July 8, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate Washington, D.C.
20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi, Majority Leader McConnell, Republican Leader McCarthy, and Minority Leader Schumer:

On behalf of the California local educational agencies (LEAs) and statewide education associations that are represented on this letter, we are writing to request that you enact temporary and targeted liability relief legislation related to the COVID-19 pandemic.

Because opening schools will be crucial to safely and efficiently reopen the economy, it is imperative school districts are afforded protection from unfair lawsuits, so they can move forward in providing high-quality instruction for their students and safe facilities for their communities.
California K-12 local education agencies, have been closed since mid-March 2020, pursuant to Governor Gavin Newsom’s School Closure, Stay-at-Home Executive Orders (N-26-20 and N-33-20), and the California Department of Public Health Guidelines on public gatherings. Our school districts and programs operated by the county office of education are actively working to reopen schools in August in a manner consistent with instructional and attendance requirements, social distancing and public health guidelines set forth in SB 98, the 2020-21 California education budget trailer bill.

Among the new expectations for schools to follow in their re-openings in August is the clear requirement (contained in section 34 of SB 98, statutes of 2020) that all schools must offer in-person instruction to students. While distance learning is an option for schools to use in some circumstances, the clear expectation of the Governor and Legislature is that schools’ prioritize classroom-based instruction for students. In short, educators understand that it is vital our students return to their teachers and classrooms, for the educational, social and emotional well-being of our students.

In our planning for the reopening of schools and classrooms, local education agencies are prioritizing student and staff safety. We are taking great care to protect the safety of students and staff and to limit the health risks associated with reopening. Not only are schools required to comply with all federal, state, and local public health orders, but they are also going beyond those orders using public health guidance that provide additional K-12 industry recommendations. Our school districts and county offices of education will do all that they possibly can to ensure that classrooms and school facilities are sanitized and that students are kept safe. Moreover, schools will take every reasonable precaution to ensure children and staff are safe with the use of personal protective equipment and that social distancing measures are followed.

We are looking forward to reopening and again providing service to the public and most importantly to our students. Unfortunately, until there is an effective vaccine for COVID-19 widely available to the public, we cannot eliminate the risk of the virus’s transmission, due to its extreme virulence, lengthy incubation period, and high levels of asymptomatic infection.

Consequently, despite the full implementation of appropriate and required safety measures, it is possible that a member of our school community or the community at large may contract the virus, and that legal action might be pursued against the education agencies. While schools have some protection from excessive damage claims by employees due to the workers’ compensation system, the issue of third-party lawsuits by or on behalf of students, parents, vendors, and visitors to our schools must be addressed.

California school districts have been informed by their risk pools and liability insurance carriers that there is an exclusion clause in our Liability Memorandum of Coverage to "organic pathogens", meaning there is no coverage for lawsuits arising from the COVID-19 virus and claims will be entirely financed from finite dollars intended to educate students. Absent temporary and targeted liability relief legislation for claims and lawsuits, local education agencies and ultimately the taxpayers that support them will be subject to potential damages in the millions of dollars. Due to the potential impacts of frivolous lawsuits on school districts’ budgets, it is critically important that lawmakers realize the financial burden that school districts would likely face without some protections—and that
these expenses impact the quality of education offered to all students at the end of the day. Lack of temporary and limited immunity to our exposure to liability claims is an issue so significant that it may actually prevent our ability to reopen schools with in-person and classroom-based instruction until a proven vaccine is produced and available to the public.

As Congress moves forward in its efforts to enact temporary liability protections against COVID-19 exposure claims for employers that work to follow applicable public health guidelines, it is imperative that public school systems and educational institutions be included in such protections. We believe any protections should be limited in scope and preserve recourse for those harmed by truly bad actors who engage in egregious misconduct. To meet those important goals, we urge you to act now and include our nation’s public school districts in your legislation to provide liability protections to entities during this crisis. Our nation’s schools are a large part of this country’s critical infrastructure. They are a key contributor to economic growth and the GDP. As the federal government continues to assist states and local governments with COVID-19 recovery, reasonable liability protections during this pandemic will enable our schools to reopen safely, implement the necessary protocols to protect our students and staff, and mitigate additional losses.

We look forward to working with you and others in Congress as you address this health crisis impacting public education.

Sincerely,

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California School Boards Association

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