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State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

1/7/2022

Dear Local Health Officers and County Superintendents of Schools,

It has come to my attention that attorney Gary Kreep has sent a letter, dated December 3, 2021, to California school leaders regarding a recent ruling by the San Diego Superior Court in *Let Them Breathe v. Newsom*. That lawsuit challenges the lawfulness of the universal masking requirement in public health guidance for K-12 schools issued by the California Department of Public Health (hereinafter “K-12 masking guidance”).

The letter suggests that the court found that the K-12 masking guidance – including the requirement that schools develop policies to enforce masking – violates state law.

That is inaccurate. In fact, the court considered and rejected arguments that are virtually identical to those advanced in the December 3 Letter and ruled that the lawsuit should be dismissed because the universal mask requirement, like other public health requirements for attending school, is a permissible exercise of the State's authority to protect the health and safety of students and staff in schools.

We encourage you to review the court's order, a copy of which is attached, to confirm for yourself that the court rejected the very same arguments included in the December 3 letter that excluding students who refuse to wear masks violates state law. Two points merit particular emphasis:

- The court expressly rejected the argument on page 2 of the December 3 letter that excluding students who do not mask to comply with public health requirements violates state law as an impermissible suspension or expulsion under Education Code 48900. Instead, the court concluded that “[t]he exclusion referenced in the [K-12 masking guidance]. . . is neither a suspension nor an expulsion as contemplated by section 48900” and expressly upheld the Department's authority under state law “to take action to prevent the spread of disease, which includes preventative



measures in the school setting." For ease of reference, the relevant portion of the order is on page 10.

- The December 3 Letter's reference on page 2 to the court's discussion of independent study also lacks context and could be misleading. In the quoted excerpt from the order, the court rejected plaintiffs' claim that the K-12 masking guidance requires schools to enroll students who refuse to wear masks in independent study. As the court found, such a requirement is nowhere in the K-12 masking guidance and, as noted in the preceding bullet point, the exclusion of students who do not comply with masking requirements does not violate state law.

In sum, the court agreed with the State that the K-12 masking guidance is lawful, including the requirement that schools develop policies to enforce the universal masking requirement, including by excluding students who refuse to comply. The K-12 masking guidance is also firmly grounded in science and provides critical mitigation for transmission of COVID-19 in schools. The Department's August 23, 2021 open letter regarding the public health rationale and benefits of masking in K-12 schools provides an overview of the evidence supporting universal masking and the array of risks faced by any school that refuses to follow the guidance. For ease of reference, that letter is available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Requirement-for-Universal-Masking-Indoors-at-K-12-Schools.aspx>.

Sincerely,



Drew Brereton
Deputy Director & Chief Counsel
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Encl. 11/12/2021 Order in *Let Them Breathe v. Newsom*, CASE NO: 37-2021-00031385-CU-WM-NC, San Diego Superior Court