



March 30, 2022

Senator Jeb Bradley, Chairman
Senate Health and Human Services Committee
Legislative Office Building, Room 101
33 N. State Street
Concord, NH 03301

Submitted via email to: Jeb.Bradley@leg.state.nh.us; James.Gray@leg.state.nh.us;
Tom.Sherman@leg.state.nh.us; Becky.Whitley@leg.state.nh.us; Kevin.Avard@leg.state.nh.us;
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RE: HB 1131 relative to facial covering policies for schools

Dear Chairman Bradley and Members of the Health and Human Services Committee:

Bi-State Primary Care Association and our members respectfully request HB 1131, relative to facial covering policies for schools, be recommended inexpedient to legislate. Bi-State is unable to attend the public hearing in person, and we thank you for the opportunity to submit written testimony to your committee electronically.

Bi-State and our members write to you in strong opposition of HB 1131 because it will result in limiting educational institutions' ability to mitigate the spread of deadly disease. We believe that it also prohibits school officials from considering requests by individuals with disabilities for reasonable accommodations pursuant to federal law.

Bi-State Primary Care Association (Bi-State) is a 501(c)(3) nonprofit organization, formed by two health and social service leaders in 1986 to advance access to comprehensive primary care and preventive services for all, with special emphasis on those most in need in New Hampshire and Vermont. Today, Bi-State represents 28 member organizations across both states that provide comprehensive primary care services to over 300,000 patients at 146 locations. Our members include community health centers (CHCs), federally qualified health centers (FQHCs), rural health clinics (RHCs), area health education center programs, and Planned Parenthood of Northern New England. New Hampshire's 13 health centers serve approximately 112,000 patients at locations across the state, including in those districts represented by the members of this esteemed committee.

Bi-State and our members oppose HB 1131 because it will prohibit New Hampshire's schools from enacting public health measures designed to minimize the spread of infectious diseases.

HB 1131 prohibits school boards of school districts, chief executive officers of chartered public schools or public academies from “adopting, enforcing, or implementing a policy that requires students or members of the public” from wearing a facial covering unless it is for a “specific extracurricular or instructional purpose.” Public health measures, such as masks, are designed to and can protect members of our communities, including those who cannot wear masks, from deadly disease. In a recent study included in the CDC’s Morbidity and Mortality Weekly Report (MMWR), scientists found that “consistent use of a face mask or respirator in indoor public settings was associated with lower odds of positive SARS-CoV-2 test result.”¹ Today, New Hampshire school districts can require masks in classrooms where there are clusters of COVID-19 cases to prevent the further spread of disease. If HB 1131 were to become law, our school districts would be prohibited from requiring classrooms mask despite knowing there was a communicable disease spreading in that group of students and staff.

The bill does not seem to take into consideration the needs and rights of children and staff with disabilities; and prohibits school districts (and school boards) from considering requests for reasonable accommodations pursuant to federal law.² However, the bill explicitly allows public school boards, “governing person or a body of a school” to require facial coverings in certain circumstances: facial coverings for sports, handling chemicals, fire, or “other hazardous elements from scientific or similar educational purposes.”

HB 1131 puts school districts at odds with federal law by eliminating the districts’ ability to consider requests for reasonable accommodations from children with individualized education programs and Section 504 plans. Section 504 of the Rehabilitation Act of 1973 ensures children with disabilities have equal opportunities to access their schools, school programs, and school activities. The Individuals with Disabilities Education Act of 1975 requires schools to provide a free public education to students with disabilities that is tailored to the needs of the student. This means that students can request an “accommodation” that would allow the student to continue to access public education, including masks being worn by the child, and the children and school staff in near vicinity to the child.

There are people of all ages who are more likely than others to become severely ill or die from COVID-19, including people with cancer, cystic fibrosis, type 1 and type 2 diabetes, Down syndrome, cerebral palsy, pregnancy, and people with intellectual and developmental disabilities. Children with underlying health conditions attend our public schools, and they deserve and are lawfully entitled to an education that does not jeopardize their safety.

In February 2022, the state of Virginia passed S 739, which is similar to HB 1131 in that parents choose whether their children wear a mask, regardless of the needs of the children with disabilities or chronic conditions in the classroom. The parents of twelve public school children who have disabilities and diagnoses that put them at “severe health risk if they should contract COVID-19” filed suit against the Commonwealth of Virginia.³ On March 23, 2022, the US District Court for the Western District of Virginia confirmed in an injunction that federal law requires “schools be able to consider and afford disabled students reasonable modifications from

¹ <https://www.cdc.gov/mmwr/volumes/71/wr/mm7106e1.htm> (last visited March 30, 2022).

² HB 1131, As Passed the House, Lines 8-13, 2022 Leg. Sess. (Nh 2022).

³ Seaman, *et al.* v. Commonwealth of VA, F. Cas. (3:22-cv-00006) (March 23, 2022).

otherwise applicable state or local laws.” This includes students with compromised immune systems and/or disabilities are at “heighted risk of severe illness or death, and that transmission of COVID-19 in their communities and schools specifically presents an acute, ongoing risk...” If HB 1131 were signed into law, school districts would not be able to consider requests for modifications or accommodations, placing schools at risk of lawsuit and most troubling, students’ health at risk.⁴

Further, New Hampshire voters elect their school districts’ school boards, and HB 1131 ties the hands of elected officials by prohibiting those elected officials from considering policies that impact the health, welfare, and education of their constituents. HB 1131 also creates a cause of action against school officials even though those very same school officials had no ability to consider requests for or against facial coverings.

HB 1131 will harm children and school staff with complex medical needs. It will also place additional burdens on our educational system to find in-home educational opportunities if these children were unable to attend school due to a lack of accommodations. We know that employing mitigation measures such as masks in schools prevents the spread of disease. Eliminating the ability of the local authorities to require masks to prevent disease spread will undoubtedly increase the number of COVID-19 cases and burden our health care system even more than it is today. COVID-19 will continue to overwhelm our health care system if we unilaterally prohibit mitigation measures.

For these reasons and more, Bi-State Primary Care Association and our members respectfully request the Committee recommend HB 1131 be inexpedient to legislate.

Sincerely,

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⁴ See *id.* at 3.