

February 16, 2022

TO: Superintendents and CBOs
SISC District Members

FROM: Robert J. Kretzmer
Director, Property & Liability

SUBJECT: COVID-19 update

Recently SISC Property & Liability has received inquiries concerning the proposed passing of resolutions by our district school boards to relax the enforcement of mask mandates for students and staff while at school.

Per the most recent guidance provided by the California Department of Public Health (CDPH), dated January 12, 2022, masks remain optional outdoors for all in K-12 school settings, and K-12 students are required to mask indoors as well as adults when sharing indoor spaces with students. On February 14, 2022, Dr. Mark Ghaly, Secretary of the California Health and Human Services Agency, announced this guidance would be reassessed on February 28, 2022.

It is important that SISC member districts continue to abide by the guidance issued by the CDPH. Any deviation from this guidance would put at risk the liability coverage afforded by SISC. The coverage for bodily injury and personal injury claims or suits that allege negligence on the part of a member district or an individual employed by a member district is in most cases not subject to review. However, in instances where a member district has intentionally passed a resolution that is in violation of a public health order and/or law, would obligate SISC to conduct a thorough coverage review for any subsequent claims or suits submitted. We offer the following examples:

- A student or parents on behalf of a student alleged that their son or daughter contracted the novel coronavirus due to the district's intentional lack of enforcement of a public health order. SISC would be obligated to review coverage in light of the intentional decision by the district to ignore the public health order. The district in this instance intended to ignore the public health order and consequently the student could allege that he or she contracted the virus due to the intentional conduct of the district.
- A student or parents on behalf of a student allege that their son or daughter was not able to attend school due to the increased risk of exposure to the novel coronavirus. The student may allege that the district's intentional conduct to deviate or not follow the guidance and/or public health order issued by the CDPH led directly to the student's decision to remain off campus and therefore be deprived of his or her Fair and Appropriate Public Education (FAPE). Even though the student has not suffered a bodily injury, the student in this instance will have suffered personal injury (violation of his or her civil right to an education). SISC would be obligated once again to review coverage in light of the district's intentional decision to ignore CDPH guidance.

The best coverage decisions are made with the benefit of the written factual allegations contained in a claim or suit. However, documented willful knowing violations of state ordered mandates in a board resolution dramatically increases the likelihood that SISC or SISC's excess insurers would not afford coverage or cost of defense.

RJK

Respectfully,

Lilia Beck

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For more advice and information, visit our website at <http://sisc.kern.org/pl/>