



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

August 18, 2021

The Honorable Bill Lee  
Governor  
State Capitol  
Nashville, TN 37243

The Honorable Penny Schwinn  
Commissioner of Education  
Tennessee Department of Education  
Nashville, TN 37243

Dear Governor Lee and Commissioner Schwinn:

As the new school year begins in school districts across Tennessee, it is our shared priority that students return to in-person instruction safely. 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. **Tennessee's actions to block school districts from voluntarily adopting science-based strategies for preventing the spread of COVID-19 that are aligned with the guidance from the Centers for Disease Control and Prevention (CDC) puts these goals at risk and may infringe upon a school district's authority to adopt policies to protect students and educators as they develop their safe return to in-person instruction plans required by Federal law.**

We are aware that Tennessee has adopted an Executive Order prohibiting local educational agencies (LEAs) from adopting requirements for the universal wearing of masks.<sup>1</sup> This State level action against science-based strategies for preventing the spread of COVID-19 appears to restrict the development of local health and safety policies and is at odds with the school district planning process embodied in the U.S. Department of Education's (Department's) interim final requirements. As you know, the American Rescue Plan Act of 2021 (ARP Act) requires each LEA that receives Elementary and Secondary School Emergency Relief (ARP ESSER) funds to adopt a plan for the safe return to in-person instruction and continuity of services. (See section 2001(i).) The Department's interim final requirements clarify that such plan "must describe...how [the LEA] will maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC..." The safety recommendations include "universal and correct wearing of masks."

The Department is concerned that Tennessee's actions could limit each LEA's ability under the ARP Act to adopt a plan for the safe return to in-person instruction and continuity of services that the LEA determines adequately protects students and educators by following CDC guidance. **The Department stands with the dedicated educators who are working to safely reopen schools and maintain safe in-person instruction.**

The Department also emphasizes that it is within an LEA's discretion to use ARP ESSER

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<sup>1</sup> See: <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee84.pdf>.

funds for implementing indoor masking policies or other policies aligned with CDC guidance. Section 2001(e)(2)(Q) of the ARP Act explicitly gives LEAs the authority to use ARP ESSER funds (as well as ESSER funds granted through prior relief funding) for “developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.”

We are eager to partner with Tennessee on any efforts to further our shared goals of protecting the health and safety of students and educators. In addition, the Department will continue to closely review and monitor whether Tennessee is meeting all of its Federal fiscal requirements. It’s critical that we do everything in our power to provide a safe environment for our students and staff to thrive.

Sincerely,

A handwritten signature in blue ink, reading "Miguel A. Cardona". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miguel A. Cardona, Ed.D.