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August 13, 2021

The Honorable Merrick Garland, Secretary
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

The Honorable Miguel Cardona, Secretary
United States Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretaries Garland and Cardona:

Thank you for your service to our nation under President Biden's leadership to Build Back Better, as we all navigate the latest wave of the pandemic. I write with concerns about the right of children with disabilities in Florida to attend school safely. As you know, Title II of the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA) secures that students with disabilities have the right to a free and appropriate education in a regular educational environment and integrated with able bodied persons in all activities and services to the maximum extent appropriate.

I recently learned about a Florida parent, Judi Hayes, who claims that her 10-year-old son Will cannot safely attend school because of his Down syndrome and other underlying conditions¹. According to the American Academy of Pediatrics, children with intellectual or developmental disabilities, like Will, have a greater susceptibility to COVID-19 and statistically suffer more severe consequences from becoming infected with this virus². The school district's policy allowing parents to opt their children out of wearing a mask appears to follow a recent executive

¹ Alisha Ebrahimji. "Parents of Florida students with disabilities are taking a stand over masks. They're suing Gov. DeSantis." *CNN*. August 10, 2021. <https://www.cnn.com/2021/08/10/us/florida-mask-lawsuit-school-orlando-ada-trnd/index.html>

² Tinker SC, Cogswell ME, Peacock G, Ryerson AB. "Important Considerations for COVID-19 Vaccination of Children with Developmental Disabilities." *Pediatrics*. August 13, 2021. doi: 10.1542/peds.2021-053190 found at <https://pediatrics.aappublications.org/content/pediatrics/early/2021/07/15/peds.2021-053190.full.pdf>

order issued by Florida Governor Ron DeSantis, in which he orders new rules preventing mandatory masks in schools, emphasizing “parents’ right to make decisions regarding masking of their children in relation to COVID-19.”³ Given the unprecedented spread of the Delta variant throughout our state, I can see why Judi is upset!

Over 800 Florida doctors, including dozens of my constituents, have signed an open letter that includes a recommendation to allow school districts to take appropriate measures to keep all children safe, particularly those who have not been vaccinated⁴. They write, “[f]or children ineligible for a vaccine, the only protection they have against COVID-19 is for them to wear a mask, and for those around them to do the same.” Further, the American Academy of Pediatrics recommends that all students should wear face masks at school to prevent transmission of the virus and its variants, while noting lack of in-person learning has a disproportionate impact on students with disabilities⁵.

Any policy that gives individual parents the right to make students with disabilities unsafe at school would appear to violate Section 504 and the Americans with Disabilities Act as it would either shut these children out of school or force them into isolated environments. Given the roles of the Department of Justice and the Department of Education in enforcing these critical laws, I have two questions.

1. What steps are the Department of Justice and the Department of Education taking to protect the rights of students with disabilities to attend school safely?
2. Given the apparent discrepancy between Section 504 of the Americans with Disabilities Act and the governor’s executive order, what guidance would you give individual school districts that earnestly want to keep children safe in the classroom while protecting the rights of students with disabilities?

Thank you for your attention to these concerns and for all you do to protect the rights of students with disabilities.

Sincerely,



Charlie Crist
UNITED STATES CONGRESSMAN

³ Fla. Exec. Order No. 21-175 (Jul. 30, 2021)

⁴ Bernard Ashby, MD, Mona Mangat, MD, et al. “Florida Physicians: Repeal anti-mask laws, protect FL children.” *Committee to Protect Health Care*. August 13, 2021. <https://actionnetwork.org/forms/fl-physicians-repeal-anti-mask-laws-protect-children/>

⁵ American Academy of Pediatrics. “COVID-19 Guidance for Safe Schools.” July 18, 2021. <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>