

December 16, 2020

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Joint Interim Committee On The Third Special Session of 2020  
Oregon State Capital  
980 Court Street  
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By email: [j3ss.exhibits@oregonlegislature.gov](mailto:j3ss.exhibits@oregonlegislature.gov)

Re: OPPOSE LC21 – School Immunity

Dear President Courtney, Speaker Kotek, and members of the committee,

I'm writing as the father of two children in public schools to express my opposition to the proposed "School Immunity" bill, LC21.

Let's be very clear about the premise and purpose of LC21: it is NOT to protect students or make schools safe – it is to protect school districts *from* students, teachers and their families who become infected due to district negligence.

The sponsors are pushing LC21 because they expect that even if schools do follow safety rules, that students, teachers and their families will still become infected, and some will die or become permanently disabled. They want to be sure that if and when that happens, that the school districts have no financial liability whatsoever – even if the districts made a big, negligent mistake. Schools would only be liable for "reckless, wanton, or intentional misconduct" – so if a district passes out contaminated masks by mistake, they could have no liability for that negligence unless they did it on purpose.

LC21 shifts all of the burden for harm from COVID infections in schools onto those least capable shouldering the burden – students, staff, and their families coping with the consequences of death and disability due to a district mistake. *It provides no support to the victims whatsoever – not even a guarantee of access to health care, or funeral benefits.*

This is incredibly inequitable – lower income families, English language learners, and disabled children who are most in need of in-person education will be at much greater risk than wealthier families with better access to health care, more flexibility to keep their children home, and greater ability to advocate for safety.

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."

If a "declaration" or "statement" from one state or federal body contradicts the Oregon Department of Education's "Ready Schools, Safe Learners" guidance, a district could assert immunity by pointing to the most favorable statement. Note that President Trump has issued numerous statements regarding the rendering of education services that have contradicted Governor Brown and even his own CDC.<sup>1</sup> Since LC21 is retroactive to the start of the emergency, these tweets could be used to defend a failure to comply with Oregon's rules.

#### **A Better Way – 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 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.*

I 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.

Sincerely,

/s

Paul Terdal

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<sup>1</sup> For instance, [@realDonaldTrump, 7/7/2020](#), "I disagree with @CDCgov on their very tough & expensive guidelines for opening schools. While they want them open, they are asking schools to do very impractical things. I will be meeting with them!!!"