

# Executive Order 2021-10: What It Means for Your District

## April 20, 2021

---

Prepared by Gust Rosenfeld P.L.C. and Udall Shumway P.L.C.

On April 19, 2021 Governor Ducey issued [Executive Order 2021-10](#). The crux of this Executive Order was to rescind the portion of his prior Executive Order that required school districts to develop and implement a policy to require face coverings. Almost immediately after the Governor issued his Executive Order, the Arizona Department of Health Services (ADHS) issued [emergency measure 2021-02](#). That emergency measure rescinded its prior emergency measure which required the wearing of face masks at school. The ADHS emergency measure indicates that school districts “still maintain the right to institute and enforce policies to mitigate against COVID-19 spread including the use of masks.” ADHS’ emergency measure also encouraged school districts to continue to take actions consistent with CDC recommendations, ADE’s roadmap and ADE’s March 29, 2021 guidance to schools.

The effect of these two declarations is there is no longer a state-wide mandate requiring masks in public K-12 schools. Whether to require masks and, if so, the extent of those requirements are now local decisions. Both the Governor and Arizona Department of Health Services have encouraged school districts to consider the most up to date public health recommendations as they make their decisions.

What is the “bottom line” impact of the Executive Order and ADHS Emergency Measure on your District? Please see below for our analysis and answers to questions we are already receiving.

**Question 1: Are school districts still required to include face coverings in their COVID-19 mitigation plan or Board Policies (or Administrative Regulations)?**

**Answer 1:** No. EO 2021-10 rescinds the requirement that school districts have face covering requirements.

**Question 2: May school districts still include face coverings in their COVID-19 mitigation plan or Board Policies (or Administrative Regulations)?**

**Answer 2:** Yes.

- EO 2021-10 makes it clear that school districts may continue to require face coverings as part of its COVID-19 mitigation effort.

Further, in a prior executive order, ([EO 2021-06](#), issued March 25, 2021), the Governor expressly stated, “Political subdivisions maintain the right to set and enforce mitigation policies in their own government buildings and on public transportation, including but not limited to, requiring face coverings.”

School districts are political subdivisions. Therefore, per EO 2021-06, your school district may continue to set and enforce your own policies relating to COVID-19 in your buildings and school buses.

- ADHS Emergency Measure 2021-02 specifically states, “K-12 school districts and charter schools still maintain the right to institute and enforce policies to mitigate against COVID-19 spread including the use of masks.” (Emphasis added).
- ADHS Emergency Measure 2021-02 specifically states, K-12 school districts are “encouraged to continue to take actions consistent with the CDC Recommendations, the Roadmap and the Guidance to prepare for, respond to, and mitigate community spread of COVID-19.”
- On March 19, 2021, the CDC issued updated recommendations for preventing COVID-19 in schools. <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>
- On March 29, 2021, ADHS adopted the CDC’s recommendations in its K-12 School Guidance for COVID-19. <https://azdhs.gov/covid19/documents/schools/k-12-school-guidance-covid-19.pdf>
- The March 29, 2021 ADHS K-12 School Guidance for COVID-19 document expressly states, “Regardless of the level of community transmission, all schools should use and layer mitigation strategies.” ADHS encouraged schools to prioritize **key mitigation strategies including universal and correct use of masks.**

**Question 3: If our school district wants to continue requiring face coverings, what must we do?**

**Answer 3:** No additional action is required.

If your Governing Board previously approved a COVID-19 mitigation plan that includes face covering requirements, the Governing Board need not take additional action if it wishes to keep the “status quo” and continue to require face coverings. As well, if the face covering requirement was established by Governing Board Policies or Administrative Regulations, no new action will be needed to continue the face covering requirement.

That said, your district may want to update community members on both sides of the mask debate. A prepared written statement on the district’s website explaining the District’s position may be helpful.

**Question 4: If our school district wants to discontinue or modify the face covering requirement, what must we do?**

**Answer 4:** The Governing Board should meet to discuss and vote to rescind or modify the face covering requirement from the District’s COVID-19 mitigation plan and/or Governing Board Policies or Administrative Regulations.

Your district may want to update community members on both sides of the mask debate. A prepared written statement on the district’s website may be helpful.

**Question 5: What should our school district do if our town, city or county has a face covering requirement?**

**Answer 5:** Based upon EO 2021-06, towns, cities and counties are no longer supposed to have face covering requirements. Specifically,

- In EO 2021-06 (paragraph 2), the Governor has rescinded prior Executive Orders, including those that required or allowed counties, cities or towns to impose face covering requirements.
- In EO 2021-06 (paragraph 3), the Governor has prohibited counties, cities or town from making “any order, rule or regulation that conflicts with or is in addition to the policy, directives or intent of this or any other Executive Order relating to the COVID-19 health emergency, or any other order, rule or regulation that was not in place as of March 11, 2020 and prohibits the enforcement of the same. This includes but is not limited to mandated use of face coverings.” (Emphasis added).

Notwithstanding EO 2021-06, some counties, cities and towns may argue that EO-2021-06 exceeds the Governor’s authority. Some of them may choose to retain certain face covering requirements in government facilities and other locations.

Your district should contact its legal counsel if it rescinds the current face covering requirement, but your district is located in a county, city or town that retains some form of face mask covering requirement.

**Question 6: How does EO 2021-10 relate to face covering requirements that have been in place at private businesses?**

**Answer 6:** EO-2021-10 states in paragraph 1:

- Businesses, whether for-profit or non-profit, institutions, professions or entities that physically operate in this state and serve the public or are employers are encouraged to take actions recommended by the CDC, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19.

- These entities still maintain the right to institute and enforce policies to mitigate against COVID-19 spread including the use of face coverings and physical distancing ... (emphasis added).
- These entities retain the right to refuse service to those who do not comply with the policies.

**Question 7: If our school district will be holding graduation ceremonies or other year end events (e.g. proms) at non-district owned venues (e.g. stadiums, hotels), will we be able to require our students and their guests to wear face coverings, even if the venue does not require face coverings?**

**Answer 7:** This may depend on your rental agreement. You may want to consult legal counsel on this point. While enforcement (and public relations) may be problematic, school districts have the ability to manage their own events in large part. That ability can be preserved, or diluted, based on contractual language.

**Question 8: May the school district require people to disclose their COVID-19 vaccination status?**

**Answer 8:** No, such disclosure would be prohibited by [EO 2021-09](#), “Prohibiting Political Jurisdictions of the State from Requiring Disclosure of an Individual’s COVID-19 Vaccination Status.” This EO was also issued by Governor Ducey on April 19, 2021.

In paragraph 1 of EO 2021-09, the Governor prohibits political subdivisions (which includes school districts) from adopting any order, policy, regulation or other measure that requires an individual to provide documentation regarding the individual’s COVID-19 vaccination as a condition of receiving any service provided by the entity.

**Question 9: May the school district ask individuals to voluntarily disclose their COVID-19 vaccination status?**

**Answer 9:** Yes. In paragraph 5 of EO 2021-09, the Governor notes that paragraph 1 (described in Question 8 above) does not limit the ability of an individual to voluntarily release their vaccination records to third parties. Thus, should a school district wish to ask employees or others to voluntarily disclose their vaccination status, it may do so.

**Caution:** If your district decides to do something like this, you should ensure that your voluntary disclosure program is truly voluntary and there is no indicia of pressure being placed on employees or others to share their vaccine status.

*Disclaimer: These materials have been prepared for general informational purposes only and are not intended as legal advice or a substitute for such advice.*