



TO: Chair Courtney, Chair Kotek, Vice-Chair Girod, Vice-Chair Drazan, & Members of the Joint Interim Committee on the Third Special Session of 2020
FROM: Disability Rights Oregon
DATE: December 19, 2020
RE: Testimony Opposing School Immunity (LC 21)

Dear Chairs and Members of the Committee:

Disability Rights Oregon submits this testimony opposing legislation to provide immunity to school districts (LC 21). There has been inadequate legislative process and improvement to this legislation to address the concerns of students with disabilities and their families. Disability Rights Oregon urges the Committee to reject this legislation (LC 21) and reject companion legislation related to medical settings (LC 29).

Schools must be safe places for children and teachers, especially those with underlying health conditions and disabilities that cause them to be at particular risk during a public health emergency. LC 21 would immunize school districts from liability related to COVID-19 infections suffered as a result of acts or omissions performed by the school district—even in cases of provable negligence—as long as the school district is following vaguely defined “COVID-19 Emergency Rules.”

WHY LIABILITY IN SCHOOL MATTERS TO CHILDREN WITH DISABILITIES AND THEIR FAMILIES

Under current and well-established liability law, schools that harm Oregonians through their negligence can be found responsible for this harm. This results in the school being ordered by the court to make a child or their family whole. These cases are already difficult to win because a child and their family must prove the school neglected its duty to take reasonable steps to protect the health, safety and well-being of children. Moreover, while school districts are permitted to use the public’s resources to fight these claims in court, parents must pay for the cost of litigation—making access to justice even more difficult.

Notwithstanding these challenges, liability laws play a powerful role in making sure school districts take seriously their responsibility for taking all reasonable steps to protect the health and safety of children with disabilities. The liability framework in current law balances personal responsibility of school districts with the rights of parents who entrust their children to the school. LC 21 upends that balance—leaving parents and children cut off from access to justice.¹ Ultimately, liability provides a powerful disincentive for school districts to cut corners on creating a safe place for children.

¹ See also testimony submitted by a coalition of Oregon’s largest disability organizations, including Disability Rights Oregon, Oregon DD Coalition, Unite Oregon, The Arc of Oregon, the Arc of Multnomah-Clackamas County, Next Up Action Fund, FACT Oregon, Autism Society of Oregon, and the Oregon Justice Resource Center: <https://olis.oregonlegislature.gov/liz/20191/Downloads/CommitteeMeetingDocument/228220>

For all of these reasons, Disability Rights Oregon asks the Legislature to reject LC 21 and any similar proposal.

ABOUT DISABILITY RIGHTS OREGON

Disability Rights Oregon is a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. Disability Rights Oregon serves as a watchdog as we work to transform systems, policies, and practices to give more people the opportunity to reach their full potential. Since 1977, the organization has served as Oregon's federally authorized and mandated Protection & Advocacy System. Disability Rights Oregon is committed to ensuring the civil rights of all people are protected and enforced, including in educational settings during the pandemic.