



Texas Association of School Boards

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Serving Texas Schools Since 1949

Mask Mandates in Texas School Districts

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On July 29, 2021, Texas Governor Greg Abbott issued an executive order ([GA-38](#)) that specifically prohibited local authorities, including school districts, from imposing face covering requirements.

The order stated:

“No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering.”

The order also stated that the imposition of a face-covering requirement by a local governmental entity or official would constitute a “failure to comply with” the executive order subject to a fine up to \$1,000.

Finally, the order directed that public schools operate in accordance with Texas Education Agency (TEA) public health [guidance](#), which also indicates that mask wearing must be voluntary.

Of course, since the release of the governor’s executive order, some areas of Texas have experienced extremely high levels of community spread and resulting hospitalizations due to the COVID-19 Delta variant.

In response to the rapidly evolving health situation here in Texas, TASB has developed the following short Q&A in support of its members. Naturally, we understand that Texas is a large state with significant variation in geography, demography, and community standards.

That’s precisely why on the issue of mask requirements in schools, TASB advocates for local control. It has been our longstanding tradition to support and advocate for the local authority of school boards to govern the schools in their community, and that tradition continues on this important issue.

Here are our responses to questions we have received related to executive order GA-38:

Does TASB consider GA-38 a lawful exercise of the governor’s authority?

No. TASB views the executive order as overreach and an intrusion on local independent school districts’ authority to govern and oversee the management of Texas’ public schools. As such, we

support school districts who have taken steps to implement health and safety measures that respond to COVID-19 conditions in their communities.

To this end, TASB has written a letter to the Texas Supreme Court emphasizing the importance of local decision making on the issue of mask policies at the local level. Additionally, TASB's Legal Assistance Fund joined a "friend of the court" brief in which school districts effectively demonstrate that the executive order is not a valid exercise of executive authority under the Texas Disaster Act and the governor's authority to suspend procedural laws during a disaster does not include the power to undermine local school district governance.

These cases are pending around the state and will likely be decided by the Texas Supreme Court. Unfortunately, even if appeals are expedited, a final decision could take several weeks.

Here at TASB, we find it deeply disturbing that school districts are facing the dilemma of potentially violating an executive order to safeguard the health of students and staff. We ask that districts not currently facing this dilemma support the efforts of fellow Texas school districts to ensure that our state's longstanding tradition of local control is protected and upheld.

What does TASB advise regarding mask requirements? We advise all districts to work closely with local health officials, staff, and parents to determine the best approach regarding the use of face coverings.

For districts that determine that mandatory mask wearing is necessary for the health and safety of their community, we advise working closely with your school attorneys. According to Texas Attorney General Ken Paxton, imposing a mask mandate violates GA-38 and could subject the district to legal consequences.

The attorney general has been contacting [districts](#) perceived to be in potential violation of the order, issuing stern warnings like the following:

My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

Given the inherent legal risk in imposing mask requirements in schools, we strongly encourage districts to consult with your school community, health officials, and school attorney before implementing a mask requirement to fully understand potential implications.

What should we do if we get a warning letter from the attorney general? Inform your school attorney and your insurance carrier or risk pool promptly.

Could a mask mandate be adopted as a “dress code” requirement rather than health rule?

While we consider the inclusion of face coverings in a dress code within a school district’s authority, the governor’s executive order appears to restrict this option with its broad prohibition on local mask requirements. The attorney general has sent a warning letter to all districts identified as having mask mandates, regardless of how the mandate was characterized.

Is there individual liability for school officials who adopt a mask mandate? Generally speaking, we understand the adoption of a mask mandate to be a local governance decision made in good faith in the course of official duties. As such, the actions of individual decision makers should be covered by immunity under state law. While it is impossible to give a conclusive answer when the legal issues are in flux, individual liability for individual school officials is highly unlikely.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-essource/business/documents/mask-mandates-in-texas-school-districts.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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