PEDIATRICS PERSPECTIVES

State Mask Mandate Bans for Schools: Law, Science, and Public Health

Y. Tony Yang, ScD, LLM, MPH,[a] Sarah Schaffer DeRoo, MD, MA,[b] Stephanie R. Morain, PhD, MPH[c]

Early in the pandemic, all 50 state governors issued executive orders designed to combat coronavirus disease 2019 (COVID-19), many of which aimed to mitigate disease transmission and facilitate the health system's ability to respond to the increased resource demands.[1] More recently, however, some state-level efforts, either through governors' offices or state legislatures, have focused instead on limiting the authority of local policymakers related to COVID-19 mitigation.[1] Perhaps most controversial among these policies have been state efforts banning local school districts from mandating mask wearing, despite evidence that masking is a key COVID-19 preventive measure.[2] These recommendations directly oppose recommendations from the Centers for Disease Control and Prevention (CDC) and American Academy of Pediatrics (AAP) for universal masking in schools to support a return to in-person learning.

State actions to restrict masking requirements within schools present a critical public health challenge, and inadequate masking in schools has likely contributed to the increased burden of COVID-19 among children <18 years of age.[2] Students' return to in-person learning has coincided with the predominance of the Delta variant in the United States, which has increased both transmissibility and breakthrough infections in vaccinated individuals when compared with previously circulating variants. Although children <18 years represent just 22% of the US population and 16% of total cumulative COVID-19 cases, the AAP estimates that children represent 24% of reported weekly COVID-19 cases for the week ending on October 7, 2021, a marked increase from earlier phases of the pandemic.[3] This surge of infections has overwhelmed pediatric emergency rooms and hospitals across the country as new hospital admissions nearly doubled for pediatric patients 0 to 17 years between January and September 2021 (0.29 to 0.50 admissions per 100 000 population), based on CDC data.[4] In addition to the health care burden, rising pediatric cases are taxing school systems that are struggling to adapt infection prevention and control measures to the rapidly changing COVID-19 landscape. Several school districts without masking mandates have had to either close or modify instruction because of rising COVID-19 cases.

[a]*Center for Health Policy and Media Engagement, School of Nursing, George Washington University and Department of Health Policy and Management, School of Public Health, George Washington University Milken Institute, Washington, DC;* [b]*Division of General and Community Pediatrics, Children's National Hospital, Washington, DC; and* [c]*Berman Institute of Bioethics, Johns Hopkins University, Baltimore, Maryland*

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Address correspondence to Y. Tony Yang, ScD, LLM, MPH, 1919 Pennsylvania Ave, NW, Suite 500, Washington, DC 20006. E-mail: ytyang@gwu.edu

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These statewide bans on school mask mandates directly contradict evidence-based public health recommendations.[2] The results of a recent analysis indicated that increases in pediatric COVID-19 case rates during the start of the 2021–2022 school year were smaller in US counties with school mask requirements than in those without.[2] A study of kindergarten through 12th grade schools with high masking compliance revealed lower incidence of COVID-19 infections among students and staff when compared with the county overall.[5] Notably, student masking compliance did not vary with age, suggesting that students of all ages are able to comply with masking requirements. Similarly, a study revealed that children with a positive COVID-19 test were less likely than age-matched controls with a negative test to report consistent masking by students and staff when inside of school.[6] Additional studies conducted in child care settings suggest that low transmission rates are attributable to layered preventive strategies, including the combination of masking requirements, physical distancing, hand hygiene, ventilation, cleaning, testing, quarantining, and vaccination of eligible individuals.[7,8]

To date, 9 states have enacted policies that have aimed to prohibit school masking mandates, although the legal status of these policies remains uncertain.[1] At least 4 of the 9 states with mask mandate bans have had the bans overturned by courts.[9] In both Florida and Texas, where mask mandate bans were established via executive order, courts have found that these executive orders either exceeded the governor's executive authority (Texas) or did not comply with the law granting the executive order's authority (Florida). In Arkansas and Arizona, where mask mandate bans came from laws promulgated by state legislatures, judges temporarily blocked the states from enforcing the bans on the grounds that the laws violated their respective constitutions. Although those who oppose mask mandate bans may be cheered by the above decisions, these victories are tenuous at best, given courts have issued only temporary injunctions halting enforcement of bans on mask mandates.

Alternative efforts to block state mandates are underway at the federal and local levels.[9] The US Department of Education has announced it would investigate Oklahoma, Iowa, South Carolina, Tennessee, and Utah, driven in part by concerns that mask mandate bans could "amount to discrimination against students with disabilities or health conditions."[10] According to the Department of Education, state mask mandate bans create an unsafe learning environment for students with disabilities, who face a heightened risk of COVID-19 illness.

Similar arguments have been made in federal court by parents asserting that mask mandate bans violate federal antidiscrimination laws.[9] Parents of students with disabilities in Texas recently filed a lawsuit in federal court challenging the state's mask mandate ban, arguing that the ban violates the Americans with Disabilities Act (ADA) because it prevents their children from safely attending school. Several clinicians have offered support for this position, arguing that immunocompromised status should qualify as a protected disability under the ADA and, correspondingly, that schools should be required to provide reasonable accommodations for students with immunocompromised status.[11] Given that masks have been worn regularly for the past year and a half, requiring masks in schools may be found to be such a reasonable accommodation.

However, there is no prepandemic precedent for immunocompromised status requiring disability accommodations.[9] Ensuring that the ADA covers immunocompromised status (thus requiring reasonable accommodations) may require the Department of Justice, which is responsible for enforcing ADA regulations, to promulgate a rule or issue a guidance document stating that immunocompromised status is an ADA-covered disability. Alternatively, litigants (like the parents-plaintiffs in Texas) can convince a court to interpret the ADA as including immunocompromised status, then convince the court that mask mandates are a reasonable accommodation.

Additionally, some localities have found creative means to circumvent state mask mandate bans.[9] For example, a Texas school district altered its dress code to include face coverings, arguing that it could still alter the dress code regardless of the governor's actions. Elsewhere, Athens, Ohio, argued that its mask mandate did not violate the state law ban because the state law restricted state health officials from mandating masks, but there was no such restriction for an individual city.

State masking bans notwithstanding, strong evidence supports masking as an effective COVID-19 mitigation strategy, particularly among those, such as school-aged children, who are not yet eligible to receive a COVID-19 vaccine. All stakeholders from the federal to local levels should aim to align their policies with the CDC and AAP recommendations. As such, local school districts should be able to take actions, including mandating masks, to protect students and to keep schools open for in-person learning. Equally important is the need for ongoing advocacy by pediatricians and other public health professionals to present unified

recommendations for masking to mitigate disease transmission. Pediatric health care professionals and their associated institutions, such as the AAP and the Children's Hospital Association, can support this effort through several strategies, including the following:

- Strongly recommend masking for children according to CDC and AAP guidelines and actively debunk myths and misinformation about masking during well and sick visits.
- Develop and disseminate behavioral strategies to support children's compliance with masking based on individual abilities and needs. For example, studies have reported behavioral interventions for improving masking compliance among children with autism.[12]
- Advocate for evidence-based masking policies using traditional and social media platforms, including flagging misinformation and disinformation, and providing factual information to counter false claims.
- Partner with educators at the local, district, state, and national levels to advocate for evidence-based masking policies.
- Leverage existing partnerships with schools, such as through school nursing associations, school sports affiliations, and mobile vaccination clinics, to advocate for evidence-based masking policies.

Although some legal challenges have successfully delayed the implementation of mask mandate bans, the durability of those decisions remains uncertain.[9] Similar uncertainty surrounds the likely success of other strategies to protect schools' ability to implement effective mask mandates, including federal withholding of funding from states that refuse to comply with CDC guidance, or findings by the Department of Justice or courts that immunocompromised status qualifies as a disability under the ADA meriting reasonable accommodations, including masking. Ultimately, continued efforts are needed to ensure schools are able to promote reasonable, evidence-based strategies to promote the health of their students, teachers, and communities, and we, as advocates for children, are obligated to emphatically support these efforts.

ABBREVIATIONS

AAP: American Academy of Pediatrics
ADA: Americans with Disabilities Act
CDC: Centers for Disease Control and Prevention
COVID-19: coronavirus disease 2019

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