



June 15, 2021

Q: Are LEAs required to implement a mask mandate in exchange for receiving ESSER III Funds?

A: No. ESSER III does not *require* schools to implement mask mandates. They must only address the extent to which they are adopting policies on the CDC's safety recommendations.

The U.S Department of Education's Interim Final Rule on the *American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund (ARP ESSER)* discusses the requirements for LEAs that receive ESSER III funds from ARPA. 86 Fed. Reg. 21195 (Apr. 22, 2021). One requirement is that LEAs must develop, submit to OPI, and make publicly available a plan for the LEA's for the safe return to in-person instruction and continuity of services ("Reopening Plan"). *Id.* at 21199. The Reopening Plan must include only "how it will maintain the health and safety of students, educators, and other school and LEA staff, *and the extent to which it has adopted policies*, and a description of any such policies, on each of the CDC's safety recommendations." 86 Fed. Reg. at 21200, 21201 (emphasis added). The Department merely requires that LEAs "address" in their plans CDC safety recommendations such as the "[u]niversal and correct wearing of masks." 86 Fed. Reg. at 21200 n.14. There is no mandate.

This is supported by the text of ARPA itself, which makes clear that using ARPA funds to reopen schools in accordance with CDC guidance is only one of the optional uses available to LEAs. *See* Pub. L. 117-2 § 2001(e)(2). Moreover, ARPA makes clear that even if an LEA uses ESSER III funds for reopening and public health measures, it must only do so "to the greatest extent practicable" with CDC Guidance. § 2001(e)(2)(R). Thus, if it is impracticable for an LEA to implement a mask mandate, it is not required to and the LEA should explain its reasoning in its Reopening Plan.

Each LEA should evaluate its individual facts circumstances in consultation with local public health officials to determine the extent to which CDC guidelines are necessary and/or practicable. Schools across Montana are in different places when it comes to the necessity and practicability of universal mask wearing. LEAs should make local decisions regarding these important questions.

