



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2021

VIA EMAIL

Dr. Stephanie S. Elizalde
Superintendent, Austin ISD
4000 S. I-H 35 Frontage Rd.
Austin, TX 78704
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Dear Dr. Elizalde:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,



KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).