

Let Them Breathe v. Newsom

A trial court in San Diego County issued an [order](#) in the case of *Let Them Breathe v. Newsom* on Friday, November 12, 2021. [Media coverage](#) after the decision made it sound like the decision actually meant that schools are free to enforce the mask mandate how they see fit and are not required to exclude children from the classroom for failure to wear a mask. The ruling issued by Judge Freeland does not state that. In fact, the decision issued by the judge is entirely consistent with the [letter](#) issued by the State Public Health Officer, Dr. Tomás Aragón, on August 23, 2021.

Preliminary points:

- Decision was made on the pleadings (the paperwork submitted) at a very early stage of the case.
- It is a trial court opinion only, not an appellate or higher court opinion. This means it has no precedential impact.
- The opinion can be persuasive authority. It is an exceptionally well- written opinion.

Key points:

- Judge hones in on mask mandate and specifically explains that other items in the [CDPH Schools Guidance](#) (testing for COVID-19, quarantining students when exposed, offering independent study if excluded for failure to wear a mask) are recommendations and not mandates.
- This is aligned with Dr. Aragón's letter and affirms the statements that school districts, including boards, are obligated to follow the mask mandate or face serious consequences as outlined in his letter.
- Opinion reinforces governor's powers under Emergency Services Act and clarifies that a court does not have the authority to determine when it is appropriate to terminate a state of emergency nor can a court terminate a state of emergency.
- Public health directives, like the mask mandate, can be issued due to the state of emergency.
- Exclusion from school for failure to comply with the mask mandate is not a disciplinary suspension. It is an exclusion for public health reasons and is supported by the Health and Safety Code.
- Contrary to plaintiff's claims, students are not being forced into independent study for failure to comply with the mask mandate. Schools are directed to offer alternative educational opportunities for students who are excluded because they will not wear a face covering and schools are reminded of the requirements to offer independent study under AB 120.
- While there is a fundamental right to education, courts have routinely permitted the exclusion of students who refuse to comply with public health and safety measures designed to prevent the spread of communicable diseases with measures far more invasive than a mask mandate with citations to court decisions dating back to 1904 from the small pox pandemic era.
- State has a compelling interest in preventing the spread of COVID-19 and can issue orders to that end.
- The mask mandate treats everyone equally. Everyone in the school environment (indoors) is required to mask. There is no disparate impact on similarly situated individuals.

Conclusion:

The *Let Them Breathe v. Newsom* case was dismissed without leave to amend. This means that based on the claims/arguments made, there was nothing the plaintiffs could do to "fix" the case to give it a chance to succeed at trial. This was not a political decision. It was based on the law. The mask mandate is not a political decision. It is a public health decision.

The mask mandate is a state public health directive and must be followed by school districts, even if it is not something with which individuals personally agree. The *Let Them Breathe* decision fully supports the mask mandate.