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VIA EMAIL & USPS

sevans@dwkesq.com; kyeomans@dwkesq.com; lauds_lit@dwkesq.com

Susan Evans

Keith Yeomans

DANNIS WOLIVER KELLEY

444 W. Ocean Blvd., Suite 1070

Long Beach, CA 90802

RE: Cease & Desist: Illegal, Dangerous Masking Requirement

Counsel:

On January 3, 2021, your client, Superintendent Megan K. Reilly, on behalf of the Los Angeles Unified School District (“LAUSD”) emailed the LAUSD community updates regarding the return to school for the Spring Semester. One of these updates included a masking update that states:

“Masking will be required at all times, indoors and outdoors. It is strongly recommended that all students wear well-fitting, non-cloth masks with a nose wire.”

There is no legal, scientific, or medical basis for this requirement, which actually conflicts with current medical and scientific findings – and is likely why Ms. Reilly failed to cite any authority in support in her email – and it is the putting the health, lives, and safety of the children your clients are obligated to protect at even greater risk. As such, **this letter is to provide your clients the opportunity to withdraw its new mask requirements immediately, or face further legal action.**

No Global Authority for Face Masks

As a preliminary matter, top global authorities denounce masking children under 6 years of age. The World Health Organization and United Nations Children’s Fund state that children under 6 should *not* mask.¹ The European Centre for Disease Prevention and Control does *not* recommend mask use for children in primary school.² **Even Australia and New Zealand**, two countries with some of the most severe COVID-19 restrictions in the world, do not subject children to masking. Similarly, Denmark, Ireland, Poland,

¹ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-children-and-masks-related-to-covid-19>

² <https://www.ecdc.europa.eu/en/covid-19/questions-answers/questions-answers-school-transmission>



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Germany, Netherlands, Switzerland, Hungary, Finland, Norway, Iceland, Sweden and the United Kingdom do not mask children.

One of the many reasons for Britain’s refusal to mask children was that “the potential harms exceed the potential benefits” because “seeing faces is important for the social development and interaction between people.”³ British officials recognized this long-standing truth and chose not to impose such a dangerous requirement on its children to avoid “a generation of children disabled in the coming years.”⁴ And they were right. These fears were confirmed in a 2021 Brown University study that attributes **23% overall cognitive decline since 202 in children ages 0 to 5 due to a combination of mask wearing, distancing, and remote learning.**⁵

American Authorities, Now, Do Not Support Mask Wearing

While the U.S. has been one of the only countries masking its children, in the last weeks of 2021 **several U.S. authorities came out admitting that masks are useless “facial decorations” “not appropriate for omicron . . . delta, alpha, or any of the previous variants either because we are dealing with something that is airborne.”**⁶ This falls in line with (1) admissions by the Food and Drug Administration (“FDA”) that **surgical masks do not provide antimicrobial or antiviral protection and cannot be used to prevent or reduce infection,**⁷ and **children should not wear N95 masks;**⁸ (2) OSHA’s admission that **neither cloth nor surgical masks are designed to nor can protect against airborne pathogens, particularly respiratory viruses;**⁹ and (3) the disclaimer on surgical mask boxes that warns: **“WILL NOT PROVIDE ANY PROTECTION AGAINST COVID-19 (CORONAVIRUS) OR ANY OTHER VIRUS . . . Wearing an ear loop mask does *not* reduce the risk of contracting any disease or infection.”**

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³ <https://continuitynews.com/2021/08/27/in-britain-young-children-dont-wear-masks-in-school/>

⁴ *Ibid.*; The British Department of Education – which governs England, Scotland, Wales, and Northern Ireland and does *not* require elementary or secondary school children to mask – also ran government studies after its decision not to mask, which showed that infection rates in schools did not exceed those in the community-at-large, and that multiple school cases were often caused by “multiple introductions,” or infections likely acquired outside.⁴

⁵ <https://www.medrxiv.org/content/10.1101/2021.08.10.21261846v1>

⁶ <https://www.dailywire.com/news/cnn-medical-expert-doubles-down-that-cloth-masks-were-never-appropriate-for-covid-19>

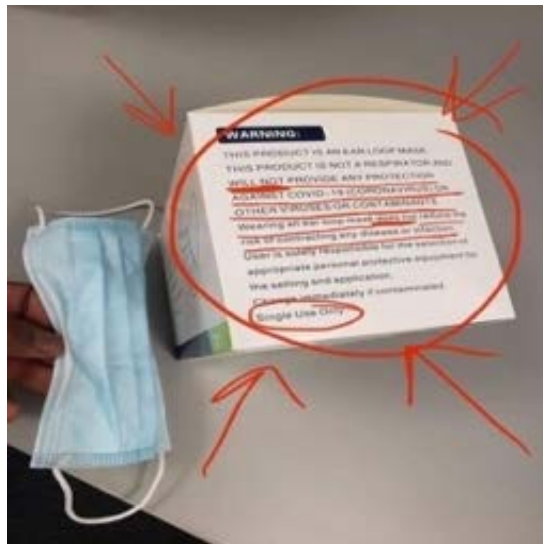
⁷ <https://www.fda.gov/media/137121/download>

⁸ <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-surgical-masks-face-masks-and-barrier-face-coverings>

⁹ <https://www.osha.gov/sites/default/files/respiratory-protection-covid19-long-term-care.pdf>



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American Authorities Recognize Masks Are Dangerous for and Should Not Be Used by Children

The FDA states that N95 masks are not designed for, do not offer complete protection to, and should not be used by children.¹⁰

The California Department of Public Health (“CDPH”) states that children should *not* use surgical masks because “they do not fit properly and can impede breathing.”¹¹

The Centers for Disease Control (“CDC”) identifies various instances where a mask should *not* be worn, all of which apply to children:

- Where the individual is not able to wear a mask correctly,
- Where the individual will frequently touch his or her mask or face,
- Where the individual has excess saliva, and/or
- Where the individual cannot remove a mask without assistance.¹²

Children – and many adults – fall into these mask-exempt categories. Therefore, children (and, again, many adults) are exempt from mask-wearing under the CDC’s mask guidelines.

¹⁰ *Ibid.*

¹¹ https://www.cdph.ca.gov/Programs/EPO/Pages/BP_Wildfire_FAQs.aspx

¹² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>



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LAUSD's Requirement Conflicts with CDPH's Mask Guidance

In addition to conflicting with the FDA's, CDPH's, and CDC's recommendations *against* the use of masks in children, on November 24, 2021, the CDPH issued updated "COVID-19 Public Health *Guidance* for K-12 Schools in California, 2021-22 School Year" ("Guidance").¹³ This Guidance is *not* law and cannot be enforced as such¹⁴; however, even this Guidance explicitly states, "Masks are *optional* outdoors for all in K-12 school settings." (Emphasis added). As a result, even if children could be legally, medically, or ethically compelled to mask, **LAUSD's outdoor mask requirement must be struck to comply with the current mask guidance of the "superior" agency.**

With respect to indoor masking, the Guidance states that masks are "required," unless the person falls into one of these categories:¹⁵

- Younger than two years old;
- With a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Mask-wearing would create a risk related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

Children fall under most of these exemptions, as well. They are unable to remove or replace their masks without assistance, and their breathing and oxygen intake is blocked while mask wearing.¹⁶ Additionally, their ability to see mouths is essential to learn how to communicate, and – as seen for years by studies throughout the world – is critical for personal, psychological, and emotional development.¹⁷ As a result, even if the CDPH Guidance could be construed as legally-enforceable, and even if masks were *not* "mere facial decorations" that endanger the lives, health, or safety of children, children would be exempted from masking indoors under *both* the CDPH's and CDC's mask guidelines.

¹³ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/K-12-Guidance-2021-22-School-Year.aspx>

¹⁴ We disagree with any court rulings to the contrary.

¹⁵ *Ibid.*

¹⁶ See fns. 7-13

¹⁷ See fn. 6



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LAUSD's Requirement Conflicts with LACDPH's Mask Guidance

On January 1 and 4, 2022, the Health Officer of the Los Angeles County Department of Public Health ("LACDPH") revised the "Reopening Protocols for K-12 Schools: Appendix T1" ("Protocols"). The revised Protocols state:

[I]t is ***strongly recommended but not required*** that students wear upgraded masks which at a minimum are well-fitting, non-cloth mask of multiple layers of non-woven material with a nose wire. Nothing in this protocol requires that the school provide upgraded masks to its general student population and ***parental preference should be respected*** as to the level of PPE the student wears.¹⁸

We presume this update was to take into account the aforementioned admissions, and to reconcile them with decades of studies, findings, and research, that prove cloth facemasks are not appropriate to prevent the spread of an airborne, respiratory virus. Regardless, as stated, above, per the FDA and CDPH – "superior" agencies to the LACDPH – children cannot wear surgical, N95, or any other "upgraded" masks and any suggestion otherwise conflicts with the established science / medicine and is dangerous. Furthermore, the upgraded mask recommendation is just that – a ***recommendation*** – therefore, it is not only inappropriate and dangerous, but invalid and will not control Los Angeles schools.

LAUSD's Criminal & Civil Liability for Continued Abuse

In sum, **children should not use cloth masks, surgical masks, N95 and comparable "upgraded" masks – let alone any combination of these masks layered – and they are otherwise exempt from mask wearing.** After nearly two years of forced masking without benefits and numerous California and national authorities openly admitting that masking is a useless, damaging exercise in "facial decoration," any continued mask requirement is unfounded, dangerous, illegal, unenforceable, and must be struck.

It is impossible – at this point – to understand the reason behind LAUSD's need to ignore data showing the enormous harms masks have on the children in its abusive "care," or its need to go *beyond* global, national, and local recommendations. Regardless, any attempt by your clients to force children to wear *any type* of mask, *knowing* the risks and lack of benefit presented by wearing them, will expose them – individually and in their official capacities – to civil and criminal liability for, *inter alia*, child endangerment, child abuse,

¹⁸ http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening_K12Schools.pdf
(emphasis added)



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manslaughter (involuntary and voluntary), murder, practicing medicine without a medical license, blocking a child's airway, harassment, assault, and battery, as well as penalties in the form of punitive damages, attorneys' fees, costs, and licensing and insurance issues, due to the knowing, intentional, voluntary, and cruel nature of their illegal behavior.

Again, we are writing to inform you and your clients of the foregoing, and to provide them with the opportunity to withdraw their unlawful, dangerous mask requirement *immediately*. **To the extent we do not receive a copy of the notification sent out to the entire LAUSD community retracting the proposed new mask requirements for children from you by close of business (5:30 p.m. PST), Monday, January 10, 2022, we will swiftly commence the exercise of all legal remedies available to the LAUSD community.**

Thank you for your prompt attention to and cooperation with regard above. Do not hesitate to contact me with any questions.

Very truly yours,

Nicole C. Pearson, Esq.
Rita Barnett-Rose, Esq.
Jessica Barsotti, Esq.

*Attorneys for Children's Health Defense – California
Chapter & Protection of the Educational Rights of Kids*