed for months, until case rates improved.

Freeland noted that the state has allowed elementary students to attend school in-person on a regular basis in several districts, while middle and high school students in the same districts have not been allowed.

The state has prioritized reopening elementary schools first because younger children are believed to be less likely to get seriously sick from COVID. But Freeland said the state's evidence to support rules that keep middle and high schools closed while elementary schools are open is insufficient. She also said the state's rules are not specifically tailored for the goal of minimizing COVID spread and instead have led to unequal treatment of students.

"Indeed, there can be no dispute that students throughout the districts at issue have, as a result of frameworks or rules adopted by various governmental agencies, received differing forms and levels of education, which the evidence demonstrates have significantly affected the quality of education being delivered to students," Freeland said in the restraining order.

Officials at Carlsbad Unified and Poway Unified praised the judge's decision. Carlsbad, Poway, San Dieguito Union High and San Marcos Unified had filed declarations of support for a restraining order, arguing that they had been planning to reopen with several safety mitigation measures in place.

"This is great news for PUSD, allowing us to confidently move forward with our phased reopening plans, regardless of our County's tier status.

On March 30 the state will get a chance to defend its reopening rules at a court hearing.