

# ALERT

## CalChamber Endorses Effort to Open Schools Safely/Soon



The time has come for the Legislature to join Governor Gavin Newsom in finalizing an agreement to

reopen California public schools.

Governor Newsom has laid out a conservative, but realistic plan to reopen schools in California, applying the lessons learned from science and best practices, and recognizing that the COVID-19 infection trend is beginning to abate.

State officials announced on February 9 that 37 counties are below the threshold for reopening K–6 schools, as determined by the California Department of Public Health.

On February 10, CalChamber Executive Vice President Jennifer Barrera joined a group of business leaders at a press conference to underscore support for the Governor’s proposal to get California schools safely open as soon as possible.

### Letter to Legislators

The CalChamber sent a [letter](#) on February 9 to California legislators urging them to reach an agreement with the Governor rapidly on a plan and funding so schools may immediately accommodate some or all students on campus when it is safe to do so.

The CalChamber has pointed out that society, commerce and govern-  
*See CalChamber Endorses: Page 6*

## Proposed Change to Prop. 65 Warning Rules Will Increase Business Costs



### WARNING: Everything in California May Cause Cancer.

That is the likely conclusion *if* one were to believe every Proposition 65 warning they encounter. So ubiquitous are Prop. 65 warnings that they seamlessly blend into the California landscape.

From mall entrances to just about every conceivable consumer product, Californians are bombarded with Prop. 65 warnings to the point that it is hard to know what is *not* known to the state of California to cause cancer or reproductive harm.

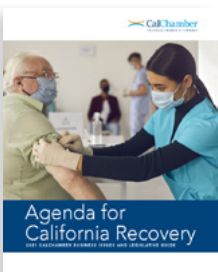
Clearly, there are too many Prop. 65 warnings and consumers are by and large viewing them as simply “white noise.”

The agency responsible for promulgating the regulations, the Office of Environmental Health Hazard Assessment (OEHHA), agrees there is an overwarning problem. Unfortunately, OEHHA’s proposed regulatory changes are unlikely to reduce the number of warnings and will have negative unintended consequences for businesses.

The California Chamber of Commerce is co-leading a coalition to highlight the problems with the proposed changes to the warning requirements.

*See Proposed Change: Page 4*

## 2021 Issues Guide Available on Website



The California Chamber of Commerce **2021 Business Issues and Legislative Guide** is available now on the CalChamber website at [www.calchamber.com/businessissues](http://www.calchamber.com/businessissues).

This easy-to-reference publication presents ways to make California a better place in which to live, work and do business.

To make progress on the **Agenda for California Recovery**, the state should: stop taking California’s success for granted; reduce the day-to-day cost of living for working Californians; and update laws to provide flexibility for

employers and employees to meet the needs of the modern workforce.

Hard copies of the **Guide** are being mailed to CalChamber preferred and executive members who signed up to receive the hard copy **Guide**.

Additional hard copies are available for purchase (\$20 each). Mail checks to California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736, Attn: Business Issues.

An **e-book** edition of the **Guide**, compatible with smartphones, tablets and desktop computers with an e-book reader installed, can be downloaded free at [www.calchamber.com/businessissues](http://www.calchamber.com/businessissues). A **PDF** file also is available.

In addition, issue articles can be viewed as web pages and downloaded as individual PDF files.

### Inside

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## Cal/OSHA Corner

# Cal/OSHA Provides Model Template for COVID-19 Prevention Plan



**Mel Davis**  
Cal/OSHA Adviser

*Where can I find a copy or example of a COVID-19 Prevention Plan?*

In conjunction with the recent adoption of the COVID-19 emergency regulations, the Division of Occupational Safety and Health (Cal/OSHA) has developed a model COVID-19 Prevention Plan (CPP) to assist employers in developing their CPP.

The emergency regulations to protect workers from COVID-19 went into effect on December 1, 2020, as announced

that day in a press release from the Department of Industrial Relations.

The emergency regulations apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases standard. The regulations do require the employer to develop a site-specific written COVID-19 prevention plan, although the employer has the alternative to incorporate the conditions into its existing Injury and Illness Prevention Program.

### Regulation on Prevention Plan

Section 3205, COVID-19 Prevention, dealing with developing the CPP, is more than nine 8.5"x11" pages long.

The elements of subsection (c), that portion of the prevention regulation to be in writing, is seven pages and addresses in part masks, social distancing, medical privacy, sanitation, airborne particulates, employee interaction, infection investigation, hazard investigation/mitigation, reporting/recordkeeping, and ventilation.

For that reason, I recommend using the Cal/OSHA model plan.

### Model Written Program

The posted Cal/OSHA model written COVID prevention plan is set up with introductory statements at the beginning and a leading statement as to what the employer is to address.

However, the template plan is careful to inform the user that the document is merely a suggestion and circumstances may warrant additional information to address the employer's specific conditions.

The sections in the model plan cover subjects such as authority, identification and evaluation of COVID-19 hazards, employee preparation, employee screening, correction and control of COVID-19 hazards, masks, engineering controls, cleaning and disinfecting, investigation, communication, training, and recordkeeping.

Also included are four appendices addressing identification of COVID-19 hazards, inspections with check lists, investigating cases, and training, plus considerations for infections and outbreaks, and employer-provided housing and transportation.

To find the complete model template, go to [dir.ca.gov](http://dir.ca.gov), open Cal/OSHA, then click on the link for the [COVID-19 emergency temporary standards](#).

*Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues.*

*Send email address changes to [alert@calchamber.com](mailto:alert@calchamber.com). Publisher: Allan Zarembeg. Executive Editor: Ann Amioka. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffitt.*

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## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor and Employment

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. February 18-19-SOLD OUT, March 18-19, April 22-23, Online. (800) 331-8877.

Managing CFRA Leave Requests at Your Small Business: Two-Day Intensive Webinar. CalChamber. February 25-26, Online. (800) 331-8877.

HR Boot Camp Virtual Seminar. CalChamber. March 4-5, Online. (800) 331-8877.

### International Trade

Power Sector Opportunities in South Africa—Part II: Gas and Municipal Power Opportunities. U.S. Commer-

cial Service. February 16, Webinar. (800) 872-8723.

Bureau of Industry and Security (BIS) Export Controls. Customs Brokers and Forwarders Association of Northern California. February 17, Webinar. (510) 864-2233.

Diplomacy Matters: California Leading the Way. World Trade Center Northern California. February 17, Webinar. (916) 447-9827.

*See CalChamber-Sponsored: Page 3*

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## The Workplace

# New Role for HR: Mandatory Reporter



In Episode 105 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment

law experts Matthew Roberts and Bianca Saad remind employers about meeting California's harassment prevention training mandate and discuss AB 1963, a new mandatory reporting requirement that applies to employers who employ minors and have five or more employees.

### Harassment Prevention Training

Before delving into the new requirements set forth by AB 1963, Frank reminds podcast listeners that a pretty big deadline recently passed in California. Employers with five or more employees must have provided harassment, discrimination and retaliation prevention training to their workers by January 1 of this year.

If an employer has not provided their employees with training, it is still better to be late than never, and employers should provide the training as quickly as they can, Roberts says. Not providing training may be used against an employer in the event that a harassment claim is filed by an employee.

"So, get that training in now even though you're late," he urges.

The mandate also requires that training is provided to all new or promoted employees within 6 months of hire or promotion.

A new component of the mandate that took effect on January 1 this year requires that employers provide harassment prevention training to their seasonal and temporary employees as well, Saad explains. The training must be provided within 30 calendar days of work being performed or within 100 hours worked—whichever occurs first.

If a worker is employed through a staffing agency, the staffing agency is responsible for providing the training. Due to joint employer considerations and other issues that may arise, however, Saad recommends that businesses ensure that the staffing agency they are using is aware of these new requirements and is in compliance.

The CalChamber offers a variety of sexual harassment prevention training courses and mandatory posters. For more information, visit <https://store.calchamber.com/10032185/training/-sexual-harassment-training>.

### AB 1963: Mandatory Reporting

As briefly discussed in the *last Workplace podcast*, AB 1963 is a new

law that took effect this year. The law applies to any employer with five or more employees who employs a minor, whether on a pay or voluntary basis, Roberts explains.

The law creates two categories of mandated reporters that must report child abuse if and when they see it. The new categories are:

- HR professionals working for the business; and
- Any frontline supervisor who directly supervises the work performed by the minor(s).

As part of the law, these mandated reporters must also receive training that covers specific topics such as identifying and reporting cases of child abuse and neglect, Saad explains.

Frank clarifies that this mandatory reporting training is separate from work permit requirements and separate from the mandatory harassment prevention training requirement discussed at the beginning of the podcast.

Free online Child Abuse Mandated Reporter training and other resources are offered by the California Department of Social Services at <https://www.cde.ca.gov/ls/ss/ap/>.

## CalChamber-Sponsored Seminars/Trade Shows

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Mapping Your Supply Chain Is Essential. World Trade Center Northern California. February 23, Webinar. (916) 447-9827.

California Global Connect: Renewable Energy and Advanced Transportation Opportunities in Portugal and Spain. Governor's Office of Business and Economic Development. February 23–26, Online. (279) 666-9104.

California-U.K. After Brexit: Prospects for Partnership. CalChamber. February 25, Virtual Webinar. (916) 930-1233.

Cyber Security Trade Mission to South America. U.S. Department of Commerce, International Trade Administration. March 1–5 and March

8, Peru, Chile, Uruguay, Argentina (optional stop). (410) 962-4539; (202) 482-3773; (703) 235-0102.

Taiwan Trade Show 2021. Taiwan External Trade Development Council. March 1–October 30, Taiwan. 886-2-2725-5200.

Beauty & Personal Care Products: Export Opportunities in Southeast Asia. U.S. Commercial Service. March 18, Webinar. (800) 872-8723.

2021 Smart City Summit & Expo, Taiwan. SCSE+. March 23–26, Taiwan. +866 2-2577-4249, ext. 255.

Cyber Security Business Development Mission to India. U.S. Department of Commerce, International Trade Administration. April 19–23, New

Delhi, Mumbai, optional stops in Bangalore or Hyderabad. (303) 844-5655; (202) 482-3773.

World Trade Week Southern California Kickoff. Los Angeles Area Chamber of Commerce. May 6, Virtual. (213) 580-7500.

2021 Virtual Export Conference. National Association of District Export Councils (NADEC). May 26 and May 27.

2021 SelectUSA Investment Summit. International Trade Administration. June 6–9, Washington, D.C. (800) 424-5249.

Expo Dubai 2021. Expo 2020 Dubai UAE. October 1, 2021–March 31, 2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).



## State Updates Vaccine Allocation Guidelines



Governor Gavin Newsom and the California Department of Public Health (CDPH)

continue to work toward allocating COVID-19 vaccines to a broader segment of the state’s population, with the agency recently clarifying what education and child care providers are eligible for the vaccine.

The state’s weekly dose allocation from the federal government has also increased slightly with California slated to receive more than 3 million vaccine doses by the third week of February.

Currently eligible to receive the COVID-19 vaccine, according to the CDPH, are individuals age 65 years and older, health care workers, residents in

high risk congregate care settings, education workers and child care providers, emergency service workers, and food, grocery and agriculture workers.

### Education/Child Care Providers

The CDPH’s guidelines define what education and child care providers are eligible for the vaccine as follows:

Persons at risk of occupational exposure to SARS-CoV-2 through their work in any role in the following Education and Child Care settings:

- All formal and informal child care workers, including day care providers;
- All staff in colleges, universities, junior colleges, community colleges, and other postsecondary education facilities;
- All staff in educational support services and administration;
- All staff in pre-kindergarten, elementary, middle, and high schools;

- All staff in technical and trade schools;
- Any other workers involved in child and/or student care, including school bus drivers and monitors, crosswalk guards, etc.

### Mass Vaccination Sites

In addition to broadening eligibility categories, the state has announced a number of mass vaccination sites. Locations will include Levi’s Stadium (Santa Clara), Petco Park (San Diego), Dodger Stadium (Los Angeles), Cal Expo (Sacramento), Cal State Los Angeles, Oakland-Alameda Coliseum, and Disneyland. Kaiser has also opened two mass vaccination sites — one at the Moscone Center in San Francisco and another at Cal Poly Pomona.

**Staff Contact: Preston Young**

## Proposed Change to Prop. 65 Warning Rules Will Increase Business Costs

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### Why Warn?

Companies warn under Prop. 65 because not doing so brings substantial liability, even if the exposure to a Prop. 65-listed chemical is *de minimis*. Rarely does defending even a frivolous lawsuit make economic sense when settling with bounty hunters is often cheaper and speedier.

Private enforcers alleging exposure to a Prop. 65-listed chemical need only to demonstrate the presence of the Prop. 65-listed chemical **and include a certificate of merit**. It is the business that carries the heavy burden of proving that the exposure is below the Safe Harbor Level, a highly technical and often difficult to prove analysis that rarely justifies the high cost.

Since 2010, businesses have opted to settle more than \$185 million in Prop. 65 lawsuits. Even during a global pandemic, Prop. 65 enforcement attorneys have

secured more than \$1.1 million in fees just 30 days into 2021.

Shakedown lawsuits will inevitably continue, and companies will inevitably continue warning to reduce liability. OEHHA will not address the overwarning problem and restore meaning to Prop. 65 warnings with its proposed changes to the short form warning requirements. The proposed changes will simply result in companies spending millions more dollars to redo their warning labels, again.

### Increased Costs, Liability

***Proposed Change to Safe Harbor Warning Requirements Will Raise Costs on California Businesses.***

OEHHA’s proposed changes to the Prop. 65 warning requirements come just two years after companies spent millions of dollars overhauling their Prop. 65 warning programs to comply with the August 30, 2018 enforcement deadline.

OEHHA provided companies with two safe harbor warning options, one of which

was the short form warning allowed if the company placed the Prop. 65 warning label directly on the actual product (as opposed to the store shelf, as one example).

Companies relied on and spent millions complying with the plain language of the regulations and the [agency’s written feedback](#) to the regulated community about sizing requirements, language and placement of the warnings.

Now, two years later, OEHHA justifies these proposed changes as a way to reduce the number of warnings in the marketplace. Unfortunately, these proposed regulations will do little to meaningfully address the Prop. 65 overwarning problem because they incorrectly assume companies are overwarning because the agency provided a shorter Prop. 65 warning label option.

Changing Prop. 65 warning label programs, again, will result in additional financial impacts, confusion and legal liability for businesses at a time when they can least afford it.

**Staff Contact: Adam Regele**

## Export-Import Bank Maintains Quorum, Ability to Help Exporters



The Export-Import Bank of the United States will continue to operate

with a quorum following the early February presidential appointment of James Cruse to serve as vice chairman of the bank's board of directors.

Cruse currently serves as the Ex-Im agency's senior vice president of policy analysis and international relations. President Joe Biden also extended the term of Judith Pryor, a 2019 Trump appointee.

These appointments mean the Ex-Im Bank Board will maintain a quorum, which is necessary to approve transactions worth more than \$25 million.

From July 2015 to May 2019, Ex-Im went without a quorum as nominations were held in the U.S. Senate. The U.S. Ex-Im Bank lost \$20 billion in export sales opportunities during the four years it wasn't fully operational.

During those four years, Ex-Im could not approve transactions worth more than \$10 million, meaning numerous lost opportunities for U.S. businesses and their workers.

The bank's inability to approve transactions exceeding \$10 million extended the profound impact of the quorum lapse to larger exporters, the thousands of

smaller companies that supply them, and the hundreds of thousands of workers whose jobs depend on exports.

### Record of Success

Ex-Im has a proven record of success and turns a profit for the U.S. taxpayer. Since 2009, Ex-Im has refunded \$5 billion to the U.S. Treasury above all costs and loss reserves.

Small businesses account for 90% of Ex-Im's transactions; further, these small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters.

Since 2014, Ex-Im Bank has assisted more than 600 California exporters, helping to support \$10 billion in export value. Of the exporters, 500 were small businesses, including more than 100 minority-owned and over 85 women-owned enterprises. See the map at [https://customermap.exim.gov/state\\_map.cfm?state=CA](https://customermap.exim.gov/state_map.cfm?state=CA).

### Broad Impact

The hundreds of workers at large businesses are not the only ones affected by U.S. export transactions; there are strong ripple effects on the many small and medium-sized enterprises throughout the larger companies' supply chains. The United States is home to some of the largest supply chains in the world. Sales and

employees in these supply chains depend on exports of larger clients, financed by Ex-Im.

Effects on U.S. businesses and workers from a lack of domestic political support for Ex-Im can be exacerbated by the extraordinary steps other countries are taking to support their own exporters and national interests. Export credit agencies (ECAs) abroad are expanding product offerings allowing exporters to compete more aggressively, and more countries are opening new ECAs of their own.

With economic growth and job creation the top priorities for the United States, Ex-Im has an important role to play.

Trade offers the opportunity to expand the role of California's exports. As one of the top economies in the world with a gross state product of more than \$3 trillion, California exports \$173.3 billion to more than 225 foreign markets.

### CalChamber Position

The California Chamber of Commerce, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

**Staff Contact: Susanne T. Stirling**

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## CalChamber Endorses Effort to Open Schools Safely/Soon

*From Page 1*

ment have responded to the pandemic. The Governor and the Legislature have expanded the social safety net and provided some economic relief for employers and employees.

Front line workers, whether hospital employees, EMTs, firefighters, grocers, truckers, utility workers and many, many others have met the challenge by continuing to serve the public. Employers have reorganized the workplace where possible to enable remote working or safer on-site conditions.

Now it is time for our public schools to fully join the effort.

State education officials and other surveys estimate that about 70% of the state's school districts are still in distance learning — accounting for roughly 85% of the student population.

### Impact on Students

Nobody disagrees that school children have been devastated by the inability or unwillingness to reopen schools:

- School enrollments have dropped precipitously as many children have either disconnected or never were connected in the first place.
- A Stanford study suggested that the average student has lost at least a third of a year's worth of learning in reading and three-quarters of a year's worth of learning in math. Another study found that the loss of learning could reduce the lifetime income of today's American students by 3%.
- A survey of Los Angeles teachers

found that 94% said low student engagement was a barrier to remote learning. The vast majority of teachers say their students lack quiet spaces, adequate technology and high-speed internet and do not have schoolwork help from an adult.

• All these problems are even worse for the students who were disadvantaged and underserved before the pandemic crisis. Quite simply, poor Black and Latino children suffer the most from shuttered schools.

### Impact on Workplace

While the worst impacts have befallen students, distance learning has also affected the workplace. Many of our employees are parents or guardians of public school students who are struggling with remote learning and its effects.

Nearly a third of employers nationally have seen employees leave the workforce — primarily in businesses that are public facing, such as retail, leisure and entertainment, health care and social assistance.

Another 29% of employers saw employees leaving their businesses to seek employment elsewhere. This churn is not just because these workers lost jobs, but because in many cases their jobs are incompatible with their family responsibilities, like supervision of their remote-learning children and lack of adequate child care.

### Economic Issue

This is an existential issue for the California economy. Our schoolchildren are the future employees for California

small and large businesses. Other nations are prioritizing returning students to schools.

Reopening schools is not only a matter of student achievement, mental health and family normalcy, but is a matter of global competitiveness and viability for California businesses.

Outside of the education establishment, the notion of returning students to the classroom is rapidly gaining credibility and urgency:

• The U.S. Centers for Disease Control and Prevention (CDC) recently concluded that in-person schooling poses very little risk of coronavirus transmission as long as basic safety precautions are followed.

• California's state health officer, Erica Pan, stated that "Schools should absolutely reopen."

• President Joseph Biden has recognized the urgency of this issue, vowing to reopen schools within his first 100 days in office.

• Pediatricians in Southern California have called for schools to reopen.

The extraordinary efforts by teachers and school officials this year to ramp up distance learning in the face of enormous uncertainty about the nature of the virus must be recognized. Yet, we are in a different place now.

With more information about how to minimize risk and under the guidance of public health officials, it is clear that we can open our schools safely and soon.

**Staff Contacts: Jennifer Barrera and Robert Moutrie**

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## HRWatchdog Blog Tracks Updates to Local COVID-19 Ordinances

Since the beginning of the year, local jurisdictions that adopted their own COVID-19 sick leave ordinances in 2020 have been updating and revising their requirements. The *HRWatchdog* blog, presented by CalChamber, has the details.

Below is a quick rundown of the localities that updated their ordinances. Be sure to visit the individual blog posts for full details.

### Oakland

On January 19, 2021, Oakland's City Council approved an emergency ordinance extending the city's emergency paid sick leave (EPSL) ordinance through the duration of Oakland's March 9, 2020, Declaration of COVID-19 Emergency. Passed on an emergency basis, the [revised ordinance took effect immediately, retroactive to December 31, 2020](#).

See the [January 28, 2021](#) blog post.

### Los Angeles County

On January 26, 2021, Los Angeles County revised and extended its COVID-19 paid sick leave ordinance. Los Angeles County's urgency ordinance took effect immediately upon approval, retroactive to January 1, 2021. The expiration date was extended.

Los Angeles County's COVID-19 supplemental paid sick leave ordinance [initially took effect](#) on April 28, 2020, expired on December 31, 2020, and applied only to private-sector employers with 500 or more employees nationally.

As revised and effective January 1, 2021, the [ordinance applies to all employers](#) in the unincorporated areas of the county, regardless of size/number of employees. This means that employers with fewer than 500 employees previously exempt (and subject to the Families First Coronavirus Response Act (FFCRA)) must follow the local ordinance.

Los Angeles County's supplemental paid sick leave ordinance will remain in effect until two calendar weeks after the expiration of the Los Angeles County Board of Supervisors COVID-19 local emergency declaration.

See the [February 2, 2021](#) blog post.

### Sonoma County

Sonoma County initially revised and extended its COVID-19 sick leave ordinance on January 26, 2021. The urgency ordinance took effect immediately upon passage and its expiration date was extended.

Sonoma County's COVID-19 paid

sick leave ordinance [initially took effect](#) on August 18, 2020. Unlike Los Angeles County, the ordinance is not retroactive.

The [revised ordinance](#) extends the expiration date of the ordinance to **June 30, 2021**. The Sonoma County Board of Supervisors met on February 9, 2021 to vote on a [further revised ordinance](#) that includes employers of all sizes

See the [February 2, 2021](#) blog post.

### Santa Rosa

On February 2, 2021, Santa Rosa's City Council adopted a newly revised [local urgency ordinance](#), replacing the [initial ordinance](#) that was in place July 7, 2020, through December 31, 2020, and temporarily reinstating COVID-19-related paid sick leave for employees working within Santa Rosa city limits.

The new urgency ordinance took effect immediately on February 2, 2021, and will remain in effect through March 31, 2021, or upon expiration of the applicable federal tax credits related to the FFCRA, whichever is later.

See the [February 8, 2021](#) blog post.

**Staff Contact: Bianca Saad**



MARCH 18 - 19, 2021 | APRIL 22 - 23, 2021

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