

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends,

Civil Action No. 1:21-cv-00717-LY

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS; MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

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Plaintiffs respectfully move under Federal Rule of Civil Procedure 65(a) and Local Rule CV-65 for a temporary restraining order and preliminary injunction enjoining Defendants from prohibiting local school districts from requiring masks for their students and staff, and allege as follows:

I. INTRODUCTION AND BACKGROUND FACTS

Plaintiffs incorporate the facts described in their Original Complaint and repeat the following relevant facts in support of their Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Most Texas public schools began or will begin in-person classes for the 2021-22 school year during the two-week span between August 9 and 23.¹ While the start of school is an annual occurrence this time of year, this school year is unlike any other.

Plaintiffs are students enrolled in the Texas public schools who have disabilities as defined under the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”). *See* Exs. F–R (declarations of Plaintiffs’ respective parents). Plaintiffs’

¹ *See, e.g.*, Dallas ISD and Fort Worth ISD begin classes on August 16, 2021. Dallas ISD school calendar page, <https://thehub.dallasisd.org/2021/04/20/see-the-dallas-isd-2021-2022-school-year-calendars/> (last visited on Aug. 17, 2021). Fort Worth ISD school calendar page, <https://www.fwisd.org/calendar#calendar1/20210814/month> (last visited Aug. 17, 2021). Houston ISD and Waco ISD begin on August 23, 2021; Houston ISD school calendar page, <https://www.houstonisd.org/2021AcademicCalendar> (last visited Aug. 17, 2021); Waco ISD school calendar page, <https://www.wacoisd.org/Page/2#calendar1/20210814/month> (last visited Aug. 17, 2021). San Antonio began classes on August 9, 2021. San Antonio ISD School Calendar Page, https://www.saisd.net/upload/page/0456/docs/SAISD_2021-22_InstructionalCalendar.pdf (last visited Aug. 17, 2021). Fort Bend ISD began classes on August 11, 2021. Fort Bend ISD School Calendar Page, <https://www.fortbendisd.com/calendar#calendar1/20210811/day> (last visited Aug. 17, 2021). Austin ISD began classes on August 17, 2021. Austin ISD School Calendar Page, <https://www.austinisd.org/calendar/events/2021/08/17/first-day-classes> (last visited Aug. 17, 2021). Round Rock ISD began classes on August 18, 2021. Round Rock ISD School Calendar Page, <https://roundrockisd.org/about-rrisd/calendars/> (last visited Aug. 17, 2021).

disabilities—which include Down syndrome, asthma, chronic lung and heart conditions, cerebral palsy, and weakened immune systems, among others—place them at greater risk of serious illness or death should they contract COVID-19. *Id.* In addition, Plaintiffs are under the age of 12 and thus not eligible to receive any of the currently authorized COVID-19 vaccines. *Id.* The ADA and Section 504 prohibit the exclusion of students with disabilities from public educational programs and activities. At this critical stage of the pandemic when the Delta variant threatens to increase exposure and contagion among children, school districts must implement basic COVID-19 prevention strategies in schools to comply with their obligations under the ADA and Section 504 to provide integrated and accessible environment for their most medically vulnerable students.

Governor Abbott’s Executive Order GA-38, attached hereto as Exhibit A, issued on July 29, 2021, prevents school districts from being able to comply with these federal requirements. Executive Order GA-38 specifically prohibits governmental entities from imposing a mask mandate. In addition, the Texas Education Agency (“TEA”) has issued Public Health Guidance, attached hereto as Exhibit B, requiring school districts to comply with the Executive Order. Most recently, the Office of the Attorney General (“OAG”) has written letters to 43 school districts, including at least five school districts in which one of the Plaintiffs attends school, attached hereto as Exhibit C, threatening to “pursue further legal action, including any available injunctive relief, costs and attorney’s fees, penalties, and sanctions—including contempt of court—available at law” against the districts if they do not comply with the Executive Order’s prohibition on mask requirements.²

² COVID-19 List of Government Entities Unlawfully Imposing Mask Mandates, Attorney General of Texas, <https://www.texasattorneygeneral.gov/covid-governmental-entity-compliance> (last visited Aug. 17, 2021) (noting that a total 51 governmental entities were reported as not in compliance with Executive Order GA-38 and were sent letters by the Texas Attorney General’s Office).

Governor Abbott’s order was issued only days before the Centers for Disease Control (“CDC”) updated its “Guidance for COVID-19 Prevention in K-12 Schools” to recommend “universal indoor masking for all students, staff, teachers, and visitors to K-12 schools, regardless of vaccination status,” noting that “protection against exposure remains essential in school settings.”³ The CDC explained that the “universal mask” recommendation was motivated by “the circulating and highly contagious Delta variant.” Indeed, as reported by the American Academy of Pediatrics, there has been a nearly sevenfold increase in new child COVID-19 infections in the last month, with 12,000 cases reported nationwide in the first week of July and up to 96,000 in the first week of August.⁴ As noted by one publication, “child hospitalizations have now reached an all-time pandemic high.”⁵

“These outbreaks are . . . devastating local pediatric hospitals,” observes Dr. Dona Kim Murphey, a neurologist and neuroscientist and Director of Scientific Affairs of an EEG Diagnostics company. Ex. D (Murphey Declaration) ¶ 11. According to Dr. Murphey, the University of Texas has projected that, factoring in known community transmission rates, at least five to ten people will be infected on the first day of school in the average Texas elementary school given the highly virulent Delta variant. *Id.* ¶ 9. Dr. Murphey further indicates that each infected individual will infect an average of seven others and that the COVID-19 viral load develops quicker, which she projects will result in “very rapid dissemination and hyperlocal outbreaks.” *Id.*

³ Centers for Disease Control, *Guidance for COVID-19 Prevention in K-12 Schools*, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> (last updated Aug. 5, 2021).

⁴ Emily Anthes, *The Delta Variant Is Sending More Children to the Hospital. Are They Sicker, Too?*, The N.Y. Times, Aug. 9, 2021, <https://www.nytimes.com/2021/08/09/health/coronavirus-children-delta.html>.

⁵ Katherine J. Wu, *Delta Is Bad News for Kids*, The Atlantic, Aug. 10, 2021, <https://www.theatlantic.com/health/archive/2021/08/delta-variant-covid-children/619712/>.

¶ 10; *see also* Ex. E (Yudovich Declaration) ¶ 29 (noting COVID-19’s “current exponential spread”).

According to reports, medical professionals in part attribute the increase in COVID-19 pediatric infections to the latest variants in the virus and the fact that children under 12 years old are ineligible to receive the vaccines.⁶ COVID-19 vaccines have been shown to be effective at helping protect against severe disease and death from variants of the virus currently circulating, including the Delta variant.⁷ Unfortunately, accordingly to Dr. Murphey, only 45% of Texans are fully vaccinated. Ex. D ¶8. Even more alarming, Dr. Murphey notes that Texas is “among 20 states considered ‘high’ risk for the unvaccinated” given recorded COVID-19 cases and positivity test rates. *Id.* ¶7. Plaintiffs are all under the age of 12 and thus do not qualify for COVID-19 vaccination at this time. To make matters worse, according to Dr. Alexander Yudovich, a board-certified pediatrician, fellow of the American Academy of Pediatrics (“AAP”), member of the medical advisory team of a Houston private school, and former chief resident at Children’s Hospital Los Angeles, both COVID-19 and respiratory syncytial virus (“RSV”) are circulating throughout the country, and if a child contracts both viruses, it can lead to a “higher likelihood of respiratory failure [and] necessity for ICU care.” Ex. E ¶ 22. Texas is a state included in the CDC’s June 2021 RSV health advisory. *Id.* ¶ 23.

Dr. Yudovich further states that the combination of the Delta Variant and the unvaccinated status of children under 12 years old will mean, “schools without mitigation strategies will be an epidemiological disaster and a lesson in statistics.” Ex. E ¶¶ 1, 2, 4, 26. Because of our current

⁶ *Id.*

⁷ Centers for Disease Control, *Key Things to Know About COVID-19 Vaccines*, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (last updated Aug. 16, 2021).

grim reality, Dr. Murphey notes that the American Academy of Neurology has strongly recommended that regulatory approval of COVID-19 vaccines be expedited for children under 12 years of age. Ex. D ¶ 16. Until that happens, however, Plaintiffs face an imminent threat of harmful and potentially life-altering and life-threatening consequences if exposed to an environment bereft of universal masking. *Id.* at ¶ 19; Ex. E ¶ 18 (noting that those who are high risk for severe COVID-19 illness may need hospitalization, intensive care, and support from a ventilator or may die). Though parents of all children have cause for concern, those with children who have disabilities that compromise immune responses or impair respiratory or neurological function have heightened reasons to be anxious about returning to school without a mask mandate in place. According to the CDC, “children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease can be at increased risk for severe illness from COVID-19.” Ex. D ¶ 19.⁸

Dr. Murphey notes that all Plaintiffs qualify as “high risk” for COVID-19 complications, per CDC guidelines. Ex. D ¶¶ 13, 14. It is her expert opinion that any child who is medically complex and/or has Down syndrome, a weakened immune system, chronic lung or heart disease, or a neurological diagnosis will face a higher likelihood of a negative outcome from a COVID-19 infection. *Id.* These outcomes include severe illness, death, and a nascent condition called Long COVID. *Id.* ¶ 15. The latter may result in a long-term impairment with symptoms including but not limited to chronically disabling fatigue, headache, difficulty concentrating, and insomnia. *Id.* ¶ 17. Currently available and preliminary data suggests that up to ten percent of children who contract COVID-19 will also receive a Long COVID diagnosis. *Id.* ¶ 18.

⁸ Centers for Disease Control, *COVID-19: People with Certain Medical Conditions*, May 13, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

Universal masking, a simple mitigation measure, can help prevent many of these distressing and avoidable outcomes. Dr. Yudovich and the American Academy of Pediatrics are advocates of the “‘Swiss cheese model’ of prevention,” namely “the more layers of prevention the less likely the spread” in schools, which includes face masks. Ex. E ¶¶ 5, 17. Dr. Yudovich’s experience as a member of the Medical Advisory Team of a Houston private school confirms the efficacy of this model. Students and staff at the Shlenker School followed CDC recommendations and mandated masking last year. The school did not once have to pause in-person instruction and/or quarantine last school year. *Id.* ¶¶ 4-6. Notably, not a single class had to be shut down. *Id.* at 8.

Dr. Yudovich has seen his experience in Houston corroborated by study after study. Each one has shown that mitigation strategies such as mandatory masking result in significant reductions of COVID-19 spread among school age-children. *Id.* ¶ 10-12. Conversely, the opposite is also true. Dr. Yudovich notes that ten days after an Israeli high school began its school year and failed to mandate COVID safety procedures such as universal masking, two positive COVID cases metastasized into 176 cases. *Id.* ¶ 12.

Texas schools face similar risks. Indeed, “at least four Texas school districts have already closed campuses due to COVID-19 outbreaks.”⁹ The elementary school campus in Waskom ISD where school had started on August 11 “was closed due to the ‘number of staff members out with COVID.’”¹⁰ And all of Gorman ISD closed for at least a week *before* school has even started “due

⁹ Juan A. Lozano, *Virus outbreaks temporarily close 4 Texas school districts*, AP News (Aug. 18, 2021), <https://apnews.com/article/health-texas-education-coronavirus-pandemic-8e78f68e2c0f118a3cc0c7>. See also Exs. S–V.

¹⁰ *Id.*

to positive COVID cases within the school community of both faculty and students.”¹¹ Each of these districts followed Governor Abbott’s Executive Order and TEA Guidance and did not have an indoor mask requirement for students and staff.¹² Should this remain the case, Texas is likely to follow other states that have seen major outbreaks among student populations, significant numbers of students needing to quarantine, and school shutdowns in their first few weeks of the school year. For example, Mississippi State Epidemiologist Dr. Paul Byers explained on August 17 that among the states 800 schools “about 20,000 students are currently quarantined for COVID-19 exposure in the state — 4.5% of the public school population.”¹³ These schools also started “the academic year without restrictions such as mask mandates.”¹⁴ Dr. Byers also added, “These disruptions . . . are going to continue for a while.”¹⁵

Congress has recognized the importance of implementing COVID-19 prevention measures in schools by its passage of the American Rescue Plan Act of 2021 (“ARP”) that allocated over \$11 billion in Elementary and Secondary School Emergency Relief (“ESSER”) funding so that local school districts in Texas can adopt plans for a safe return to in-person instruction.¹⁶ As a condition of receiving those funds, local school districts are required to adopt a plan for in-person

¹¹ *Id.*

¹² *Id.*

¹³ Leah Willingham, About 20,000 Mississippi students in quarantine for COVID-19 exposure, health official says, Clarion Ledger (Aug. 17, 2021), <https://www.clarionledger.com/story/news/local/2021/08/17/covid-mississippi-children-20-000-students-quarantine/8171250002/>.

¹⁴ *Id.*

¹⁵ *Id.* (alteration in original).

¹⁶ See U.S. Dep’t of Educ., *American Rescue Plan Elementary and Secondary School Emergency Relief Fund – Methodology for Calculating Allocations* (last revised June 25, 2021) at 3, https://oese.ed.gov/files/2021/06/Revised-ARP-ESSER-Methodology-and-Allocation-Table_6.25.21_FINAL.pdf.

instruction that describes “the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC . . .” specifically including “universal and correct wearing of masks.”¹⁷ It is clear that Congress intended, through passing the ARP, to authorize local school districts to use their discretion in implementing safety measures that may include mask mandates. By preventing local school districts from being able to consider their full range of options—particularly an option that is arguably the easiest to implement and is most effective—Executive Order GA-38 and the TEA’s Public Health Guidance impermissibly conflict with and are preempted by this federal law.

With the school year fast approaching, and the serious risk posed to Plaintiffs upon their return to school in the absence of a mask mandate, Plaintiffs respectfully urge this Court to issue a temporary restraining order and preliminary injunction and enjoin enforcement of Executive Order GA-38 and the TEA’s Public Health Guidance against local school districts, as well as enjoin Defendants from retaliating against local school districts local school districts which elect to require students and staff to wear masks. As Dr. Yudovich soberly concludes, otherwise “a state order prohibiting districts from adopting mask requirements in accordance with CDC and AAP guidance will result in additional COVID-19 spread and serious illness, hospitalizations and deaths of children with high-risk disabilities and health conditions.” Ex. E ¶ 32.

II. ARGUMENT

A. Standard for Temporary Restraining Order and Preliminary Injunction

A plaintiff seeking a temporary restraining order or preliminary injunction must show the following: (1) a substantial likelihood of success on the merits; (2) a substantial threat of

¹⁷ See American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, 86 Fed. Reg. 21195, 21200 (Apr. 22, 2021).

irreparable harm to the plaintiff if the temporary restraining order or preliminary injunction is not granted; (3) that the threatened injury outweighs any harm that may result to the defendant from the temporary restraining order or preliminary injunction; and 4) that the temporary restraining order or permanent injunction will not undermine the public interest. *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014); *Lindsay v. City of San Antonio*, 821 F.2d 1103, 1107 (5th Cir. 1987). At the preliminary injunction stage, the procedures for the district court are less formal, and the court may rely on otherwise inadmissible evidence. *Sierra Club, Lone Star Ch. v. F.D.I.C.*, 992 F.2d 545, 551 (5th Cir. 1993).

B. Plaintiffs Have a Strong Likelihood of Success on The Merits.

i. Counts I and II: Violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act is an antidiscrimination statute that provides: “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]” 29 U.S.C. § 794(a). This provision “broadly prohibit[s] discrimination against disabled persons in federally assisted programs or activities.” *D.A. ex rel. Latasha A. v. Hous. Indep. Sch. Dist.*, 629 F.3d 450, 453 (5th Cir.2010).

Like Section 504, Title II of the Americans with Disability Act (“ADA”) is also an antidiscrimination statute and provides: “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Excluding children from the public-school classroom on the basis of their

disability is precisely the type of discrimination and segregation the ADA and its amendments aim to prevent and specifically prohibit.

Aside from the element of causation, Rehabilitation Act claims are analyzed under the same standard applicable to ADA claims. *See, e.g., Wilson v. City of Southlake*, 936 F.3d 326, 330 (5th Cir. 2019); *D.A., ex rel. Latasha A.*, 629 F.3d at 453–54. Both the ADA and the Rehabilitation Act require Plaintiffs to establish that: (1) Plaintiffs are qualified individuals with a disability within the meaning of Section 504 of the Rehabilitation Act or the ADA; (2) Plaintiffs will be “excluded from participation in, or will be denied benefits of, services, programs, or activities for which the school district is responsible, or [are] otherwise being discriminated by the public entity,” and (3) Plaintiffs’ exclusion, denial of benefits, or discrimination will be by reason of their disability. *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 671-72 (5th Cir. 2004). Evidence of intentional discrimination is not necessary when a plaintiff is only seeking equitable relief. *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 574 (5th Cir. 2018).

Plaintiffs will likely prevail on the merits because they are qualified individuals with disabilities under the ADA and Section 504, and a mask-optional policy will have the effect of excluding these children from school activities with other children, or otherwise denying them the opportunity to participate in the services of the school district because they will either have to stay at home to guarantee their health and safety, or expose themselves to serious risk of illness or death by appearing for in-person classes in the absence of basic COVID-19 prevention strategies.

Governor Abbott’s Executive Order and TEA’s Public Health Guidance specifically violate the regulations and provisions of the ADA and Section 504, and/or cause Plaintiffs’ School Districts to violate the regulations and provisions of the ADA and Section 504, as follows:

- Defendants are failing to make a reasonable modification, and/or are preventing Plaintiffs' School Districts from making a reasonable modification, under circumstances where it is required, in violation of 28 C.F.R. § 35.130(b)(7);
- Defendants are excluding, and/or are causing Plaintiffs' School Districts to exclude, Plaintiffs from participation in public education, in violation of 42 U.S.C. § 12132; 28 C.F.R. § 35.130; 29 U.S.C. § 794(a) and 34 C.F.R. § 104.4(b)(1)(i);
- Defendants are failing to make, and/or causing Plaintiffs' School Districts to fail to make, their services, programs, and activities "readily accessible" to disabled individuals, in violation of 28 C.F.R. § 35.150;
- Defendants are administering a policy that has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability and that has the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities, in violation of 28 C.F.R. § 35.130(b)(3)) and 34 C.F.R. § 104.4(b)(4).
- Defendants are using methods of administration that have the effect of subjecting Plaintiffs to discrimination on the basis of disability, in violation of 34 C.F.R. § 104.4(b)(4);

Although all school children, particularly those under age 12 who are ineligible to receive the vaccine, face an increased risk of contracting COVID-19 in the absence of a mask mandate, students with certain medical disabilities will be significantly more impacted without this basic protection. Plaintiffs have the following medical disabilities that have been shown to put them at greater risk for being hospitalized, becoming severely ill, or dying as a result of COVID-19:

- J.V. is eleven years old and has muscular disorders and moderate to severe asthma. Ex. R.

- E.T. is eleven years old and has been diagnosed with Down syndrome, asthma, hypogammaglobulinemia, and a severe B-cell lymphocyte deficiency, which has resulted in a suppressed immune system. Ex. H.
- H.M. is eight years old and has Down syndrome, a heart defect, and a history of bronchomalacia. Ex. P.
- N.C. is eight years old and has Sanfilippo Syndrome type A, which is a type of childhood dementia and a neurological disorder. Ex. J.
- J.G. is seven years old and is immunocompromised due to having received a heart transplant. Prior to the COVID-19 pandemic, J.G. has been hospitalized approximately 20 times for contracting various infectious diseases due to her immunodeficiency. Ex. O.
- M.P. is eleven years old and was born with Down syndrome. Ex. M.
- H.P. is eleven years old and has been diagnosed with epilepsy, autism, and a SCN2A genetic-related disorder, which causes a wide range of neurological conditions. Ex. L.
- S.P. is eight years old and has bronchiectasis, attention deficit hyperactivity disorder, spina bifida and epilepsy. Ex. Q.
- R.S. is eleven years old and was born with Down syndrome. Ex. G.
- J.R. is eight years old and has attention deficit hyperactivity disorder, a growth hormone deficiency, and moderate to severe asthma. Ex. K.
- E.S. is seven years old and has moderate to severe asthma. Ex. N.
- E.R. is seven years old and has a chronic lung condition and moderate to severe asthma. Ex. F.
- A.M. is eight years old and has cerebral palsy. Ex. I.

If they contract COVID-19, each of these Plaintiffs are at a high risk of significant complications such as severe illness, long-lasting disability, and death. Ex. D ¶¶ 7, 13-18.

ii. Count III: Federal Preemption

Plaintiffs are also likely to succeed on the merits of their claim based on federal preemption law. The Supremacy Clause of the United States Constitution renders federal law the “supreme Law of the Land.” U.S. CONST. art. VI, cl. 2. The doctrine of federal preemption that arises out of the Supremacy Clause requires that “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Felder v. Casey*, 487 U.S. 131, 138 (1988) (quoting *Free v. Bland*, 369 U.S. 663, 666, 82 S. Ct. 1089, 8 L.Ed.2d 180 (1962)). State law is preempted when, among other things, it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Pac. Gas & Elec. Co. v. State Energy Res. Cons. & Dev. Comm’n*, 461 U.S. 190, 204 (1983).

Governor Abbott’s Executive Order and TEA’s Public Health Guidance conflict with federal law because they frustrate Congress’ purpose to ensure that local school districts have the authority to adopt public health policies, including mask requirements, to protect students and educators as they develop plans for safe return to in-person instruction. Under section 2001(i) of the American Rescue Plan Act of 2021 (ARP), local school districts in Texas – including the districts in which Plaintiffs attend school – have been allocated over \$11 billion dollars in Elementary and Secondary School Emergency Relief (ESSER) funding so that they can adopt plans for a safe return to in-person instruction.³⁹ Pub. L. No. 117-2, § 2001(i). Section 2001(e)(2)(Q) of the ARP Act explicitly gives local school districts the authority to use these ARP ESSER funds for “developing strategies and implementing public health protocols *including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease*

Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.” *Id.* § 2001(e)(2)(Q) (emphasis added). As discussed above, the CDC’s guidance specifically recommends universal indoor masking in all K-12 schools.

Furthermore, interim final requirements adopted by the U.S. Department of Education specifically require each local school district to adopt a plan for safe return to in-person instruction that describes “the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC...”, specifically including “universal and correct wearing of masks.” *See* Am. Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, 86 Fed. Reg. 21195, 21200 (April 22, 2021). To be clear, the requirement “does not mandate that [a local educational agency] adopt the CDC guidance, but only requires that [it] describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance,” which include both “[u]niversal and correct wearing of masks,” and notably “appropriate accommodations for children with disabilities with respect to health and safety policies,” among others. *Id.* The interim requirements further provide that a local educational agency must ensure the interventions it implements will respond to the needs of all students, “and particularly those students disproportionately impacted by the COVID-19 pandemic, including . . . children with disabilities.” *Id.*

In other words, it is the legislative purpose and intention of Congress, both as set forth in the statute itself and as interpreted by the Department of Education, that local school districts—and not the state—have the authority to decide whether and to what extent they will adopt public health policies, including mask requirements, consistent with CDC guidance. Governor Abbott’s

Executive Order and TEA's Public Health Guidance impermissibly conflict with and are preempted by this federal law.

C. Plaintiffs Will Be Irreparably Harmed Without a Temporary Restraining Order or Preliminary Injunction.

Plaintiffs must show that “irreparable injury is *likely* in the absence of an injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A harm need not be inevitable or have already happened for it to be irreparable; rather, imminent harm is also cognizable harm that merits an injunction. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993). Plaintiffs are likely to suffer probable, irreparable injury if the Executive Order and Public Health Guidance are enforced because the first day of school has either already begun or is about to begin within the next two weeks, and under Executive Order GA-38 and TEA's Public Health Guidance, schools are prohibited from requiring face coverings. Without the ability for the school districts to implement a mask policy, Plaintiffs will certainly be exposed to an increased risk of infection, hospitalization, or death because of COVID-19, or otherwise be forced to stay home and be denied the benefits of an in-person public education.

Plaintiffs are particularly vulnerable to the virus both because of their medical conditions and the fact that they remain ineligible to receive the vaccine due to being under the age of 12 years old. *See Exs. F–R*. It is inarguable that exposure to a life-threatening virus, or one that may cause lifelong complications, is an irreparable harm incapable of being adequately remedied at law with money damages. *See Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975); *Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814, at *8 (W.D. La. Nov. 17, 2020) (noting that “[i]t is difficult to dispute that an elevated risk of contracting COVID-19 poses a threat of irreparable harm”); *Thakker v. Doll*, 451 F. Supp. 3d 358, 365 (M.D. Pa. 2020) (in granting an injunction to release petitioners in civil detention who suffered from “chronic medical conditions and face[d]

an imminent risk of death or serious injury if exposed to COVID-19,” court determined that “[t]here [could] be no injury more irreparable” than the “very real risk of serious, lasting illness or death”); *Basank v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1953847, at *7 (S.D.N.Y. Apr. 23, 2020) (in granting an injunction to prevent placing petitioners in immigration detention, court noted that “[p]etitioners [were] at particular risk for serious illness or death, because their preexisting medical conditions either [made] them more vulnerable to contracting COVID-19, or more likely to develop serious complications due to COVID-19, or both” and the possibility of a severe, and “quite possibly fatal” infection constituted irreparable harm that warranted a preliminary injunction).

D. The Irreparable Harm Caused to Plaintiffs Outweighs the Hardship to Defendants, and a Temporary Restraining Order and Preliminary Injunction Will Not Disserve the Public Interest.

The only hardship that Defendants may suffer from a temporary restraining order and preliminary injunction is disappointment by certain constituents who are opposed to mask mandates. Indeed, given that the Executive Order is preempted by federal law for the reasons set forth above, enjoining its enforcement will not subject Defendants to any undue hardship or penalty, because the temporary restraining order and preliminary injunction will require only Defendants’ compliance with federal law under the Supremacy Clause. *See Greyhound Lines, Inc. v. City of New Orleans ex rel. Dep’t of Pub. Utils.*, 29 F. Supp. 2d 339 (E.D. La. 1998) (citing *Mitchell v. Pidcock*, 299 F.2d 281, 287 (5th Cir. 1962)). Granting a temporary restraining order and preliminary injunction will not only protect Plaintiffs but will protect all students in the Texas public school system. At this stage of the pandemic, the Delta variant has caused a spike in cases among people of all ages, but particularly children, for reasons that are not yet fully understood. As reported widely by the media, local governments are wrestling daily with the complex and politically controversial issue of how to ensure that students can return safely to in-person classes

this year after a challenging period of virtual learning for parents and students alike. It is in the public's best interest for its local government and school boards to have full authority to respond to the needs of its citizenry by taking into account county-wide infection and hospitalization rates, available resources, vaccination rates, public opinion, and the number of other factors that guide public policy during a pandemic. The Executive Order and TEA's Public Health Guidance effectively undermine and handicap this important pillar of governance.

E. Plaintiffs Will Suffer Irreparable Harm if a Temporary Restraining Order is Not Entered Before the Preliminary Injunction Hearing.

As detailed above, four school districts have already temporarily closed due to COVID-19 outbreaks, and other school districts have just begun or will soon begin in-person classes. Plaintiffs, all of whom are considered high risk due to their health conditions described above, will be exposed to a heightened risk of infection, hospitalization, or death because of their respective school district's inability to consider, much less implement, the most basic safety precaution against COVID-19. As shown by the four districts that have closed to-date, extending out the enforcement of Executive Order GA-38 by more than a matter of days can result in further outbreaks and instances of Plaintiffs' exposure to unmasked, unknowingly COVID-19-positive students or staff. Unless the Court enters a Temporary Restraining Order, Plaintiffs will have to choose between their safety and receiving an in-person education. Accordingly, Plaintiffs

respectfully request the Court enter a temporary restraining order until such time that the Court can hold a preliminary injunction hearing.

As noted in the Certificate of Service below, the undersigned counsel for Plaintiffs is simultaneously providing the Defendants and attorneys with the Texas Attorney General's Office notice of this Motion and the relief sought herein by hand delivery and/or email.

III. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that this Court enter a temporary restraining order and preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a), in the form attached hereto as Exhibit G, that enjoins Defendants from enforcing Sections 3(b), 3(e), 3(g) and 4 of Executive Order No. GA-38, as well as TEA's Public Health Guidance, to the extent that they prohibit local school districts from requiring masks for their students and staff.

Dated: August 18, 2021

Respectfully submitted,

/s/ Thomas M. Melsheimer

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record. I also certify that the Complaint in this case, this Motion, and the proposed order on were served via hand delivery. I also certify that a copy of the foregoing was provided to attorneys at the Office of the Texas Attorney General who have appeared on behalf of one or more of the Defendants in prior actions.

/s/ Thomas M. Melsheimer
Thomas M. Melsheimer

Exhibit A



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15 PM O'CLOCK

JUL 29 2021

A handwritten signature in black ink, appearing to be "John D. Ratzelor", written over a horizontal line. Below the line, the text "Secretary of State" is printed.

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Gregory S. Davidson", written in a cursive style.

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER
GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility “for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;” and

WHEREAS, under Section 418.016(a), the “governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;” and

WHEREAS, under Section 418.018(c), the “governor may control ingress and egress to

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Governor Greg Abbott
July 29, 2021

Executive Order GA-38
Page 2

and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.

2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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Governor Greg Abbott
July 29, 2021

Executive Order GA-38
Page 3

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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Governor Greg Abbott
July 29, 2021

Executive Order GA-38
Page 4

4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
- a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.
 - c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
- a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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Governor Greg Abbott
July 29, 2021

Executive Order GA-38
Page 5

- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

Handwritten signature of Greg Abbott in black ink.

GREG ABBOTT
Governor

ATTESTED BY:

Handwritten signature of Joe A. Esparza in black ink.

JOE A. ESPARZA
Deputy Secretary of State

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JUL 29 2021

Exhibit B



Public Health Guidance

August 5, 2021

The guidance in this document is authorized by Executive Order GA-38, which has the effect of state law under Section 418.012 of the Texas Government Code. Executive Order GA-38 provides TEA with the legal authority to publish requirements for the operation of public school systems during the COVID-19 pandemic. This document takes effect immediately, replacing all prior guidance. TEA recommends that public school systems consult with their local public health authorities and local legal counsel before making final decisions regarding the implementation of this guidance.

This guidance addresses:

- On-campus instruction
- Non-UIL extracurricular sports and activities
- Any other activities that students must complete

For guidance on matters related to school system staff, please refer [here](#). Additionally, as a reference for practices recommended by the CDC, see [here](#).

Required Actions if Individuals with Test-Confirmed Cases Have Been in a School

1. If an individual who has been in a school is test-confirmed to have COVID-19, the school must notify its local health department, in accordance with applicable federal, state and local laws and regulations, including confidentiality requirements of the Americans with Disabilities Act (ADA) and Family Educational Rights and Privacy Act (FERPA).
2. Upon receipt of information that any teacher, staff member, student, or visitor at a school is test-confirmed to have COVID-19, the school must submit a report to the Texas Department of State Health Services via an online form. The report must be submitted each Monday for the prior seven days (Monday-Sunday).

Masks

Per GA-38, school systems cannot require students or staff to wear a mask. GA-38 addresses government-mandated face coverings in response to the COVID-19 pandemic. Other authority to require protective equipment, including masks, in an employment setting is not necessarily affected by GA-38.

School systems must allow individuals to wear a mask if they choose to do so.

Students Who Have COVID-19

As provided in this [Department of State Health Services \(DSHS\) Rule](#), school systems must exclude students from attending school in person who are actively sick with COVID-19 or who have received a positive test result for COVID-19. Parents must ensure they do not send a child to school on campus if the child has COVID-19 symptoms or is test-confirmed with COVID-19,

until the conditions for re-entry are met. See the DSHS rule for more details, including the conditions for ending the exclusion period and returning to school.

During the exclusion period, the school system may deliver remote instruction consistent with the practice of remote conferencing outlined in the proposed *Student Attendance Accounting Handbook* (SAAH) rules, as described [here](#).

To help mitigate the risk of asymptomatic individuals being on campuses, school systems may provide and/or conduct recurring COVID-19 testing using rapid tests provided by the state or other sources. Testing can be conducted with staff. With prior written permission of parents, testing can be conducted with students.

Students Who Are Close Contacts

As a reference, close contact determinations are generally based on [guidance outlined by the CDC](#), which notes that individuals who are vaccinated are not considered close contacts. Given the data from 2020-21 showing very low COVID-19 transmission rates in a classroom setting and data demonstrating lower transmission rates among children than adults, school systems are not required to conduct COVID-19 contact tracing. If school systems are made aware that a student is a close contact, the school system should notify the student's parents.

Parents of students who are determined to be close contacts of an individual with COVID-19 may opt to keep their students at home during the recommended stay-at-home period.

For individuals who are determined to be close contacts, a 14-day stay-at-home period was previously advised by the CDC based on the incubation period of the virus. CDC has since updated their guidance, and the stay-at-home period can end for students experiencing no symptoms on Day 10 after close contact exposure, if no subsequent COVID-19 testing is performed.

Alternately, students can end the stay-at-home period if they receive a negative result from a PCR acute infection test after the close contact exposure ends.

During the stay-at-home period, the school system may deliver remote instruction consistent with the practice of remote conferencing outlined in the proposed *Student Attendance Accounting Handbook* (SAAH) rules, as described [here](#)

Exhibit C



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2021

VIA EMAIL

Dr. Hafedh Azaiez
Superintendent, Round Rock ISD
1311 Round Rock Ave.
Round Rock, TX 75081
superintendent_rrisd@roundrockisd.org

Dear Dr. Azaiez:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,



KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).

Exhibit D

2. I am Director of Scientific Affairs of an EEG diagnostics company.
3. The attached is a true and accurate copy of my curriculum vitae.
4. I have spent the last 19 months educating diverse communities and constituents and advancing research-based solutions to prevent COVID spread, especially in vulnerable populations with the NAACP, National Black Leadership Commission on Health, Doctors For America, and Project Lifeline.
5. Unfortunately, I acquired COVID through exposure to an infected physician, also in Spring 2020, and have been managing Long COVID symptoms, including mild neurological impairments with written expression. As a patient, physician scientist, and advocate, I serve on "The Promise of Patient-Led Research Integration into Clinical Registries and Research," a federally funded collaboration between the Council of Medical Specialty Societies and the Patient Led Research Collaborative.
6. I am distinctly qualified given my clinical and scientific expertise, research, publications, and experience as a patient to consider the neurological effects of COVID and Long COVID, as well as the effects of COVID on children with existing neurological problems.
7. Texas is among 20 states considered "high" risk for the unvaccinated (i.e. children less than 12 years) given cases and test positivity.
8. Texas is only 45% fully vaccinated,¹ as vaccinations slowed in the late spring 2021.

¹ *Corona Virus in the U.S.: Latest Map and Case Count*, New York Times, at Ch. 4, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last updated Aug. 16, 2021).

9. Modeling with known community transmission by the University of Texas indicates that in an average elementary school in Texas,² at least 5-10 people will be infected on the first day of school during the current surge,³ driven overwhelmingly by the delta variant.⁴
10. Each infected individual will infect 7 others.⁵ There is a median latency to a detectable viral load of 4 days rather than 6 days with the alpha variant.⁶ This suggests very rapid dissemination and hyperlocal outbreaks.⁷
11. These outbreaks are already devastating local pediatric hospitals.⁸
12. There is understandably growing concern about the specific risk of the delta variant on children.
13. The CDC has suggested higher risk for COVID complications in children who are medically complex, have genetic, neurologic, or metabolic conditions, congenital heart disease or like in adults, chronic obesity, diabetes, asthma or chronic lung disease, sickle cell disease, and immunosuppression.⁹
14. I have reviewed the declarations of the plaintiffs in this case including their ages and diagnoses. All qualify as higher risk per the CDC. Any child who is medically complex (ie

² Texas Education Agency, *School Size and Class Size in Texas Public Schools*, (1999).

³ University of Texas College of Natural Sciences, *Expected number of COVID-19 cases arriving at school*, https://covid-19.tacc.utexas.edu/dashboards/school-risk/?fbclid=IwAR1r112rIaGUVjVic_Dwfs0kGewborbY3VJDsWJ6W-FFkmwbTx2tcfk0UM (last updated Aug. 16, 2021).

⁴ Limón, *CORONAVIRUS IN TEXAS: What you need to know about the latest COVID-19 surge and how to stay safe*, Texas Trib. (July 26, 2021), at 6, <https://www.texastribune.org/2021/07/26/texas-covid-19-delta/>

⁵ Michaeleen Doucleff, *The Delta Variant Isn't as Contagious as Chicken Pox. But It's Still Highly Contagious* (Aug. 11, 2021), <https://www.npr.org/sections/goatsandsoda/2021/08/11/1026190062/covid-delta-variant-transmission-cdc-chickenpox>.

⁶ Doucleff, *Why the Delta Variant is Hyper-Contagious: A New Study Sheds Light*, NPR (July 21, 2021), <https://www.npr.org/sections/goatsandsoda/2021/07/08/1013794996/why-the-delta-variant-is-so-contagious-a-new-study-sheds-light>

⁷ Kathy Kattella, *5 Things to Know About the Delta Variant*, Yale Medicine (Aug. 13, 2021), <https://www.yalemedicine.org/news/5-things-to-know-delta-variant-covid>

⁸ Ariana Cha, *'This is Real': Fear and hope in Arkansas pediatric ICU*, Wash. Post (Aug. 13, 2021), <https://www.washingtonpost.com/health/2021/08/13/children-hospitalizations-covid-delta/>

⁹ Centers for Disease Control and Prevention, *Children*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>, (last updated December 30, 2020).

D.D.), has Down Syndrome (i.e. E.T., H.M., M.P, R.S.), an immunosuppressive illness (i.e. D.R., E.T.) or is on chronic immunosuppressive therapy due to solid organ transplant (i.e. J.G.) as well as any child with chronic heart or lung disease (i.e. J.R., E.S., D.R., E.R., J.P.V.) is vulnerable to poorer clinical outcomes with COVID. I am also specifically concerned about any child with a neurological diagnosis (S.P., N.C.).

15. Individuals with chronic neurologic disease, including children, are at elevated risk of severe illness or death with COVID.¹⁰

16. This is what has motivated the American Academy of Neurology to urgently recommend efforts to expedite regulatory approvals of vaccinations for children under 12.¹¹

17. Long COVID (post-acute sequelae of COVID-19, PASC) causes chronically disabling fatigue, headache, difficulty concentrating, insomnia and other multisystemic symptoms for 25-30% of adults, often following mild COVID infection.

18. Preliminary data suggest that up to 10% of children may also have long-lasting COVID symptoms, such that being spared from hospitalization and death is no guarantee of safety from chronic disability.¹² This is the subject of ongoing investigation.

19. In the meantime, masks matter. Converging experimental, epidemiological, and modeling evidence consistent with the efficacy of masks in mitigating COVID transmission¹³ stand diametrically opposed to the ban on mask mandates at a time when we desperately need to ensure compliance with masking, social distancing, and vaccinations.

¹⁰ Elizabeth Gardner, *People With Neurological Conditions At Greater Risk of Death by COVID-19*, U.S. News: Health (April 29, 2021), <https://health.usnews.com/hospital-heroes/articles/people-with-neurological-conditions-at-greater-risk-of-death-by-covid-19>.

¹¹ American Academy of Neurology, *American Academy of Neurology Position Statement on COVID-19 Vaccine* (Aug. 2021), <https://www.aan.com/policy-and-guidelines/policy/position-statements/aan-position-statement-on-covid-19-vaccination/>.


¹² Dyani Lewis, *Long Covid and Kids: Scientists Race to Find Answers*, 595 Nature 482, (2021).

¹³ Howard et. al., *An evidence review of face masks against COVID-19*, 118 PNAS 1, 1-12 (2021); Cheng, et al., *Face masks effectively limit the probability of SARS-CoV-2 transmission*, 372 Science 1439, 1439-1443 (2021).

20. The American Academy of Pediatrics strongly recommends in-person learning for the mental, emotional, and physical health of children but emphasizes the critical importance of universal masking (in children > 2 years) regardless of vaccination status.¹⁴ The State of Texas has chronically failed special needs students.¹⁵ These are children who have particular need for in-person instruction. And in many school districts, even nominally equivalent educational services are not available through remote learning. The failure to allow local entities to implement universal masking policies will have disproportionate impact on these students.
21. With significant inter-county differences in cases, test positivity, vaccinations, and health resources, local authorities including school districts should be able to decide, based on the dynamics of this pandemic, how to move on implementing mask mandates and other public health policies to help prevent, contain, and mitigate this disease. While it is generally true that the entire state of Texas is facing a COVID surge, to illustrate the variation in impact over a single snapshot in time, observe that in In Travis County, there are currently 30/100,000 cases, in Bexar County, 72/100,000 cases, and in Hays County, 80/100,000 cases.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Houston, Texas.

DocuSigned by:

BE7ACB7887EB41A...
Dona Kim Murphey, MD PhD

¹⁴ American Academy of Pediatrics, *American Academy of Pediatrics Updates Recommendations for Opening Schools in Fall 2021* (July 19, 2021), <https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-updates-recommendations-for-opening-schools-in-fall-2021/>.

¹⁵ Aliyya Swaby, *Texas schools still failing special education students, federal review finds*, Texas Trib. (Nov. 5, 2020), <https://www.texastribune.org/2020/11/05/texas-schools-failing-special-education-students/>.

CURRICULUM VITAE

DATE PREPARED: August 16, 2021**PART I: General Information****Name:** Dona Kim Murphey**Mailing Address:** 3835 Hanberry Lane
Pearland, TX 77584**Phone:** (713) 459-0450**Email:** dmkim@post.harvard.edu**Place of Birth:** Houston, TX. Citizenship: USA.**Education:**

2001 A.B. in History and Science, Cum Laude, Harvard College
 2008 Ph.D. in Neuroscience, Baylor College of Medicine
 2010 M.D., Baylor College of Medicine

Employment:

6/10 – 6/14 Neurology Residency, Baylor College of Medicine, Texas
 6/14 – 6/15 Clinical Neurophysiology Fellowship, Baylor College of Medicine, Texas
 1/13 – 7/16 Postdoctoral fellow, Baylor College of Medicine, Department of
 Molecular and Human Genetics, Texas
 9/15 – 7/16 Independent physician reader and consultant, CortiCare
 12/15–5/16 Locum Tenens Epileptologist (Weatherby), Greenville Health System
 8/16 – 8/19 Director of Medical and Scientific Affairs, CortiCare
 8/19 – present Director of Scientific Affairs, CortiCare
 3/21 – present Locum Tenens Clinical Neurophysiologist (Weatherby), Memorial Health

Active Licenses in Each State:

Alabama	MD.37153
Colorado	DR0060221
Texas	Q1236
Kentucky	49339
South Carolina	38982
South Dakota	9702
Oklahoma	32724
North Dakota	13691
Pennsylvania	MD456666
New Mexico	MD2016-0591

Illinois 36142151

Professional Societies (Member):

- 2004–2016 Society for Neuroscience
- 2014–2019 American Clinical Neurophysiology Society
- 2007–present American Academy of Neurology

Ad hoc reviewer for: Journal of Neuroscience

Skills

Languages: Rudimentary Korean. Fluency in Spanish and English.
 Software: Rudimentary Matlab, Proficiency in Persyst 13 Spike Detection Tool,
 qualitative and quantitative neurophysiology, quantitative behavior, IPEG compliant EEG
 experimental design, statistical analysis plans, data visualization

Grants

- 2012-2013 Advancing Clinical Excellence in Health Care Delivery System Trainee Grants, \$2500.
- 2013-2014 T32 - Multidisciplinary Training in Brain Disorders and Development, \$65k
- 2013-2014 T32 - Medical Genetics Research Fellowship Program (declined)
- 2015-2017 Clinical Research Training Fellowship, American Brain Foundation, \$140k

Awards and Honors:

- 2002-2004 Baylor College of Medicine Community Service Scholarship
- 2003 AMA Foundation Leadership Award
- 2005 NINDS/AUPN/ANA - How to combine clinical and research careers in neuroscience symposium Travel Award
- 2005 Baylor Research Advocates for Student Scientists Scholarship Finalist
- 2005-2007 HHMI Science Education Leadership Fellow
- 2005-2006 John J. Trentin Scholarship Award
- 2006-2007 Student Leadership in Community Service Grantee
- 2007-2008 MSTP Publication Award
- 2008 Scientific Highlights Plenary Session Selection (top 5% of over 1600 submitted abstracts) at the annual meeting of the American Academy of Neurology in Chicago, IL.
- 2008 Negotiating the Ideal Faculty Position: A Workshop for Women in Science & Engineering, Selected participant (75 of 1000).
- 2009 Houston-Galveston Schweitzer Fellows Program Finalist
- 2009-2010 Richard R. Dickason, Jr. Outstanding Physician Scientist Award

- 2013 Platform Presentation selection on “Therapeutic Utility of Long-Term Monitoring Diagnosis in Psychogenic Nonepileptic Events (PNEE) on Patient Illness Perception and Hospital Resource Utilization” at the American Academy of Neurology annual meeting in San Diego, CA.
- 2014 Neurology Resident Teaching Award
- 2015 Research Career Development Symposium: How to be Successful in Academic Neuroscience AAN Travel Scholarship
- 2018 Organización Latina de Trans en Texas Commitment and Love Award

PART II: Academic Information

Research:

- 2004-2008 Graduate Student, Baylor College of Medicine, Department of Neuroscience. Michael S. Beauchamp, Ph.D (started with John Maunsell for 2 years). fMRI, cortical electrical stimulation, and psychophysics in humans with medically intractable epilepsy to study visual perception.
- 2013-2016 Postdoctoral Fellow, Baylor College of Medicine, Department of Genetics. Benjamin Arenkiel, Ph.D. Cell type-specific interneuron loss in a mouse model of Alzheimer’s disease. Revealing the neuropeptidergic role of classical stress hormones in cortical circuit development.

Teaching:

- 2005 Teaching Assistant for Pre-Medical Summer Programs, Anatomy, Baylor College of Medicine
- 2007 Teaching Assistant for Anatomy and Development of the Nervous System, Baylor College of Medicine
- 2015 Lecturer, Medical Neuroscience, Baylor College of Medicine

Mentorship:

- 2013-2014 Divya Koyyaguntala – Mentored this high school senior, who received a First Award in the Behavioral and Social Sciences category and two Intel ISEF Special Awards from the American Physiological Society and NASA for her work in the lab on the Role of Somatostatin Interneurons in Alzheimer’s Disease. Duke University graduate.
- 2014-2016 Sugi Panneerselvam – Mentored this Rice University freshman on two projects: 1. Dissecting local connectivity of somatostatin cells in the anterior olfactory nucleus and their contribution to amyloidogenesis in the olfactory system and 2. Revealing the developmental role of canonical stress peptides on cortical circuit formation. Currently a Baylor College of Medicine medical student.

Service:

1998-2004 Grades4Aid Executive Director
 2001-present Harvard University Club of Houston Alumni Interviewer
 2002-2008 Harvard University Club of Houston VP of Community Service
 2003-2010 BCM Admissions Committee Student Interviewer
 2004-2005 Baylor Student Association Director of Community Service
 2006-2007 BCM Neuroscience Seminar Series Student Representative
 2006-2007 BCM Systems Neuroscience Search Committee
 2006-2008 Early College Awareness Project Executive Director
 2008-2009 BCM Admissions Committee Student Co-Chair
 2016-2019 EMERGE Fellowship Mentor
 2016-present Founder / Chair, Board Member, Pantsuit Republic
 2017-2018 Deportation Defense Organizer, United We Dream Houston
 2018-2020 Board Member, Korean American Assoc. and Community Ctr of Houston
 2018-present Co-Founder, Board Member, Dir. of Medical Initiatives, Project Lifeline
 2019-present Board Member, Steering Committee for the Immigrant and Refugee Health Justice Working Group, Doctors for America
 2019-2020 Board Member, Political Action, Health Chair, Brazoria County NAACP
 2020-present Doctors In Politics – Founders Circle, Vice Chair of the Board
 2021-present External Advisor to “The Promise of Patient-Led Research Integration into Clinical Registries and Research,” a PCORI funded grant

Meetings and Courses:

1. Gordon Research Conference on Oculomotor Systems Biology (2007)
2. Cold Spring Harbor Laboratory Computational Neuroscience: Vision course (2008).

Bibliography:

Original Articles

1. **Murphey, D. K.** & Maunsell, J. H. R. Behavioral detection of electrical microstimulation in different cortical visual areas. *Curr Biol.* 2007;17(10):862-7.
2. **Murphey, D. K.**, Yoshor, D., & Beauchamp, M. S. Perception Matches Selectivity in the Human Anterior Color Center. *Curr Biol.* 2008;18(3):216-20.
3. **Murphey, D. K.** & Maunsell, J. H. R. Electrical microstimulation thresholds for behavioral detection and saccades in monkey frontal eye fields. *PNAS.* 2008;105(20):7315-20.
4. Dulay, M. F.*, **Murphey, D. K.***, David, Y., Sun, P., Maunsell, J. H. R., and Yoshor, D. Computer-controlled electrical stimulation for mapping function in human cerebral cortex. *Journal of Neurosurgery.* 2009;110(6):1300-3. *co-first authors

5. **Murphey, D. K.**, Maunsell, J. H. R., Beauchamp, M. S.*, and Yoshor, D.*. Perceiving electrical stimulation of identified human visual areas. *PNAS*. 2009;106(13):5389-93. *co-senior authors.
6. Herman, A. M.*, Huang, L.*, **Murphey, D. K.**, Garcia, I., Arenkiel, B. R. Cell type-specific and time-dependent light exposure contribute to neuronal silencing in neurons expressing Channelrhodopsin-2. *eLife* 2014;3:e01481. *co-first authors.
7. Nunez-Wallace, K. R.*, **Murphey, D. K.***, Proto, D., Collins, R. L., Franks, R., Chachere II, D. M., Chen, D. K. Health resource utilization among US veterans with psychogenic nonepileptic seizures: A comparison before and after video-EEG monitoring. Accepted, *Epilepsy and Behavior*. *co-first authors
8. Mishori R, Hampton K, Habbach H, Raker E, Niyogi A, **Murphey D.** "Better than having no evaluation done": a pilot project to conduct remote asylum evaluations for clients in a migrant encampment in Mexico. *BMC Health Serv Res*. 2021 May 26; 21(1):508. doi: 10.1186/s12913-021-06539-5.

Reviews

Murphey, D. K., Herman, A. M. & Arenkiel, B. R. Dissecting inhibitory brain circuits with genetically-targeted technologies. *Front Neural Circuits* **8**, 124, doi:10.3389/fncir.2014.00124 (2014).

Book Chapters

Murphey, D. K. & Mosier, Dennis. "Clinical Neuroscience." *Neurology Secrets*. Ed. Sixth. New York: Elsevier, In press.

Commentaries

Murphey, D. K. Making sense: Determining the parameter space of electrical brain stimulation. *PNAS*. 2015 Nov 25. pii: 201520704. [Epub ahead of print]

Thesis

1. Murphey, D. K. *Studying Visual Perception with Intracranial Electrical Stimulation in Human and Non-Human Primates*. Houston, TX: Ph.D. Thesis, Baylor College of Medicine Department of Neuroscience, 2008.

Abstracts

1. **Murphey, D. K.** & Maunsell, J. H. R. (2005, November). *Behavioral thresholds for detecting electrical microstimulation in monkey visual cortex*. Poster presented at the annual meeting of the Society for Neuroscience, Washington, D.C.

2. **Murphey, D. K.** & Maunsell, J. H. R. (2006, November). *Electrical microstimulation thresholds for detection and saccadic responses in monkey frontal eye fields*. Poster presented at the annual meeting of the Society for Neuroscience, Atlanta, GA.
3. **Murphey, D. K.** & Maunsell, J. H. R. (2007, July). *Detection and saccade thresholds for microstimulation in monkey frontal eye fields*. Poster presented at the Gordon Research Conference on Oculomotor System Biology, Lewiston, ME.
4. **Murphey, D. K.**, Yoshor, D., Maunsell, J. H. R., and Beauchamp, M. S. (2007, November). *Studying visual perception in human subjects with fMRI and intracranial electrical stimulation*. Talk presented at the annual meeting of the Society for Neuroscience, San Diego, CA.
5. **Murphey, D. K.**, Beauchamp, M. S., Maunsell, J. H. R., and Yoshor, D. (2008, April). *Studying visual perception in human subjects with intracranial electrical stimulation*. Talk presented at the annual meeting of the American Academy of Neurology, Chicago, IL.
6. Beauchamp, M. S., **Murphey, D. K.**, Yoshor, D. (2008 June). *Electrical stimulation, recording, and BOLD fMRI of the human anterior color center*. Human Brain Mapping, Melbourne, Australia.
7. **Murphey, D. K.**, Yoshor, D., and Beauchamp, M. S. (2008, November). *Perception matches selectivity in the human anterior color center*. Poster presented at the annual meeting of the Society for Neuroscience, Washington, D.C.
8. Ash, R. T., **Murphey, D. K.**, Yoshor, D., and Beauchamp, M. S. (2008, November). *Adaptation of local field potentials in the fusiform face area (FFA) and fusiform body area (FBA)*. Poster presented at the annual meeting of the Society for Neuroscience, Washington, D.C.
9. **Murphey D. K.**, Maunsell J. H. R., Yoshor D., Beauchamp M. S., (2009, June). *Perceiving electrical stimulation of identified human visual areas*. Human Brain Mapping, San Francisco, CA.
10. **Murphey, D. K.** (2009, October). *Novel Methods in Human Intracranial Electrophysiology*. Minisymposium I chaired at the annual meeting of the Society for Neuroscience, Chicago, IL.
11. Nunez-Wallace, K., **Murphey D. K.**, Chen D. K. (2013, March). *Therapeutic Utility of Long-Term Monitoring Diagnosis in Psychogenic Nonepileptic Events (PNEE) on Illness Perception and Hospital Resource Utilization*. Talk presented at the annual meeting of the American Academy of Neurology, San Diego, CA.

12. **Murphey, D. K.**, Koyyaguntala, D., Arenkiel, B. R.. Early amyloid deposition in the anterior olfactory nucleus correlates with specific mixture discrimination deficits in 5xFAD mice (2014, November). Poster presented at the annual meeting of the Society for Neuroscience, Washington, D.C.
13. **Murphey, D. K.** Fellow's Case Presentations (2015, March). Talk presented at the annual Southern Epilepsy and EEG Society meeting, San Antonio, TX.
14. **Murphey, D. K.**, Paneerselvam, S., Huang, L., Arenkiel, B. Neuropeptidergic interneurons expressing canonical stress hormones provide a transient developmental substrate for cortical circuit formation (2015, August). Poster presented at the Gordon Research Conference on Inhibition in the CNS, Lewiston, ME.

Invited Talks

1. The Methodist Hospital Neuro-ophthalmology Grand Rounds, August 2009.
2. Baylor College of Medicine Department of Molecular Physiology and Biophysics Seminar Series, January 2010.

Exhibit E

2. I served as Chief Resident at Children's Hospital Los Angeles in 2013-2014, and I have been a community pediatrician in Southeast Houston since 2014 at Pediatric Associates, a clinic started by my father in the 1970's.
3. The attached is a true and accurate copy of my curriculum vitae.
4. Since summer of 2020 I have served on the Medical Advisory Team (MAT) of the Shlenker School, a private school in Southwest Houston. We had a successful school year in 2020-2021 with implementation of protocols put together via interpretations of CDC and AAP guidelines.¹ Furthermore, we used CDC recommendations to help keep indoor spaces safe.
5. Our protocol addresses all 3 modes of spread of disease. COVID-19 is spread in three main ways: 1) droplets, typically from inhalation or landing in eyes, nose or mouth. Average distance droplets travel when speaking or breathing is 6 feet. This is the reasoning for recommended physical distancing. (2) Aerosols, which are small particles that float in the air and travel long distances. This is the mode that is most difficult to stop, but where indoor ventilation and being outdoors helps. (3) Contact of fingers with contaminated surfaces and then touching eyes, nose, or mouth. This is where surface cleaning and washing hands helps to reduce spread.
6. The most important part of our success was the community responsibility that was fostered through education of parents and educators and school staff, as well as an understanding that safe, in-person learning was the goal for all.

¹ Centers for Disease Control and Prevention, *K-12 School Operational Strategy*, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>, (last updated May 15, 2021); American Academy of Pediatrics, *COVID-19 Guidance for Safe Schools*, <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>, (last updated July 18, 2021).

7. Our protocol is a model for success, as we had no whole school shut downs last school year and is one that relies on the “swiss cheese” model of prevention i.e., the more layers of prevention the less likely the spread in the school.²
8. Our layers included: a daily health attestation, temperature checks, masks, frequent handwashing, distancing of desks, plexi glass around desks, plexiglass between students while eating, cleaning of surfaces, free standing HEPA units in each classroom, MERV-13 HVAC system, cohorting classes and expeditious contact tracing.
9. Of note, vaccines are also a layer in this model, but not yet available to the children who attend our school, as 5th grade is the oldest class.
10. We recommend, like the AAP and CDC masks in children 2 year and older, but require it for PreK4 and older. Classes being masked or unmasked is taken into account with contact tracing, with immediate class closure for suspected COVID-19 in classes without masks. In classes that are masked, where contact tracing reveals that no close contact was made and the affected individual wore a mask well, a class did not have to be shut down.
11. Safe, uninterrupted in-person learning is the goal for all students and in order to achieve this goal, mitigation strategies must be in place.
12. A Yale University study showed small group sizes, frequent hand washing, disinfection practices, daily symptom screening, cohorting, and use of masks by caretakers of young children prevented the spread of COVID-19 to caretakers. Instead community spread was the major predictor of caretakers testing positive. This study shows that there is some protection to the wearer of a mask, at least in the setting of unmasked young children.³

² Siobhan Roberts, *The Swiss Cheese Model of Pandemic Defense*, New York Times (Dec. 5, 2020), <https://www.nytimes.com/2020/12/05/health/coronavirus-swiss-cheese-infection-mackay.html>.

³ Giliam et. al., *COVID-19 transmission in US child care programs*, 147 *Pediatrics* 1, 1-8 (2021).

13. A study of children aged 0-18 in Mississippi showed that children and adolescents who received positive test results for SARS-CoV-2 were more likely than were similarly aged participants with negative test results to have reported close contact with a person with confirmed COVID-19 and less likely to have reported consistent mask use by students and staff members inside the school facility.⁴
14. A study looking at 11 school districts in the fall of 2020 in North Carolina showed 32 infections in school vs 773 outside of the school among 90k students and staff. This is another example of the successful use of mitigation strategies in schools to limit the spread of the virus.⁵
15. A case report from Israel shows the opposite is true; school is a common place for spread if mitigation strategies are not in place. Ten days after restarting high school two students came to school with mild symptoms. Out of the 1161 students and 151 staff tested, 153 students and 25 staff tested positive. The contact tracing and investigation showed the problems including less than 100% mask usage, insufficient physical distancing and poor air circulation.⁶
16. In the summer of 2020, Governor Abbott put in place a mask mandate which correlated with a subsequent drop in COVID-19 cases in Texas.
17. While children do better overall than adults with COVID-19, children with co-morbidities or pre-existing conditions need increased monitoring.⁷

⁴ Hobbs et. al., *CDC COVID-19 Response Team: Factors Associated with Positive SARS-CoV-2 Test Results in Outpatient Health Facilities and Emergency Departments Among Children and Adolescents Aged <18 Years – Mississippi, September-November 2020*, 69 Morbidity and Mortality Weekly Report 1925, 1925-1929 (2020).

⁵ Zimmerman et. al., *Incidence and Secondary Transmission of SARS-CoV-2 Infections in Schools*, 147 Pediatrics 1, 1-7 (2021).

⁶ Stein-Zimmer et.al., *A large COVID-19 outbreak in a high school 10 days after schools' reopening, Israel, May 2020*, 25 Eurosurveillance 1, 1-5 (2020).

⁷ Dhochak et. al., *Pathophysiology of COVID-19: Why Children Fare Better than Adults?*, 87 Indian Journal of Pediatrics 537, 537-546 (2020).

18. The AAP defines children and youth with special health care needs (CYSHCN) as those who have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and who also require health and related services to a type or amount beyond that required by children generally.
19. The AAP recommends a swiss cheese model to protect these youth, one of which is the use of personal protective equipment (PPE) and facemasks. The recommendations go on to say that subgroups of CYSHCN who have a higher risk for severe biological effects of SARS-CoV-2 infection, as well as their caregivers, should have access to PPE used by healthcare workers such as N95 respirators and eye protection.⁸
20. The CDC states that people with certain medical conditions are at higher risk of severe illness from COVID-19, as defined by needing hospitalization or intensive care or ventilator support or death.
21. Current evidence regarding the extent to which underlying medical conditions in children are associated with increased risk of severe illness from COVID-19 is limited, but suggests medical complexity, genetic, neurologic, metabolic conditions or congenital heart disease are factors for increased risk. Furthermore, much like adults, children with obesity, diabetes, asthma, chronic lung disease, sickle cell disease or immunosuppression can also be at risk for severe illness.⁹
22. Cerebral palsy (CP) is the most common motor disability in childhood.¹⁰

⁸ American Academy of Pediatrics, *Caring For Children and Youth With Special Health Care Needs During the COVID-19 Pandemic*, <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/caring-for-children-and-youth-with-special-health-care-needs-during-the-covid-19-pandemic/>, (last updated June 28, 2021).

⁹ Centers for Disease Control, *Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>, (last updated May 13, 2021).

¹⁰ Pasquale J. Accardo, M.D., *Capute & Accardo's Neurodevelopmental Disabilities in Infancy and Childhood: Neurodevelopmental Diagnosis and Treatment* 17 (3rd ed, 2008).

23. Children with CP die younger than general population, mainly due to pneumonia.¹¹
24. Currently there is both COVID-19 and respiratory syncytial virus (RSV) circulating throughout the US. Co-infection leads to higher likelihood of respiratory failure, necessity for ICU care.¹²
25. Texas is a state included in the CDC's RSV health advisory released in June, 2021.¹³
26. Safety protocols in operating rooms call for redundancy and universal use of protective equipment, including surgical masks. The operating room is an example of a scenario where people wear masks to protect the one who cannot wear a mask.¹⁴ Part of universal masking is to protect those who are physically, mentally or developmentally unable to wear a mask, such as children under 2, and children with disabilities, in addition to patients on an operating table.
27. The CDC recommends avoiding crowded indoor spaces as part of mitigating the risk of contracting COVID-19, as indoor spaces are where humans spread disease easily to one another. The CDC recommends mask usage if one has to be inside regardless of vaccination status if in an area of high or substantial transmission. Current infection trends throughout Texas would qualify as high or substantial transmission.¹⁵

¹¹ Brooks et. al., *Recent trends in cerebral palsy survival. Part II: individual survival prognosis*, 56 *Developmental Medicine & Child Neurology* 1065, 1065-1071 (2014).

¹² Garazzino et. al., *Epidemiology, Clinical Features and Prognostic Factors of Pediatrics SARS-CoV-2 Infection: Results From an Italian Multicenter Study*, 9 *Frontiers in Pediatrics* 1, 1-10 (2021).

¹³ Shawn Radcliffe, *Covid-19 Receding this Summer, But Now Cases of RSV are Rising*, Healthline (June 21, 2021), <https://www.healthline.com/health-news/covid-19-is-receding-this-summer-but-now-cases-of-rsv-are-rising>.


¹⁴ Joyce Wahr, *Safety in the operating room*, UpToDate, <https://www.uptodate.com/contents/safety-in-the-operating-room>, (Accessed on August 16, 2021).

¹⁵ Centers for Disease Control and Prevention, *When You've Been Fully Vaccinated: How to Protect Yourself and Others*, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>, (last updated July 27, 2021).

28. The CDC is a reliable resource for public health safety. With the current Delta variant and the unvaccinated status of children ages 11 and younger, school without mitigation strategies will be an epidemiological disaster and a lesson in statistics.
29. While masks are not the only mitigation strategy, they are the most visible one and the one that inherently helps cover one's cough.
30. Masks work best when everyone who is physically able to wear them does so properly.
31. With the current exponential spread (the 3rd spike in 18 months) and with a more communicable variant of the virus there will be a large number of pediatric cases of COVID-19, and with greater numbers there will be more severe cases of COVID-19.
32. The goal of the school/school district is not to prevent COVID-19 in the community. The goal is to keep the virus out of school, and mitigate the spread should someone come into the school with the virus, hopefully asymptomatic.
33. For the protection of students with disabilities and high-risk health conditions, individual school districts must have the ability to make decisions for themselves and in accordance with best practices recommended by the CDC and AAP.
34. If allowed to take effect a state order prohibiting districts from adopting mask requirements in accordance with CDC and AAP guidance will result in additional COVID spread and serious illness, hospitalizations and deaths of children with high-risk disabilities and health conditions.

I swear under the penalty of perjury under the laws of the United States that foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Houston, Texas

DocuSigned by:

DC7037E29574482...
Alex Yudovich M.D., F.A.A.P.

Curriculum Vitae Alexander Yudovich, M.D.

Alexander Yudovich, M.D., F.A.A.P.

**4501 Groveway Dr.
Houston, TX 77087
ayudovich@gmail.com
(832) 816-4039**

EMPLOYMENT

PEDIATRIC ASSOCIATES, Houston, TX
Pediatrician, Vice President August, 2014 - Present

CHILDRENS HOSPITAL LOS ANGELES, Los Angeles, CA.
Pediatric Chief Resident July 2013 - June 2014

RESIDENCY TRAINING

CHILDRENS HOSPITAL LOS ANGELES, Los Angeles, CA.
Resident in Pediatrics July 2011 - June 2013

CHILDRENS HOSPITAL LOS ANGELES, Los Angeles, CA.
Intern in Pediatrics June 2010 - June 2011

EDUCATION

UNIVERSITY OF TEXAS MEDICAL BRANCH, Galveston, TX
Doctor of Medicine August 2006 - June 2010

UNIVERSITY OF TEXAS, Austin, TX
Bachelor of Science: Psychology August 2002 - June 2006

LICENSURE

California License: A120448
Texas License: Q0389
NPI: 1508125923
DEA: FY3766219

CERTIFICATION

American Board of Pediatrics October 2013
NRP (Expires March 2020)
Basic Life Support (Expires June 2020)
USMLE Step III June 2010
USMLE Step II August 2009
USMLE Step I June 2008

ACADEMIC APPOINTMENTS/RESPONSIBILITIES

USC KECK SCHOOL OF MEDICINE, Los Angeles, CA.
Clinical Instructor July 2013 - June 2014.

BAYLOR COLLEGE OF MEDICINE, Houston, TX
Pediatrics Medical Student Preceptor January 2020 – April 2021

PEER REVIEWED PUBLICATIONS

Gutierrez, David S., Alexander Yudovich, and Larry Yin. "E-Photo Challenge: Is the Lump on This

Curriculum Vitae Alexander Yudovich, M.D.

Teenage Boy's Testicle Malignant?" *Consultant for Pediatricians* 11.11 (2012): 391.

Konstat-Korzenny E, Yudovich A, Morgenstern-Kaplan D (January 05, 2020) Lepidopterism: Case Report and Review of the Literature. *Cureus* 12(1): e6567. doi:10.7759/cureus.6567

AWARDS

Volunteer of the Year Award, 2021
The Shlenker School Student
Parent Association

Associates & Affiliates Award, 2012
Children's Hospital Los Angeles

You Make a Difference Award,
University of Texas Medical Branch 2009, 2010

LECTURE PRESENTATIONS

Resident Case Conference: Intussusception, Children's Hospital Los Angeles, January 2013

Non-Infectious Rashes, Children's Hospital Los Angeles, January 2014

The Non-Acute Scrotum, Children's Hospital Los Angeles, April 2014

Ophthalmology for Pediatrics Boards, Children's Hospital Los Angeles, May 2014

EDUCATIONAL RESPONSIBILITIES (Children's Hospital Los Angeles)

Ward Attending January 2014 & May 2014

Morning Report (2 mornings/week) July 2013 - June 2014

Medical Student Rounds (weekly) July 2013 - June 2014

COMMITTEES

(Pediatric Associates)

Amerigroup Provider Quality February 2016 - February 2017

Incentives Program Committee

(Children's Hospital Los Angeles)

Jeopardy Call Committee July 2010 - June 2014

Resident Education Committee July 2013 - June 2014

Intern Selection Committee July 2013- June 2014

RN/Housestaff Committee July 2013 - June 2014

Family Centered Rounds Committee July 2013- June 2014

COMMUNITY LEADERSHIP

Co-Chair: The Shlenker School June 2020-present

Medical Advisory Team

MEDIA APPEARANCES

Dayna Steele Podcast August, 2020- present

Appelbaum Training Institute August, 2020 - present

Exhibit F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF A.R.

COMES NOW, A.R. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is A.R., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of E.R., my seven-year-old son, who has a chronic lung condition. E.R. receives 504 services in school for a speech impairment.

3. Because my son is under age 12, he is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. E.R. attends Hays Consolidated Independent School District. We live in Hays County.
5. His treating doctors and specialists have informed me that my child is at high risk for severe complications due to COVID-19 infection. They highly recommend that he only be in public indoor spaces where everyone is wearing masks. In order to decrease his risk, he and everyone around him should observe strict COVID-19 safety protocols. Without universal masking, no one can guarantee his safety.
6. In part owing to Governor Abbott's actions, our hospitals are at capacity and our community is hopelessly divided. I worry every day for my son's welfare.
7. Both of my children have significant anxiety regarding returning to in person instruction. E.R. has specifically voiced that he will only attend school if everyone is masked.
8. E.R. also worries about my health because I have autoimmune issues, and I am also at high risk of COVID-19 complications.
9. I am in fear for the safety of my child and the only option Hays ISD has offered is to place E.R. in an unsafe classroom, where other students and staff will likely not be wearing masks.
10. Given no other humane option, I plan to withdraw E.R. and my other son and seek enrollment at a school, which can ensure my family's safety.
11. I am seeking a reinstatement of a "full panoply of services" for my son including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Buda, Texas.

A.R.

Exhibit G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF A.S.

COMES NOW, A.S. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is A.S., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of R.S., my eleven-year-old daughter, who was born with Down syndrome.
3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.

4. R.S. attends Keller Independent School District in Tarrant County, where she receives supports, services and accommodations. School staff ensure that E.T. will wear a mask at all times, and teachers provide her with reminders to cover her nose and mouth. Unfortunately, under Governor Abbott's order, they cannot guarantee that anyone else in the classroom will do the same, thus increasing the likelihood that she will contract COVID-19 and potentially face life-threatening consequences.
5. Her treating doctors and specialists have informed me that it is dangerous for her to return to brick-and-mortar school without such precautions as following the recommended CDC guidelines. They highly recommend that all COVID-19 mitigation measures are followed, including but not limited to masking of all persons in crowded public places such as schools.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Hurst, Texas.

A.S.

Exhibit H

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS; MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF A.T.

COMES NOW, A.T. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

- 1. My name is A.T., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of E.T., my eleven-year-old daughter. She has been diagnosed with Down syndrome, asthma, hypogammaglobulinemia, and a severe B-cell lymphocyte deficiency, which has resulted in a weakened immune system.

3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. E.T. attends Round Rock Independent School District, where she receives supports, services and accommodations. We live in Williamson County.
5. Her treating doctors and specialists have informed me that it is dangerous for her to return to brick-and-mortar school without such precautions as requiring everyone to follow the recommended CDC guidelines. They highly recommend that all COVID-19 mitigation measures are followed, including but not limited to masking of all persons in crowded public places such as schools.
6. We attempted virtual instruction last year but it was largely unsuccessful and resulted in a significant loss of education for E.T. It also resulted in a substantial increase of self-harm behaviors given that virtual instruction is an inappropriate platform for a student with E.T.'s type of disability needs.
7. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
8. I do not know what to do with respect to E.T.'s education this school year. E.T. will wear a mask without difficulty, but I am concerned that may not be enough to protect her from COVID-19 if others around her do not mask. Her treating psychiatrist has recommended that she attend in-person classes provided it is safe as virtual learning was detrimental to her psychological, social, and developmental health and has resulted in significant regression, agitation, and the aforementioned self-harm. Governor Abbott's order has placed my family in an impossible situation.
9. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Austin, Texas.

A.T.

Exhibit I

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF C.M.

COMES NOW, C.M. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is C.M., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of A.M., my eight-year-old son, who has cerebral palsy, which is a neurological disorder and a risk factor, according to the CDC, for serious and potentially life-threatening consequences from COVID-19 infection.

3. Because my son is under age 12, he is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. One of A.M.'s diagnoses requires a medication, which suppresses his immune system and impairs his body's ability to fight off viruses. I am deeply concerned and scared for my son's life.
5. A.M. is currently nonverbal, but appears to be on the cusp of verbalizing words. I worry if A.M. does not receive in-person instruction this school year, he will lose this important emerging skill and may regress even further.
6. A.M. attends Edgewood Independent School District, where he receives supports, services and accommodations. We live in Bexar County.
7. His treating doctors and specialists have informed me that it is dangerous for him to return to brick-and-mortar school without such precautions as requiring everyone to follow the recommended CDC guidelines regarding reducing the transmission of COVID-19, which includes mandatory masking. They have advised me that A.M. cannot be in crowded places, where people are not wearing masks.
8. Without universal masking, I do not know how I will be able to safely educate my son and ensure his wellbeing.
9. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
10. Homebound instruction is also not an option since it is not a substitute for in-person instruction. Under the homebound option, A.M. will likely receive, at most, four hours of instruction per week, which is not enough to ensure he attain adequate progress during this important developmental period.
11. I am seeking a reinstatement of a "full panoply of services" for my son including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at San Antonio, Texas.

C.M.

Exhibit J

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF D.C.

COMES NOW, D.C. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is D.C., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the father of N.C., my eight-year-old daughter who was born with Sanfilippo syndrome type A, which is a neurological disorder and a type of childhood dementia.

3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. N.C. attends Friendswood Independent School District, where she receives supports, services and accommodations. We live in Galveston County.
5. Her treating doctors and specialists have informed me that my child is at high risk for severe complications if she contracts COVID-19. In order to decrease her risk, she and everyone around her should observe strict COVID-19 safety protocols and wear a mask indoors. Without a mask mandate at her school, no one can guarantee her safety.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. Virtual instruction does not work for my daughter. She cannot learn effectively in a remote setting nor can she access much needed related services such as physical therapy, occupational therapy, or speech therapy, which focuses on utilizing a voice output device. N.C.'s disease is regressive so it is not really possible for her to regain lost skills or to catch up later if she is not provided with educational services now.
8. Empirical research has also shown that virtual instruction is woefully inadequate for children diagnosed with Sanfilippo syndrome.
9. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Friendswood, Texas.

D.C.

Exhibit K

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF J.L.

COMES NOW, J.L. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is J.L., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of J.R., my eight-year-old daughter who has attention deficit hyperactivity disorder, a growth hormone deficiency, and moderate to severe asthma.
3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.

4. J.R. attends San Antonio Independent School District, where she receives supports, services and accommodations. We live in Bexar County.
5. Her treating doctors and specialists have informed me that my child is at high risk for serious and severe complications if she contracts COVID-19. In order to decrease her risk, she and everyone around her should observe strict COVID-19 safety protocols and wear a mask indoors.
6. Due to COVID-19 and our family members' multiple asthma and autoimmune disorder diagnoses, we rarely leave the home, and we avoid all indoor public places as well as any crowded outdoor places. Because of Governor Abbott's wanton disregard for my child's safety, he is also endangering the health of my entire family.
7. We face an impossible choice. Governor Abbott's order requires my family to choose potentially between my daughter's education and my daughter's safety and wellbeing.
8. Unfortunately, J.R. cannot stay home this school year. During remote learning, her generalized anxiety disorder had been exacerbated by having to remain homebound and isolated from her same-aged peers at school. Virtual instruction is also not an option currently offered by her school district.
9. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
10. I have the option to homeschool J.R. However, J.R. would lose the access to the services provided under her IEP if she was homeschooled. Even if virtual learning options were available, many of the services and accommodations identified in her IEP would be necessarily modified or entirely unworkable in the virtual setting.
11. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at San Antonio, Texas.

J.L.

Exhibit L

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF K.P.

COMES NOW, K.P. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is K.P., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of H.P., my eleven-year-old daughter who was born with a SCN2a genetic disorder, epilepsy, and autism spectrum disorder.

3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. H.P. attends Katy Independent School District, where she receives supports, services and accommodations. We live in Fort Bend County.
5. Her treating doctors and specialists have informed me that my child is at high risk for severe complications due to COVID-19 infection. They highly recommend wearing masks in public indoor spaces. In order to decrease her risk, she and everyone around her should observe strict COVID-19 safety protocols and wear a mask indoors. No one can guarantee her safety.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. Virtual instruction does not work for H.P. because looking at a screen for extended periods of time will aggravate my daughter's seizure disorder.
8. The district and the state have provided no viable options other than homebound instruction, which she has received before, was only four hours of instruction per week, and resulted in significant academic, behavioral, and social regression.
9. My daughter is currently attending in person instruction because that is the only way that she will make progress in her education. She is too far behind to lose additional learning time.
10. I have significant anxiety that Governor Abbott's refusal to mandate masks in Texas schools may result in life-threatening consequences for our child. I wonder every day if I am making the right decision for her health and wellbeing.
11. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Katy, Texas.

K.P.

Exhibit M

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF K.P.

COMES NOW, K.P. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is K.P., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of M.P., my eleven-year-old daughter who was born with Down syndrome.
3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.

4. M.P. attends Fort Bend School District, where she receives supports, services and accommodations. We live in Fort Bend County.
5. Her treating doctors and specialists have informed me that my child is at high risk for severe complications due to COVID-19 infection. They highly recommend wearing masks in public indoor spaces. In order to decrease her risk, she and everyone around her should observe strict COVID-19 safety protocols and wear a mask indoors. No one can guarantee her safety.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. My daughter is currently attending in person instruction because the school district is not currently providing virtual instruction, and my family has been given no other option. Every day, my husband and I endure significant anxiety that Governor Abbott's refusal to mandate masks in Texas schools may result in life-threatening consequences for our child.
8. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Sugar Land, Texas.

K.P.

Exhibit N

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF M.M.

COMES NOW, M.M. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is M.M., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of E.S., my seven-year-old daughter who has moderate to severe asthma. At school, she has an asthma plan, and we have met with a pulmonologist to determine

how to adequately control E.S.'s asthma, which sent her to the emergency room as recently as April of this year.

3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. E.S. attends Killeen Independent School District. We live in Bell County.
5. Her treating doctors and specialists have informed me that it is dangerous for her to return to brick-and-mortar school without precautions such as requiring everyone to follow the recommended CDC guidelines of mandatory masking and regular testing in schools.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. E.S. struggled considerably during virtual instruction because she missed being around her same-aged peers and had significant difficulty remaining focused.
8. My daughter has started the school year in person, but I have significant anxiety that she may contract COVID-19. I went to a back-to-school meeting last week, where only one teacher was wearing a mask, no one was social distancing, and the majority of the students and parents were not wearing masks.
9. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Harker Heights, Texas.

M.M.

Exhibit O

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF R.G.

COMES NOW, R.G. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is R.G., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of J.G., my seven-year-old daughter who has a weakened immune system due to receiving a heart transplant.
3. Because my daughter is under age 12, she is not eligible to receive any of the currently authorized COVID-19 vaccines.

4. Prior to the COVID-19 pandemic, she had 20 inpatient hospitalizations for the treatment of infectious diseases, including but not limited to rhinovirus, human metapneumovirus, parainfluenza, rotavirus, and adenovirus.
5. J.G. attends Lamar Consolidated Independent School District in Fort Bend County, where she receives supports, services and accommodations.
6. Her treating doctors and specialists have informed me that it is dangerous for her to return to brick-and-mortar school without everyone following precautions such as the recommended CDC guidelines regarding reducing the transmission of COVID-19, which includes mandatory masking.
7. This school year J.G. is repeating first grade because virtual instruction could not accommodate all of her disabilities. She also has been diagnosed with attention deficit hyperactivity disorder and dyslexia.
8. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
9. If Governor Abbott and Lamar Consolidated Independent School District do not change their minds and require masks in schools, J.G. will have to participate in homebound services, which is only four hours of instruction per week. Given that she has already lost a year of school due to virtual instruction's inability to meet her disability needs, I fear she will fall even further behind.
10. In addition, my child has significant anxiety that she could be hospitalized once more if she contracts COVID-19. My other son worries that he could bring COVID-19 home to his sister if he attends school in person.
11. I am seeking a reinstatement of a "full panoply of services" for my daughter including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Sugar Land, Texas.

R.G.

Exhibit P

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS; MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF R.M.

COMES NOW, R.M. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

- 1. My name is R.M., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of H.M., my eight-year-old son who has Down syndrome, a history of bronchomalacia, and a heart defect.

3. Because my son is under age 12, he is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. H.M. attends Leander Independent School District, where he receives supports, services and accommodations. We live in Travis County.
5. His treating doctors and specialists have informed me that my child is at high risk for severe complications if he contracts a COVID-19 infection. They highly recommend wearing masks in public indoor spaces. In order to decrease his risk, he and everyone around him should observe strict COVID-19 safety protocols and wear a mask indoors. No one can guarantee his safety.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. Last school year, H.M. could not access his education through virtual instruction because children with Down syndrome tend to be visual rather than verbal learners, and unfortunately, visual instruction is near impossible to accommodate for a student with Down syndrome in a remote setting. H.M. has regressed in a number of areas, even with significant parental involvement in both curriculum development and dedicated learning time.
8. In particular, H.M. experienced significant expressive communication regression since he did not have every day access to his peers at school. This summer I enrolled him in a costly intervention program to address the multiple areas of substantial regression.
9. I am extremely nervous about sending H.M. to school for in person instruction and the thought that he might contract COVID-19. Recently, due to stress, I have had difficulty sleeping and have experienced debilitating spells of anxiety. I don't know if I am doing the right thing but I also don't have a choice because of Governor Abbott's order.
10. I am seeking a reinstatement of a "full panoply of services" for my son including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Austin, Texas.

R.M.

Exhibit Q

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS; MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF S.P.

COMES NOW, S.P. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

- 1. My name is S.P., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of S.P., my eight-year-old son who has been diagnosed with spina bifida, attention deficit hyperactivity disorder, epilepsy, and bronchiectasis, which is a chronic respiratory condition.

3. Because my son is under age 12, he is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. S.P. attends Richardson Independent School District, where he receives supports, services and accommodations. We live in Dallas County.
5. His treating doctors and specialists have informed me that it is dangerous for him to return to brick-and-mortar school without such precautions as requiring that everyone follow the recommended CDC guidelines regarding reducing COVID-19 transmission. Before the recent spread of the Delta variant, his doctors stated it was safe to return to in-person instruction as long as universal masking practices were in place.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. Given his learning and attention challenges, he suffered academically during virtual instruction last school year, and as a result, he is significantly behind in core grade level skills such as reading and math. He cannot afford, academically or developmentally, to do another year of virtual school.
8. My husband and I feel like we have to choose between S.P.'s education and his health. No parent should be forced to make a decision like this.
9. I am seeking a reinstatement of a "full panoply of services" for my son including but not limited to requirements for every person at my child's school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at Richardson, Texas.

S.P.

Exhibit R

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends.

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS;
MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

DECLARATION OF Y.V.

COMES NOW, Y.V. and pursuant to 28 U.S.C. § 1748, declares under penalty of perjury that the foregoing is true and correct:

1. My name is Y.V., and I am over 18 years old and have personal knowledge of the facts as stated herein.
2. I am the mother of J.P.V., my eleven-year-old son who has been diagnosed with muscular disorders and moderate to severe asthma.

3. Because my son is under age 12, he is not eligible to receive any of the currently authorized COVID-19 vaccines.
4. J.P.V. attends IDEA Public Schools, where he has a 504 plan. We live in Hidalgo County.
5. His treating doctors and specialists have informed me that my child is at high risk for severe and possibly life-threatening complications if he contracts a COVID-19 infection. In order to decrease his risk, he and everyone around him should observe strict COVID-19 safety protocols and wear a mask indoors.
6. The Texas Virtual School Network or other online programs do not provide the necessary supports, services and accommodations, including direct instruction and socialization with peers.
7. Without universal masking, the only option available to me, according to school officials, is to withdraw my son and homeschool him. This option will result in my son falling further behind academically, behaviorally, and socially.
8. I am seeking a reinstatement of a “full panoply of services” for my son including but not limited to requirements for every person at my child’s school to follow CDC guidelines, which would, *inter alia*, require the wearing of masks in schools.

I swear under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of August 2021, at McAllen, Texas.

Y.V.

Exhibit S



WASKOM

Independent School District

Elementary School Closure

© Posted Date: 08/15/2021

Dear Waskom Families,

Due to the number of staff members out with COVID, Waskom Elementary will be closing August 16th-20th, 2021. We feel this is the best decision to protect our students, staff, and community during this time. I do apologize for the inconvenience this late notice may cause. The staff has contacted us throughout the weekend and there is no way to staff our elementary school at this time. Thank you for your patience and understanding while we get through this period. We encourage each of you to stay safe and help us get back into school next week. The WES staff will not report to work this week while we deep clean the building. Waskom Elementary will use the minutes in the calendar that we have banked to cover this time off. At this time, these days will not be required to be made up. However, if we have to close the elementary school again, the time will need to be made up during the school year or at the start of summer. There will be no remote learning offered at the elementary campus this week. The safety of our Wildcats is the main focus at this time.

Waskom Middle School and Waskom High School campuses will resume as normal.

Again, thank you for your patience and understanding.

Rae Ann Patty Superintendent

Exhibit T



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Bloomburg ISD

August 15 at 8:11 AM ·

School Closure

DUE TO THE NUMBER OF STAFF MEMBERS OUT WITH COVID, BLOOMBURG ISD WILL BE CLOSING **8/16-8/20**. WE FEEL THIS IS THE BEST DECISION TO PROTECT OUR STUDENTS, STAFF AND COMMUNITY DURING THIS TIME. WE WILL BE USING STATE PROVIDED COVID DAYS SO WE WILL NOT HAVE TO MAKE UP THIS WEEK. WE APPRECIATE SUPPORT FROM OUR LOCAL SCHOOL BOARD AND WE SINCERELY APOLOGIZE FOR ANY INCONVENIENCES.

School Closure



Bloomburg ISD Education

5

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Bloomburg, TX, TX 75556

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Miss Teresa's Pre-K
Education



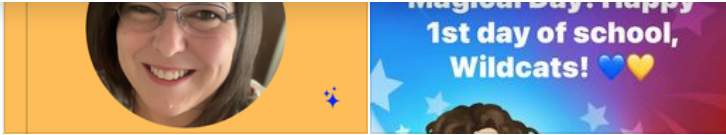
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Exhibit U

Gorman High School
Gorman Middle School
P.O. Box 8
(2 54) 734-3171
FAX (2 5 4) 734-3425



Maxfield Elementary School
P.O. Box 8
(254) 734-3 171
FAX (2 54) 734-3445

GORMAN INDEPENDENT SCHOOL DISTRICT

P.O. Box 8 114 W Lexington Gorman, Texas 76454

Administration Office
(254) 734-3 171
FAX (254) 734-3393

Dear Parents,

Due to positive COVID cases within the school community of both faculty and students, Gorman ISD will delay the beginning of school until next Wednesday, August 25th. This decision was not made lightly or quickly, and it was made with the best interest of all students, staff, and parents safety in mind. I am disappointed that we will not be able to see our students for another week, but I do believe that this is the safest course of action to take.

Similarly, the open house for tonight will be cancelled and will be rescheduled.

I apologize for any inconvenience.

Sincerely,
Mike Winter
Superintendent

Exhibit V

Iraan-Sheffield Independent School District

Dr. Tracy Canter- Superintendent

Excellence: Every Student, Every Classroom, Every Day

Melissa Hanna – Business Manager
Paul Armstrong – Principal, Iraan High School
Amy Frazier – Principal, Iraan Elementary
Patina Crowder – CTE/PTECH Program Coordinator
Berry Bowman – Head Coach, Athletic Director

August 16, 2021

Board of Trustees
Margaret Holmes - President
Tory Cox - Vice President
Blake Andrews - Secretary
Cody Strube
Jeffery McMahon
Jodi Cravens
Ollie Schneemann

Students, Staff and Community,

Our ISISD Leadership Team has made the determination that we will need to quarantine for the next two weeks. This decision was made to ensure the safety of our students and staff; as well as to make certain that we have appropriate staff available for each campus. We are currently working with the ISISD team and TEA on alternative plans, if appropriate. If we are able to return sooner or provide additional at home support, that information will be forthcoming. However, at this time, we will not have virtual or remote learning. During this time, teachers and staff will be available daily via email.

ISISD will meet the minimum requirement of 75,600 instructional minutes, as required per House Bill 2610. Iraan-Sheffield has built an additional 3,885 extra minutes into the 2021-2022 School Calendar. The previous early release days on September 10, 2021 and October 8, 2021 will no longer be early release and students will attend school to the end of the school day.

Currently, we will close the schools from Tuesday, August 17 and reopen Monday, August 30. However, if we are able to open up one, or all campuses sooner, we will do so. We will keep you informed as this situation may evolve and change with new information or guidance.

Please ensure that students are truly taking this opportunity to quarantine. This means that students and staff will quarantine only with immediate family. They should not be out and about in the community or hanging out with friends. The only way that this will work is if everyone does their part.

We encourage and highly recommend the regular use of face masks/ coverings, washing hands regularly, and social distancing. Please see the CDC Guidance for COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

We know that this is difficult for everyone involved and we thank you for your support and patience during this unprecedented time.

Thank you,



Dr. Tracy Canter
Superintendent of Schools

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

E.T., by and through her parents and next friends; D.D., by and through her parents and next friends; E.R., by and through her parents and next friends; J.R., by and through her parents and next friends; H.M., by and through her parents and next friends; N.C., by and through her parents and next friends; J.G., by and through her parents and next friends; E.S., by and through her parents and next friends; M.P., by and through her parents and next friends; S.P., by and through her parents and next friends; R.S., by and through her parents and next friends; J.V., by and through her parents and next friends; H.P., by and through her parents and next friends; and A.M., by and through her parents and next friends,

Civil Action No. 1:21-cv-00717

Plaintiffs,

v.

GOVERNOR GREG ABBOTT, in his official capacity as GOVERNOR OF TEXAS; MIKE MORATH, in his official capacity as the COMMISSIONER of the TEXAS EDUCATION AGENCY; and the TEXAS EDUCATION AGENCY,

Defendants.

ORDER GRANTING PLAINTIFFS’ EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pending before the Court is Plaintiffs’ Emergency Motion for Temporary Restraining Order and Preliminary Injunction (“TRO”) filed on August 18, 2021. (Dkt. No. __).

Having considered the briefing, the applicable law, and all matters properly before the Court, the Court finds that Plaintiffs have clearly showed that immediate and irreparable injury, loss, or damage will result to Plaintiffs if Defendants Governor Greg Abbott’s (“Governor

Abbott”), Texas Education Agency Commissioner Mike Morath’s, and the Texas Education Agency’s (“TEA”) (“Defendants”) acts are not immediately restrained. Further, the Court finds that Plaintiffs have made a proper showing of (1) a substantial likelihood of success on the merits; (2) a substantial threat that failure to grant the TRO will result in irreparable injury to the moving party; (3) the threatened injury outweighs any damages the injunction may cause Defendants; and (4) the injunction is in the public interest. *See Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014); *Mayo Found. for Med. Educ. & Research v. BP Am. Prod. Co.*, No. 2:20-CV-34-Z, 2020 WL 759212, at *2 (N.D. Tex. Feb. 14, 2020).

The Court finds that Plaintiffs have made a clear showing of irreparable harm in two ways. First, Plaintiffs are likely to suffer irreparable injury if Governor Abbott’s Executive Order GA-38 (“Executive Order GA-38”) and the TEA’s August 5, 2021 Public Health Guidance (“TEA Guidance”) are enforced because the first day of school has either already begun or is about to begin within the next two weeks, and under Executive Order GA-38 and the TEA Guidance, schools are prohibited from requiring face coverings. Without the ability for the school districts to implement a mask policy, Plaintiffs will be exposed to an increased risk of infection, hospitalization, or death because of COVID-19 or otherwise be forced to stay home and be denied the benefits of an in-person public education. Second, Plaintiffs are particularly vulnerable to COVID-19 due to their medical conditions and because they remain ineligible to receive the vaccine due to being under the age of 12 years old. Plaintiffs’ exposure to a life-threatening virus that may cause lifelong complications is an irreparable harm incapable of being adequately remedied at law with money damages. *See Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975); *Peregrino Guevara v. Witte*, Case No. 6:20-CV-01200, 2020 WL 6940814, at *8 (W.D. La. Nov. 17, 2020) (noting that “[i]t is difficult to dispute that an elevated risk of contracting COVID-19

poses a threat of irreparable harm”). Moreover, a temporary restraining order is necessary to prevent Plaintiffs from suffering the irreparable injuries described in this paragraph during the period between the entry of this order and the preliminary injunction hearing set below.

IT IS THEREFORE ORDERED, to avoid irreparable harm and maintain the status quo, Plaintiffs’ Emergency Motion for Temporary Restraining Order and Preliminary Injunction is **GRANTED**, and Defendants, Defendants’ officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with Defendants are hereby temporarily restrained and enjoined from implementing, giving any effect to, imposing any fines or withholding any funding in connection with, or bringing any legal actions to enforce Paragraphs 3(b), 3(e), 3(g), and 4 of Executive Order GA-38 and the TEA Guidance as to public schools or school districts, which provide in relevant part:

- that “no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering,” (ECF No. 1, Ex. A at ¶ 3(b)),
- that “[p]ublic schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency,” to the extent that it requires public schools to follow TEA Guidance that “school systems cannot require students or staff to wear a mask,” (ECF No. 1, Ex. A at 3(e); ECF No. 1, Ex. B),
- that Paragraph 3 of Executive Order GA-38 “supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders,” (ECF No. 1, Ex. A at 3(g)),

- that “the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a ‘failure to comply with’ [Executive Order GA-38] that is subject to a fine up to \$1,000,” (ECF No. 1, Ex. A at ¶ 3(g)),
- that “no governmental entity can mandate masks,” (ECF No. 1, Ex. A at ¶ 4),
- that “[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering,” (ECF No. 1, Ex. A at ¶ 4(a)),
- that Paragraph 4 of Executive Order GA-38 “shall supersede any face-covering requirement imposed by any local governmental entity or official,” (ECF No. 1, Ex. A at ¶ 4(b)),
- that “[t]o the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements,” Governor “suspend[s]” certain sections of the Texas Government Code, the Texas Health and Safety Code, the Texas Local Government Code, and “[a]ny other statute invoked by any local governmental entity or official in support of a face-covering requirement,” (ECF No. 1, Ex. A at ¶ 4(b)),
- that “the imposition of any such face-covering requirement by a local governmental entity or official constitutes a ‘failure to comply with’ [Executive Order GA-38] that is subject to a fine up to \$1,000,” (ECF No. 1, Ex. A at ¶ 4(b)), and
- that “face coverings cannot be mandated by any governmental entity,” (ECF No. 1, Ex. A at ¶ 4(b)).

IT IS FURTHER ORDERED that the required bond or security to be posted by Plaintiffs under rule 65(c) of the Federal Rules of Civil Procedure are waived.

IT IS FURTHER ORDERED that a hearing on hearing is set on Plaintiff's request for a preliminary injunction is set before this court on _____, ____ 2021 at ____:____ __. m.

IT IS FINALLY ORDERED that, unless extended, this temporary restraining order will expire 14 days after its entry.

SIGNED this August 18, 2021 at ____:____ p.m.

THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE