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October 1, 2021

James Frederick  
Acting Assistant Secretary of Labor  
for Occupational Safety and Health  
United States Department of Labor  
Occupational Safety and Health Administration (OSHA)  
200 Constitution Avenue, N.W.  
Room Number N3626  
Washington, D.C. 20210

Dear Mr. Frederick:

We are writing on behalf of the 2.5 million members of the affiliated state education associations listed on the signature page, in support of the previously filed petition of the National Education Association (NEA), filed on August 23, 2021 pursuant to 29 C.F.R. § 1910.3(a), requesting that the Occupational Safety and Health Administration (OSHA) take swift action to protect workers from occupational exposure to COVID-19. No one is more committed to making sure that our students can continue to attend school in person than our nation's educators. Swift action by OSHA can help put the protections in place to limit and contain the COVID-19 outbreaks in school that threaten the health of school staff and students alike and also fuel continued and escalating disruption of in-person schooling of students.

Specifically, the NEA petition calls on OSHA to adopt an emergency temporary standard (ETS) requiring all covered employers not subject to the OSHA's June 21, 2021, COVID-19 ETS for healthcare workers to implement at least the following six basic protections against the workplace transmission of the SARS-CoV-2 virus.

- Universal Masking requirements, meaning that:
  - Employers must provide employees with FDA cleared or authorized surgical-type facemasks and, subject to necessary accommodations, ensure proper use of

them by all employees in shared workplaces, as contemplated by Part 1910.501(f)(1) of OSHA's Draft ETS.<sup>1</sup>

- Employers must also, subject to necessary accommodations, ensure that members of the public who enter shared workplaces including schools (namely, students and parents) wear the masks described above while in the workplace, and provide such masks to members of the public who do not have them.
- Physical distancing of at least 6 feet to the fullest extent that feasibility allows, as contemplated by Draft ETS Part 1910.501(d).
- Adequate ventilation in indoor workplaces including in schools. Such ventilation must provide for air exchange with outside air and indoor air filtration, whether by adjusting and/or upgrading existing heating, ventilation, and air conditioning systems and installing high filtering efficiency filters, as contemplated by Draft ETS Part 1910.501(h), or by other means.
- Appropriate symptom screening for employees and sound quarantine procedures, including medical removal benefits, as contemplated by Draft ETS Part 1910.501(i).
- The development and implementation of COVID-19 plans for every workplace as contemplated by Draft ETS Part 1910.501(c).
- The creation and retention of confidential logs of employees who are confirmed to be COVID-19 positive and reporting of work-related COVID-19 hospitalizations and fatalities to OSHA, as contemplated in Draft ETS Part 1910.501(q) and (r).

These protections are critical to protect the health of school staff and students and to ensuring that in-person schooling can continue without further disruption across the country. The protections are directly in line with the recommendations of the CDC for “universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status” and “physical distancing to the extent possible,” alongside “additional prevention strategies to protect students, teachers, and staff,” including promoting vaccination, proper ventilation, screening testing, handwashing and respiratory etiquette, contact tracing, and cleaning and disinfection.<sup>2</sup> And they follow the guidance of the American Academy of Pediatrics, which not only endorses “universal mask policies” as the “most effective way to reduce the spread of COVID in school populations where many children – including all children under the age of 12 – are unvaccinated”<sup>3</sup> but strongly supports schools in taking a “multi-pronged, layered approach to protect students,

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<sup>1</sup> See Exhibit A to NEA Petition at 748-50.

<sup>2</sup> CDC, *Guidance for COVID-19 Prevention in K-12 Schools* (“updated Aug. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

<sup>3</sup> AAP Amicus Brief in *ASBA v. AZ*, Case No. CV2021-012741 (filed Sept. 10, 2021) (AZ Superior Ct, Maricopa Cty).

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teachers, and staff (ie, vaccination, universal mask use, ventilation, testing, quarantining, and cleaning and disinfecting).”<sup>4</sup>

Already, just a few short weeks into the school year, we have seen thousands of school closures, and tens of thousands of staff, and hundreds of thousands of students, have been infected with COVID-19 and both they, and their close contacts, have been subject to quarantine restrictions that have taken them out of in person instruction.<sup>5</sup> That trend will not only continue but is likely to grow based on current rates of COVID-19 infection and spread, and further waves of increasing infections, beginning in the winter, are anticipated.

We are seeing the highest ever rates of infection for children and overcapacity pediatricians’ offices and pediatric ICUs, with particularly devastating effects on Black, Hispanic or Latino, and American Indian or Alaskan Native children, who are more than three times as likely to be hospitalized with COVID-19.<sup>6</sup> And yet, we still see many states and thousands of school districts failing to take basic steps to protect the health and safety of students and staff in school or, even worse, affirmatively preventing school districts and institutions of higher education from taking the steps needed to protect health and safety and keep schools and higher education institutions open. Indeed, even now, only seven states and the District of Columbia affirmatively require mask-wearing in indoor public places, regardless of COVID-19 vaccination status,<sup>7</sup> and nine states prohibit local school officials and/or higher education governing bodies from requiring mask wearing.<sup>8</sup>

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<sup>4</sup> AAP, *COVID-19 Guidance for Safe Schools* (updated July 18, 2021), <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>

<sup>5</sup> See *School Outbreaks and What it Means for Hospital Capacity* (dated Sept. 9, 2021) (available at <https://yourlocalepidemiologist.substack.com/p/school-outbreaks-and-what-it-means>); American Academy of Pediatrics & Children’s Hospital Association, *Children and COVID-19: State Data Report* (dated Sept. 2, 2021) (available at <https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%209.2%20FINAL.pdf>);

<sup>6</sup> CDC, *Disparities in COVID-19-Associated Hospitalizations* (updated Aug. 30, 2021) (available at <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-hospitalization.html>).

<sup>7</sup> Those states are: Hawaii, Illinois, Louisiana, Nevada, New Mexico, Oregon and Washington.

<sup>8</sup> K-12 Education; Budget Reconciliation, Ariz. Ch. 404, Section 12, 55<sup>th</sup> Legis., (June 30, 2021); An Act to End Mandatory Face Covering Requirements in the State of Arkansas, Act 1002, 93<sup>rd</sup> Gen. Assemb., K-12 education; budget reconciliation, (signed April 19, 2021); An Act to End Mandatory Face Covering Requirements in the State of Arkansas, Act 1002, 93<sup>rd</sup> Gen. Assemb., K-12 education; budget reconciliation, (signed April 19, 2021); State of Florida Office of The Governor, Exec. Order No. 21-175, Ensuring Parents’ Freedom to Choose – Masks in Schools (July 30, 2021); Iowa House File 847, Sec. 28 (signed May 20, 2021); Okla. Sen. Bill 658, 58<sup>th</sup> Legisl., 1<sup>st</sup> Sess. (signed May 26, 2021); State of South Carolina Office of the Governor, Exec. Order No. 2021-23 (May 11, 2021); State of Tennessee, Exec. Order by the Governor No. 84, An Order Regarding Mask Requirements in Schools (Aug. 16, 2021); State of Texas – Office of the Governor, Executive Order GA 38, relating to the Continued Response to the

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We are now over a year and a half into the COVID-19 pandemic, which has had devastating and deadly consequences on our country. Those consequences include the disruption of education and learning for hundreds of thousands of students. It is long past time for the federal government to use every tool available to it to limit further disruptions. We urge that OSHA do so by adopting an ETS that includes not only the basic vaccinate-or-test mandate that President Biden has called for and that we fully support, but also the basic protections called for in the NEA petition and set forth above. No one wants our students to be in in-person instruction more than educators. OSHA must act to prevent further disruptions of our students' in-person learning.

Sincerely,

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COVID-19 Disaster, at 2, 4 (July 29, 2021); Utah H.B. 1007, Face Covering Requirements, 1<sup>st</sup> Spec. Sess. (signed May 28, 2021).

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