

# Henrico Schools keeps mask rules; Youngkin's order says parents don't have to abide

Anna Bryson



Despite an [executive order](#) from Gov. Glenn Youngkin Saturday that will terminate the statewide health order requiring masks in K-12 schools, Henrico Schools officials said Sunday night that their masking rules will remain in effect.

The executive order clashes with a state law that requires schools to follow guidelines from the Centers for Disease Control and Prevention to the greatest extent practicable. For now, CDC guidelines recommend using masks in school buildings.

A statement Sunday night from Henrico County Public Schools officials cited the [state law](#) and reaffirmed the [Henrico School Board's decision](#) to require masks inside school.

“The HCPS School Board and administration respect that parents make decisions for their families; however, division leaders must make decisions for the collective safety of nearly 49,000 students and 10,000 employees and fulfill HCPS’ responsibility to provide in-person instruction,” the news release said.

The governor’s executive order, which takes effect Jan. 24, states that parents may elect for their children not to be subject to any mask mandate in effect at the child’s school. No parent who chooses to opt their child out

of a school mask mandate shall be required to provide a reason or make any certification concerning their child's health or education, according to the order.

But Henrico and at least 11 other school divisions in the state (including Fairfax, Prince William, Loudoun, Albemarle, Roanoke and Richmond) have announced that they'll keep their mask requirements in place.

"By saying that parents don't have to listen to localities, [Youngkin is] encouraging conflict as a way to, I think, take it to the courts," said Del. Schyuler VanValkenburg (D-Henrico), who contributed to the language in the state law that requires schools to follow CDC guidance. "The school can say, 'Hey, Johnny, you have to wear your mask. It's a school policy.' And then the kid can say, 'Well, the governor said I don't have to.' When the first school system punishes a kid for that, it'll end up in the court system. That's where the courts will settle the issue."

HCPS Spokeswoman Eileen Cox said that the school division will continue to consult with its legal counsel.

"We'll do the same thing that we've done all year, which is work with individual families to see what – if any – alternatives are available," Cox said. "But there is an expectation, and all parents and families signed an acknowledgement of the expectation that students will be wearing masks. That happened at the very beginning of the school year."

The law that requires schools to follow CDC guidance, [Senate Bill 1303](#), was originally introduced by Sen. Siobhan Dunnivant (R-Henrico) as a one-sentence bill, mandating a return to in-person instruction.

House Democrats, including VanValkenburg, added language onto the bill that requires schools to follow mitigation strategies from the CDC "to the maximum extent practicable." It passed last year with a strong bipartisan vote.

The law [stoked conflict in August](#) after the CDC amended its guidance to urge masks for everyone in K-12 schools regardless of vaccination status. State lawmakers argued over the interpretation of the language that states schools must follow CDC guidance "to the maximum extent practicable" — emphasis on the word "practicable."

Soon after, then-State Health Commissioner M. Norman Oliver [released a health order](#) mandating that masks be worn in all public and private K-12 schools by everyone 2 years and older. The order took the decision-making process out of the hands of local school boards and temporarily quelled the conflict over the interpretation of SB 1303.

HCPS had [announced a mask-optional policy](#) in late July, when the COVID-19 transmission level in Henrico was considered moderate. A couple of weeks later, Henrico School Board members [voted unanimously](#) to approve the updated recommendations from the HCPS health committee and require masks in schools. Coincidentally, the vote came just as the health order was released.

Any future change to HCPS masking rules would come from a school board vote, Cox said.

"I'm not saying there is a change looming, but if or when it is safe, and we feel that it is safe based on CDC guidance, then the school board would have to approve any change to our current mask policy," Cox said. "Everything is based on our current circumstances."

Dunnivant chimed in Monday afternoon and released a statement that said, "SB1303 does not mandate the use of masks in school because the CDC does not mandate masks."

While the CDC is one of the largest federal health agencies in the U.S. and has been seen as a leader in the COVID-19 response, the agency itself does not have the power to mandate masks. It makes recommendations.

The Youngkin administration did not respond to requests for comment from the *Citizen*.

Youngkin appeared on "[Fox News Sunday](#)" in his first interview since being sworn into office and spoke about his executive order regarding masking in schools.

"We are providing parents an opt out, we're providing them the ability to make the right decision for their child with regards to their child's well being," he said in the interview. "We are going to use all the authority that... I have to consider all options to protect that right. And I think this is exactly what Virginians voted for in November, and we delivered yesterday."

Disagreement about the conflicting nature of Youngkin's order and the state law ultimately could be resolved by the Virginia Supreme Court, if anticipated legal challenges occur.

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*Anna Bryson is the Henrico Citizen's education reporter and a Report for America corps member. [Make a tax-deductible donation](#) to support her work, and RFA will match it dollar for dollar.*

# Cashwell: Henrico Schools' mask rules are not a political stance

*Anna Bryson*



Students work at their desks during a Henrico Schools Summer Academy program at Skipwith Elementary School (Henrico Citizen file photo/ 2021)

Henrico Superintendent Amy Cashwell Saturday morning spoke publicly for the first time about Gov. Glenn Youngkin's executive order [that terminates the statewide mask mandate](#) for K-12 schools. It's an order that school system officials announced last week will not trump the school system's existing policy requiring masks for everyone in its buildings.

"I want to be really clear, this is in no way Henrico County Schools pushing back personally on the governor or taking any kind of political stance," Cashwell said, addressing the Henrico Board of Supervisors during its one-day retreat. "We're working to make sure we're maintaining our health and safety plans and doing so in accordance with the law and health experts."

Cashwell cited existing state law (from Senate Bill 1303, passed last year), which requires schools to follow guidance from the Centers for Disease Control and Prevention. Those guidelines include universal masking in K-12 schools.

Legislators [continue to argue](#) about the law's intent.

Sen. Siobhan Dunnivant (R- Henrico) originally introduced it as a one-sentence bill, mandating a return to in-person instruction.

House Democrats, including Schuyler VanValkenburg (D- Henrico) added language onto the bill that requires schools to follow mitigation strategies from the CDC "to the maximum extent practicable." It passed last year with a strong bipartisan vote.

HCPS spokeswoman Eileen Cox said that if any students refuse to wear masks on Monday or beyond, school officials will do what they have done all year – work with individual families to see what alternatives are available.

Based upon directives from school administration obtained by the *Citizen*, one mitigation strategy is to have unmasked students sit behind plexiglass if they cannot always be distanced by 6 feet or more.

If a parent's concern cannot be resolved collaboratively through other means, it may be necessary for a student to learn asynchronously outside of the school building, according to Cox.

"Again, our expectation and hope are that students and families will continue to adhere to current HCPS masking requirements as they have done successfully all school year," Cox said. "School administrators will assist and support teachers in addressing situations where a student may refuse to wear a mask."

Youngkin's executive order states that parents may elect for their children not to be subject to any mask mandate in effect at the child's school. No parent who chooses to opt their child out of a school mask mandate will be required to provide a reason or make any certification concerning their child's health or education, according to the order.

But on Friday evening, [Youngkin said in a statement](#) that he encourages families to follow guidance from their principals until the matter is sorted out legally.

A group of parents filed a [lawsuit on Tuesday](#) against Youngkin in the Supreme Court of Virginia. The suit claims that the executive order is unconstitutional, partly because it clashes with a state law.

Attorney General Jason Miyares filed a motion on Thursday night to dismiss the lawsuit.

SB1303 stoked conflict in August when the CDC changed its recommendations to urge universal masking in K-12 schools. Then-governor Ralph Northam [implied](#) that school divisions that didn't follow CDC mitigation strategies would be in violation of state law.

Confusion arose over the intent and reach of the law. The controversy was put on hold when then- State Health Commissioner M. Norman Oliver [released](#) a health order mandating that masks be worn in all public and private K-12 schools by everyone 2 years and older.

Now, that order will be terminated Monday when Youngkin's executive order takes effect.

The issue should soon be settled by the Virginia Supreme Court.

The Henrico Education Association, along with the Richmond and Chesterfield teachers unions, are encouraging teachers to wear black on Monday in support of efforts to maintain safety protocols.

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# Henrico Schools reduces isolation periods, makes mask transition plans

Anna Bryson



Starting Monday, Henrico County Public Schools students and staff who test positive for COVID-19 must isolate for only five days if they are fever-free without medication and their symptoms are improving. The previous isolation time was 10 days.

The change, announced during Thursday's Henrico School Board work session, reflects updated guidance from the Centers for Disease Control and Prevention and the Virginia Department of Health.

After returning to school or work, the person must wear a face mask at all times for the next five days and be physically distant from others, no matter their vaccination status.

No changes to quarantine rules were announced at Thursday's Henrico School Board work session. Two weeks ago, [quarantine rules were changed](#) to require booster shots for eligible adults in order to avoid quarantine. (Isolation refers to people who test positive for COVID-19, while quarantine refers to people who were exposed to someone else with COVID-19.)

## End to contact tracing

Following the lead of the state health department, HCPS will no longer contact trace each positive COVID-19

case. The shift will allow school staff to focus on instruction, HCPS Chief of Staff Beth Tiegen said Thursday.

The VDH [announced](#) Tuesday that it is ceasing its attempts to investigate every case in order to focus on follow-up of outbreaks and cases in high risk settings.

It is no longer possible or fruitful to track every case because the Omicron variant is spreading so quickly, according to the VDH. While the illness is more mild than previous variants, the sheer number of cases is straining the state's health care system.

HCPS will continue to investigate and report positive cases and outbreaks (two or more related cases).

### **Masking transition plans**

There are no changes to Henrico County Public Schools' universal masking requirements for now.

However, Teigen said Thursday that the health committee is considering when it may be warranted to discontinue or change mitigation strategies, including masking.

The health committee is working to determine which levels of transmission, vaccinations and other factors would provide off-ramps for reversal masking as a mitigation.

Gov. Glenn Youngkin's [executive order](#), which rescinds the K-12 mask mandate, took effect on Monday. Despite the order, HCPS [maintained its masking requirements](#), citing a state law that requires schools to follow CDC guidance to the greatest extent practicable.

"While we have reviewed the order and agree that parental choice and involvement is critical, the executive order is in conflict with the existing law Senate Bill 1303, which remains in place until August," Teigen said. "The federal order for masking on buses remains and of course, the state constitution calls for local school board authority related to local division matters."

The governor's order doesn't prevent school divisions from requiring masks; it states that parents may elect for their children not to be subject to any mask mandate in effect at the child's school. Despite the executive order, the vast majority of HCPS's 49,000 students arrived at school wearing their masks on Monday.

"We continue to adhere to our mask protocols with fidelity," said HCPS spokeswoman Eileen Cox. "HCPS is pleased to report that successful instruction was reported at all our schools this week."

The enforceability of Youngkin's executive order likely will be decided in court. A group of parents filed a lawsuit against the governor last week in the Supreme Court of Virginia [claiming that the order is unconstitutional](#). Attorney General Jason Miyares later filed a motion to dismiss that lawsuit.

On Sunday evening, seven Virginia school boards including Richmond and Fairfax filed a joint lawsuit against Youngkin. The suit claims that the governor cannot override the constitution of Virginia (which gives local school boards authority over school operations) and SB 1303.

HCPS "was made aware of conversations between school divisions about potential lawsuits," Cox said, but the Henrico School Board is not involved in the lawsuit.

Late last week, [Youngkin urged parents](#) to listen to their principals on masking for the time being, until the matter is settled in court and the constitutionality of his order becomes more clear.

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## About one dozen Henrico families, mostly at Deep Run High, refuse masks

*Anna Bryson*



Across the Henrico County Public Schools division which serves nearly 49,000 students, only about one dozen families are refusing to follow the district's mask rules, citing the governor's executive order.

Gov. Glenn Youngkin's [order](#), which rescinded the K-12 mask mandate, took effect last Monday. Despite the order, HCPS [maintained its masking requirements](#), citing a state law that requires schools to follow guidance from the Centers for Disease Control and Prevention to the greatest extent practicable. The CDC recommends universal masking in K-12 schools.

Of the small group of families who are refusing to have their children wear masks, most are at Deep Run High School.

A group of 13 Deep Run students whose parents would not let them wear masks last week completed school work from the auditorium, according to students and teachers.

But starting Monday, the group of students were allowed in classrooms without masks.

In an email sent Friday afternoon only to teachers of those 13 students, school administrators wrote that the



unmasked students are now allowed in classrooms and teachers should keep them either socially distanced or behind plexiglass if distancing isn't possible.

In most classrooms, there isn't enough room to space a student out six feet from classmates, said Rachel Lawrence, a Deep Run teacher.

"The general feeling from teachers is that this is going to be a slippery slope," Lawrence said. "That once we have students not wearing masks, it will be hard to enforce the mask policy. How can you ask a student to wear a mask when someone else is not?"

In a faculty meeting on Monday morning, Deep Run teachers were instructed to send any students not wearing masks to the office – except for the original 13 students whose parents are refusing masks, according to teachers.

"To be clear, students cannot just come to school without a mask and sit in class," said HCPS spokeswoman Eileen Cox.

Parents who are concerned about masking must talk with their principals, and following those conversations the vast majority of students wear their masks, according to Cox.

"...However, in cases where the parent refuses, we are leveraging the other mitigation measures available to us, including distancing, separation from peers by plexiglass, and learning asynchronously in an alternate location," Cox said.

Katie Sullivan, a student at Deep Run, said that students are generally split on the mask issue – some feel safer with masks, some don't like wearing them, and some don't care either way.

But the conflict is "a distraction none of us need," she said. "We've worn masks for half the year now, I think we can all survive and wear them for the rest of it."

The 13 Deep Run students who are now allowed in classrooms maskless must put on their masks to go to the bathroom or change classes.

Last week, the students who were separated in the auditorium were allowed go to classes if they put on a mask. Lawrence, who is a math teacher, said one of her students was missing her classes but attending other classes.

"My concerns are that students broke a policy – whether you agree with it or not – and they're being allowed to basically continue to break that policy without any consequences," Lawrence said. "If we had more communication and more transparency, a lot of this could be avoided."

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On Thursday evening, several HCPS parents spoke at a Henrico School Board meeting in support of parental choice for masking students.

Eleina Espigh, who said she's the parent of a "political prisoner" at Deep Run, said her son has been "unjustly" quarantined.

"The people have elected a governor who would free us from this unjustified discrimination and tyranny," Espigh said. "He's outlawed mask mandates, and yet HCPS continues to go rogue and make up rules that segregate, threaten, isolate and humiliate our children."

Other parents called the mask rules heartbreaking, unethical and illegal.

The governor's order doesn't prevent school divisions from requiring masks, but it effectively gives parents the power to override them by electing that their children not be subject to any mask mandate at their schools.

Another parent, Matt Williams, said that last year HCPS cited the former governor's directive that required universal masking in schools.

"Now that our new governor has clearly written an executive order to give parents the choice in whether to mask children, the board now chooses to cite another law..." he said.

In their reasoning for keeping masking rules, HPCS officials have cited Senate Bill 1303, which requires schools to follow CDC guidance.

The law originally was introduced by Sen. Siobhan Dunnivant (R-Henrico) as a one-sentence bill, mandating a return to in-person instruction. House Democrats added language onto the bill that requires schools to follow mitigation strategies from the CDC “to the maximum extent practicable.” It passed last year with a strong bipartisan vote.

The law [stoked conflict in August](#) after the CDC amended its guidance to urge masks for everyone in K-12 schools. But the conflict was nipped in the bud when then-State Health Commissioner M. Norman Oliver [released a health order](#) mandating masks in K-12 schools, taking the authority out of the hands of local school boards.

When Youngkin rescinded the mask mandate, the conflict came back to life.

Susan Swecker, chairwoman of the Democratic Party of Virginia, said in a call with reporters on Friday that the order jeopardizes the ability of schools to offer in-person instruction because masks are critical to keeping schools open.

“Gov. Youngkin and Republican leaders have told Virginia that our school boards have failed our students, undermining these local officials, and he continues to repeatedly threaten that he will defund public schools that don’t comply with his orders,” Swecker said. “All of this put together is pretty daggone straightforward — it’s an attack on our public schools...”

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The biggest concern for Deep Run teachers, Lawrence said, is that there hasn’t been clear communication about policies and procedures for how to handle students who defy mask rules.

Leadership of the local teachers union, Henrico Education Association, encouraged teachers across HCPS to wear black on Monday to show solidarity with educators at Deep Run.

“This is a slap in the face to disabled and immunocompromised students whose families have worked tirelessly for years to attain medical documentation for their children’s accommodations,” said HEA President Patrick Miller in a statement. “We’re calling on HCPS to fix this egregious error, and to issue the same consequences they would if any other student broke any other rule.”

Of the approximately 12 families across the district who are refusing masks for their children, the majority are at Deep Run, according to Cox. By percentage, the Far West End school serves the fewest poor families (10%) out of any high school in the division, according to [state data](#). Meanwhile, every high school in the East End of the county serves a majority of economically disadvantaged students.

The enforceability of Youngkin’s executive order likely will be decided in court. A group of parents filed a lawsuit against Youngkin in the Supreme Court of Virginia [claiming that the order is unconstitutional](#). Seven Virginia school boards including Richmond also filed a joint lawsuit against Youngkin which claims that the governor cannot override the constitution of Virginia (which gives local school boards authority over school operations) and Senate Bill 1303.

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# Henrico mother and other parents sue Youngkin over mask order

*Anna Bryson*



The mother of a Henrico County Public Schools student is part of a lawsuit against Gov. Glenn Youngkin and his administration filed in federal court Tuesday. The suit claims that the governor's executive order, which rescinded the statewide K-12 mask mandate, violates federal antidiscrimination laws.

This is the third lawsuit challenging the legality of Youngkin's executive order.

The Henrico parent, Elizabeth Burnett, is suing on behalf of her 11-year-old son, who attends Quioccasin Middle School.

The boy has chronic lung disease and is immunocompromised, which substantially limits his breathing and the major bodily function of the respiratory system, according to the lawsuit filed by the American Civil Liberties Union of Virginia. Because of his disabilities, the boy is at high risk of severe illness if he contracts COVID-19.

HCPS mask mandate is still in place. However, school administration is allowing [some students to violate the rules.](#)

If there is no longer a mask mandate in HCPS, the boy's parents said they will have to choose between sending him to school and putting his safety at heightened risk, or withdrawing him from school and risking his educational progress, according to the suit.

Burnett, along with 10 other parents of students with disabilities statewide, claim in the lawsuit that Youngkin's executive order violates the Americans With Disabilities Act and other federal law that provides broad protections for people with disabilities.

"By refusing to allow school districts to even consider whether to implement universal mask requirements as needed to protect the health and safety of the children they serve, the governor's order has placed unlawful barriers to educational access for students with disabilities," said Eden Heilman, the ACLU of Virginia's legal director in a statement. "The governor is preventing some of the state's most vulnerable children from returning to, or remaining in, public schools."

The lawsuit asks the court for a permanent injunction lifting the executive order.

Other school children represented in the suit include those living with disabilities such as cancer, cystic fibrosis, moderate to severe asthma, Down syndrome, lung conditions, organ and blood stem cell transplants and diabetes.

Along with Youngkin, the other defendants named in the suit are Attorney General Jason Miyares, State Superintendent Jillian Ballow and Acting State Health Commissioner Collin Greene.

According to the suit, those officials are forcing parents of students with disabilities to choose between keeping their children at home and forfeiting their children's education, or placing them in an environment that presents a serious risk to their health and safety.

Another plaintiff, Lindsey Dougherty, has a son in neighboring Chesterfield County Public Schools. Her son has an autoimmune disorder, and she pulled him from school after the Chesterfield School Board voted to rescind CCPS' mask rules.

Burnett's son also has a twin brother, who would also have to withdraw from school if the HCPS mask mandate is lifted, on the advice of the boy's pediatrician. This is particularly challenging, Burnett said, because the brother has autism and requires in-person support and services.

Youngkin signed the executive order that terminated the statewide mask mandate in K-12 schools on the day of his inauguration. The order states that parents may elect for their children not to be subject to any mask mandate in effect at the child's school.

The day after Youngkin signed the order, [HCPS announced to families that its mask requirement would remain](#) in place. Henrico Schools officials cited existing state law (Senate Bill 1303, passed last year), which requires schools to follow guidance from the Centers for Disease Control and Prevention. Those guidelines include universal masking in K-12 schools.

Superintendent Amy [Cashwell said](#) before the executive order went into effect Jan. 24 that HCPS is not "pushing back personally on the governor or taking any kind of political stance."

But despite HCPS' continued mask requirement, not all students are wearing masks at school.

Last week, a group of 13 students at Deep Run High School completed their work from the school's auditorium at the direction of school administration, because their parents would not allow them to wear masks, citing the governor's order.

On Monday, those [maskless students were allowed back inside their classrooms](#).

Only the teachers of those 13 students were notified, via email on Friday afternoon, that the rules surrounding these students were changing.

Other teachers, along with students and parents, were not told that unmasked students would be in classrooms this week, according to several parents and teachers.

The number of maskless students began to expand beyond the original group of 13 this week, parents of those students told the *Citizen*.

A Deep Run teacher who spoke to the *Citizen* on condition of anonymity for fear of retribution said that the

situation has caused confusion among students and has put teachers in an uncomfortable situation.

“It is incredibly hard because the kids ask, ‘Why does he not have to wear a mask?’ I can’t say, ‘because his parents are the ones that are complaining and yelling,’” the teacher said. “I feel like it’s pitting students against students. It’s also pitting teachers against each other because certain teachers are totally cool without masks whereas other teachers don’t allow it.”

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# Henrico Schools to stop allowing unmasked students following court ruling

Anna Bryson



Highland Springs High School (Anna Bryson/Henrico Citizen)

An Arlington County judge temporarily blocked Gov. Glenn Youngkin’s executive order to give parents the option to opt their children out of school mask mandates.

Following the ruling Friday afternoon, Henrico County Public Schools officials announced that schools will no longer allow students to attend school without wearing masks. HCPS [didn’t rescind](#) its universal masking requirement following the governor’s order— but it [did allow some students to defy rules](#) at the insistence of their parents.

“Students are expected to adhere to the universal masking requirement, and anyone who refuses to wear a mask will face disciplinary action in accordance with the Code of Student Conduct for disruption of the school day,” HCPS officials said in an email to families and staff on Friday evening. “We understand that not everyone agrees with the court’s decision. We all look forward to (and are planning for) the time when masks are no longer needed.”

As of Monday, about one dozen HCPS families refused to follow the district’s mask rules, citing the

governor's executive order. But that number grew throughout the week. Most of the maskless students attend Deep Run High School.

Only the teachers of the select group of students at Deep Run who were allowed to defy the mask rules were notified of the change before it took place on Monday. The patchwork system confused and angered many teachers and families, who said they felt left in the dark by the school's approach.

The ruling Friday came in a lawsuit against Youngkin brought on by seven school boards, including Richmond and Fairfax. The Henrico School Board did not participate.

In the lawsuit, the school boards complained that the executive order undermines the clear authority vested in them by the General Assembly in a state law, SB 1303, to implement a reopening plan consistent with recommendations from the Centers for Disease Control and Prevention.

The law, authored in part by Del. Schuyler VanValkenburg (D- Henrico) who is also a HCPS teacher, requires schools to follow mitigation strategies from the CDC "to the maximum extent practicable." It passed last year with a strong bipartisan vote.

In the ruling, Arlington County Circuit Court Judge Louise DiMatteo said the language in SB 1303 clearly states that the General Assembly delegated certain policy determinations regarding practicability of CDC COVID-19 mitigation protocols to school boards.

There is no ambiguity in the law, the judge said in the ruling.

"...the efficacy of the governor's school mask policy contained in EO2 does not bear upon whether he has authority to issue it," DiMatteo wrote. "The single issue before the Court is whether the governor, via his emergency powers, can override the decisions of local school boards delegated to them under SB 1303. On this pivotal point, the Court concludes that the governor cannot."

Governor spokeswoman Macaulay Porter said in a statement that the administration will appeal the ruling, and that it is just the first step in the judicial process.

"The governor will never stop fighting for parents' ability to choose what is best for their children," Porter said in the statement. "The governor often said that this is not a pro-mask or anti-mask debate. It's about parents knowing what's best for their child's health, and opting-out should there be a mask mandate. More voices, including from the scientific and medical community, call into question the efficacy behind a universal mask mandate for children. This is about what's best for their kid's health and who can best make that decision."

The lawsuit brought on by the seven Virginia school boards is one of three challenging the governor's order to rescind the K-12 mask mandate.

A group of [Chesapeake parents sued the governor last month](#), and claimed in the suit that the order violates the Constitution of Virginia.

Earlier this week, a group of parents [including a Henrico mother sued Youngkin](#). The parents of students with disabilities contend that the executive order violates federal antidiscrimination laws.

Following HCPS' announcement late Friday, the president of the local teachers union credited local teachers in part for the school division's announcement.

"While many will attribute this solely to the Arlington Circuit Court decision, some credit is certainly due to those teachers at DRHS who stood firm, and every educator and community member who stood in solidarity to demand the health and safety of all students and staff be prioritized," said Patrick Miller, president of the Henrico Education Association.

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# Va. Supreme Court dismisses school masking lawsuit against Youngkin

*Anna Bryson*



Gov. Glenn Youngkin Jan. 27, 2022. (Anna Bryson/ Henrico Citizen)

The Virginia Supreme Court on Monday dismissed a lawsuit that [claimed Gov. Glenn Youngkin's executive order](#) to permit parents to exempt their children from school masking requirements violates the state constitution.

The lawsuit was filed Jan. 18 by a group of Chesapeake parents who claimed that the governor's order clashes with a state law that requires schools to follow guidelines from the Centers for Disease Control and Prevention "to the greatest extent practicable."

In its dismissal, the Supreme Court said that the state law, SB 1303, "gives the [school] boards a degree of discretion to modify or even forgo those strategies as they deem appropriate for their individual circumstances."

That discretion persists even if the executive order's masking exemption provisions are unlawful, according to the court.



Although the lawsuit was dismissed, the Supreme Court offered no opinion on the legality of the executive order or any other issue pertaining to the claims described by the parents in the lawsuit.

Still, Virginia Attorney General Jason Miyares interpreted the decision as a win for the Youngkin administration.

“The governor and I are pleased with today’s ruling,” Miyares said in a statement. “We agree with the Court’s decision and will continue to defend the executive order. This is a victory for Virginia families.”

But House of Delegates Minority Leader Eileen Filler-Corn, a Democrat, disagreed.

“Today’s court decision has no bearing on the decision that came down Friday in favor of local school boards against Governor Youngkin’s unconstitutional executive order,” she said in a statement. “Governor Youngkin and Attorney General Miyares are falsely applauding today’s ruling out of Chesapeake on a separate case, causing further confusion on the governor’s unconstitutional executive order and what it means for Virginia families. We all want our schools to remain safe and open for in-person learning. We also want a return to normal for our students, but the timing and decision should be driven by science and local communities, not politics.”

## **Two remaining lawsuits**

The lawsuit filed by Chesapeake parents that was dismissed Monday was the first of three lawsuits regarding Youngkin’s order to rescind the K-12 mask mandate. The two additional lawsuits remain active – one in federal court and one in the Arlington County Circuit Court.

A lawsuit filed in federal court Feb. 1 by the ACLU of Virginia involves the mother of Henrico County Public Schools students. The suit claims that Youngkin’s executive order violates federal antidiscrimination laws.

The Henrico parent, Elizabeth Burnett, has a sixth grader who attends Quioccasin Middle School. The 11-year-old boy has interstitial lung disease and is immunocompromised.

If the HCPS mask requirement was lifted, his parents would have to take him out of school based on the advice of his medical team, Burnett told the *Citizen* on Monday.

“But from an educational and psychosocial standpoint, it’s not the decision that we would want to make for him,” Burnett said. “We don’t feel that it’s providing an equitable situation for my son, and other children like him.”

Burnett, along with other parents of students with disabilities statewide, claim in the lawsuit that Youngkin’s executive order violates the Americans With Disabilities Act and other federal law that provides broad protections for people with disabilities. The suit asks for a permanent injunction lifting the executive order.

It could take quite a bit of time for the lawsuit to play out in court, said Kaitlin Banner, deputy legal director for the [Washington Lawyers’ Committee for Civil Rights and Urban Affairs](#). But there’s also the possibility of asking the judge to escalate things or to move for preliminary relief, which Banner said the legal team is considering if and when appropriate.

Burnett’s son wears a K95 mask during the school day, even though he has 50% lung function, his mother said. He eats in a classroom with his twin brother and another student to avoid being exposed to COVID-19 during lunch when students remove their masks to eat.

“We are very, very careful and have a lot of things in place to try to protect him,” Burnett said. “It would be a completely different picture if other students were unmasked. He would not be able to attend.”

Another lawsuit against Youngkin, which was filed Jan. 24 in Arlington County Circuit Court, was brought on by seven school boards. It claims that the executive order undermines the authority vested in school boards by the General Assembly in SB 1303 to implement a reopening plan consistent with recommendations from the CDC.

On Friday, an Arlington judge temporarily blocked the order. Monday’s ruling by the Supreme Court of Virginia doesn’t affect that [temporary restraining order](#).

Following the ruling Friday afternoon, Henrico County Public Schools officials announced that schools will no longer allow students to attend school without wearing masks. HCPS [didn’t rescind](#) its universal masking requirement following the governor’s order— but it [did allow some students to defy rules](#) at the insistence of

their parents.

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*Anna Bryson is the Henrico Citizen's education reporter and a Report for America corps member. [Make a tax-deductible donation](#) to support her work, and RFA will match it dollar for dollar.*

# Friction over masking between Henrico parents snowballs with sign spat

Anna Bryson



A defaced sign on Twin Hickory Road Friday morning. (Anna Bryson/ Henrico Citizen)

The [drama](#) over masking at Deep Run High School continued this week as signs reading “unmask the kids” have popped up – and disappeared – throughout Henrico’s Far West End.

The signs have been removed and defaced by multiple people.

April Sullivan, the mother of a Deep Run student, marked up one of the signs when she saw it at her student’s school.

“I decided since it was on my child’s school property, I would add my own little flair to it,” Sullivan said. “I took a big black Sharpie, and I crossed out where it said ‘un’ and I left it to ‘mask the kids.’ As far as I’m concerned, if you put a sign on public property it’s fair game.”

The school took the sign down because “you can’t just put anything on school property,” said Eileen Cox, spokeswoman for Henrico County Public Schools.

The signs in medians and on public library property are unauthorized, according to Steven Yob, deputy county manager for community operations. Usually county workers take them down, but Yob said it's not illegal for any person to remove an unauthorized sign on public county property.

"If somebody wanted to pick up litter on the side of the road, we wouldn't object to that. I consider these to be along the same lines as litter," Yob said. "That's all for the good, as far as I'm concerned."

The back-and-forth sign tiff between parents is the latest development in the mask hullabaloo at Deep Run, the Far West End high school at which the largest number of students have gone to school without masks, according to the school system.

HCPS has not rescinded its universal masking requirements. But after Gov. Glenn Youngkin's executive order rescinding the K-12 mask mandate went into effect Jan. 24, a small group of students defied the HCPS rules at the insistence of their parents, who cited the executive order. Most of those students attend Deep Run.

### **Patchwork response to masking issues**

The approach of schools across the division varied greatly, as shown in documents obtained by the *Citizen* through a records request.

An email sent from Highland Springs High School administration to staff before the executive order went into effect said that students who refused to wear a mask should be sent home.

The principal of Douglas Southall Freeman High School described in an email to department chairs and admin aides what the plan would entail: "With a ridiculous amount of compassion and respect, we will pull students out of class who refuse to follow school board policy and the rules of Freeman HS and address them. If they refuse, we will bring them to the auditorium to learn remotely and admin will address this. We will return anger and arguments with kindness and sympathy while we enforce the rules."

Directives from other schools, including Deep Run, mentioned putting unmasked students behind plexiglass.

"This is proof positive that there was a need for clear and consistent guidelines to avoid a crisis," said Patrick Miller, president of the Henrico Education Association. "That's what we've been asking for all along."

The governor's order was in effect for roughly two weeks before a ruling from an Arlington County judge temporarily [blocked Youngkin's executive order](#) to give parents the option to opt their children out of school mask mandates.

HCPS announced after the ruling that schools would no longer allow students to attend school without wearing masks. However, parents told the *Citizen* that they still sent their children to school without masks after the announcement from HCPS.

### **Maskless students on the horizon**

The Henrico County School Board on Thursday voted unanimously to set clear guidelines governing when the school division will remove its mandatory face mask policy for students.

The four-metric plan includes three standards that already have been met. The last metric, which the county has not yet met, is a two-pronged one; the county's COVID transmission rate must be less than 100 new cases per 100,000 people for two weeks in a row (it's currently just about half that), and its positivity rate among PCR testing encounters must remain below 10% for two straight weeks (it's currently just more than 16%).

When the county reaches that point, Superintendent Amy Cashwell now has the authority to remove the universal masking requirement for students.

HCPS' plan would be superseded if a bill currently [passing through the legislature](#) becomes law and is made effective before the last metric is met.

The [bill](#), which includes a provision that would give parents the legal right to send their children to school without masks, is expected to pass through the Republican-controlled House of Delegates. It then will advance to Gov. Glenn Youngkin, who has been pushing for an end to school mask mandates.

Youngkin has the option to put an emergency clause on the bill, which would make it effective immediately. The bill would then go back to the House and Senate for a vote.

Cashwell said Thursday that the school division will comply with the law if it's enacted.

On Friday, the House Education Committee advanced the bill to the full House floor, where it is expected to pass.

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# Henrico Schools enacts mask-optional rule after Youngkin signs law to end mandates

Anna Bryson



Gov. Glenn Youngkin (center) signed into law on Wednesday a bill that ends school mask mandates. (Anna Bryson/ Henrico Citizen)

For the first time in almost two years, Henrico County Public Schools students will be allowed to attend school without wearing a face mask.

The school division announced to students and staff Wednesday evening that the new mask optional rule will go into effect on Thursday, following the passage of a new law that bans school mask mandates.

Gov. Glenn Youngkin signed the measure into law on Wednesday afternoon on the steps of the state capitol.

“This is not about any individual. It is about us,” Youngkin said as he was surrounded by students, including some from HCPS. “Today we are reestablishing and restoring power back to parents.”

The law went into effect as the bill was signed, but the law stipulates that school divisions have until March 1 to comply.

However, HCPS officials chose to implement mask-optional rules immediately.

Spokeswoman Eileen Cox said that the school division was in a position to make the change immediately “without impacting the structure of instructional programs.”

“Since it’s always our goal to be in compliance with the law as soon as we are able, that’s what we’ve done,” Cox said. “It’s still our hope that families and students will continue to wear masks indoors at school. However we do acknowledge that in accordance with the state law, we must respect their choice and allow students to wear or to stop wearing masks if that is their family’s decision.”

The message to families said that school counselors and administrators will be available to help students who may experience anxiety or stress due to the change.

Students from Deep Run High School were at the state capitol on Wednesday afternoon as Youngkin signed the bill. The students cheered and took selfies with State Senator Siobhan Dunnivant (R- Henrico) who introduced the bill that later included an amendment regarding mask mandates.



Deep Run High School students watched Gov. Glenn Youngkin sign into law on Wednesday a bill that bans school mask mandates. (Anna Bryson/ Henrico Citizen)

When masks were still required by HCPS, the majority of students who [defied the rules](#) were at Deep Run High School. The school division ended up allowing those students to attend class without masks, but later [changed the rules again](#) following a court ruling that temporarily blocked Youngkin’s executive order to give parents the option to opt their children out of school mask mandates.

The Henrico senator was met with applause as she said how wonderful it was to see everybody’s faces, referencing the fact that none of the children wore a mask.

“It is time to stop putting children last,” Dunnivant said. “Parents make the decisions for their children. The political entities need to get out.”

Youngkin told reporters Wednesday that the new law should put to bed the several active lawsuits regarding his executive order, which sought to end school mask mandates.

While HCPS announced that its mask optional rules would go into effect Thursday, neighboring Richmond Public Schools held off on an announcement Wednesday. RPS Superintendent Jason Kamras said in a message to families that he would send an update on Thursday.

“As I’ve shared before, I think this is bad policy that will undermine our ability to keep everyone safe and limit interruptions to learning,” Kamras said in the message. “That said, it is now the law in the Commonwealth. We’re assessing exactly what the legislation requires and its implications for RPS.”

Chesterfield County Public Schools lifted its mask mandate in late January.



Sen. Siobhan Dunnivant (R- Henrico) takes selfies with students. (Anna Bryson/ Henrico Citizen)

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# Judge rules that Henrico student and select others can ask schools for mask requirement

Anna Bryson



A federal judge ruled on Wednesday that a group of Virginia students, including one in Henrico, who are involved with a lawsuit against Gov. Glenn Youngkin can ask their schools for a mask mandate.

The [lawsuit was filed by the parents](#) of immunocompromised students and claimed that Youngkin's executive order rescinding the statewide K-12 mask mandate violates federal antidiscrimination laws.

In a ruling on Wednesday, Judge Norman K. Moon said that the 12 families involved in the lawsuit could ask their schools for a mask mandate, and those schools could implement some required masking. However, school officials are in no way required to accommodate those students, and the injunction only affects the 12 plaintiffs in the case.

The Henrico parent involved in the suit, Elizabeth Burnett, sued on behalf of her 11-year-old son, who attends Quioccasin Middle School.

The boy has chronic lung disease and is immunocompromised, which substantially limits his breathing and the major bodily function of the respiratory system, according to the lawsuit filed by the American Civil Liberties Union of Virginia. Because of his disabilities, the boy is at high risk of severe illness if he contracts

COVID-19.

Burnett told the Citizen last month that if the HCPS mask requirement was lifted, she would have to take him out of school based on the advice of his medical team. Henrico County Public Schools [implemented a mask-optional rule last month](#) following the passage of a new law that bans school mask mandates.

Burnett's two children have been learning virtually since the new rule went into effect.



Gov. Glenn Youngkin (center) signed into law in February a bill that ends school mask mandates. (Anna Bryson/ Henrico Citizen)

HCPS administration officials are in the process of reviewing the court's ruling, a HCPS spokeswoman said Thursday morning.

In his ruling, Moon emphasized that the ruling does not affect Youngkin's executive order or the state law that bans school mask mandates.

"Simply put, federal law demands just such a fact-specific inquiry into reasonableness, and (Executive Order 2) and S.B. 739 — just like any other state law — cannot preclude Plaintiffs from asking for some required masking as a reasonable modification, nor can they bar Plaintiffs' schools from implementing some required masking, if in fact, it would constitute a reasonable modification under federal law," according to the ruling.

Although the affected schools can violate the state law by enforcing masking rules, school officials are not required to make accommodations for those 12 families.

Virginia Attorney General Jason Miyares tweeted on Wednesday night, "a Federal Court ruled that 'EO2 and SB739 are the law in Virginia and they remain in force, affording parents the choice whether their children

should wear masks to school, notwithstanding any school rule that would require students to wear masks.”

The Virginia ACLU, which filed the lawsuit, responded by tweeting that, “the court also recognized that federal law protects the 12 students in our lawsuit from discrimination, especially when state law and state actions would force them to choose between their health and their education.”

Along with Henrico, the other school divisions affected by this ruling are Chesterfield County Public Schools, Chesapeake City Public Schools, Loudoun County Public Schools, Fairfax County Public Schools, Albemarle County Public Schools, Manassas City Public Schools, Cumberland County Public Schools, York County School Division and Bedford County Public Schools.

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