



February 19, 2021

Senator Toni Atkins
President Pro Tempore
California State Senate
Sacramento, CA 95814

Assembly Member Anthony Rendon
Speaker of the Assembly
California State Assembly
Sacramento, CA 95814

RE: Legislature's Safely Reopen Schools Grants (SB 86)

Dear Pro Tem Atkins and Speaker Rendon:

On behalf of the California School Boards Association, representing nearly 1,000 school district and county boards of education statewide, we appreciate the Legislature's focus on reopening schools. Reopening all schools safely as soon as possible should continue to be the goal.

We recognize the progress and efforts that have been made by SB 86 to strike the delicate balance between interests advocated by labor and management. As we continue progress to reopen and stay open in challenging conditions, we believe it is critically important that the Legislature and Governor do not take any actions that would interfere with the ability of schools currently open to remain open or prevent schools in the process of reopening from opening. This includes ensuring that any other bills being considered in the Legislature do not have the same effect of adding barriers to reopening.

Unfortunately, there are some implementation barriers contained in SB 86 that will inhibit the ability of schools to reopen. Specifically, these barriers include:

1. **Paraprofessionals:** The 10 percent minimum set aside of funding for paraprofessionals to support individualized instruction hampers districts in terms of hiring and directing funds in the best way to address learning loss and support student achievement. Further, paraprofessionals providing individualized instruction could be interpreted as expanding existing law related to paraprofessionals assisting classroom teachers and other certificated personnel. The 10 percent requirement will also lead to additional unnecessary long-term costs locally and reduce the level of funding available to reopen schools consistent with the actual need. The practical effect of this is that it will serve to limit funding that could otherwise be used to help reopen schools.

Proposed Amendment - Amend this language to specify that paraprofessionals assist with individualized instruction and allow the hiring/rehiring of paraprofessionals as an eligible use of funds rather than a strict percentage of expenditures.

2. **Expenditure Prior to Reopening:** The prohibition of expending funds prior to reopening will inhibit a district's ability to use necessary funds to hire and plan for additional supports that these funds are intended to target.

Proposed Amendment - Amend the bill to either remove this language or to allow for some of these funds to be used for planning and start-up costs.

3. **Small School Districts:** We understand that the bill may be amended to include the previous language as proposed by the Administration with minimum funding for necessary small schools. However, the proposed funding for necessary small schools will unlikely be enough to support new testing cadences alone since they face more challenges due to the lack of economies of scale.

Proposed Amendment - Amend the bill to include higher minimum funding amounts for necessary small schools and include adequate minimum funding levels for small school districts that have 2,500 students or less.

There are also areas in SB 86 that need to be clarified:

1. **Vaccinations:** We appreciate the attempt to prioritize vaccinations for school employees; however, the language seems to prioritize only those employees who are working at a school site where pupils are attending in person. This leaves out those employees who are critical to in-person instruction but who may not be on a school site such as bus drivers or central food preparation and distribution centers. The language also does not prioritize those who are about to work in schools that are planning to reopen or substitute teachers.

Proposed Amendment - Add language to include staff that are vital to the reopening and everyday functioning of schools.

2. **Reporting Requirements- HIPAA Limitations:** The proposed language requires administrators to report the identification and personal information of both staff and students who have tested positive within 24 hours to their local health officers by phone. Due to health information privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), districts open and performing testing only receive information from labs that discloses which classroom the positive test came from. This allows

districts to close the appropriate classroom while also ensuring the lab does not violate HIPAA. Districts do not receive identifiable information about the staff or student, which is required in the current version of the bill.

Proposed Amendment - Add the following language to the beginning of paragraph (1), subdivision (b), of section 32090 -- "Where the Health Insurance Portability and Accountability Act allows,".

- 3. Reporting Requirements-CDE Partnership:** We are concerned about the burden of new and potentially duplicative reporting requirements to multiple state agencies as required by section 32090(c)(2). Currently LEAs report enrollment and staff data to the Department of Education and are shouldering significant vendor costs to actively adapt their systems to meet new distance learning reporting requirements. Requiring new reports twice per month to the Department of Public Health adds to this burden without deeper alignment with existing CDE efforts earlier in the process than 32090(c)(2)(B) implies.

Proposed Amendment - Amend the bill to require the CDE and DPH to collaborate in developing any forms and collection dates, and add the following language to paragraph (2)(A), subdivision (c), of section 32090 to read -- "Develop the form and identify the procedures to be used for reporting information pursuant to this subdivision in partnership with the State Department of Education."

- 4. Continuous In-Person Learning:** While we recognize the importance of continuity in providing in-person instruction, the realities of operating in a pandemic make the requirement to provide continuous instruction unless ordered by a local health officer or the state to shut down unrealistic. Many schools have reopened throughout the state but when required quarantines to ensure safety are in effect, combined with a severe shortage in substitute teachers, some school sites have been forced to return to distance learning.

Proposed Amendment - Amend the language to ensure flexibility that recognizes the limitations that many schools are struggling to deal with when forced to quarantine to prevent transmission and uphold public health.

Education funding must be committed to educational services and must mitigate inequities heightened by the pandemic. COVID-19 testing and other health-related expenses are inappropriate uses of Proposition 98 funds. While we acknowledge and appreciate the broader educational investments proposed in SB 86, we do not believe education dollars should be spent for community health

needs. Every dollar of Proposition 98 spent on public health is a dollar that is no longer available to benefit students for instructional support, social-emotional services, or learning loss mitigation.

Additionally, we need to be very clear: it appears that at least a portion of the Prop 98 funding proposed here is available only as a result of the June apportionment deferral not being repaid. In fact, the January budget proposal actually grows the June deferral to \$3.7 billion. By not repaying all current year deferrals, the Legislature and the Governor are proposing to borrow apportionment funding and use it for these new programs. Our concern has always been that deferrals must be repaid when the funds are available as they are in the current year; otherwise, future year growth in the Prop 98 guarantee could be too slow to cover the base and retire the remaining deferral.

In closing we would also like to reiterate that CSBA continues to be very concerned that there is no limited liability relief for LEAs. California's K-12 schools are currently analyzing and identifying all potential avenues to safely return to in-person instruction and on-campus services. LEAs across California have been informed by insurers that they are not covered for COVID-19 liability issues. California K-12 schools need immediate, reasonable, and targeted liability protection. Liability relief will also protect already stretched local budgets, as general liability and special education settlements will be paid from local general funds.

CSBA remains committed to working with all of you and is dedicated to safely reopening our public schools.

Sincerely,

A handwritten signature in black ink that reads "Dennis Meyers". The signature is written in a cursive style with a large, stylized "D" and "M".

Dennis Meyers
Assistant Executive Director, Governmental Relations
California School Boards Association

cc: Governor Gavin Newsom
Sen. John Laird, Chair, Senate Budget Subcommittee 1, Education
Members, Senate Budget Subcommittee 1, Education
Sen. Connie Leyva, Chair, Senate Education Committee
Sen. Rosilicie Ochoa-Bogh, Vice Chair, Senate Education Committee
Sen. Nancy Skinner, Chair, Senate Budget Committee
Sen. Jim Nielsen, Vice Chair, Senate Budget Committee
Elisa Wynne, Deputy Staff Director, Senate Budget

Asm. Kevin McCarty, Chair, Assembly Budget Subcommittee 2, Education
Members, Assembly Budget Subcommittee 2, Education
Asm. Patrick O'Donnell, Chair, Assembly Education Committee
Asm. Kevin Kiley, Vice Chair, Assembly Education Committee
Asm. Phil Ting, Chair, Assembly Budget Committee
Asm. Vince Fong, Vice Chair, Assembly Budget Committee
Erin Gabel, Consultant, Assembly Budget Subcommittee 2, Education
Keely Bosler, Director of the Department of Finance
Chris Ferguson, Program Budget Manager, Department of Finance