

July 18, 2021

_____ UNIFIED SCHOOL BOARD MEMBERS

RE: CDPH Guidance Allows School Districts to Develop a Mask Policy of Limited Enforcement

Dear _____ School Board Members,

I submit this letter with support of California Parents United and Protection of the Educational Rights of Kids, which are non-partisan organizations who advocate for children. We are writing with a request that this school district follow the new CDPH guidelines and develop a policy for _____ USD that will *limit enforcement* of mask wearing by children. Sufficient enforcement can include posting a notice, sending a letter home, and/or discussion with parents/guardians regarding the risks and benefits of mask wearing. The data is clear that it is time to let parents decide whether or not to send their children to school with masks because continued mandated mask wearing of children impedes learning, physically impacts children negatively¹, and creates unnecessary liability for teachers and administrators when not approved by parents or their physicians.² _____ USD can allow parents to decide *and* follow CDPH guidelines.

As you may know, CDPH *guidelines* have recently been updated, delegating mask *enforcement choices* to school districts. Recognizing within hours that their original *guidance*, which mandated refusal to educate, suspension or expulsion, violated the actual *law* found in the Education Code³, the CDPH is now only requiring schools to determine how to enforce. It states in pertinent part as follows:

e. Consistent with guidance from the 2020-21 school year, schools must develop and implement local protocols to enforce the mask requirements.

Clearly, the only “mandate” or “directive” from CDPH that school districts “must” follow is that they develop a local “protocol.” By California law, the protocol can respond to the unique needs of the school district and its surrounding community.⁴ This means that _____ USD is within its legal rights to develop a policy that encourages masks, educates parents on the risks and benefits of making their choice, but does not punish a child for not wearing one with illegal expulsion or suspension⁵.

In fact, it is in a school district’s best interest to develop a policy in this recommended manner because the opposite choice of mandating masks or else refusing to allow children an in person education violates the law and could subject the district to civil liability.⁶ If a school, or agent of the school such as a teacher, enforces mask wearing and it adversely impacts a child in any way, including but not limited to psychological damage, physical

¹ <https://www.mdpi.com/1660-4601/18/8/4344/htm>

² Masks are defined by federal law as experimental, only emergency use authorized, and thus require informed consent. 21 U.S. Code § 360bbb-3

³ Cal Ed Codes §§48213, 48900

⁴ Cal Ed Code § 35160 – 35160.2; *American Civil Rights Foundation v. Berkeley Unified School Dist.*, 172 Cal. App. 4th 207, 216 (“...the Legislature has granted school boards wide authority to set policies for the communities they serve”)

⁵ Schools can only exclude students from attendance if there is a clear and present danger which requires actual facts such as violence or drugs to support such an act. Cal Ed Codes §§48213, 48900

⁶ Cal Gov Code § 815.2; *Dailey v. Los Angeles Unified Sch. Dist.*, 2 Cal. 3d 741, 747 (“Under section 815.2, subdivision (a) of the Government Code, a school district is vicariously liable for injuries proximately caused by such negligence.”)

harm, impeding academic progress, then the school could be civilly liable by law.⁷ Schools are not even allowed to “use a physical restraint technique that obstructs a pupil’s respiratory airway” in the first place, by law⁸.

In the event there is any doubt that an actual risk of harm to a child exists if they are forced against their parent’s will to wear a mask by a school district employee, I respectfully direct you to the complaint filed against Los Angeles Unified School District on June 19, 2021 in Case No. 2:21-cv-05009-VAP-MRW.⁹ This list of physical and other symptoms is long including increased lactate concentration, stress hormone levels, muscle tension, loss of concentration, and loss of reaction time, long-term neurodegenerative disease, hypertension, premature aging, death, fear, mood disturbances, compromised cognitive performance and more. The masks dehumanize people and hide facial expressions and nonverbal communication. Our most vulnerable members of society need to thrive and prosper. Clearly, there is risk and now school districts across California are on notice of this very real liability.¹⁰

Considering the foregoing, the respectful recommendation is that the ____ School District and School Board Members immediately draft a new protocol or modify current protocol to simply create a policy for all staff to encourage mask wearing without denying educational rights. The district could adopt a process of dealing with a student that attends school without a mask as one of education. A call could be made to the parent to confirm their directive and discuss the benefits and risks, or a letter could simply go home to the parent to encourage reconsideration of their decision. This would respect the CDPH guidance, relieve the district of liability because the ultimate decision would be the parents, and comply with any individuals concerns over mask choice as an option.

In conclusion, we respectfully request that you immediately develop a policy that encourages, educates but limits enforcement of masking children. Please advise how I can further be of service to the school district.

Sincerely,

_____, parent of a student at ____ School District

Tracy L. Henderson, Esq.
Founder California Parents United



Amy Bohn
Executive Director PERK



CC: _____ County Superintendent,

_____ County Board of Education

⁷ *Shannon v. Central-Gaither Union School Dist.*, 133 Cal. App. 124, 129, 23 P.2d 769, 771 (“The question of the negligence of the defendants (School District) in the present case should therefore be determined with due regard to all the surrounding circumstances including the age, mentality and childish impulses of the injured boy.”)

⁸ Cal Ed Code § 49005.8(3)

⁹ *Jennifer Guilfoyle v. Austin Beutner* 2:21-cv-05009-VAP-MPW

¹⁰ <https://www.aier.org/article/medical-journal-warns-about-maskss-potentially-devastating-consequences/>