

February 4, 2022

Page 1



Iowa

505 Fifth Avenue
Suite 808
Des Moines, IA 50309
(515) 243-3576
www.aclu-ia.org

February 4, 2022

Via Email to Counsel

Johnston Community School District
6510 NW 62nd Ave.
Johnston, Iowa 50131

Re: Reasonable Modification for C.B.
Arc of Iowa v. Reynolds, Nos. 21-cv-264 & 21-3268

Dear Counsel:

We write regarding Johnston Community School District's November 30, 2021 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 C.B., a eleven-year old child who is one of the plaintiffs in this suit and a student in your district. We believe your recent action 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).

C.B. is eleven years old and has been diagnosed with moderate to severe asthma. C.B.'s doctor has told C.B.'s parents that C.B. should be surrounded by masked students and staff at school to reduce their risk of contracting COVID-19. Johnston Community Schools has assigned C.B. to Summit Middle School.

Based on the legal force of the Eighth Circuit's opinion, we fully expect that the Johnston Community School District will restore masking at Summit Middle School immediately.

We also expect the Johnston 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



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Disability Rights Program
39 Drumm Street
San Francisco, CA 94111
p. (415) 343-0769
f. (415) 395-0950

National Office
125 Broad Street
18th Floor
New York NY 10014
(212) 549-2660

February 4, 2022

Page 2

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

Legal Director

American Civil Liberties Union of Iowa Foundation, Inc.

505 Fifth Ave., Ste. 808

Des Moines, IA 50309

Telephone: (515) 207-0567

Email: Rita.Bettis@aclu-ia.org

Susan Mizner

Director

Disability Rights Program, American Civil Liberties Union

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 343-0781

Email: smizner@aclu.org