Dear U.S. Department of Education, Office for Civil Rights (OCR):

Below please find the following disability discrimination complaint.

1. Name of person filing this complaint:

Last Name: Click or tap here to enter text. First Name: Click or tap here to enter text. Middle Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

City: Click or tap here to enter text.

State: Click or tap here to enter text.

Zip Code: Click or tap here to enter text.

Home Telephone: Click or tap here to enter text.

Work Telephone: Click or tap here to enter text.

E-mail Address: Click or tap here to enter text.

2. Name of Student discriminated against (if other than person filing).

Last Name: Click or tap here to enter text. First Name: Click or tap here to enter text. Middle Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

City: Click or tap here to enter text.

State: Click or tap here to enter text.

Zip Code: Click or tap here to enter text.

Home Telephone: Click or tap here to enter text.

Work Telephone: Click or tap here to enter text.

E-mail Address: Click or tap here to enter text.

(Student will be referred to as “Student” in the body of the Complaint.)

Name of School District: Click or tap here to enter text.

Address of School District:Click or tap here to enter text.

District Phone Number: Click or tap here to enter text.

Name of School: Click or tap here to enter text.

Address of School: Click or tap here to enter text.

City: Click or tap here to enter text.

State: Click or tap here to enter text.

Zip Code: Click or tap here to enter text.

School Phone Number: Click or tap here to enter text.

(The School District will be referred to as the “District” and the School will be referred to as “School” in the body of the Complaint.)

**Background**

Student is a person with a disability as defined by Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA). Student has Click or tap here to enter text. that substantially impacts the major life activity/major bodily function of Click or tap here to enter text.

*Example: Student is a person with Downs Syndrome and that mental impairment substantially impacts the major life activities of brain function, learning, communicating, and caring for oneself.*

Student is at higher risk of contracting COVID-19 and/or having serious health complications if they contract the virus. The District currently has the following mask and COVID-related policies in place [check all that apply]:

[ ] Masks are not permitted for students or staff.

[ ] Masks are permitted but not required for students in any setting.

[ ] Masks are permitted but not required for staff in any setting.

[ ] Masks are required for unvaccinated staff indoors and outdoors.

[ ] Masks are required for unvaccinated students indoors and outdoors.

[ ] Masks are required for unvaccinated staff indoors.

[ ] Masks are required for unvaccinated students indoors.

[ ] Masks are required for staff indoors and outdoors, regardless of vaccination status.

[ ] Masks are required for students indoors and outdoors, regardless of vaccination status.

[ ] Masks are required for staff indoors, regardless of vaccination status.

[ ] Masks are required for students indoors, regardless of vaccination status.

[ ] Enhanced cleaning and sanitation protocols in classroom.

[ ] Seating students 6 feet apart when indoors.

[ ] COVID testing is required for students and/or staff.

[ ] Other: Click or tap here to enter text.

Due to student’s disability-related needs, on Click or tap to enter a date. I asked Click or tap here to enter text. to make reasonable modifications to the policy to ensure that my child can safety participate in the educational environment and receive a Free and Appropriate Public Education (FAPE).

I requested the following:

Click or tap here to enter text.

Click or tap here to enter text. responded that, due to state law or District policy prohibiting masks requirements, Choose an item. cannot require masks at school.

Use the space below to include any additional rationale provided by the District and/or School:

Click or tap here to enter text.

Because Click or tap here to enter text. are not required to wear masks, Click or tap here to enter text. Student is being denied equal access to an education as compared to their non-disabled classmates.

*Example: Principal Anderson responded that, due to state law prohibiting mask requirements, he cannot require Student’s classroom aide Monica Smith or other students to wear masks at school. Because Monica and the other students are not required to wear masks, Student has been unable to participate in class in-person, and has instead been staying home and completing homework packets without teacher instruction.*

Use the space below to include any relevant facts of retaliation against student and/or parent as a result of advocating for masking requirement:

Click or tap here to enter text.

*Example: When classroom aide Monica learned that I had asked the principal to require her to wear a mask when indoors working with Student, she told Student that she’ll never wear a mask and stopped providing daily feedback about his behavior in his communication log, as required in his Individualized Education Plan (IEP).*

**Relevant Law**

Section 504 and Title II of the ADA prohibit discrimination against persons with disabilities. Discrimination under Section 504 includes denying a person with a disability the opportunity to participate in a program or service, or affording them an opportunity to participate that is not equal to that afforded to others. 34 C.F.R. §104.4(b)(1)(i-ii). Additionally, Section 504 requires recipients of federal funds, such as school districts, to provide a Free and Appropriate Public Education (FAPE) to students with disabilities. An “appropriate education” is defined as “the provision of regular or special education and related aids and services that are designed to meet the individual needs of handicapped persons as adequately as the needs of non-handicapped persons are met...” 34 C.F.R. § 104.33(b)(1).

Title II of the ADA contains similar antidiscrimination protections. *See* U.S Department of Education, Office for Civil Rights, Disability Discrimination: Frequently Asked Questions, *available at*: https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/disability.html (noting that, [i]n general, Section 504 and Title II nondiscrimination standards are the same, and in general, actions that violate Section 504 also violate Title II.) Title II requires public entities, such as school districts, to make reasonable modifications in policies, practices, or procedures, when doing so is necessary to avoid disability discrimination, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

Here, the District failed and continues to fail to provide students with disabilities who are at higher-risk of complications from COVID-19 with an equal opportunity to benefit from the educational environment by failing to take steps, such as requiring masking, that enable these students to be safer within the educational environment. Additionally, the District’s failure to modify its policy against mandating masking, in order to avoid discrimination, violates Title II of the ADA.

Supporting documents: I have attached the following documents in support of this complaint: Click or tap here to enter text.

*Examples: email to principal regarding request for masks in class, texts from aid regarding refusal to wear mask, note from Student’s doctor regarding why he needs classmates to wear a mask.*

**Requested Resolution of this Matter**

I ask that the Office for Civil Rights investigate this complaint. Additionally, to resolve this matter, I ask that the District:

1) Create or revise its policies to require Staff and Students to wear masks when needed to ensure FAPE and/or as a reasonable accommodation due to a student or staff member’s disability indoors and in other circumstances where social distancing cannot be maintained.

2) Create or revise policies to ensure that masking policies are enforced, as consistent with ongoing non-discrimination obligations;

2) Disseminate this revised or new policy to students and staff via e-mail, on-line portal, or other mechanisms to ensure notice to all district schools; and

3) Train staff on the policy change;

4) Add an accommodation to Student's IEP or 504 plan that requires staff and other students to be masked when in close contact with Student;

5) Any other relief that OCR deems appropriate.

6) Other:Click or tap here to enter text.

**Advocacy Efforts Taken**

I have filed an internal grievance with the school district. Choose an item.

I have filed an administrative complaint with another state or federal agency.

 Choose an item.

I have filed a lawsuit in state or federal court regarding this matter. Choose an item.

Thank you again for your attention to this matter. If you have any questions, please feel free to contact me at: Click or tap here to enter text.

Sincerely,

Click or tap here to enter text.