

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

JANE DOE, a minor, by her mother and next friend JANE DOE 2;  
JOHN DOE, a minor by his mother and next friend JANE DOE 3

Plaintiff(s),

v.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1;  
PLATTE RIVER ACADEMY;  
DOUGLAS COUNTY;  
DOUGLAS COUNTY, BOARD OF COUNTY COMMISSIONERS;

Defendant(s).

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

---

Plaintiffs (“Jane Doe” and “John Doe,” collectively “Plaintiffs”) hereby respectfully file this action against Defendants Douglas County School District (“DCSD”), Platte River Academy (“PRA”), Douglas County, and Douglas County, Board of County Commissioners (“Board”) (collectively, “Defendants”) through the undersigned counsel of record Kishinevsky & Raykin, Attorneys at Law, and state on information and belief as follows. This action seeks appropriate declaratory and injunctive relief.

**JURISDICTION AND VENUE**

1. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Federal question jurisdiction arises under the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794).

2. This court has supplemental jurisdiction over the state-based claims under 28 U.S.C. 1367(a) as these claims arise out of the same transactions and occurrences.
3. Plaintiff JANE DOE is a resident of Douglas County, Colorado.
4. Plaintiff JOHN DOE is a resident of Douglas County, Colorado.
5. Defendant Douglas County School District is a school district in Douglas County, Colorado.
6. Defendant Platte River Academy is a public charter school of choice authorized by Douglas
7. Defendant Douglas County is a county in Colorado.
8. Defendant Douglas County Board of County Commissioners is the governing body for Douglas County and is located in Douglas County, Colorado.
9. The wrongful acts alleged by Plaintiffs occurred in whole or in part in Douglas County, Colorado.
10. Venue is proper in this court under 28 U.S.C. § 1391(b)(2).

### **FACTUAL ALLEGATIONS**

#### ***Plaintiffs require a mask mandate to enjoy equal access DCSD***

11. Plaintiff JANE DOE (“Jane”) is a sixth-grade student at PRA. Jane is eleven (11) years old.
12. Jane is not eligible for a COVID-19 vaccine, because no COVID-19 vaccine is currently authorized for use in children under twelve (12) years of age.
13. Jane is a student with disabilities.

14. Jane has been diagnosed with asthma. Jane's asthma substantially impairs her major life function of breathing.
15. Jane requires a daily inhaler morning and night. Jane requires a rescue inhaler before exercise. Jane keeps an inhaler at PRA.
16. Jane has been hospitalized on several occasions.
17. Jane's asthma attacks can be induced by illness. Exposure to COVID-19 could induce an asthma attack which could threaten Jane's health and life.
18. Jane requires a reasonable accommodation to ensure her equal access to PRA's educational programs.
19. A universal mask mandate for all students, staff, and visitors to PRA is a reasonable accommodation that ensures Jane equal access to PRA and its programs and activities.
20. Without a universal mask mandate, Jane suffers harm due to an increased risk of exposure to COVID-19, and consequently an increased risk of an asthma attack that could threaten her health and life.
21. Plaintiff JOHN DOE ("John") is a seventh-grade student in DCSD. John attends a neighborhood school in DCSD.
22. John has been diagnosed with Rosai-Dorfman disease, a rare type of disease in which histiocytes, a specific type of white blood cell, accumulate in bodily tissues, generally the lymph nodes. The disease is rare, and there is no established, widely accepted treatment. Patients with active Rosai-Dorfman disease require treatment with surgery, steroids, and/or chemotherapy.
23. John's diagnosis substantially impairs a major life activity, by substantially impairing his major bodily function of normal cell growth.

24. Viral infections, such as with the novel coronavirus that causes COVID-19, may trigger active Rosai-Dorfman to overproduce histiocytes in John.
25. John requires a reasonable accommodation to ensure his equal access to DCSD's educational programs.
26. A universal mask mandate for all students, staff, and visitors to DCSD schools is a reasonable accommodation that ensures John equal access to DCSD and its programs and activities.
27. Without a universal mask mandate, John suffers harm due to an increased risk of COVID-19, and consequently an increased risk that his Rosai-Dorfman disease will become active which could threaten his health and life.

***Douglas County and the Tri-County Health Department***

28. Colorado law requires each county by resolution of its board of county commissioners to establish and maintain a county public health agency or to participate in a district public health agency. C.R.S. § 25-1-506(1).
29. Colorado law permits any two or more contiguous counties to establish and maintain a district public health agency. *Id.*
30. Colorado law allows for the withdrawal of a county from a district public health agency subject to two requirements. First, a county may not withdraw from a district public health agency within two years of the formation of the district or the county joining the district. Second, a county may only withdraw from the district public health agency after providing one year's written notice given to the agency. C.R.S. § 25-1-513(2).

31. Douglas County joined the Tri-County Health Department (“TCHD”) in 1966.
32. TCHD is a district public health agency with the powers and duties established by Colorado law.
33. Along with Douglas County, Arapahoe County and Adams County participate in the TCHD.
34. Throughout the COVID-19 pandemic, the TCHD has exercised its authority under Colorado law as a district public health agency to issue and enforce public health orders to control and slow the spread of COVID-19.
35. Douglas County and the Board repeatedly clashed with TCHD regarding TCHD’s public health orders.
36. The frequent disagreements between TCHD and Douglas County and the Board came to a head in July 2020.
37. On July 10, 2020, Douglas County and the Board, through County Attorney Lance J. Ingalls (“Mr. Ingalls”), sent the statutorily required one-year written notice to TCHD that Douglas County intended to withdraw from TCHD, effective July 11, 2021.
38. Following this July 10 notice, TCHD continued to exercise its authority as a district public health agency, and its orders were in full force and effect in Douglas County.
39. Following the July 10 notice, Douglas County continued to discuss its position in the TCHD with the TCHD and Arapahoe County and Adams County.
40. Following discussions with Douglas County, TCHD announced that counties would be given the opportunity to opt out of COVID-19 public health orders, including orders related to the wearing of masks.

41. On November 10, 2020, Douglas County rescinded its July 10 notice that it was withdrawing from TCHD.
42. The November 10 letter from Mr. Ingalls in addition to explicitly stating that the July 10 notice of withdrawal is rescinded, also declared that Douglas County will remain in the TCHD through at least December 31, 2022.
43. At the start of the 2021-2022 school year, there was considerable confusion as to whether masks would be required for students in DCSD.
44. TCHD issued a mask mandate for students under 12 in childcare and school settings on August 17, 2021. The order took effect on August 23, 2021. The order also contained a provision to allow counties to opt out.
45. On August 19, 2021, prior to the August 17 order taking effect, Douglas County voted to opt out of the TCHD order.
46. PRA did not implement a mask mandate for students.
47. DSCD determined that it would continue to follow the TCHD order despite Douglas County's decision to opt out.
48. On August 24, Adams County voted to opt out of the August 17 TCHD order.
49. On August 30, 2021, TCHD rescinded its initial August 17 order and replaced it with a new public health order effective September 1, 2021. The new order requires all persons in schools to wear masks regardless of vaccination status and no longer provides counties within TCHD the option to opt out.
50. DSCD continued to implement and enforce a mask mandate consistent with the TCHD order.

51. On August 30, 2021, PRA informed students and parents that because TCHD had the legal authority to issue public health orders for Douglas County, it would be enforcing a mask mandate for all students, staff, and visitors consistent with the TCHD order.
52. Immediately upon issuance of the new August 30 public health order, Douglas County and the Board announced their opposition to the order and began work on plans to leave the TCHD.
53. On September 7, 2021, the Board agreed to form a new public health department and directed staff to create a formal resolution creating the new board of health for Douglas County.
54. On September 14, 2021, the Board approved the formal resolution establishing a new board of health for Douglas County.
55. It is the position of the Board and Douglas County that effective September 14, 2021, no TCHD public health orders are in effect in Douglas County.
56. The Board and Douglas County rely on the July 10 notice in an effort to satisfy their statutory obligation to provide TCHD with one-year written notice prior to withdrawal.
57. The July 10 notice was rescinded by letter dated November 10, 2020. No additional written notice to TCHD has been provided.
58. Douglas County and the Board have not complied with the one-year written notice requirement of C.R.S. § 25-1-513(2).
59. Despite the vote of the Board to form a new board of health for Douglas County, Douglas County is still a participant in TCHD. TCHD public health orders to control and slow the spread of COVID-19 have full force and effect in Douglas County.

60. PRA stopped enforcing the TCHD mask order. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

61. DCSD has not required PRA to comply with the TCHD mask order, despite having the authority to do so. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

62. DCSD has stopped enforcing the TCHD mask order. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

### CLAIMS FOR RELIEF

*First Claim For Relief:  
Violation of the ADA – Against all Defendants*

63. Plaintiffs reallege all other paragraphs as if fully set forth herein.

64. Plaintiffs are children with disabilities as defined by the Americans with Disabilities Act.

65. Plaintiffs' disabilities substantially impair major life functions and activities.

66. Plaintiffs require a universal mask mandate to safely enjoy equal access to PRA's and DCSD's educational programs and activities.

67. A universal mask mandate for school settings such as the TCHD public health order is a reasonable accommodation that provides Plaintiffs and students with disabilities equal access to PRA's and DCSD's programs and activities.

68. PRA's and DCSD's failure to enforce the TCHD universal mask mandate for school settings, increases Plaintiffs' potential exposure to COVID-19. Exposure to COVID-19 increases Plaintiffs' risk of illness that could threaten Plaintiffs' health and lives. PRA's and DCSD's failure to enforce the TCHD universal mask mandate for school settings violates the ADA. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**



69. DCSD's failure to ensure that PRA, a charter school authorized by DCSD, enforce the TCHD public health order likewise violates Jane's rights under the ADA. DCSD's failure to require PRA to issue and enforce a mask mandate deprives Jane of the equal opportunity to access PRA's educational programs and activities on the same basis as non-disabled students. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

70. Defendants Douglas County and Douglas County, Board of County Commissioners' unlawful actions in purporting to withdraw from TCHD and create a separate public health agency without providing the statutorily required one-year written notice, deprives Plaintiffs of the equal opportunity to access PRA's and DCSD's educational programs and activities on the same basis as non-disabled students. If Douglas County and the Board had complied with Colorado law and provided the required one-year notice, Plaintiffs would still be protected by the TCHD public health order while attending PRA and DCSD schools. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

*Second Claim for Relief:  
Violation of Section 504 – Against all Defendants*

71. Plaintiffs reallege all other paragraphs as if fully set forth herein.

72. Plaintiffs are students with a disabilities as defined by Section 504 of the Rehabilitation Act.

73. Plaintiffs' disabilities substantially impair major life functions and activities.

74. Plaintiffs require a universal mask mandate to safely enjoy equal access to PRA's and DCSD's educational programs and activities.

75. A universal mask mandate for school settings such as the TCHD public health order is a reasonable accommodation that provides Plaintiffs and students with disabilities equal access to PRA's and DCSD's programs and activities.
76. PRA's and DCSD's failure to enforce the TCHD universal mask mandate for school settings, increases Plaintiffs' potential exposure to COVID-19. Exposure to COVID-19 increases Plaintiffs' risk of suffering illness that could threaten Plaintiffs' health and lives. PRA's and DCSD's failure to enforce the TCHD universal mask mandate for school settings violates the ADA. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**
77. DCSD's failure to ensure that PRA, a charter school authorized by DCSD, enforce the TCHD public health order likewise violates Plaintiffs' rights under the ADA. DCSD's failure to require PRA to issue and enforce a mask mandate deprives Plaintiffs of the equal opportunity to access PRA's educational programs and activities on the same basis as non-disabled students. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**
78. Defendants Douglas County and Douglas County, Board of County Commissioners' unlawful actions in purporting to withdraw from TCHD and create a separate public health agency without providing the statutorily required one-year written notice, deprives Plaintiffs of the equal opportunity to access PRA's and DCSD's educational programs and activities on the same basis as non-disabled students. If Douglas County and the Board had complied with Colorado law and provided the required one-year notice, Plaintiffs would still be protected by the TCHD public health order. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

***Third Claim for Relief:  
Declaratory Judgment – Against all Defendants***

79. Plaintiff realleges all other paragraphs as if fully set forth herein. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

80. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, and Colo. R. Civ. P. 57, Plaintiff requests the Court declare the rights and legal relations of the parties.

81. Plaintiff seeks a declaratory judgment that:

- a. Douglas County is still a participant in the TCHD;
- b. TCHD’s “Public Health Order Requiring Facial Coverings for All Individuals Aged 2 Years and Older in Schools and Child Care Settings” is still in full force and effect in Douglas County.
- c. PRA’s and DCSD’s failure to enforce TCHD’s public health order violates Plaintiffs’ rights under federal laws -- the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**
- d. DCSD’s failure to require PRA to enforce a universal mask mandate, including TCHD’s public health order violates Plaintiff’s rights under federal laws – the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**
- e. Douglas County and Douglas County, Board of County Commissioners violated C.R.S. § 25-1-513(2) by purporting to withdraw from TCHD without the

statutorily required one-year written notice. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

- f. Douglas County's and Douglas County, Board of County Commissioners' unlawful actions in purporting to withdraw from TCHD without the statutorily required one-year written notice violates Plaintiff's rights under federal laws – the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, by causing PRA to cease to enforce a universal mask requirement. **(This has not happened yet. This part of the lawsuit is contingent upon this happening.)**

### REQUEST FOR RELIEF

82. Plaintiffs reallege all other paragraphs as if fully set forth herein.

83. Plaintiffs request that the Court enter judgment in their favor and against Defendants as follows:

- a. Plaintiffs request appropriate declaratory relief as described in Paragraphs 73-74.
- b. Plaintiffs request both preliminary and permanent injunctive relief as follows:
  - i. An injunction requiring Defendants PRA and DCSD to enforce TCHD's "Public Health Order Requiring Facial Coverings for All Individuals Aged 2 Years and Older in Schools and Child Care Settings."
  - ii. An injunction prohibiting Defendants Douglas County and the Board from taking actions that conflict with the lawful authority and lawfully issued public health orders of the TCHD.
- c. Awarding Plaintiffs costs and attorney fees.
- d. Awarding the Plaintiffs any additional and further relief that the Court finds equitable, appropriate, or just.

*s/ Igor Raykin* \_\_\_\_\_

Igor Raykin, Esq.  
Kishinevsky & Raykin, Attorneys at Law  
2851 South Parker Road, Suite 150  
Aurora, CO 80014  
Telephone: (720) 767-1846  
E-mail: [igor@coloradolawteam.com](mailto:igor@coloradolawteam.com)  
Attorney for Plaintiff

*s/ Michael Nolt* \_\_\_\_\_

Michael Nolt, Esq.  
Kishinevsky & Raykin, Attorneys at Law  
2851 S. Parker Rd., Suite 150  
Aurora, CO 80014  
Phone: 720-588-9713  
[michael@coloradolawteam.com](mailto:michael@coloradolawteam.com)  
Attorney for Plaintiff