

Orange County Board of Education



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200 Kalmus Drive
Costa Mesa, CA 92628-9050

Orange County Board of Education Approves Suit Challenging Governor Newsom’s Authority to Suspend Normal Administrative Rule Making and to Mandate Masking of Children in Public Schools

The Governor and his executive agencies, by emergency fiat that violates state constitutional and statutory law, threaten to extend and compound the harm to California’s children previously caused by prior school closures and unwarranted masking requirements

Costa Mesa, Calif., (August 3, 2021) – The Orange County Board of Education, in a special meeting today, voted to approve a legal challenge to Governor Newsom’s ongoing assertion of emergency rule making powers due to COVID-19, the latest exercise of which has resulted in an edict approximately two weeks ago, and updated yesterday, requiring K-12 children to wear masks indoors at school for the upcoming school year.

Part of the Board’s role is to promote and facilitate the quality of public education for the students and families of Orange County. In keeping with this, the Board recognizes the importance of parental involvement in our education system, of school choice, and of putting the interests of the child first. Above all, the Board also recognizes the importance of keeping our children safe at school and free from policies or practices that will cause them harm. When necessary, the Board will fight to protect the health, safety, and welfare of our county’s kids at school. Unfortunately, with the Governor’s most recent action to force Orange County’s children, even those as young as 5 and 6 years old, to endure an academic year covering their faces for hours on end, the time to fight has come again.

Putting aside for the moment the lack of a sound medical or scientific basis for the Governor’s requirement to mask school children (who in general are neither at risk from COVID-19 nor likely to spread it), and also putting aside the lack of any thoughtful, well-considered and transparent balancing of the substantial harms of forced masking of juveniles against the purported benefits, the Governor and his state-level executive agencies do not have the power to continue the state of emergency indefinitely, and to continue to suspend the Administrative Procedure Act to circumvent normal agency rule making requirements. Indeed, the California Emergency Services Act (Cal. Gov’t Code Sec. 8629) requires the Governor to “proclaim the termination of a state of emergency *at the earliest possible date* that conditions warrant.”

On June 11, 2021, the Governor announced that actions of Californians over the prior 15 months “had successfully curbed the spread of COVID-19,” and he rescinded his “stay-at-home” order. But while conditions clearly warrant the end of the state of emergency, and the Governor effectively has announced as much, the Governor has refused to give up his emergency powers. And he has now misused that

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power in a way that threatens serious harm to Orange County's children. The Board has approved this challenge to protect our kids, and to uphold the rule of law and our constitutional framework of government and separation of powers.

The Board has approved the retention of counsel on a pro bono basis to bring this legal challenge. As a result, the Board's efforts in the litigation will not incur legal fees to Orange County's taxpayers.

About the Orange County Board of Education: The Orange County Board of Education consists of five lay members who represent the five trustee areas of the Orange County. Board members are elected for a four-year term by the electors of the trustee area which they represent. From among its members, the Board elects a president, vice president and a board clerk. The Board has as its *ex officio* secretary and executive officer the Orange County Superintendent of Schools, who is publically elected for a four-year term.

The Board and Superintendent, as co-governing entities of the county office of education, provide educational opportunities and support for Orange County students, promote student achievement, and offer leadership, services, and resources for Orange County school districts, educators, and the community.

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