

Seaman v. Virginia -- Federal Court Issues Preliminary Injunction against Virginia in School Mask Mandate Case

On March 23, 2022, the federal District Court for the Western District of Virginia issued a legal opinion and order as relates to masking requirements in 10 Virginia school districts. Specifically, the Court found that Plaintiffs, who are students with disabilities that put them at high risk of severe disease if they contract COVID-19, have the right to request reasonable modifications from their schools, which may include requiring mask-wearing for students, even though state law otherwise prohibits schools from requiring masks. This new decision may assist you in seeking reasonable accommodations for your child whose disability puts them at high risk of severe disease from COVID-19.

To Whom Does the Order Apply?

The order is limited to requests made by the specific 12 plaintiffs who brought the case in 10 school districts (Albemarle County, Bedford County, Chesapeake, Chesterfield County, Cumberland County, Fairfax County, Henrico County, Loudoun County, Manassas City, and York County).

How Does This Affect My Child?

Although the order does not apply directly to students who were not a part of the lawsuit, the reasoning used by the court may extend to similar circumstances involving other students with disabilities that put them at high risk of severe disease from COVID. These disabilities include cancer, chronic lung disease, cystic fibrosis, diabetes, intellectual disabilities, and immunocompromises. The lawsuit provides a blueprint for parents to use in future lawsuits or discussions with the school system.

How Do I Request a Reasonable Modification of Masking Policy?

If your child is a student with a disability that puts them at high risk of severe disease from COVID if their peers do not wear masks, you may ask for a reasonable modification of masking policies under both the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Although requests for modification of masking policies are not required to be in writing, it may be best to submit it in writing in case there is ever a disagreement about the request. You should consider the following when making your request:

- Identify your child as a person with a disability;
- State that you are requesting accommodation under the ADA and Section 504. This request does not need to go through the IEP or 504 Plan process;
- Identify the specific, individualized needs of your child;
- Suggest an appropriate accommodation, which may include mask-wearing of other students and staff;
- Request that the school suggest an alternate accommodation if they find your suggestion unreasonable;
- Provide the school with medical documentation or a letter from your child's doctor(s) that supports your requested accommodation; and
- Request that the school respond to your request in a reasonable amount of time

If your school declines to accommodate your child the ACLU of Virginia would be interested in hearing from you. You can contact them at intake@acluva.org or <https://intake.acluva.org/>.