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Via Email to Counsel
Davenport Community Schools
1702 N. Main St.
Davenport, IA 52803

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

Dear Counsel:

I write regarding Davenport Community Schools' January 25, 2022 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 K.G., a six-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).

Davenport Community Schools Superintendent TJ Schneckloth indicated on January 25, 2022 that he understands his legal obligations under the Eighth Circuit's order. Specifically, he said that the district is "proactively looking for areas" for masking where needed for "students with disabilities."¹ Schneckloth further noted that the Eighth Circuit's decision "did not" eliminate the district's obligation under federal disability law to provide the reasonable modification of masking to disabled students.²

K.G. has moderate to severe asthma, a disability that puts him at a heightened risk of serious illness due to COVID-19. His doctor has told K.G.'s parents that he should be surrounded by masked students and staff at school to reduce his risk of contracting COVID-19. Davenport Community Schools has assigned K.G. to Adams Elementary.

Based on both the legal force of the Eighth Circuit's opinion and

¹ Brian Weckerly, *Local 4 exclusive: Davenport Schools' superintendent talks mask mandates*, QuadCities.com (Jan. 26, 2022), <https://www.ourquadcities.com/news/local-news/local-4-exclusive-davenport-schools-superintendent-talks-mask-mandates/>.

² *Id.*



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Superintendent Schneckloth's recent comments, we fully expect that the Davenport Community Schools will restore masking at Adams Elementary immediately.

We also expect Davenport Community Schools 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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