



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

August 20, 2021

The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Foxx:

Thank you for your letter regarding the U.S. Department of Education's (Department's) actions to protect the health and safety of students and educators as the Nation's schools continue to return to in-person instruction amidst the COVID-19 pandemic.

In your letter, you note the importance of providing clarity to the public about the Department's position on this important issue. I am pleased to refer you to the [Presidential Memorandum](#) issued by President Biden on Wednesday (see attached), which directs the Department "to assess all available tools in taking action, as appropriate and consistent with applicable law, to ensure that:

- (i) Governors and other officials are taking all appropriate steps to prepare for a safe return to school for our Nation's children, including not standing in the way of local leaders making such preparations; and
- (ii) Governors and other officials are giving students the opportunity to participate and remain in safe full-time, in-person learning without compromising their health or the health of their families or communities."<sup>1</sup>

Your letter asks two related questions about the Department's approach to supporting educators who are working hard to follow the science-based strategies for preventing the spread of COVID-19 recommended by the Centers for Disease Control and Prevention (CDC). As you know, my staff met with your staff earlier this week and provided responses to these and other questions. I am happy to follow-up in writing per your request.

It is vital that the resources in the American Rescue Plan Act of 2021 (ARP Act) reach school districts in order to support the safe return to in-person instruction and continuity of services and to meet the social, emotional, mental health, and academic needs of the Nation's students—especially those who have been most impacted by the pandemic. Our priority must be to help ensure that every student can safely return to school in person, which necessitates protecting the health and safety of school communities and families.

In addition, the ARP Act explicitly gives school districts the authority to use Elementary and

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<sup>1</sup> See: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/18/ensuring-a-safe-return-to-in-person-school-for-the-nations-children>.

Secondary School Emergency Relief (ARP ESSER) funds for “[d]eveloping 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.”<sup>2</sup>

The ARP Act also requires each school district that receives ARP ESSER funds to adopt a plan for the safe return to in-person instruction and continuity of services.<sup>3</sup> The Department’s interim final requirements clarify that such plan “must describe... how [the school district] 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...”<sup>4</sup> The safety recommendations include “universal and correct wearing of masks.”

As I wrote in letters to States that have prohibited universal masking, 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 CDC may infringe upon a school district’s ability to carry out policies to protect students and educators as they develop their safe return to in-person instruction and continuity of service plans required by Federal law.<sup>5</sup> The Department stands with the dedicated educators who are working to safely reopen schools and maintain safe in-person instruction, and will continue to support States and school districts in following CDC guidance so we can get students back to school and keep them there safely. Current CDC guidance says that all people should wear a mask inside K-12 schools.

Thank you again for your letter, and I look forward to continuing to work with you to protect the health and safety of the Nation’s students. If you have further questions, your staff may contact the Office of Legislation and Congressional Affairs at (202) 401-0020.

Sincerely,

A handwritten signature in blue ink, appearing to read "Miguel A. Cardona".

Miguel A. Cardona, Ed.D.

Enclosure

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<sup>2</sup> See section 2001(e)(2)(Q) of the ARP Act.

<sup>3</sup> See section 2001(i) of the ARP Act.

<sup>4</sup> See: <https://www.federalregister.gov/documents/2021/04/22/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund>.

<sup>5</sup> A copy of each letter may be found at <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief>.



THE WHITE HOUSE  
WASHINGTON

August 18, 2021

MEMORANDUM FOR THE SECRETARY OF EDUCATION

SUBJECT: Ensuring a Safe Return to In-Person School for the Nation's Children

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. As the school year starts across the country, a top priority of my Administration is to do everything in our power to ensure a safe return to full-time, in-person school for our Nation's children. With increased access to vaccinations for school staff and students age 12 and older, proven virus prevention strategies, and unprecedented resources from the American Rescue Plan Act of 2021 (Public Law 117-2) (American Rescue Plan) and other Federal pandemic relief funds, opening all schools this fall for full-time, in-person learning is essential. At the same time, the Centers for Disease Control and Prevention (CDC) has made clear that, with the B.1.617.2 (Delta) variant driving an increase in COVID-19 cases nationally, it is critical for schools to protect students against exposure, especially given the number of children who are ineligible to obtain the vaccine at this time. The CDC has provided clear guidance to schools on how to adopt science-based strategies to prevent the spread of COVID-19, and the Department of Education has provided guidance to schools on how to reopen safely

while addressing the academic, social, emotional, and mental health needs of our Nation's students.

Many Governors and other State and local officials have risen to the challenge of beginning the new school year safely and responsibly by implementing prevention and mitigation strategies to maximize the health and safety of students, educators, and staff. The Federal Government is supporting these efforts in critical ways. The American Rescue Plan provides significant support to schools to develop and implement science-based health protocols to prevent the spread of COVID-19. Additionally, the Federal Emergency Management Agency is reimbursing States, including their school districts, at 100 percent Federal cost share to support the safe reopening and operation of school facilities and to effectively maintain the health and safety of students, educators, and staff.

At the same time, however, some State governments have adopted policies and laws that interfere with the ability of schools and districts to keep our children safe during in-person learning. Some of these policies and laws have gone so far as to try to block school officials from adopting safety protocols aligned with recommendations from the CDC to protect students, educators, and staff. And some State officials have even threatened to impose personal financial consequences on school officials who are working tirelessly to put student health and safety first and to comply with their legal obligations to their communities to further the essential goal of a safe, in-person education for all students.

Our priority must be the safety of students, families, educators, and staff in our school communities. Nothing should interfere with this goal.

Sec. 2. Department of Education Role in Ensuring a Safe Return to

In-Person School. (a) In furtherance of the policy set out in section 1 of this memorandum, I direct the Secretary of Education to assess all available tools in taking action, as appropriate and consistent with applicable law, to ensure that:

(i) Governors and other officials are taking all appropriate steps to prepare for a safe return to school for our Nation's children, including not standing in the way of local leaders making such preparations; and

(ii) Governors and other officials are giving students the opportunity to participate and remain in safe full-time, in-person learning without compromising their health or the health of their families or communities.

(b) The Secretary of Education's assessment in subsection (a) of this section shall include consideration of whether to take steps toward the initiation of possible enforcement actions under applicable laws.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.

JOSEPH R. BIDEN JR.