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## Superior Court Dismisses Lawsuit Challenging the State's Face Mask Mandate in California K-12 Schools

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On November 12, 2021, San Diego Superior Court Judge Cynthia Freeland ended a lawsuit filed against Governor Gavin Newsom, the California Department of Public Health (CDPH), and other California state health officials. The lawsuit was filed by two organizations, Let Them Breathe and Reopen California Schools. The plaintiffs' complaint alleged nine causes of action and challenged, among other things, the CDPH's guidelines and mandate for face coverings in K-12 schools. The defendants filed a demurrer to the complaint, seeking to dismiss all nine causes of action. The court sustained the demurrer, dismissing the case for failure to state a cause of action upon which relief could be granted.

The plaintiffs' complaint alleged the following causes of action:

- The Governor violated the California Constitution by declaring a state of emergency under the Emergency Services Act (ESA) in March 2020, and state health officials violated the California Constitution by issuing guidance to K-12 for the 2021-2022 school year (CDPH Guidance);
- The Governor's failure to end the state of emergency violates the ESA;
- The defendants' actions constituted a violation of the Administrative Procedure Act;
- The CDPH Guidance requiring students to be excluded from school for refusing to wear face masks violates Education Code section 48900;
- The CDPH Guidance violates Education Code sections 51746 and 51747, because it is being interpreted in a way that forces students into independent study, and therefore deprives students of an education without access to school facilities;
- The CDPH Guidance violates Education Code section 49050 by encouraging schools to administer COVID-19 testing to students through use of a nasal swab;
- The CPDH Guidance, as it relates to COVID-19 testing, violates the right to privacy protected by the California Constitution;

- The defendants violated Article IX of the California Constitution by preventing students from returning to school for in-person instruction unless they wear a face mask; and
- The State's mask mandate violates the Equal Protection Clause of the California Constitution.

Through their demurrer, the State defendants requested the court dismiss the case as to all nine causes of action. The court agreed with the State's grounds for demurrer in its entirety, determining that the plaintiffs' complaint failed to state any valid claims for relief and that the plaintiffs could not amend the complaint to fix those deficiencies. The court also noted "that it, as a matter of law, does not have the authority to grant the relief Plaintiffs seek, namely directing the Governor to terminate the declared state of emergency and revoke any laws promulgated thereunder."

Of particular interest, the court found that the State's face covering requirement in the K-12 school setting valid under California law, as was the mandate's obligation to exclude students that refuse to comply with the school mask requirement. Correspondingly, the exclusion of students from school for refusal to wear a face mask does not constitute a suspension or expulsion in violation of Education Code section 48900. Rather, the court found that there is a difference between exclusion of students for public health reasons and suspension or expulsion for disciplinary reasons. The court also found that there is no language in the CDPH Guidance that "requires, directs, or otherwise authorizes schools to force students into an independent study program."

Notably, other aspects of the CDPH Guidance, such as that pertaining to quarantine and testing, were found to constitute recommendations only, as opposed to a mandate, which essentially shielded these elements of the CDPH Guidance from legal challenge.

While the plaintiffs filed a motion for reconsideration which the trial court heard on January 28, 2022, the trial court rejected the arguments made and upheld the dismissal of the case. Whether the plaintiffs will appeal the case is not yet certain.

## Takeaways

Under this court's review, the CDPH's K-12 school face mask requirement is valid and enforceable. Students may therefore be excluded from in-person learning for refusing to wear face masks while at school. While elements of the CDPH Guidance are recommendations, as opposed to mandates, failure to comply with such recommendations continues to carry significant risks. Finally, while the San Diego County Superior Court's decision is not binding statewide, the decision is well reasoned and is likely to reflect the outcome if this issue were to be addressed by other courts.

If you have any questions about this case, or any issue relating to current masking or testing guidelines, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

# Client News Brief

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