

Department of Education's Office for Civil Rights Opens Investigations in Five States Regarding Prohibitions of Universal Indoor Masking

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Today, the U.S. Department of Education's Office for Civil Rights (OCR) opened directed investigations in five states exploring whether statewide prohibitions on universal indoor masking discriminate against students with disabilities who are at heightened risk for severe illness from COVID-19 by preventing them from safely accessing in-person education.

"The Department has heard from parents from across the country – particularly parents of students with disabilities and with underlying medical conditions – about how state bans on universal indoor masking are putting their children at risk and preventing them from accessing in-person learning equally," said U.S. Secretary of Education Miguel Cardona. "It's simply unacceptable that state leaders are putting politics over the health and education of the students they took an oath to serve. The Department will fight to protect every student's right to access in-person learning safely and the rights of local educators to put in place policies that allow all students to return to the classroom full-time in-person safely this fall."

OCR sent letters today to the chief state school officers of Iowa, Oklahoma, South Carolina, Tennessee, and Utah, outlining how prohibitions of universal indoor masking prevent school districts from implementing health and safety policies that they determine are necessary to protect students from exposure to COVID-19, including those with underlying medical conditions related to their disability. OCR is concerned that state mask restrictions on schools and school districts "may be preventing schools...from meeting their legal obligations not to discriminate based on disability and from providing an equal educational opportunity to students with disabilities who are at heightened risk of severe illness from COVID-19," the letter states.

OCR has not opened investigations in Florida, Texas, Arkansas, or Arizona because those states' bans on universal indoor masking are not currently being enforced as a result of court orders or other state actions. Due to these rulings and actions, districts should be able to implement universal indoor masking in schools to protect the health and safety of their students and staff. However, the Department will continue to closely monitor those states and is prepared to take action if state leaders prevent local schools or districts from implementing universal indoor masking or if the current court decisions were to be reversed.

The investigations will explore each state's compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), which is a federal law that protects students with disabilities from discrimination based on their disability. Section 504 guarantees qualified students with disabilities the right to a free appropriate public education in elementary and secondary school,

commonly referred to as FAPE. This includes the right of students with disabilities to receive their education in the regular educational environment, alongside their peers without disabilities, to the maximum extent appropriate to their needs.

The investigations will also explore whether statewide prohibitions on universal indoor masking violate Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities, including public education systems and institutions. OCR's regional offices will begin collecting data from each state educational agency as part of the direct investigations over the coming weeks.

During the investigation, OCR is a neutral factfinder, collecting and analyzing relevant evidence from state education agencies and other sources as appropriate prior to reaching determinations in these matters. Opening a directed investigation does not imply that OCR has decided whether there has been a violation of a law that OCR enforces.

On Aug. 18, 2021, President Biden issued a Presidential Memorandum directing the Secretary of Education to "assess all available tools in taking action, as appropriate and consistent with applicable law" to ensure that governors and other officials are giving all students the opportunity to participate and remain in full-time, in-person learning safely, without compromising their health or the health of their families. In response to the President's call, Secretary Cardona laid out the steps the Department of Education can take to protect the rights of all students to access safe in-person learning equally, including using the enforcement authority of the Office for Civil Rights.

Secretary Cardona also sent letters earlier this month to each of the states that are the subject of the direct investigations that OCR announced today. The letters note that: "The safe return to in-person instruction requires that school districts be able to protect the health and safety of students and educators, and that families have confidence that their schools are doing everything possible to keep students healthy."