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S.B. 107 Enrolled

IN-PERSON INSTRUCTION PRIORITIZATION

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill requires the Department of Health to support widespread testing of a school's students for COVID-19 under certain conditions to facilitate a requirement for in-person instruction.

Highlighted Provisions:

This bill:

• requires the Department of Health to provide support to a local education agency (LEA) that initiates widespread COVID-19 testing for a school (test to stay program);

• requires that guidance that the Department of Health provides to LEAs related to test to stay programs complies with certain statutory provisions;

• requires an institution of higher education to provide a certain number of in-person courses during the 2021-2022 academic year, with certain exceptions;

• requires an LEA to ensure that certain schools within the LEA continue to provide in-person instruction;

• establishes the case threshold in a school above which the LEA is required to initiate a "test to stay program" for the school; and

• enacts provisions related to a "test to stay program," including provisions related to parental consent for COVID-19 testing for the parent's student.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

26-6-33, Utah Code Annotated 1953

53B-16-111, Utah Code Annotated 1953

53G-9-210, Utah Code Annotated 1953

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

Section 1. Section **26-6-33** is enacted to read:

26-6-33. Department support for local education agency test to stay programs -- Department guidance for local education agencies.

(1) As used in this section:

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

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

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

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

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

(a) COVID-19 testing supplies;

(b) a mobile testing unit; and

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

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

Section 2. Section **53B-16-111** is enacted to read:

53B-16-111. In-person instruction.

(1) As used in this section:

(a) "Course" means each section of a course that an institution of higher education offers as:

(i) part of a program of instruction; or

(ii) a general education requirement.

(b) "Institution of higher education" means an institution described in Section 53B-1-102.

(c) "Program of instruction" means the same as that term is defined in Section 53B-16-102.

(2) Except as provided in Subsection (3):

(a) for fall semester in 2021, an institution of higher education shall offer a number of in-person courses that is at least 75% of the number of in-person courses that the institution of higher education offered for the analogous semester that began immediately on or after August 1, 2019; and

(b) for spring semester in 2022, an institution of higher education shall offer a number of in-person courses that is at least 75% of the number of in-person courses that the institution of higher education offered at the beginning of the analogous semester that began on or immediately after January 1, 2020.

(3) An institution of higher education may offer fewer in-person courses than the number of courses described in Subsection (2):

(a) in proportion to the institution of higher education's decline in enrollment if the institution has a decline in enrollment between the analogous semesters described in Subsection (2);

(b) for courses that are designed to accommodate nontraditional students who need to participate in online learning; or

(c) if a number of vaccinations against COVID-19, as that term is defined in Section 53-2c-102, that would allow all willing members of the institution's faculty and staff to be vaccinated has not been available in the state before the beginning of the semester in question.

Section 3. Section **53G-9-210** is enacted to read:

53G-9-210. Requirement for in-person instruction -- Test to stay programs.

(1) As used in this section:

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

(b) "COVID-19" means:

(i) severe acute respiratory syndrome coronavirus 2; or

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

(c) "In-person instruction" means instruction offered by a school that allows a student to choose to attend school in-person at least four days per week if the student:

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

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

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

(d) "Local Education Agency" or LEA means:

(i) a school district;

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

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

(e) "School" means a school other than an online-only charter school or an online-only public school.

(f) "Test to stay program" means a program through which an LEA provides testing for COVID-19 for students during an outbreak of COVID-19 at a school in order to:

(i) identify cases of COVID-19; and

(ii) allow individuals who test negative for COVID-19 to attend school in person.

(2) (a) An LEA shall:

(i) except as provided in Subsection (2)(b), beginning on March 22, 2021, ensure that a school offers in-person instruction; and

(ii) require a school that reaches the case threshold to:

(A) fulfill the requirement described in Subsection (2)(a)(i) by initiating a test to stay program for the school; and

(B) provide a remote learning option for students who do not wish to attend in person.

(b) The requirement to provide in-person instruction described in Subsection (2)(a) does not apply for a temporary period if the governor, the president of the Senate, the speaker of the House of Representatives, and the state superintendent of public instruction jointly concur with an LEA's assessment that due to public health emergency circumstances, the risks related to in-person instruction temporarily outweigh the value of in-person instruction.

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

(i) within the preceding 14 days:

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

(B) tested positive for COVID-19; and

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

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

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

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

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

Section 4. **Effective date.**

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

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