

MEMORANDUM

TO: Superintendents
FROM: Daniel M. French, Ed.D., Secretary of Education
SUBJECT: **UPDATED:** School District Authority to Require Masks
DATE: August 18, 2021

Background

Many superintendents have requested the Agency of Education (AOE) to provide guidance on whether a district may exclude a student who refuses to wear a mask when required to do so by school district policy. As will be explained below, a school district can require compliance with a locally-adopted mask policy. The AOE urges district officials to consult with their own attorney to receive advice specific to their conditions, policies and needs. The AOE does not provide legal advice to school districts. This memo provides background information on school district authority to require students to wear masks as a condition of attendance at school.

General Authority and Duty of School Districts

School district boards are given broad authority to “take any action that is required for the sound administration of the school district.” 16 V.S.A. § 563. With this authority, school districts owe students a duty of ordinary care to prevent students from being exposed to unreasonable risk, from which it is foreseeable that injury is likely to occur. 16 V.S.A. § 834.

A school district may adopt a policy requiring students to wear a mask at school, and may enforce the policy by refusing to admit a student who does not comply, as is the case with other school district attendance requirements, such as submission of proof of residency, and proof of childhood immunizations.

Recommendations for Locally Adopted Policies

The school board of the district may either act under its own authority to adopt a written policy concerning masking, or may delegate planning for the district’s COVID-19 mitigation measures, including masking requirements, to the superintendent. 16 V.S.A. 242. In either case, a school district board should take action to clearly communicate whether it has delegated this authority to the superintendent.

A strong locally-developed policy will be predicated on public health data and recommendations from state and federal health officials. The AOE and the Department of Health will issue recommendations to assist districts to determine their local vaccination rates, in keeping with the [Advisory Memo](#) released on August 4, 2021. The Department of Health will continue to provide information about local and regional conditions for the virus. Note that a

CDC order remains in effect requiring individuals to wear masks on school buses regardless of vaccination status.

Finally, locally-developed policies should provide appropriate exemptions for those students who cannot wear a mask, such as students with medical, behavioral or other challenges. These exemptions were described in [A Strong and Healthy Year](#), health guidance for School Year 2020-21 issued jointly by the AOE and the Health Department. A school district may choose to mirror those exemptions in its own policy.