



YOUNG, MINNEY & CORR, LLP

# LEGAL ALERT

## **Welcoming Students Back During a Pandemic; School Reopening Considerations in Requiring a Face Covering for Students**

*March 18, 2021*

As schools prepare to reopen for in-person learning on campus, K-12 students are still legally required to wear a mask while on the school campus. On November 16, 2020, the California Department of Public Health (“CDPH”) released a Guidance for the Use of Face Coverings which outlined mask requirements and exemptions. As it relates to public schools, students are required to always wear a mask while on campus except in a few specific settings, such as when actively eating/drinking or when outdoors – while still maintaining at least six feet of separation. The Center for Disease Control and Prevention (“CDC”) as of February 18, 2021, states that wearing a face-covering is not a substitute for social distancing and continues to recommend that students maintain a distance of 6 feet from other students (not in their household) and staff and while wearing a mask.

The CDPH states that students are exempt from wear a mask if they have a (1) “medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face-covering could obstruct breathing or who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. Such conditions are rare” or (2) “hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.” When determining if a student with certain disabilities should wear a mask, the CDC recommends that schools assess the student’s ability to: (1) use a mask correctly: (2) avoid frequent touching of the mask and their face: (3) limit sucking, drooling, or having excess saliva on the mask: and/or (4) remove the mask without assistance.

On January 14, 2021, the CDPH published the COVID-19 and Reopening In-Person Instruction Framework & Public Health Guidance for K-12 Schools in California, 2020-2021 School Year. Within this guidance, it proposed alternatives to a face covering. For students with communication disabilities, schools can consider permitting the student to wear a clear mask or cloth mask with a clear panel when appropriate. Students “exempted from wearing a face-covering due to a medical

condition, as confirmed by school ... health team and therapists 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.”

On February 11, 2021, the California Department of Education (“CDE”) released a guidance COVID-10: Students with Disabilities and Face Coverings. The CDE is recommending that students with disabilities not be excluded from educational environments if their disability prevents them from wearing a face covering. Already we are seeing individual counties choose to go against this CDE guidance and exclude students from campus if they are unable to wear a mask. On March 12, 2021, the Los Angeles County Department of Public Health released its Reopening Protocols for K-12 Schools: Appendix T1. In this Order, it states that:

***“ alternative protective strategies may be adopted to accommodate students who are on Individualized Education or 504 Plans and who cannot use or tolerate a face mask. Students who cannot wear a mask should not be placed with a cohort or group of students in the classroom. They may be able to tolerate a face shield with a drape at the bottom which does not provide the same extent of source control or personal protection as use of a properly fitted, multi-layered face mask, therefore a student who cannot wear a mask can receive necessary services in a one-to-one setting with staff wearing appropriate PPE. They may also need to be accommodated via distance learning.”***

Accordingly, schools will need to monitor orders from their local county health department in determining the local requirements required for reopening and ongoing operation.

Please note that during these unprecedented times, guidance and law are constantly changing. If you have any questions about face covering requirements in your county or would like assistance developing a Face Covering Policy or revising your Health and Safety Policies and Procedures, please contact Sarah Kollman [skollman@mycharterlaw.com](mailto:skollman@mycharterlaw.com) and/or Matejka Handley [mhandley@mycharterlaw.com](mailto:mhandley@mycharterlaw.com).

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