

## Court Rules ADA Prevents School District from Dropping Mask Mandate

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In *Doe v. Perkiomen Valley School District*, 2022 U.S. Dist. LEXIS 21079 (E.D. Pa. Feb. 7, 2022), the court granted an injunction requested by a class of disabled children and their parents to prevent the school district from moving to a voluntary indoor masking policy on the basis that moving from mandatory to voluntary indoor masking exposed the disabled children to higher risks of COVID exposure in violation of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.

Under either the ADA or Section 504, a plaintiff must establish: (1) that he or she is a qualified individual with a disability; (2) that he or she will be excluded from participation in or denied the benefits of services, programs, or activities of the public entity, or subjected to discrimination by the public entity; and, (3) that such exclusion, denial, or discrimination occurred by reason of his or her disability.

The Perkiomen Valley School District (the District), for purposes of the injunction proceedings conceded the first and third elements. However, the District argued that the plaintiffs could not satisfy the second element asserting that disparate impact claims were not recognized under the ADA or Section 504. The court disagreed, finding that both disparate-treatment and disparate-impact claims were recognized under the ADA and Section 504. The court then turned to whether the change in masking policy "resulted in a denial of meaningful access to in-person schooling for students with disabilities."

The court acknowledged that there was always some risk to any child of exposure to transmissible diseases when going to school:

"The question is whether the Child-Plaintiffs face such a heightened risk, due to the impact of the optional masking policy and of their disabilities, that they can no longer be considered to have 'meaningful access' to the benefits of their education. In weighing the evidence, the Court relies on the risk assessments conducted by public health authorities like the CDC."

The three plaintiff class representatives each had asthma and other medical conditions (chronic bronchitis, pneumonia, etc.). Each child's medical team "found that universal masking is 'essential' to their safe in-person schooling." Because the District's switch to an optional masking policy during a period of substantial or high transmission rates of COVID, the plaintiffs were denied meaningful access to in-person education "because they cannot attend school alongside their unmasked peers without incurring a real risk of serious illness or worse."

Because the District previously had a full indoor masking policy in place, it could show no harm to continuation of the indoor masking policy to allow the plaintiffs to access in-person education. There was no reasonable accommodation to the optional masking policy the District adopted. The court rejected the argument that having the plaintiffs wear masks in school was not acceptable because that improperly forced the plaintiffs to make an accommodation to protect themselves from the District's discriminatory practice. "To find that the Child-Plaintiffs would suffer no harm from the discriminatory impact of an optional masking policy because there are actions they could take to lessen that harm would erode the broad protections that the ADA and Section 504 were intended to provide."

Accordingly, the court granted an injunction to the plaintiffs requiring the District to continue its mandatory indoor masking policy. The District may seek to modify or lift the injunction if transmission rates decline or the CDC issues new guidance.

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This decision has obvious impacts on other schools seeking to change masking policies during the ongoing pandemic. However, given the broad reach of the ADA it is conceivable that suits across workplaces may be brought by disabled persons claiming that they need protections to be able to come into the office to fully participate in the workforce. It would not be surprising to see a rash of suits brought as re-openings begin and workplaces adopt new policies for workers in office. There may also be a conflict between state policies loosening masking requirements in various settings if such policies are less restrictive than CDC guidance.

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