



## **At a Glance: The Variant Version**

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- **Fourteen states prohibit vaccine requirements in schools**
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- **The Feds back local masking mandates in Florida and Texas**

The Delta variant's rapid spread has again sparked showdowns over masking orders, school and business closings and vaccine passports between state and local governments nationwide. This week we are focusing on bans on vaccine requirements in schools.

Right now, more than one in four (14) states have enacted bans on COVID-19 vaccination requirements in local school districts. The governors of [Florida](#), [South Dakota](#), and [Texas](#) banned local authorities from requiring teacher and student vaccinations in schools through executive orders, while 11 other states enacted bans through state legislation.

*States where legislatures have [prohibited schools from requiring vaccines](#) include Alabama, Arizona, Arkansas, Florida (the legislature passed a bill codifying the Governor's executive order), Indiana, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, Tennessee and Utah.*

Six of the states—Arkansas, Arizona, Florida, Oklahoma, Texas, and Utah—have overlapping bans on masking and vaccination requirements for students and teachers.

Of the fourteen states banning COVID-19 vaccination requirements, the laws in Arizona, Montana, and Utah only apply to the vaccine while it is under Food and Drug Administration emergency authorization. [When the COVID-19 vaccines receive final federal approval](#), these laws will no longer apply.

### Local Defiance and Lawsuits Over Masking Bans

**Arizona** Gov. Doug Ducey has criticized schools' mask mandates but [has not said](#) yet whether he'll take action against them—a separate non-governmental [lawsuit](#) has been filed by a Phoenix-area teacher against that district's mask mandate—and [some Arizona Republican](#)

[lawmakers have called for legislators to impose “financial sanctions” on mask-requiring schools](#) and for a special session to be held to tackle the issue.

A state court in [Arkansas](#) has already issued a preliminary injunction temporarily invalidating that state’s mask mandate ban while the case moves forward.

Parents from a half-dozen **Florida** counties have [sued](#) Gov. Ron DeSantis and state education officials, arguing the masking ban infringes on classroom safety guaranteed by the state’s constitution. On Friday, DeSantis’s attorney told Leon County Circuit Court Judge John Cooper the [state plans to file a motion to dismiss the case, arguing it would violate the governor’s executive branch authority and accusing the parents of political motivations](#).

In **Kentucky**, Gov. Andy Beshear, a Democrat, signed an executive order Tuesday requiring masks for all schools, a move immediately challenged by state Attorney General Daniel Cameron, a Republican. Cameron filed a response to the mask mandate in schools with the Kentucky Supreme Court, arguing the governor's order goes against laws passed in the General Assembly this year. He accused the governor of engaging "in an unlawful exercise of power by issuing his executive order," in a [statement](#).

**Oklahoma** is facing a lawsuit from parents and a medical association over the state’s ban on mask mandates in schools. [The lawsuit filed Thursday by the Oklahoma State Medical Association seeks to stop the state from enforcing Senate Bill 658](#), which prevents state schools and colleges from adopting mask or vaccination mandates. The plaintiffs allege that the law is a “violation of Oklahoma children’s rights to a free education in a safe environment,” a violation of the Oklahoma State Constitution.

**South Carolina** Gov. Henry McMaster has [threatened](#) to pull funding from Columbia’s school district for mandating masks, after South Carolina lawmakers stipulated in their state budget that public schools cannot impose mask mandates and keep state funding, and the state’s attorney general [said](#) news on a potential lawsuit against the mask mandate could come this week.

In **Tennessee**, where the majority of K-12 students in the Nashville area returned to classrooms Tuesday, [Republican Gov. Bill Lee is saying that individual school boards have the authority to mandate masks](#) – bucking the state's GOP leadership, which has threatened legislative action against any district that attempts to require masks.

Sunday, the **Texas** Supreme Court gave Gov. Greg Abbott a win with a ruling that temporarily blocks [mask mandates](#) recently issued in San Antonio and Dallas. The court also said previously scheduled hearings on local mask mandates in lower courts in Bexar and Dallas counties will proceed as scheduled.

"The City of San Antonio and Bexar County's response to the Texas Supreme Court continues to emphasize that [the Governor cannot use his emergency powers to suspend laws that provide local entities the needed flexibility to act in an emergency](#)," San Antonio City Attorney Andy Segovia said in a statement. Dallas County Judge Clay Jenkins, who asked for the temporary restraining order against Abbott's executive order, reacted to the state Supreme Court decision on Sunday, noting the temporary injunction hearing set for August 24 will go forward.

Attorney General Ken Paxton and Abbott argued that "Under Executive Order GA-38, no governmental entity can require or mandate the wearing of masks. [The path forward relies on personal responsibility—not government mandates](#). The State of Texas will continue to vigorously fight the temporary restraining order to protect the rights and freedoms of all Texans."

The Supreme Court ruling comes after [Abbott suffered several defeats Friday afternoon in his bid to overturn local mask mandates](#) after he banned such precautions earlier in the pandemic. The 4th Court of Appeals in San Antonio tossed out Abbott's appeal to nix an order by the local health authority in Bexar County mandating mask-wearing in local public schools. Abbott sought to overturn a lower court ruling that allowed the local mandate. The 5th Court of Appeals in Dallas made an identical ruling in Abbott's challenge to Dallas County Judge Clay Jenkins' order mandating masks in public schools, universities and businesses — upholding the mandate there.

Earlier, Friday a state district judge granted Harris County and several Texas school districts temporary permission to implement mask requirements and other safety measures against COVID-19. But a Tarrant County District judge granted a temporary restraining order blocking Fort Worth Independent School District's mask mandate after determining it was improper for an unelected school superintendent to determine the policy.

### The Feds Stand Behind Local Masking Mandates Florida and Texas

In a pair of letters sent Friday, [Education Secretary Miguel Cardona wrote both Florida Governor Ron DeSantis and Texas Governor Greg Abbott](#) to express concern about recent executive actions prohibiting 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." He also noted that [federal pandemic relief funds](#) could be used to make up for state-imposed penalties on local school districts.

"The Department stands with these dedicated educators who are working to safely reopen schools and maintain safe in-person instruction," Cardona wrote.

In a [letter](#) to DeSantis and his Education Commissioner Richard Corcoran, Cardona wrote that he was "deeply concerned" by DeSantis' efforts preventing schools from requiring students to wear masks amid a surge in COVID infections, and that his agency could reach the schools directly if need be. "We are eager to partner with [Florida Department of Education] on any efforts to further our shared goals of protecting the health and safety of students and educators,"

Cardona wrote. “If FLDOE does not wish to pursue such an approach, [the Department will continue to work directly with the school districts and educators that serve Florida’s students.](#)”

Cardona’s letter comes the same day as the Florida Department of Education announced an emergency meeting to [hash out possible sanctions](#) against school leaders in Alachua and Broward counties, which have enacted stricter student mask mandates than allowed by the DeSantis administration. DeSantis is threatening to hit school leaders with hundreds of thousands of dollars in fines for breaking the rules — an amount equal to their pay.

In the [letter](#) Cardona sent to Gov. Abbott, the Secretary of Education wrote, “The Department recognizes that several [local education agencies] in your State have already moved to adopt such policies in line with guidance from the CDC for the reopening and operation of school facilities despite the State-level prohibitions.”

Cardona emphasized that local school districts have discretion to use federal funds meant to fight the coronavirus “for contact tracing, implementing indoor masking policies, or other policies aligned with CDC guidance.” Cardona said the federal government was “eager to partner” with Texas officials on the shared goals of protecting students and educators. But he also said his agency was monitoring “whether Texas is meeting all of its Fiscal federal requirements” for the COVID-19 relief funds.