



July 1, 2020

TO: District Superintendents

FROM: Robert J. Kretzmer  
Director, Property & Liability

SUBJECT: **Coverage and COVID-19**

All will probably agree that 2020 will be remembered as the year that brought a great amount of turmoil to commercial and public entities all across California and the United States. School districts were greatly impacted by the on-set of the novel coronavirus and the illness commonly referred to as COVID-19. As part of SISC's continuing concern to meet the needs of our member districts for appropriate cost effective coverage, we want to update you on a couple of issues and share some suggested action, given our current public health crisis.

This memo is intended to provide you with background on how COVID-19 may impact your district with respect to the coverage provided by SISC. Please note that this memo is not intended to modify any obligations arising out of our Memorandum of Coverage, except as identified below nor is it intended to dissuade anyone from consulting with legal counsel of your choosing.

1. Employees who contract the virus may have coverage through the districts workers' compensation provider. Special attention should be paid to Governor Newsom's Executive Order N-62-20 signed on May 6, 2020.
2. Property coverage, including business interruption coverage, is not triggered under the SISC Property Memorandum of Coverage (MOC) as presence of the virus on real or personal property of the district does not constitute direct physical loss.
3. Effective December 31, 2019, SISC entered into a reinsurance agreement with two excess insurers to provide comprehensive liability coverage for our members. The reinsurers exclude coverage for claims resulting from exposure to "organic pathogens." The definition of "organic pathogens" includes the term "virus." Therefore, effective July 1, 2020, the SISC Liability MOC includes the organic pathogens exclusionary language.

SISC is responding to the COVID-19 crisis by:

1. Continuing to provide advice and guidance on appropriate Safety & Loss measures that can be taken to mitigate against these exposures;
2. Exploring the creation of a fund to assist our member districts with the payment of defense costs associated with suits filed alleging damages as a result of exposure to the novel coronavirus; and,
3. Continuing to monitor developments with the state legislature as to immunity that may be provided to help protect districts from future liabilities.

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*A Joint Powers Authority administered by the Kern County Superintendent of Schools Office, Mary C. Barlow, Superintendent*

In the interim, there are measures districts can take to limit their liability exposure in anticipation of school reopening in late summer or fall of 2020.

SISC recommends that districts, in consultation with legal counsel, adopt preventative measures in accordance with guidance provided by the California Department of Education and California Department of Health and the Centers for Disease Control. The guidance documents developed by these agencies can be located on the SISC website at <http://sisc.kern.org/covid-19-staffing/>

In the event your district finds it necessary to abstain or deviate from the guidance provided by the agencies listed above, we strongly recommend that this abstention or deviation be done only after consultation with your local county health department and your legal counsel. Those discussions should be well documented with notes of your discussion and e-mails that memorialize the substance of any such discussion.

Absent statutory requirements adopted and implemented by local, state or federal governments, the districts must understand that they still have a duty of care towards the health, safety and well-being of their students as provided by the Education Code. In all likelihood, the standard by which a school district met its duty of care will be judged by how closely a school district adhered to the guidance provided by the California Department of Education and California Department of Public Health and Centers for Disease Control. Panel counsel for SISC suggests that for maximum protection, a district should elect to follow the “most stringent” of any guideline proposed by the three agencies where the wording by the agencies is similar but not in full agreement.

**Example No. 1:**

The guidance offered by the California Department of Education and California Department of Public Health recommends that students’ temperatures be taken prior to entering campus. In the event a student contracts the novel coronavirus at school and later investigation reveals the school site in question did not take students’ temperatures prior to entering campus, the district may face liability exposure for their failure to take all students’ temperatures before entering the campus. The failure to meet this standard of care could create liability exposure for the district.

**Example No. 2:**

The school site discovers a student is manifesting symptoms of COVID-19. The guidance provided by the California Department of Education and California Department of Public Health and Centers for Disease Control all recommend that school sites have an isolation room or area where students displaying COVID-19 symptoms can be directed and isolated until removed from the campus by their parent or guardian. This would be another potential liability exposure for a district that fails to adopt this standard of care as recommended by the agencies noted above.

In summary, districts should begin adopting protocols that mirror the guidance provided by the agencies discussed in this memo. Further, those protocols should be reviewed with your district’s administrative legal counsel to be certain the protocols have no significant deviations from recommended guidance. In the event of an abstention or deviation your local county health department should be contacted for clearance.

RJK