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February 4, 2022

*Via Email to Counsel*
Council Bluffs Community School District
300 W. Broadway
Council Bluffs, Iowa 51503

      Re:     Reasonable Modification for V.M.H.
                *Arc of Iowa v. Reynolds*, Nos. 21-cv-264 & 21-3268

Dear Counsel:

We write regarding Council Bluffs Community School District's decision to lift masking requirements in light of the Eighth Circuit's decision in *Arc of Iowa v. Reynolds*, a case in which you are a defendant. The ACLU of Iowa represents V.M.H, a three-year old child who is one of the plaintiffs in this suit and a student in your district. We believe your recent action, which the District reaffirmed as recently as February 1, is contrary to the decision of the Court.

The Eighth Circuit affirmed a continued injunction against your school. It said "mask requirements constitute a reasonable modification" and a school's failure to provide this modification likely violates the Rehabilitation Act. *Arc of Iowa v. Reynolds*, No. 21-3268, 2022 WL 211215 at * 9, *11 (Jan. 25, 2022 8th Cir.). Following the Eighth Circuit's order, Iowa is continuing to not enforce the mask mandate ban contained in section 28 of House File 847. 2021 Iowa Acts ch. 139, § 28 (codified at Iowa Code § 280.31).

V.M.H. has been diagnosed with heart disease, periventricular leukomalacia, autism, cerebral palsy, cortical digital impairments, and optic nerve hypoplasia. V.M.H.'s doctor has told V.M.H.'s parents that V.M.H should be surrounded by masked students and staff at school to reduce their risk of contracting COVID-19. Council Bluffs Community Schools has assigned V.M.H to Longfellow Elementary School.

Based on the legal force of the Eighth Circuit's opinion, we fully expect that the Council Bluffs Community School District will restore masking at Longfellow Elementary School.

We also expect the Council Bluffs Community School District to begin the process of requiring masking in schools across the entire district as needed to ensure equal access to education for students with disabilities. It is difficult, after all, to imagine that schools in the district "encounter no one with disabilities that require masks as a reasonable accommodation." *Arc of Iowa*, No. 21-3268 at *13.  Most, if not all, of your schools will have information on record that one or more students has a condition listed by the Centers for

Disease Control that create an increased risk from COVID-19.  (These include common conditions such as moderate to severe asthma and diabetes, to less common, but still prevalent conditions such as cystic fibrosis and immune disorders.)  Having that information on record puts your schools on notice that they have obligations under section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.  Schools should be working with these students to develop the reasonable accommodations, including masking, that will protect their health and ensure equal access to their education.

We remind you that the court found that masking is not a fundamental alteration in the nature of the program, nor an undue financial or administrative burden – the only defenses available.

We are available by phone to discuss any of the above further. We are happy to provide technical assistance.

Should we not hear from you in a week, we will consider further action, including litigation, to ensure your obligations under federal civil rights statutes are being met.

Sincerely,

**Rita Bettis Austen**
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