

Even More on The Wearing Of Masks In Connecticut's Schools: Updated Pre-School Guidance (and Lawsuits)

Education Law Notes

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Connecticut Schools

We have written repeatedly in these pages about the evolving guidance from Connecticut's State Department of Education (SDE) with respect to the wearing of masks (and face coverings) in the schools:

- No Longer Taken at Face Value: Executive Order 7NNN and the New Requirement for Medical Documentation from Non-Mask Wearers (and What it Means to Connecticut's Schools)
- (Even More) New Guidance on the Wearing of Masks in

- When Will It Ever End? (Yes, Even More Newer Guidance on the Wearing of Masks in Connecticut's Schools.)

One issue that had been remaining was mask wearing by pre-school students. During the summer, the State issued guidance that appeared to excuse pre-school students from the mask wearing requirement. However, this exception had appeared to have been foreclosed via Executive Order 7NNN, and the SDE (with the assistance of Connecticut's Office of Early Childhood) has now issued guidance that instead addresses how — instead of if — preschool students will be required to comply with the mask requirement: <https://portal.ct.gov/-/media/SDE/Digest/2020-21/Group-Size-and-Mask-Requirements.pdf>

MASKS ARE REQUIRED FOR PRESCHOOL STUDENTS: The new guidance states that children 3 years of age and older are required to wear masks while in preschool programs in Connecticut's public schools. This mandate took effect on September 21, 2020. However, schools are permitted to develop a phase-in plan extending up to October 19, 2020 to allow for acclimating all preschool students to mask wearing and for time to work with families on this transition. The phase-in plan may include education for children, families and staff about how to properly wear, remove, store, wash, and dispose of masks.

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SCHOOLS MUST HAVE A POLICY: Preschool programs are required to create a written policy for mask wearing that is to be available to staff and families. The policy is required to address the school's approach to assisting preschool students with the developmental difficulties and social emotional aspects of mask wearing, and how to address non-compliance by children (and parents who refuse to permit their child to wear a mask). The policy is supposed to address the exceptions to the requirement to mask wearing. In speaking of ...

EXCEPTIONS: Some of the recognized exceptions (i.e., those students who have a medical condition for whom wearing a mask would be contrary to their health and safety, certain students with disabilities or developmental needs — such as sensory integration issues — and where a planning and placement team or Section 504 team recognizes it is appropriate to permit an exception to mask wearing) are similar to the exceptions that exist in general in the schools. In addition to those exceptions, preschool students who are newly enrolled in the preschool program within the past two months and who are working toward mask wearing are permitted to remove their masks. Furthermore, children who have just turned three years old may be given up to two months to acclimate to mask wearing.

In addition to the general exceptions for students during times when they are eating or drinking (and engaging in permitted “mask breaks”), preschool students are not required to wear a mask when “resting” or during outdoor activities. During times when a student is not wearing a mask, it is paramount that distance between students must be maximized, maintaining at least six feet of distance where ever possible. It should be noted that the guidance also provides that for preschool programs, the maximum group size in any one space is sixteen children.

CARROTS v. STICKS: While schools may be able to exercise punitive measures (including discipline and requiring non-compliant students to be educated remotely) with their general population, **preschool** programs must instead rely almost exclusively upon persuasion. Generally, and whenever possible, schools may not exclude or punish preschool students who do not wear masks. Instead, schools will have to seek alternative strategies toward increasing compliance and in addressing the concerns of such students and their parents. Schools should look to tools from the Centers for Disease Prevention and Control that are referenced in the SDE guidance. Schools will have to work with such student and their parents (as may be necessary) on developmental readiness and transitioning to wearing a mask or face covering, using age appropriate strategies — such as training, social stories, positive reinforcements, and frequent/gentle reminders — and addressing tactile and sensory issues.

FINALLY, A BONUS FOR THE READERS — AN UPDATE ON MASK LAWSUITS: In August, an advocacy group entitled the “CT Freedom Alliance” and a group of parents filed a pair of lawsuits challenging the constitutionality of the requirement that students wear masks in school. See [here](#) and [here](#). In addition to challenging the procedures utilized in adopting the mask mandate, the lawsuits assert that the mask

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requirement interferes with the students' "fundamental right to an education" under the Connecticut Constitution and will cause "physical harm" and "emotional distress" to the students. The plaintiffs in one of the suits have sought an "emergency temporary injunction" to terminate the mask requirement. The SDE has opposed this injunction and has also filed motions to dismiss both lawsuits on procedural and substantive grounds. These motions are pending, with a ruling on the motions to dismiss appearing to be imminent. However, in its ruling disqualifying the plaintiffs' purported "expert witnesses" (due to both their lack of qualifications and their fringe "scientific" beliefs), the court appeared to cast doubt upon the lawsuits, noting that the SDE mask guidelines permit medical and safety-based exceptions to mask wearing. Stay tuned.

Pullman & Comley has policy templates and other useful resources available to assist Connecticut schools in considering and implementing their options and navigating the web of executive orders, laws, regulations, and other state and federal guidance related to COVID-19. Please contact any of our **School Law** attorneys for assistance.

Posted in Centers for Disease Control (CDC), COVID-19

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