

Paso Robles Joint Unified School District

Legal Opinion Concerning Face Coverings for the 2021-2022 School Year

The California Department of Public Health has mandated that students and adults must wear face coverings whenever sharing an indoor space with students at a K-12 school setting.

[COVID-19 Public Health Guidance for K-12 Schools in California 2021-22 School Year](#)

Masks are optional for students, employees, and other adults outdoors.

Individuals may be exempted from face covering requirements in accordance with [Guidance for the Use of Face Coverings](#). Individuals exempted from wearing a face covering are permitted to instead wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, so long as their condition permits.

Under certain circumstances, where a face covering cannot be used for pedagogical or developmental reasons, then a face shield and a drape can be used.

Districts are required to develop and implement local protocols that comply with these requirements.

- 1. Masks are now mandated for all persons indoors in school. We believe mask compliance should be voluntary. What is the potential legal exposure should the Board vote to defy the direction?**

The following provides an overview of potential consequences for non-compliance with binding public health orders regarding face mask requirements.

A. Loss of Liability Coverage.

If an injury resulted from the District's intentional disregard of the CDPH mask requirements, the District's liability carrier might not provide coverage, and the District would be responsible for the costs of defense and/or liability from its general fund. Potential lawsuits resulting from injuries that are traced back to the absence of compliance with public health orders will be based in tort.

Whether regarding face masks or any other COVID-19 mitigation measure, the District's best step to ensure liability coverage for any alleged COVID-19 injury is to meet the applicable standard of care, as framed by the 2021-22 CDPH School Guidance and to discuss liability coverage with its carrier.

District employees generally have immunity from liability for actions taken within the scope of their employment and school districts have an obligation to employees and board members to defend and indemnify them against lawsuits arising from their school related actions.¹

^[1] However, in limited circumstances, District employees and board members could be personally liable for knowingly wrongful acts, or their own negligent or intentional acts.^{2[2]}

^[1] Gov. Code, § 825.

^[2] Gov. Code, § 820.2.

B. Worker's Compensation Issues.

Last year, Senate Bill 1159 was adopted, which creates a “rebuttable presumption” for the purpose of workers’ compensation that employees working outside their home and who contract COVID-19 contracted the virus at work. The presumption is “disputable” in that an employer may dispute the presumption with evidence that (1) the employer put measures in place to reduce potential transmission of COVID-19 in the employee’s place of employment; and/or (2) evidence of the employee’s non-occupational risks of COVID-19 infection. This law is set to expire January 1, 2023.

However, under California Labor Code section 4553, an employer that is found to have caused an employee's injury by its “serious and willful misconduct” will be ordered to pay additional compensation from the employer’s own funds.

Therefore, it is possible that the District may have difficulty disputing the “rebuttable presumption” and avoiding paying any additional compensation if it decides to not adhere to CDPH’s face mask requirements if an employee is injured at work due to a failure to adhere to the masking requirements.

C. Criminal Liability.

Failure to follow binding CDPH public health directives like those set forth in the CDPH Schools Guidance is a misdemeanor offense, and may result in fines or jail time during the current state of emergency.^{3[3]} Failure to follow the orders of a local public health officer is also a misdemeanor with civil and criminal penalties.^{4[4]} While prosecutions under these statutes are rare, the laws are on the books and local district attorneys have complete discretion to prosecute if they deem the law has been violated.

D. Potential Risk to Public Funding.

There is also the potential risk that schools may be required to close if they are not appropriately following the CPDH guidance which could result in lost apportionment for the time period of the closure. In addition, in 2020, the Governor communicated to some public agencies that if they did not follow public health orders, they may lose COVID-19 relief funding.

E. Cal/OSHA Complaint and Fines.

Cal/OSHA originally posted COVID-19 Emergency Temporary Standards (“ETS”) on December 1, 2020, and recently adopted a revised ETS on June 17, 2021. The ETS addresses face mask requirements for employees, including public employees. The ETS provides that face coverings are still required by employees that are not fully vaccinated when indoors but are not required for fully vaccinated employees, except in certain circumstances.

^[3] Health & Safety Code, § 130182; Gov. Code, § 8665.

^[4] Health & Safety Code, §§ 120275, 130182.

Failure to comply with the requirements to provide a safe work environment and to ensure that the District has an appropriate injury and illness prevention plan (“IIPP”) addressing COVID-19 could result in Cal/OSHA may issue a citation and fines.^{5[6]}

F. Labor Relations.

The District’s employees have the right to a safe work environment.

G. Suspension or Revocation of Teacher Credentials

All public employees are required by law to take the oath contained in the California Constitution, Article 20, Section 3. This oath includes affirmation that the employee supports the U.S. Constitution, the California Constitution, and all federal and state laws. Likewise, Board Bylaw 9224 and the California Constitution requires that Board members take the same oath.

A similar oath is required as a licensing requirement for certificated employees pursuant to Education Code section 44334, which importantly states that “[u]pon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.” It is possible, then, that a teacher’s failure to enforce the face mask requirements will result in a complaint to the California Commission on Teacher Credentialing that could affect a teacher’s credentials.

2. Can the district craft a defensible waiver that would release us from liability for families choosing not to wear a mask that isn't for a medical reason?

Most likely not. There are several reasons for this. The District’s liability exposure is not limited to individuals who do not wear face coverings. Further, their waiver not to sue would not change the fact that the District would be directly defying the legal masking requirement for allowing them to go unmasked (as indicated by the signing of the waiver). Generally these types of waivers are not enforceable for compulsory educational activities.

3. If exempt from a mask requirement, does a student have to wear an alternative?

Where an individual is exempted due to a medical condition, he/she must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

4. Would it be a requirement that the medical waiver is signed by a physician?

It is the State’s position that a self-attestation is not enough and we believe a health care providers signature indicating that the student has a medical condition that exempts him/her from the face covering requirement. Self-attestation does not constitute a medical determination.

^[6] See here for a list of COVID-19 related fines:
<https://www.dir.ca.gov/dosh/COVID19citations.html>.

5. If the district allows for a waiver system, does that negate any aspects of our return to work MOUs or CBAs with our unions?

A waiver system could impact the District's ability to comply with any contracts indicating the District will adhere to public safety guidelines and mandates in place to protect employee health and safety.

6. How are students with an IEP or 504 treated under the face covering requirement?

This should be considered through the IEP and 504 process.

7. This applies now to all kids TK-12?

Yes. The 2021-22 CDPH School Guidance provides that students **must** wear face coverings indoors (subject to exemptions) and that adults **must** wear face coverings whenever sharing indoor space with students at "K-12 school settings." This has been interpreted to include transitional kindergarten.

8. Please provide a legal opinion with regard to the attached "Let Them Breathe" Resolution

Answer Pending

9. Please provide a legal opinion on the attached "Right to Decline" form submitted by a parent.

Answer Pending