



Mask on, mask off: Eighth Circuit Court of Appeals determines mask requirement can be a reasonable accommodation for students

February 8, 2022

A dizzying number of laws, executive orders and regulations regarding masks in schools have found their way to our nation's courts. Some states are requiring students to mask up in schools (e.g., California and New York), some are leaving the decision to the individual school districts (e.g., Ohio and Indiana), and some have passed laws that block school districts from instituting a mask mandate (e.g., Florida and Oklahoma).¹ For students with disabilities, these bans on school mask mandates have prompted lawsuits alleging violations of federal disability laws. A recent Eighth Circuit case, *Arc of Iowa v. Reynolds*,² tries to parse out when such a ban may infringe upon the rights of students with disabilities and violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

In the case of *Arc of Iowa v. Reynolds*, the plaintiffs were parents of children with serious disabilities who would be at increased risk of severe injury or death from COVID-19. In the spring of 2021, Iowa passed legislation which barred school districts from requiring anyone to wear masks on school grounds. Because of this, some parents withdrew their children due to the potential health risks. The Eighth Circuit (which covers Iowa and six other Midwest states) upheld the district court's preliminary injunction – finding that a mask requirement is a reasonable accommodation, alternatives to in-person education (i.e., remote instruction and voluntary masking) had failed, and imposing a mask requirement was not administratively or financially burdensome.

The Eighth Circuit acknowledged that the Fifth Circuit (which covers Louisiana, Mississippi and Texas) had come out differently on a similar injunction. In the case of *E.T. v. Paxton*,³ the Fifth Circuit stayed the lower court's injunction of the Texas governor's

executive order, which had also barred mask mandates in local school districts. In reviewing the Fifth Circuit’s decision, the Eighth Circuit emphasized that unlike Texas students who had access to alternative learning models, Iowa students were forced into an “either/or” choice because there was no remote-learning option in their school districts and/or the remote learning model presented did not meet students’ needs.

The case stands as a strong reminder that, in certain situations, masking may serve as a reasonable accommodation for students with disabilities who may be at higher risk of severe complications from COVID-19.

¹ Education Week keeps a regularly updated list of states and mask mandates: <https://www.edweek.org/policy-politics/which-states-ban-mask-mandates-in-schools-and-which-require-masks/2021/08>.

² *The Arc of Iowa v. Reynolds*, No. 21-3268 (8th Cir. 2022).

³ *E.T. v. Paxton*, 19 F. 4th 760 (5th Cir. 2021).

Authors



Jason R. Stuckey
Partner

Cincinnati
513.870.6687
jstuckey@bricker.com



Izaak S. Orlansky
Staff Attorney

Cincinnati
513.870.6571
iorlansky@bricker.com