



# *New Mexico School Boards Association*

## **POLICY SERVICES ALERT**

**To: All Superintendents and Board Members**

**Date: January 6, 2022**

**From: John F. Kennedy, Policy Service Director**

**Re: Federal Court opinion upholding Oregon mask mandate**

On December 22<sup>nd</sup>, 2021 the United States District Court for the District of Oregon published a 31 page opinion which dismisses a parental challenge to the constitutionality of mask mandates in the public school district of North Wasco County, Oregon. Gunter et al. v. North Wasco County School District Board of Education et al., U.S. Dist. Court, District of Oregon, Case No. 3-21-cv-1661-YY.

The parents had claimed a variety of federal and state constitutional and statutory provisions were breached by the imposition of the mandate. As background, in August, 2021, the Oregon Health Authority, the state's health department, issued an administrative order requiring all public schools to require masks in all indoor school settings and activities. Exceptions for very young children, and medical and disability-related reasons were allowed. The North Wasco School Board adopted a local safe school return plan to implement the state mandate.

Parents objected to the local imposition of the mandate at public board meetings, asserting among other positions, that requiring students to be masked harms them medically, constitutes an unlawful physical restraint on the student, and the school's insistence on correct placement and wearing of masks constitutes practice of medicine without a license.

In an exhaustive analysis of the considerations which must be balanced against the parents' right to make educational, medical and other health care related decisions for their children, the court held that the mask mandate is warranted for several

reasons: to protect vulnerable individuals during a pandemic, to reduce school disruption when a positive COVID-19 case is confirmed and to prevent the spread of COVID-19. The federal court concluded that the State of Oregon and the local school board have legitimate public interests in all three of such considerations.

In reaching these conclusions, the federal court noted that its ruling follows at least seven other federal and state appellate court decisions, finding that there is a rational basis for school officials to implement mask mandates for indoor school activities.

This will certainly not be the last court challenge to public school mask mandates, but is presented to elaborate on the factors which courts will review when asked to overturn local board action adopting rules intended to address student, staff and community health and safety. Clearly, mask mandates are a current “hot button” issue facing school boards in New Mexico, which has become politicized in the media.

Local school boards exercise a “legislative” function when adopting policies and regulations governing local school programs and, so long as there is a rational basis underlying the policy or rule, it is likely to withstand a legal challenge. Of course, whenever your school board is threatened with legal action as to its actions and decisions, the local board should consult with its legal counsel for guidance.