



December 18, 2020

President Peter Courtney  
Speaker Tina Kotek  
900 Court St. NE  
Salem, OR 97301

By email: [sen.petercourtney@oregonlegislature.gov](mailto:sen.petercourtney@oregonlegislature.gov), [Rep.TinaKotek@oregonlegislature.gov](mailto:Rep.TinaKotek@oregonlegislature.gov)

**Re: Opposition to School Immunity (LC21)**

Dear President Courtney and Speaker Kotek:

We, the undersigned, oppose the proposed School Immunity bill, LC21. Schools must be safe places for children and teachers especially those with underlying conditions 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 district – even in cases of provable negligence – as long as the District is following vaguely defined “COVID-19 Emergency Rules.”

### **Undersigners**

Disability Rights Oregon (DRO), a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. For more than 40 years, the organization has served as Oregon’s federally authorized and funded Protection & Advocacy System. DRO is committed to ensuring the civil rights of all people are protected and enforced, including in healthcare settings.

Unite Oregon’s Mission: Led by people of color, immigrants and refugees, rural communities, and people experiencing poverty, we work across Oregon to build a unified intercultural movement for justice.

The Oregon Developmental Disabilities Coalition (DD Coalition) is a group of approximately 36 organizations across Oregon that promote quality services, equality and community integration for Oregonians experiencing intellectual and developmental disabilities (IDD) and their families.

DD Coalition members include a statewide coalition of people experiencing IDD, peer-based family support organizations, support services brokerages, advocacy organizations and service providers

FACT Oregon's mission is to empower families experiencing disability in their pursuit of whole lives by expanding awareness, growing community, and equipping parents, caregivers, and professionals.

The Arc Oregon, together with its network of members and affiliated chapters, advocates for the rights and full community participation of all children and adults with intellectual and developmental disabilities.

For 67 years, The Arc of Multnomah-Clackamas has provided advocacy, support, and services to children and adults with intellectual and developmental disabilities [I/DD] and their families in the greater Portland area.

The Autism Society of Oregon provides resources, education, advocacy and support to improve the daily lives of everyone impacted by autism throughout Oregon

The goal of the Oregon Justice Resource Center is to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. We work in collaboration with like-minded organizations to maximize our reach to serve underrepresented populations, to train future public interest lawyers, and to educate our community on issues related to civil rights and civil liberties.

Next Up Action Fund engages the next generation of Oregon's leaders to build political power and fight for a more just and equitable Oregon. For over 18 years, we've organized with young people to dismantle structural barriers for a more representative democracy. Through systems change, leadership development, and voter education we have advocated for and won policies making Oregon the #1 easiest state to vote in with 90.2% of eligible Oregonians registered to vote.

### **Shifting the Risk to Children and Families**

LC21's very premise anticipates that the COVID safety measures for schools will fail, and that so many students and staff (and their families) will become infected – and suffer death or permanent disability – that school districts risk crushing financial losses to compensate the victims for negligence. Passing LC21 doesn't make the schools any safer – it simply shifts the burden onto those least capable of safely managing this risk: individuals who have been infected by the deadly virus or families who have suffered the catastrophic loss of one of their members due to negligence.

LC21 could actually make schools even less safe than they are, by turning the emergency rules

from a floor (the very least that schools must do) into a ceiling (the maximum any school needs to do), by immunizing schools even in cases of provable negligence. Should there be any gaps or ambiguity in the emergency rules, schools will have no responsibility to apply common sense to close the gaps for safety. (Indeed, they will have a disincentive – since any deviation from the letter of the rules, even to close an obvious gap, could imperil their immunity). Schools will also have a powerful incentive to pressure the State into weakening the rules or inserting ambiguities to give them flexibility and maximize their grant of legal immunity.

Indeed, the LC’s definition of “COVID-19 Emergency Rule” is incredibly broad and ambiguous:

**(1) “COVID-19 emergency rule” means an executive order, order of the Superintendent of Public Instruction, declaration, directive or other state or federal authorization, policy, statement, guidance, rule or regulation that creates a standard or waives, suspends or modifies otherwise applicable state or federal law, regulations or standards regarding the rendering of education services.**

This definition includes any “order, ... declaration, directive ... authorization, policy, statement, guidance, rule, or regulation” from any “state or federal” authority “regarding the rendering of education services.”

For instance, “tweets” from the President of the United States with a “statement,” “guidance,” or “directive” “regarding the rendering of education services” would certainly qualify as a “COVID-19 emergency rule.” President Trump has made numerous tweets and statements demanding that “Schools in our country should be opened ASAP”<sup>1</sup> and denouncing CDC guidelines for schools as excessive.<sup>2</sup> Under LC21, a school district that disregarded Oregon’s “Ready Schools, Safe Learners” guidance could still claim immunity by pointing to these tweets as a “COVID-19 emergency rule.” LC21 is retroactive to the start of the emergency.

This risk to children with or without underlying conditions is that much more great considering that the initial COVID-19 vaccines have not been approved for use in children. This concept would create an unacceptable risk to the most vulnerable of children and impact the health and safety of the next generation of our state. In short, we support schools reopening but if – and only if – it is safe.

### **A Better Solution – State-backed Liability Insurance for Schools**

There is a much better way that the Legislature could reassure both parents and schools, and strengthen safety: by setting up a state-program to insure schools for liability. This could be done through SAIF or another program, by providing state-backed “stop loss” insurance to commercial insurers to defray the risks of insuring school districts for liability.

This would provide a strong message to students and staff that the State of Oregon takes their

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<sup>1</sup> @realDonaldTrump, 5/24/2020, <https://twitter.com/realDonaldTrump/status/1264748330594287622>

<sup>2</sup> @realDonaldTrump, 7/8/2020, <https://twitter.com/realdonaldtrump/status/1280857657365200902>

safety seriously – since it would literally be putting the state’s money behind it. It would also give the State of Oregon a very strong incentive to ensure that the emergency rules for schools are clear and effective, and aren’t watered down – and that schools actually comply with those guidelines.

If the emergency rules really are effective – and schools really are safe – then the actual cost to the state of providing a “stop loss” guarantee for insurers should be minimal. *If the cost of supporting the insurance market is too high for the state to bear, then please realize it will be immeasurably more so for the students, staff, and families that are being exposed to the catastrophic risk of death and disability.*

We urge you to drop LC21 and to work with stakeholders to develop a new LC to strengthen school safety by providing State-backed Liability Insurance for Schools that can be considered at the start of the full legislative session in February.

Sincerely,

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Disability Rights Oregon

Katie Rose  
Chair  
Oregon Developmental Disabilities Coalition  
(DD Coalition)

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