



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

August 6, 2020

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin, General Counsel *CDC*
Subject: Considerations in Reopening Schools
Memo No. 47-2020

As discussed in our Legal Updates Memo Nos. 43-2020 and 46-2020, Local Educational Agencies (“LEAs”)¹ located in counties that are on the California Department of Public Health (“CDPH”) monitoring list² may not provide in-person instruction until their county has been off the monitoring list for 14 calendar days. However, there is a process to obtain a waiver from the County Local Health Officer (“LHO”) to provide in-person instruction for schools with grades Transitional Kindergarten (“TK”) through Sixth grade who meet certain criteria. LEAs whose counties are not on the monitoring list have the option of providing in-person instruction, if appropriate, in accordance with their LHO guidance. We recommend that all LEAs collaborate with all relevant stakeholders, including parents, students, staff, and represented employees’ unions, prior to making the important decision to provide in-person instruction or distance learning. In addition, we also encourage LEAs to collaborate with their respective county offices of education and LHOs.

Some stakeholders are raising concerns regarding the possibility of COVID-19-related lawsuits. One option for pursuing such a lawsuit would be a common negligence suit related to exposure. A successful lawsuit of this type would likely require the plaintiff to show contact tracing and prove fault, both of which may be difficult as related to a pandemic involving an easy-spread communicable disease.

Our understanding is that the liability insurance coverage for most LEAs will not directly cover issues associated with COVID-19 exposure. Typically, schools’ liability insurance does not cover a student who contracts a communicable disease

¹ School districts, county offices of education, and charter schools.

² To verify if your county is on the monitoring list: <https://covid19.ca.gov/roadmap-counties/#track-data>. Last visited August 4, 2020.



at school.³ Even if the plaintiff was unable to substantiate his or her claim, without insurance coverage, an LEA would have to fund the entirety of the costs of defense of such a lawsuit.

Our understanding is that Assembly Bill (“AB”) 1384, which would have provided LEAs with liability protection from COVID-19 related claims insofar as the LEAs took reasonable measures to implement the applicable federal, state, and local guidance on addressing COVID-19 issues, will likely not be passed and enacted into law at this time. Although the federal government might include federal liability protection for COVID-19-related claims, it is unclear at this time what that protection would include or the scope of the protection against state-law-based claims. We are hopeful that the federal and/or California governments will enact legislation providing COVID-19 liability protection from common negligence that is similar to AB 1384; however, there is no guarantee of such action. It is also important to note that, even if there is legislative relief, it would likely only cover common negligence. This means that school staff need to be effectively trained on how to minimize the spread of communicable diseases and need to ensure that appropriate measures are implemented.

Accordingly, in addition to the aforementioned stakeholders, we also encourage LEAs, in considering in-person, a hybrid model, or distance learning, to consult with their insurance carrier and legal counsel as appropriate. Both parties can provide LEAs with information related to the above risks and options for reducing said risk.

In closing, we are all facing extreme challenges that are impacting our entire society, but especially our schools and our students. We are hopeful that all stakeholders can work together to safely provide students with quality education with as minimal disruption as possible to student learning.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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³ If an employee contracts COVID-19 while at work, their primary remedy is Workers’ Compensation coverage.