

**Representative Paul Ray** proposes the following substitute bill:

**IN-PERSON INSTRUCTION PRIORITIZATION**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: Paul Ray

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**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;
- ▶ 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



26 parental consent for COVID-19 testing for the parent's student.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 [26-6-33](#), Utah Code Annotated 1953

34 [53B-16-111](#), Utah Code Annotated 1953

35 [53G-9-210](#), Utah Code Annotated 1953



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

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

39 **26-6-33. Department support for local education agency test to stay programs --**  
40 **Department guidance for local education agencies.**

41 (1) As used in this section:

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

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

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

46 (d) "Test to stay program" means the same as that term is defined in Section  
47 [53G-9-210](#).

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

50 (a) COVID-19 testing supplies;

51 (b) a mobile testing unit; and

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

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

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

57 **53B-16-111. In-person instruction.**58 (1) As used in this section:59 (a) "Course" means each section of a course that an institution of higher education  
60 offers as:61 (i) part of a program of instruction; or62 (ii) a general education requirement.63 (b) "Institution of higher education" means an institution described in Section  
64 53B-1-102.65 (c) "Program of instruction" means the same as that term is defined in Section  
66 53B-16-102.67 (2) Except as provided in Subsection (3), ~~it~~ **for a semester** ~~beginning~~ **on or**  
67a **after** ~~it~~ August 1, 2021, an institution of  
68 higher education shall offer a number of in-person courses that is at least 85% of the number of  
69 in-person courses that the institution of higher education offered on September 15, 2019.70 (3) An institution of higher education that has a decline in enrollment between  
71 September 15, 2019, and August 1, 2021, may offer fewer in-person courses than the number  
72 of courses described in Subsection (2) in proportion to the institution of higher education's  
73 decline in enrollment.74 Section 3. Section **53G-9-210** is enacted to read:75 **53G-9-210. Requirement for in-person instruction -- Test to stay programs.**76 (1) As used in this section:77 (a) "Case threshold" means as applicable, the number of students in a school, or  
78 percentage of students in a school who meet the conditions described in Subsection (3).79 (b) "COVID-19" means:80 (i) severe acute respiratory syndrome coronavirus 2; or81 (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.82 (c) "In-person instruction" means instruction offered by a school that allows a student  
83 to choose to attend school in-person at least four days per week if the student:84 (i) is enrolled in a school that is not implementing a test to stay program; or85 (ii) (A) is enrolled in a school that is implementing a test to stay program; and86 (B) meets the test to stay program's criteria for attending school in person.87 (d) "Local Education Agency" or LEA means:

88           (i) a school district;  
89           (ii) a charter school, other than an online-only charter school; or  
90           (iii) the Utah Schools for the Deaf and the Blind.  
91           (e) "School" means a school other than an online-only charter school or an online-only  
92 public school.  
93           (f) "Test to stay program" means a program through which an LEA provides testing for  
94 COVID-19 for students during an outbreak of COVID-19 at a school in order to:  
95           (i) identify cases of COVID-19; and  
96           (ii) allow individuals who test negative for COVID-19 to attend school in person.  
97           (2) (a) An LEA shall:  
98           (i) except as provided in Subsection (2)(b), ensure that a school offers in-person  
99 instruction; and  
100           (ii) require a school that reaches the case threshold to:  
101           (A) fulfill the requirement described in Subsection (2)(a)(i) by initiating a test to stay  
102 program for the school; and  
103           (B) provide a remote learning option for students who do not wish to attend in person.  
104           (b) The requirement to provide in-person instruction described in Subsection (2)(a)  
105 does not apply for a temporary period if the governor, the president of the Senate, the speaker  
106 of the House of Representatives, and the state superintendent of public instruction jointly  
107 concur with an LEA's assessment that due to public health emergency circumstances, the risks  
108 related to in-person instruction temporarily outweigh the value of in-person instruction.  
109           (3) (a) For purposes of determining whether a school has reached the school's case  
110 threshold, a student is included in positive cases for the school if the student:  
111           (i) within the preceding 14 days:  
112           (A) attended at least some in-person instruction at the school; and  
113           (B) tested positive for COVID-19; and  
114           (ii) did not receive the student's positive COVID-19 test results through regular  
115 periodic testing required to participate in LEA-sponsored athletics or another LEA-sponsored  
116 extracurricular activity.  
117           (b) (i) A school with 1,500 or more students meets the case threshold if at least 2% of  
118 the school's students meet the conditions described in Subsection (3)(a).

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

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

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

125 Section 4. **Effective date.**

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