

Rational Steps #2: Statutory Right to In-Person Learning

Welcome to the second installment of my policy series, where we will identify and explore important issues facing our state and recommend workable policy solutions. It is my goal that this series be informative, educational, and an example of how to constructively take rational steps toward a better Washington for all.

- **Issue:** Despite public-health recommendations that children be in school, the overwhelming majority of students have been, and continue to be, denied the option of in-person instruction. The very real specter exists that even in the fall of 2021, many students will be denied in-person learning.
- **Rational Step Toward a Better Washington:** Create a statutory right for students to be offered in-person learning, unless in-person learning is prohibited by order of the governor, secretary of health, or local county public-health officer.

A. When History is Written About This Pandemic, It Will Be Written That We Did Not Serve Our Children Well

"When history is written about this pandemic, both here and across this country, it will be written that we did not serve our children well. Kids have lost not just a year of school, but everything that goes with that, and with it also is, I think, an increased amount of depression among kids and, for our students of color, where there was an opportunity gap already, this will set them back so much."

- Jenny Durkan, Seattle Mayor (Seattle Times, 2/27/21)¹

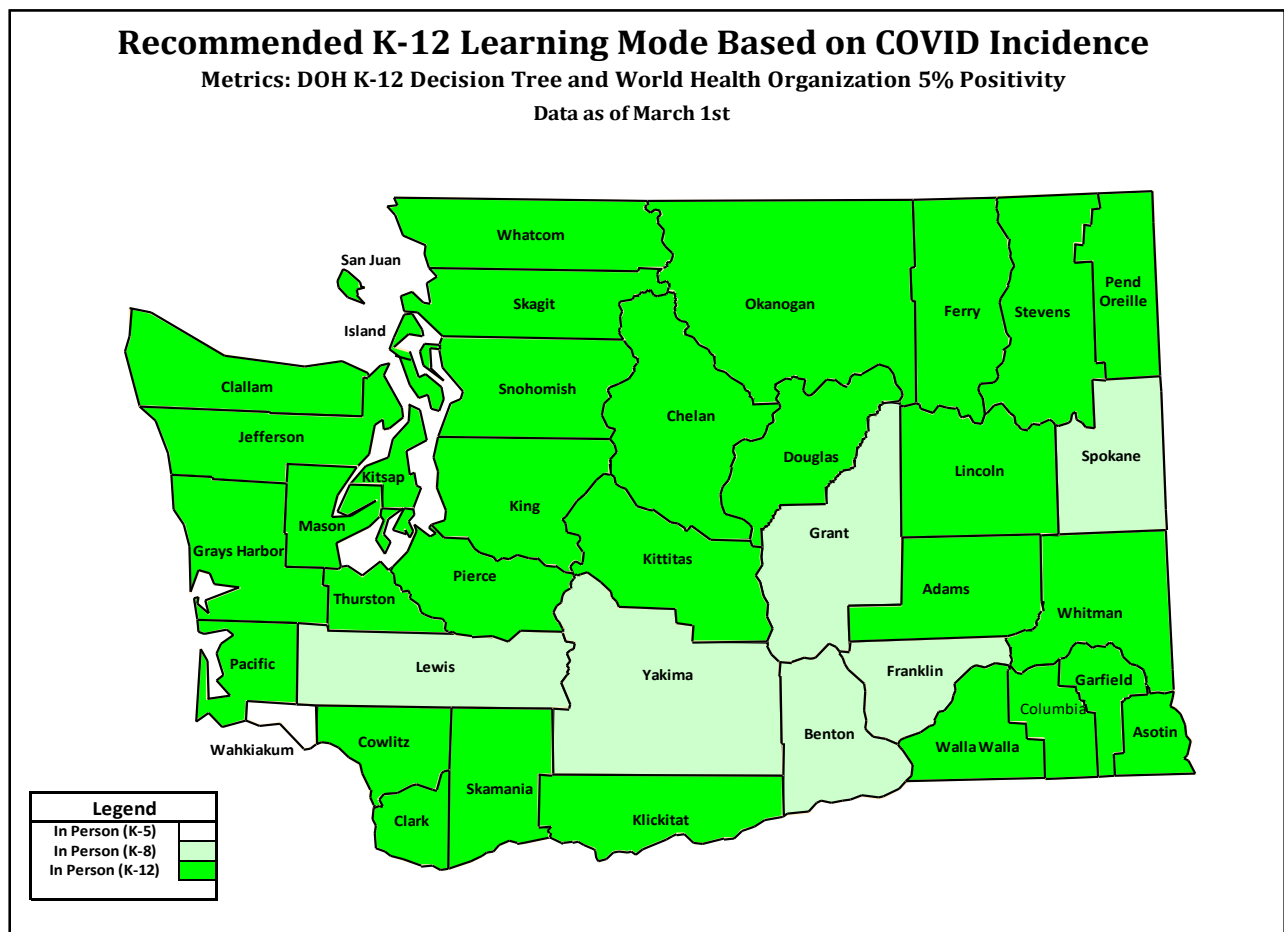
As to Mayor Durkan's point about increased depression among kids, one of the most heartbreaking letters I've ever had to read was sent to me last month by a grandmother in my district, who wrote:

"I'm asking for mental health, especially for young people, to be more of a concern to everyone. My precious grandson, Trevor James, took his own life this week. He would have been 14 on Feb. 22. He loved school and playing trumpet in the band. He was an excellent student but could not thrive in the online world. He was an active fisher/hunter, but even the outdoors was shut down. He was despondent over his life, the politics, the pandemic, the riots. It became all too much and he couldn't stay. Please make decisions that make a difference in mending the wounds of the nation so we have a generation to give it to. Thank you."

I still get tears every time I read that letter. We have failed our children – they deserve so much better.

B. "Failing to Follow the Science"

Our state's children are bearing the disproportionate brunt of this pandemic, in contradiction to public-health recommendations. Here is a map, based on current COVID metrics, of recommendations for in-person learning²:



Nearly every county in the state is recommended to offer in-person learning to all grades.³

Yet, at present, we rank near the absolute bottom in the country in terms of in-person instruction, ranking 47th by one metric.⁴ And several districts, particularly in Puget Sound, have announced that they will not be returning students to in-person learning for the rest of the year.⁵

This is the equity issue of our time. Make no mistake, the 70,000 students attending private schools are uniformly being offered in-person instruction.⁶ And they tend to be more affluent. It is only in the public sector – in which providing for education is the state's paramount duty – where we are laggards.

This is not "following the science." It is the exact opposite, causing active, real, and long-lasting – sometimes irreparable – harm to our children. While we stand by and fail to act.

Or, let me be more clear: We act on bills like school district procurement (SB 5017); school employee housing (SB 5043); school equity training (SB 5044); paying schools for not transporting children (SB 5128); teaching tribal history (SB 5161); school depreciation subfunds (SB 5202); teaching media literacy and digital citizenship (SB 5242); school district board qualifications (SB 5340); and more.⁷

These are all bills that passed out of the Senate education committee, or off the floor of the Senate, since the 2021 session began January 11 – while we as a body and an institution have ignored the proverbial 800-pound gorilla staring at us.

C. "Lesson Learned" – Need to Create a Statutory Right to In-Person Learning

We should all take time to look back and see the "lessons learned" from this pandemic so as to never make the same mistake again.

For me, the lesson learned about K-12 is straightforward:

Amazingly, there is no statutory right – despite basic education being state government's paramount duty – for students to be offered in-person learning.

The lack of such a right, which I think we all presumed to exist, has led to adults pointing fingers at each other – usually some combination involving school boards, the Legislature, the governor, and education unions – while our children suffer.

This can't be allowed to continue. And yet the very real specter of such adult bickering hangs over the start of the 2021-22 school year in a very tangible and real way.

[SB 5464](#) represents a Rational Step Toward a Better Washington.⁸ It is straightforward and codifies the right to be offered in-person learning in our state, unless school closures are ordered by either the governor, secretary of health, or the local county public-health officer.

The intent section lays out the need and rationale for the bill:

NEW SECTION. **Sec. 1.** (1) Education is a constitutional right for children residing in Washington state. The often-cited paramount duty provision in our state Constitution reflects a proud tradition that values the dignity of education and the worth of every child regardless of background or circumstance.

(2) Scientific research and firsthand reports show that extended closure of schools hurts our students academically and emotionally. Experts in the field and parents on the ground all share the same concern: In addition to academic challenges, students prevented from the option of in-person learning are denied vital emotional connections they need to learn and develop. The harms are real and long-lasting.

(3) The right to the option of in-person learning needs to be codified for the academic, emotional, and physical well-being of our children and to conform with the paramount duty provision in our state Constitution.

(4) It is the intent of this act to codify that right to the option of in-person learning for students and ensure that closures of longer than 10 days can only be ordered in times of emergency by the governor, secretary of health, or a local health officer.

If we could do only one thing to benefit our children, it should be to put a stop to the adult bickering and finger-pointing, give real meaning to the “paramount duty” clause, and codify the right to in-person learning, so all 1 million Washington students may have in-person instruction next fall.

Conclusion

The single most important thing the Legislature can do for the children of this state is to codify the right to be offered in-person instruction, absent the governor, secretary of health, or local county public-health official ordering school closures.

Footnotes

- <https://www.seattletimes.com/seattle-news/politics/after-a-year-of-covid-seattle-mayor-jenny-durkan-has-no-regrets-but-a-few-things-she-wishes-shed-known/>
- Data from DOH Risk Assessment Dashboard (accessed March 1), County Cases Per 100,000 and Positivity Rates. Categories: All K-12 In Person if Cases under 200 per 100,000 over last 14 days or below 5% positivity. K-8 in Person if Cases Under 350. K-5 In Person if Cases Over 350. See DOH K-12 Decision Tree Metrics: <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/DecisionTree-K12schools.pdf>
- Id. (32 counties meet DOH case or WHO positivity metrics for all K-12 grades in-person. 6 counties between 200-350 cases per 100,000, meriting a K-8 in-person recommendation. 1 county above 350 cases per 100,000)
- 20.1% students weighted in-person classroom instruction ranking 47th (ahead of only Maryland, California and Oregon) – accessed March 2 <https://cai.burbio.com/school-opening-tracker/?stream=future#:~:text=In-Person%20Index%20for%20K-12%20Public%20Schools%3A%20%28Calculated%20by,the%20200%20largest%20school%20districts%20in%20the%20U>
- <https://www.q13fox.com/news/parents-in-lake-washington-school-district-raise-voices-over-remaining-in-remote-learning>
<https://www.king5.com/article/news/health/coronavirus/seattle-schools-cdc-reopening-guidance/281-05f18bf1-6a30-488c-9a6e-6a695adac356>
<https://myedmondsnews.com/2021/02/edmonds-school-district-clarifies-plans-for-grade-3-12-students-not-returning-to-classrooms-under-stage-2/>
- <https://www.q13fox.com/news/demand-for-private-schools-leads-to-waitlist-pool-and-expansion?fbclid=IwAR2aBu1dBIY8YfYtNezt98MM8oEK78lIOYdghiuBxBwM1ilPOczXLLzJZxo>
- List of bills passed out of Senate Early Learning & K-12 Education Committee in 2021 session: <https://app.leg.wa.gov/DLR/searchresults/default.aspx?cb=1&id=6¶ms=12228,26,1/11/2021,2,1/11/2021&desc=xYxIFgkCPm3RpNnGiSrT8%2fPWtiUomPsTRoGBDLWRpfWaNj1jVzeTdRZZ6v%2b6qev5O9jmHMPUz9AJK73JcG7ewceXrLH1hnPc&bienString=2021-22&titles=LHHLb318X9t8p4Ils2%2bTpnIm3YAK3qqj>
- SB 5464 ("An Act relating to requiring the option of in-person learning unless prohibited by the governor, secretary of health, or a local health officer") <http://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5464.pdf?q=20210302200027>