

Sep 1, 2021

Attn:

Stacy Yao (Superintendent)
Lori Cunningham (Board Member)
Sylvia Leong (Board Member)
Jerry Liu (Board Member)
Satheesh Madhathil (Board Member)
Phyllis Vogel (Board Member)

RE: Cupertino Unified School District (CUSD) Outdoor Mask Mandate for Students

I am sending you this notice on behalf of the families of [REDACTED] and our larger coalition of approximately 80 parents that include parents of an Individual Education Plan (IEP) student. In my review of federal guidelines, the California Department of Health guidelines, and the Santa Clara County Office of Education and Public Health Department guidelines, I do not believe that CUSD has the legal authority to mandate outdoor masks without the public consent of the school Board.

California Education Code section 51101, provides that the “governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines the manner in which parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each school site.” EC 51101(a)(7) states that parents should have “a school environment for their child that is safe and supportive of learning.”

CUSD has implemented an outdoor mask mandate that was (1) not jointly developed with the school Board, parents, and guardians who have expressed concerns via email and in protests, and (2) not publicly discussed with the school Board, parents and guardians, including the adverse impact from prolonged mask-wearing such as delayed speech and social and emotional learning (SEL) development for kids under eight years of age.

In addition, the enrolled students of families of [REDACTED] and the broader parent coalition had asked their supervising teachers for permission to remove their masks while outdoors. We documented the responses of each teacher, and we believe in at least one instance, the CUSD teacher has violated the Tom Bane Civil Rights Act (California Civil Code section 52.1) for coercion and intimidation of the student.

Furthermore, California Family Code section 3105 provides a parent with the “fundamental right to provide for the care, custody, companionship, and management of his or her children.” We understand that California Education Code section 3560 provides broad jurisdiction to the school Board and Superintendent, but per the Individuals with Disabilities Education Act (IDEA) of 2004, such education should be provided in the least restrictive environment (LRE) possible.

A state's obligation to ensure LRE includes a presumption that students with disabilities are most appropriately educated with their non-disabled peers. Determining the LRE of an IEP student requires individual inquiry and cannot be done with a "one size fits all" approach. Any action taken by the district should be reasonable and necessary that cannot otherwise be served by a less restrictive means." We believe that the district's outdoor mask mandate flies in the face of the IDEA by specifically mandating a "one size fits all approach" that is not supported by many parents. Instead, this issue can easily be resolved by leaving the choice to families to opt-out of the outdoor mask mandate and to decide for themselves if they would consent to their children wearing a mask outdoors. In this manner, the school district does not run afoul of IDEA by allowing IEP students, their families and the district to work together to determine the appropriate LRE on a case by case basis. Furthermore, by not singling out IEP and non-IEP students for different treatment, the district complies with IDEA's strong preference for educating IEP students in a similar educational environment as their non-IEP peers.

As a result of the above, parents are considering filing an IEP violation with the Office of Civil Rights where the IEP student was denied when requesting the ability to remove their outdoor mask. Such action may have violated that student's right under the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et seq.) which specifically allows that a person may not be able to wear a mask safely, or at all, due to a disability.

I am requesting that the CUSD show via court order its legal authority to mandate outdoor masks for its students. Second, in the event that no such court order exists, I am requesting that the CUSD immediately change its policy mandating the masking of students outdoors to instead allow families the choice to opt-out of the outdoor mask mandate.

This letter serves as official notice that the children of families [REDACTED] and our broader coalition do not consent to being forced to wear a mask outdoors on campus. Please confirm that no further pressure will be exerted upon these students and that these students will not face any retaliatory disciplinary action.

Sincerely,

Nicole Ricci, Attorney and Parent