

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

Education Law Notes

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On August 31, 2020, the State Department of Education (SDE) issued via “Addendum 11” revised “Interim Guidance” on the wearing of masks in Connecticut’s schools. <https://schoollaw.pullcomblog.com/archives/even-more-new-guidance-on-the-wearing-of-masks-in-connecticut-schools/> On September 2, 2020, via “Volume 3” of its “Frequently Asked Questions Regarding Reopening K-12 Public Schools” series, the SDE filled in some gaps in its prior guidance. Of greatest interest, the SDE issued supplementing guidance with respect to 1) the need for documentation in support of the medical exemption for masks for students, 2) what

medical conditions may qualify for the mask exemption for students, and 3) the exemption from mask wearing for teachers while delivering instruction.

Medical documentation for students? In light of Executive Order 7 NNN, <https://schoollaw.pullcomblog.com/archives/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-connecticutschools/>, schools may be required to secure documentation confirming the need for a medical exemption for mask wearing. The SDE’s new FAQ guidance does give schools the authority to decide what they consider acceptable documentation of medical need for an exemption to wearing a mask or face covering. While stating that schools “may require a note from a medical professional to confirm a student not wearing a mask fits an exemption to the school’s mask-wearing requirements,” the FAQ guidance then notes: “To avoid any burdensome requirement, schools should also consider if they already have supporting documentation in the student’s existing school medical record.” This may be a way for schools not to have to request medical documentation where the medical condition and/or need for an exemption is “obvious.” In addition, the FAQ guidance provides further recognition of what is obvious by noting that an exemption to mask wearing “may also be appropriate for children with special needs, such as hearing or language challenges, autism, or developmental disabilities if they have issues tolerating a face covering.” In this regard, the FAQ represents a

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bit of a loosening of Executive Order 7NNN and Addendum 11.

What medical conditions might qualify for an exemption? As we noted, the “Interim Guidance” from Addendum 11 appeared to greatly limit the medical exemption to serious conditions (i.e., where wearing a mask is “medically contraindicated”). The latest FAQ guidance does acknowledge that while certain “mild” medical conditions will not justify the exemption from mask wearing, “if the work of breathing through a mask creates a significant health risk for the child or if psychological responses to a mask, such as claustrophobia, cannot be accommodated by trying different mask types (different cloth, a bandana vs. loop mask, etc.) then the mask could be considered contraindicated.” The new FAQ guidance does note that as the exemption **“has possible serious consequences for the health of other students and their families, and for the school’s ability to stay open in the face of community spread, medical professionals should give serious consideration to the risk-benefit of giving medical notes for mask exemptions and discuss these considerations with the requesting families, including the possibility that a medical attestation of compromised health severe enough to present a contraindication to mask wearing may also constitute a directive for fully-virtual learning.”** Again, the SDE is almost saying that 1) if you have a condition consistent with the medical exemption to mask wearing, perhaps you should not be coming to school, and 2) doctors giving out notes for an exemption should think about the consequences of the non-mask wearer upon the rest of the student body.

Mask wearing by teachers? The August 31, 2020 “Addendum 11” guidance left out the prior June 29, 2020 “Adapt, Advance, Achieve” guidance that permitted teachers not to wear a mask while teaching as long as they are socially distanced, or remaining behind a physical barrier. The new FAQ kind of splits the difference between the June 29, 2020 and August 31, 2020 guidance, albeit while limiting the circumstances when a teacher can remove the mask. The FAQ guidance provides that “when the wearing of a face mask is problematic (i.e., when the teacher’s and student’s mouth must be visible during speech therapy, when a child with hearing loss needs to read lips, etc.) other appropriate control measures should be implemented, including ensuring proper social distancing and/or the use of physical barriers between students and staff.” The FAQ states that “if teachers must give instruction to an individual or group without a face covering mask in place, remaining in a stationary location with a Plexiglas or other physical barrier in place is preferable to the use of a face shield.” However, the SDE updates its prior June 29, 2020 guidance to note that teachers should still wear a face covering/mask at all times in school “except for in the **rare circumstances** where face covering **is detrimental to the specific instruction being given.**” Thus, it is unclear as to whether teachers can generally be allowed to remove their masks for their **entire** class/lesson.

Finally, a bonus question/answer: Mask breaks for students? The SDE’s FAQ guidance notes that while mask breaks outside are best, brief breaks inside are acceptable if outside breaks are not practicable (for example, during less than optimal weather). With respect to indoor breaks, the SDE guidance notes that “students and/or staff should always stay apart six feet or more (and of course no physical contact) in well-

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ventilated areas” and that it is recommended that everyone face in the same direction. During these breaks, the SDE states: “One can talk but avoid loud talking, yelling/bellowing, or singing.” One assumes that yodeling is also off limits. The SDE “suggests” keeping the breaks to no more than 15 minutes. 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.

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