

URGENT FAX MESSAGE!

To:

From: Fabian Moreno

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Fax

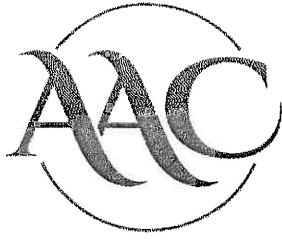
Date 02/04/2022

Pages: 9

Note:

Please give a copy to each of document to the board members- This is good legal stuff for review.
thanks

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Coastal Property Rights, Land Use & Litigation

August 27, 2021

POSTED TO THE LET THEM BREATHE WEBSITE (<https://www.letthembreathe.net/>)

Re: Enforcement of K–12 Mask Mandate

To All K–12 Students, Parents, Educators, and Concerned Citizens:

As counsel for Let Them Breathe, we are disturbed by reports that some state, county, and school district actors are employing scare tactics, aggressive enforcement policies, and misinformation to achieve compliance with CDPH’s K–12 mask mandate. We are disseminating this letter as a clarion call for all members of the public—students, parents, teachers, school board members, government officials, and others who want our schools to be governed by the rule of law, sound public policy based on objective data, and the principle of self-determination.

As you may be aware, our firm has filed a lawsuit against the state to challenge the legality of the CDPH mask mandate. (*Let Them Breathe v. Newsom*, San Diego Super. Ct., Case No. 37-2021-00031385- CU-WM-NC.) Our lawsuit is based on arguments that the mask mandate exceeds the state’s authority, is not supported by evidence, and causes harm to children. Multiple studies examining school mask mandates have failed to find any epidemiological benefit from such policies. For example, one study of 59 schools in Wales found: “There was no evidence that face coverings, 2-metre social distancing or stopping children mixing was associated with lower odds of COVID-19 or cold infection rates in the school. Primary school staff found teaching challenging during COVID-19 restrictions, especially for younger learners and those with additional learning needs.”¹

The court will decide these questions in due course. Meanwhile, we urge students and their parents to know their rights, school districts to cease their overzealous and illegal enforcement tactics, and proponents of school mask mandates to discontinue the spread of misinformation.

Forcible removal of students from classrooms violates California law.

Some school districts have implemented policies barring students from their regular classes, or from campus altogether, for failure to wear a mask. We are aware of at least one instance in which

¹ Marchant et al., *COVID-19 mitigation measures in primary schools and association with infection and school staff wellbeing: an observational survey linked with routine data in Wales, UK* (Aug. 24, 2021), available at <https://www.medrxiv.org/content/10.1101/2021.08.20.21262349v1>; see also, e.g., Oster et al., *COVID-19 Mitigation Practices and COVID-19 Rates in Schools: Report on Data from Florida, New York and Massachusetts* (May 21, 2021), available at <https://www.medrxiv.org/content/10.1101/2021.05.19.21257467v1>. Such evidence puts the lie to the argument that a mask mandate is necessary to provide a “safe” environment for education.

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a school principal sought assistance from the county sheriff to forcibly remove two elementary school-aged children simply because they had peaceably refused to don a cloth mask. Enforcement strategies involving the involuntary removal or disenrollment of children from their school infringe on children's fundamental right to education and violate California law constraining the disciplinary powers of public school administrators.

California law is clear: "willfully def[ying] the valid authority of supervisors, teachers, administrators, school officials, or other school personnel ... *shall not constitute grounds* for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, *to be recommended for expulsion.*" (Educ. Code, § 48900, subd. (k) [emphasis added].) This means children cannot be removed or disenrolled from school for peaceably refusing to wear a mask.²

Moreover, children in grades K–8 may not be suspended from school for their refusal to wear a mask. (Educ. Code, § 48900, subds. (k)(3)–(4).) Even in those instances where suspension may be a potential disciplinary measure, the school must first exhaust "other means of correction" before imposing suspension as a last resort. (Educ. Code, § 48900.5, subd. (a).)³

A child cannot be suspended for a first offense unless the principal or superintendent determines that "the pupil's presence causes a danger to persons." (*Ibid.*) Where there is no evidence that a child is infectious—that is, the child is not exhibiting symptoms, does not have a diagnosis of COVID-19, and has not had any exposure to a known infected person—a principal or superintendent cannot validly determine the child to be a "danger to persons" simply because he or she is not wearing a cloth mask.

Finally, no child can be suspended indefinitely. Any suspension must be "no more than five consecutive schooldays" (Educ. Code, § 48911, subd. (a)), and all suspensions cumulatively "shall not exceed 20 schooldays in any school year." (Educ. Code, § 48903, subd. (a).)

Children cannot be forced to enroll in an independent study program.

School officials in some districts have attempted to coerce students who do not comply with the mask mandate to enroll in an alternative independent study program. But California law could not be clearer that enrollment in any such program must be voluntary: "independent study is an *optional educational alternative* in which *no pupil may be required to participate.*" (Educ. Code, § 51747, subd. (f)(8) [emphasis added].) Thus, enrollment can occur only if there is a "pupil-parent-educator conference" to determine whether enrollment in independent study is in the best interest of the child (Educ. Code, § 51747, subd. (h)(2)) and "a signed written agreement for independent study from the pupil, or the pupil's parent or legal guardian if the pupil is less than 18

² Furthermore, a child may not be expelled from school without a full hearing before the governing board. (Educ. Code, § 48918.) Decisions by the governing board are appealable to the county board of education. (Educ. Code, § 48919.) A school official cannot simply call the sheriff to escort a child from campus.

³ "Other means of correction" might include, among other things, "(1) A conference between school personnel, the pupil's parent or guardian, and the pupil"; "(2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel ..."; or "(7) A positive behavior support approach with tiered interventions that occur during the schoolday on campus." (Educ. Code, § 48900.5, subd. (b).)

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years of age” (Educ. Code, § 51747, subd. (f)(9)(F)).

Additionally, and importantly, a child who voluntarily enrolls in a distance learning or independent study program cannot be excluded from school facilities. Rather, the school “*shall ensure the same access to all existing services and resources in the school in which the pupil is enrolled ... as is available to all other pupils in the school.*” (Educ. Code, § 51746 [emphasis added].)

And a child enrolled in an independent study program always retains the option to return to his or her regular classroom for in-person instruction. The school is required to “*transition pupils whose families wish to return to in-person instruction from independent study expeditiously*, and, in no case, later than five instructional days.” (Educ. Code, § 51747, subd. (f) [emphasis added].)

The state’s emergency powers do not allow children to be excluded from school for refusing to wear a mask.

Section 120230 of the Health and Safety Code has been cited by some as authority for a school to exclude a child who fails to follow the CDPH mask mandate. This section is being misapplied; it provides only narrow authority for schools to exclude a child who is subject to an isolation or quarantine order duly issued by a county health officer.

Section 120230 reads in relevant part: “No ... child *who resides where any contagious, infectious, or communicable disease exists or has recently existed, that is subject to strict isolation or quarantine* of contacts, shall be permitted by any superintendent, principal, or teacher of any ... public or private school to attend the ... school, except by the written permission of the health officer.” (Emphasis added.)

Two things must exist before this section can apply: First, a “contagious, infectious, or communicable disease” must exist or have recently existed at the child’s place of residence. Where a child has not received a diagnosis of COVID-19 and has not been exposed to the disease through a family member or close contact, this condition cannot be met. Second, the child must be subject to a “strict isolation or quarantine” order by the county health officer.⁴ In all the known instances where a school has excluded or threatened to exclude a child from campus for noncompliance with the mask mandate, neither of these conditions has been met.

Section 49451 of the Education Code likewise does not authorize school officials to send a healthy child home simply for refusing to wear a mask. Section 49451 provides that “*whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease*, he shall be sent home and shall not be permitted to return until the school authorities are satisfied that any contagious or infectious disease does not exist.” (Educ. Code, § 49451.) A child’s refusal to wear a mask does not establish “good reason to believe that the child is suffering from”

⁴ “Strict isolation or quarantine” means a person is subject to an order by the county health officer not to leave his or her place of confinement: “A person subject to quarantine or strict isolation residing or in a quarantined building, house, structure, or other shelter, shall not go beyond the lot where the building, house, structure, or other shelter is situated, nor put himself or herself in immediate communication with any person not subject to quarantine, other than the physician, the health officer or persons authorized by the health officer.” (Health & Safety Code, § 120225.)

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COVID-19 or any other disease.

Article I, section 28, of the California Constitution sets forth “the inalienable right to attend campuses which are safe, secure and peaceful.” CDPH, in a letter published on its website August 23, 2021, makes the misleading argument that this constitutional provision imposes a legal and moral imperative on schools to ensure compliance with the mask mandate.⁵ This section, however, is part of a victim’s rights initiative enacted by ballot measure in 2008 and pertains solely to a person’s safety from the criminal acts of others. While we agree that schools must take reasonable measures to provide a safe environment for students, nothing in the California Constitution allows, much less requires, schools to bar a healthy student from attending class. And in any event, as explained above, real-world data from the last year and a half has failed to show any correlation between mask mandates for children and a decrease in the spread of COVID-19 in schools.

Schools must issue exemptions for children who for medical reasons should not wear a mask.

CDPH’s mask guidance exempts several categories of persons, including the following:

- “Persons with a medical condition, mental health condition, or disability that prevents wearing a mask....
- “Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.”⁶

These exemptions are self-executing. Nothing in CDPH’s guidance requires a child or his or her parents to submit an “application” to obtain an exemption. Yet many school districts are not only requiring an application but are compounding the difficulty by requiring extensive documentation, substituting their own non-medical opinions for those of a child’s own physician, and requiring a child to waive his or her medical privacy rights or agree to other arduous and/or unlawful conditions. Such requirements effectively deprive children of exemptions to which they are entitled, violating *their* right to learn in a safe environment.

We are told that some children who have received an exemption are being isolated from their classmates or have otherwise been subject to harassment or discrimination. Many such exemptions arise out of a child’s disability, and any harassment or discrimination against a child based on disability violates both California and federal law.⁷

⁵ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Requirement-for-Universal-Masking-Indoors-at-K-12-Schools.aspx>.

⁶ Cal. Dep’t of Pub. Health, *Guidance for the Use of Face Coverings* (July 28, 2021), available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.

⁷ See Educ. Code, § 200 (“It is the policy of the State of California to afford all persons in public schools, regardless of their disability ..., equal rights, and opportunities in the educational institutions of the state.”); Educ. Code, § 201, subd. (a) (“All pupils have the right to participate fully in the educational process, free from discrimination and harassment.”); Educ. Code, § 220 (“No person shall be subjected to discrimination on the basis of disability ..., in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance”)

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Conclusion.

Until such time as CDPH withdraws its mask mandate or a court declares it unlawful, masks are required in schools in indoor settings. But, for as long as the mandate exists, schools may not enforce it by excluding children from classrooms, whether by means of expulsion, suspension, or forced enrollment in an independent study program. Schools must exempt students from mask requirements as provided in the CDPH guidance, without an onerous application process, and all exempt students should be free from all forms of harassment, discrimination, and retaliation.

If you would like assistance in protecting the rights of schoolchildren and fighting back against government overreach, please visit Let Them Breathe at <https://www.letthembreathe.net/>.

Very truly yours,

AANNESTAD ANDELIN & CORN LLP



Lee M. Andelin

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds. It states: "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..."



FREQUENTLY ASKED QUESTIONS – FACE MASKS

What's the big deal with wearing a mask?

It simply doesn't make sense for everyday people to wear a mask, especially children. Masks are for those who are ill, not healthy. Moreover, wearing one can create, not deter, illness. When individuals wear masks they end up touching their faces more frequently, which could lead to infection. They also rebreathe particles that their lungs have exhaled that are trapped in the mask. Additionally, the masks that everyday people wear impede oxygen flow and aren't porous enough to allow carbon dioxide to fully dissipate. All of these things decrease the body's immune response.

According to Dr. Eli Perencevich, an internist and infectious disease specialist, "The average healthy person does not need to have a mask, and they shouldn't be wearing masks. There's no evidence that wearing masks on healthy people will protect them. They wear them incorrectly, and they can increase the risk of infection because they're touching their face more often."

If I can wear a mask, why can't you wear a mask?

Many people assume that because they are able to wear a mask without issue, everyone should be able to wear a mask without issue. There are numerous reasons why someone might not be able to wear a mask.

These include:

- * Anxiety or other psychological issues and disorders
- * Autism or other developmental disorders
- * Hearing impairments
- * Fear of racial profiling, violence or brutality by being a person of color or minority in a mask
- * PTSD from being a victim of a rape, sexual assault or another violent crime in which the perpetrator was wearing a face covering or forced the victim to wear a face covering
- * Respiratory conditions such as asthma and COPD
- * Sensory issues and disorders
- * Skin conditions (staph infections, yeast infections, contact dermatitis, etc.)

Moreover, just because someone with one of the above conditions wears a mask does not mean that everyone with that condition can do so. Every human has a different physiological and psychological makeup; what's true for one person is not true for all.

The CDC says to wear a mask, so why not just listen to them?

The CDC and other health authorities have flip-flopped their position on masks several times over the past few months. Although the agency is currently recommending mask-wearing in public, it has been unable to produce compelling evidence showing that masks worn by healthy individuals stop the spread of viral illness. Further, when you look at the science behind masks, wearing one to stop the spread of coronavirus makes no sense. Masks are incapable of stopping the lifecycle of a virus, and there is zero evidence to support the theory that masks worn by healthy people stop the spread of disease.



Thus, many people who choose not to wear a mask are choosing to exercise their personal judgment and not participate in a message of fear or false security.

Isn't it silly to complain about masks when people are dying of COVID-19?

It depends on how you view the body. If you view the body as brilliantly designed and understand that oxygen is one of the most important necessities for life, then it is in no way trivial or selfish to want to protect your breathing and your health.

Surgeons and Asians have worn masks for years. Why can't you?

Face masks are worn by surgeons because they're supposed to make wound infections after surgery less likely. According to Cochrane, a global independent network that produces systematic reviews and other research to inform health decision-making, the purpose of face masks is two-fold: 1) to prevent the passage of germs from the surgeon's nose and mouth into the patient's wound and 2) to protect the surgeon's face from sprays and splashes from the patient. Thus, the mask is something that is worn by a medical provider in a specialized setting for a specialized purpose.

Masks are worn in East Asia for cultural purposes and to limit exposure to air pollution. Nearly 2 million people are estimated to die in China each year from pollution-related illnesses. Asians who wear masks in the United States have largely done so as a cultural crossover.

Shouldn't your right to refuse a mask end where it puts me in danger?

There is no solid science demonstrating that unmasked individuals are a health detriment to others. Research shows that prolonged, close contact is needed for the transmission of coronavirus. It also shows that masks are incapable of stopping the spread of a virus.

According to the Center for Infectious Disease Research and Policy, there is no scientific evidence that masks are effective in reducing the risk of SARS-CoV-2 transmission. The center, which addresses public health preparedness and emerging infectious disease response, also said that the use of masks "may result in those wearing the masks to relax other distancing efforts because they have a sense of protection."

How does wearing a mask violate your rights?

By dictating that someone must wear a mask, it is forcing that person to choose an allopathic intervention for the purpose of protecting himself/herself and others. Forcing a person to take an intervention that is potentially harmful for the sake of others is unethical.

Forcing individuals to abide by measures that restrict their ability to move freely throughout society without discrimination is unconstitutional. Prohibiting people from entering or participating in society because they don't wear a mask also violates their constitutional rights.

Lastly, for those with deeply held religious beliefs, forced mask-wearing violates their ability to abide by natural law and follow their convictions to walk in faith, not fear.



What's wrong with mask mandates?

Although public officials are charged with controlling the spread of infectious disease, they are not responsible for individual health. Only individuals can decide what measures are in their best interest. Strong health policies empower individuals to take responsibility for their health; they shouldn't strong-arm them into taking certain measures without allowing them to decide if those measures are in their best interest.

Policies that mandate compliance that for the greater good are dangerous; one person's health cannot be sacrificed for another's, and no one's life should be privileged over another's. As such, the decision to wear a mask must be a personal one and should not be universally mandated; measures that are meant to protect the community as a whole are ineffective if they hurt individuals within the community.

For more information on the problems with medical mandates, visit

<https://standforhealthfreedom.com/blog/why-states-are-getting-it-wrong-with-medical-mandates/>.

Some news reports say masks are necessary. How do you explain that?

The news media is known for oversimplifying issues; it also known for sensationalizing stories to increase ratings and profits. Coronavirus is an important topic affecting each of our lives. New scientific developments about the virus and society's response continue to unfold rapidly. However, the pandemic is dominating headlines with terrifying narratives that are generating fear and hysteria. These headlines lead to increased ad revenues and audience engagement, but they're also instilling widespread panic and uncertainty in the American public.

Studies show that exposure to fear and acute stress results in compromised immune function that can subsequently affect brain function. So individuals need to balance the need for information with the need to safeguard their health by minimizing their exposure to fear. Most of all, people need to take personal responsibility for their welfare and decide what's best for them and their family using facts and reason — not fear.

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Stand with us at www.standforhealthfreedom.com