

Hollis School Board
Tuesday, July 20, 2021
Hollis Upper Elementary School
5:30 PM

All Times are estimates and subject to change without notice

- 5:30 Call to Order
- 5:35 Non-public under RSA 91-A: 3II (a) Compensation and/or (c) reputation
- 6:05 Agenda adjustments
Correspondence/Resignations/Nominations
- 6:10 Approval of Minutes – June, 2021
- 6:15 Public Input
- 7:00 Principal's report
- 7:15 Discussion
- HSMART building project update
 - COVID protocols
 - Diversity, Equity and Inclusion follow up from School Board workshop
 - Policy Review by Drummond Woodsum
 -
- 7:45 Non-public under RSA 91-A: 3II (a) Compensation and/or
(c) reputation
- 8:00 Motion to adjourn

Hollis School District
Administrative Report
July 2021

Calendar, Events, Programs:

- No events at HPS/HUES - buildings are closed due to work in progress

Building & Grounds:

- HUES:
 - Building Repairs for heating and venting are in process
- HPS:
 - No time wasted, the sprinkler system is in process and work is underway.

Staffing & Students:

- HPS - Please welcome Lindsay McCool to our 2nd grade team, she will be replacing classroom teacher Lindsey O'Brien who will be our new Art Teacher.
- HPS/HUES ESY for students in Hollis began on July 6th at HBMS
- HPS/HUES - Summer Learning Academy (virtual) started on July 6th and is open to all learners grades 1 - 6. For some K/1 students - there will be an invitation only summer learning academy course focused on math and reading
- HPS/HUES we are currently in the interview process to welcome a new Curriculum Administrator and SRO officer.

Enrollment Snapshot for July 2021:

HPS		HUES	
Grade	Enrollment	Grade	Enrollment
PreK Intensive Needs	3	4	84
PreK 3	4	5	90
PreK 4	7	6	93
K	75		
1	79		
2	77		
3	93		
Total Hollis School District Enrollment: 605			

Hollis School District
Monthly Enrollment Breakout
July 2021

Grade	Class size Per District Policy	Number of classes	NESDEC Projections 20/21 SY	Number of students (7/1/21)	Change from last report	Actual class Enrollments
Pre – K 3 year olds		1	18	4	0	4
Pre – K 4 year olds		1		7	0	7
Prek Intensive Needs		1		3	0	3
<i>Drop in Speech Services Only</i>				NA	0	0
Kindergarten	18	4	100	75	0	18, 19, 19, 19
Grade 1	18	5	75	79	0	15, 16, 16, 16, 16
Grade 2	20	5	99	77	0	15, 15, 15, 16, 16
Grade 3	20	5	88	93	0	18, 18, 19, 19, 19
HPS Totals		22 classes	380	338	0	
Grade 4	23	4	91	84	0	21, 21, 21, 21
Grade 5	23	5	102	90	0	17, 17, 18, 19, 19
Grade 6	23	5	101	93	0	18, 18, 18, 19, 20
HUES Totals		14 classes	294	267		
HSD Totals		38 classes	674	605	0	

Enrollment History:

School Year	HPS September Starting Enrollment Numbers	HUES September Starting Enrollment Numbers
2021	TBD	TBD
2020	336	283
2019	344	299
2018	344	327
2017	344	323
2016	337	319
2015	345	295
2014	352	291
2013	358	292
2012	340	294
2011	340	297

SAU41 Safe Return to In-Person Instruction and Continuity of Services

This document is intended to meet the federal statutory requirement that, within 30 days of receiving ARP ESSER LEA allocation (anticipated May 24th), an LEA shall publish an LEA Plan on the Safe Return to In Person Instruction and Continuity of Services, which is often called a “school district reopening plan.”

Note, if an LEA developed a plan before *The American Rescue Plan Act* (ARPA) was enacted on 03/11/2021 that complied with the federal statutory requirements for public posting and comments but does not meet all the requirements below, then the LEA must revise its plan no later than six months after receiving ARP ESSER funds

For further context, please reference ARPA (<https://www.congress.gov/bill/117th-congress/house-bill/1319/text>) or the Interim Final Requirements of ARP ESSER (<https://www.govinfo.gov/content/pkg/FR-2021-04-22/pdf/2021-08359.pdf>).

I. General Information

1. LEA Name: SAU41
2. Date of Publication: June 21, 2021

II. Transparency and Accessibility

1. This plan for the safe return to in-person instruction and continuity of services was published and made publicly available online here: http://c674469e-37ee-4fac-9c96-08f76eeb02ac.filesusr.com/ugd/5a59e1_5b78b9503a0a410eb7d849d6dc1589df.pdf

Description: In April of 2020 SAU41 Administration in conjunction with various stakeholder groups began developing a comprehensive Road Map to Reopening our Schools Plan. In sum, nearly 60 stakeholders including teachers, support staff, nurses, administrators, parents, community members and public health partners participated in the development of the plan. The plan incorporated research based public health strategies from various local, state, and federal agencies including Nashua Public Health, the Department of Health and Human Services, Center for Disease Control, the New Hampshire School Nurses’ Association, and the American Academy of Pediatrics. In August of 2020, the plan was presented and voted on publicly by the Hollis, Brookline, and Hollis Brookline Cooperative School Districts.

2. Before making the plan publicly available, the LEA sought public comment on the plan and took such comments into account in the development of the plan (please check one).

Yes: Somewhat: No:

Description: A draft reopening plan was presented to each of the boards in early August. Members of both the Hollis and Brookline communities were encouraged to attend the publicly held meeting to provide feedback. Parent input surveys were administered to all families of

students in SAU41 in both the spring and summer of 2020. Feedback solicited from both the board and community was incorporated in the final version of the plan.

3. The plan is in an understandable and uniform format (please check one):

Yes: Somewhat: No:

Description: The plan was intentionally developed in a manner that made it easy to understand and followed a uniform format. When appropriate, links were made available to the guidance documents that helped to inform the creation of the plan. The plan is categorized by the following focus areas: instructional, technology, health and safety, human resources, facilities, student services, food service, extracurricular and transportation. Each of these focus areas had a taskforce that was comprised of stakeholders who had knowledge and expertise in that respective area.

4. The plan, to the extent practicable, is written in a language that parents can understand or, if not practicable, orally translated (please check one):

Yes: Somewhat: No:

Description: The plan is written in language that makes it easy to understand. While creating the plan, great care was taken to avoid technical language from the fields of public health and education. For ease of access, the plan was prominently displayed on the front page of the SAU41 website which is ADA compliant.

5. The plan, upon request by a parent who is an individual with a disability, is provided in an alternative format accessible to that parent (please check one):

Yes: Somewhat: No:

Description: The plan is available on the SAU41 website. SAU41 recently redesigned their website to ensure full compliance with all requirements of the Americans with Disabilities Act (ADA). Translation services are available upon request and available via Google Translate.

III. Health and Safety

1. How the LEA will maintain the health and safety of students, educators, and other school and LEA staff:

Description during SY20-21: SAU41 instituted research based public health measures as defined by local, state, and federal agencies. This included but was not limited to social distancing, enhanced sanitizing practices, mask wearing, modifications to the physical plant and building based procedures, staff training, creation of a community public health stakeholder group and participation in the weekly partner call with the Department of Health and Human Resources

Description during SY21-22: SAU41 will continue to implement research-based public health best practices. SAU41 will continue to follow written guidance from the Department of Health and Human Services. SAU41 will continue to monitor local,

state, and national Covid 19 data to make well informed adjustments to our reopening plan.

2. The LEA's adoption of the following CDC health and safety strategies are described below: (Note federal regulation on this plan requires such reporting but does not require adoption of CDC safety recommendations. The NH DOE recognizes schools will implement localized safety measures based on the guidance provided by the CDC, NH Public Health, and local public health officials.)

a. Universal and correct wearing of masks:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: Universal masking was a requirement for both staff, students, and visitors during the 2020-2021 school year. Time was devoted at the beginning of the school year to train both staff and students regarding proper mask wearing techniques. Masks were made available to all staff and students upon entering each school building.

For the 2021-2022 school year SAU41 will make mask wearing optional for all students in grades preK-12. Parents will be provided with the choice to have their children wear masks during the school day. Should local conditions change, the administration reserves the right to institute a mandatory mask requirement or an activity based mask requirement.

b. Physical distancing (e.g., use of cohorts/podding and modifying facilities):

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: During the 2020-2021 SAU41 observed social distancing of 3 to 6 feet in all instructional spaces. To the greatest extent possible, all schools followed a cohort grouping model. Several modifications were made to the physical plant to allow for physical distancing including the elimination and replacement of furniture in classrooms and appropriate signage in all common areas and hallways.

For the 2021-2022 school year SAU41 will restrict group seating within the classroom environment in an effort to maintain 3 feet of spacing. The 3 feet of spacing rule will not apply in the cafeteria, hallways, or other congregate settings outside of the classroom. Additional exceptions will be made at the secondary level where students currently have access to the Covid-19 Vaccine. Furniture previously removed will be returned to the classroom setting as deemed appropriate by school administrators.

c. Handwashing and respiratory etiquette:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: During the 2020-2021 school year staff members-built time into their classroom schedule to allow for students to wash and disinfect

their hands. Disinfection stations were established in all common areas of the school. Teachers were supplied with soap, hand sanitizer and disinfecting wipes. Developmentally appropriate signage was added to all 6 schools to promote healthy hygiene practices such as handwashing. This practice will remain in effect for the 2021-2022 school year.

d. Cleaning and maintaining healthy facilities, including improving ventilation:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: Significant financial resources were allocated to maintaining healthy facilities during the 2020-2021 school year. Additional custodial staff were hired, electrostatic sprayers were utilized to disinfect surfaces, custodial staff received comprehensive professional development in sanitizing surfaces, teachers were encouraged to leave classroom windows open to help improve ventilation, indoor air quality tests were performed, and a comprehensive HVAC evaluation was conducted in all 6 school buildings. Additionally, to achieve increased ACPH, ventilation units were active three hours prior to school opening and inactive three hours prior to school closing. These practices will remain in place for the 2021-2022 school year. Information collected from the HVAC evaluation will be used to drive future decision making regarding capital improvement expenditures.

e. Contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, and/or Tribal health departments:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: SAU41 principals and school nurses worked collaboratively with the Department of Health and Human Services to conduct contact tracing investigations when a positive Covid-19 case was identified. Such investigations resulted in little to no community-based transmission of Covid-19 within the school setting. SAU41 will continue to partner with the Department of Health and Human Services for the 2021-2022 school year to complete contact tracing investigations.

f. Diagnostic and screening testing:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs: SAU41 collaborated with local health care partner Convenient MD in an effort to streamline testing for both students and staff. As a result, students and staff were able to receive antigen test results with 15 minutes of testing and PCR test results within 24 to 48 hours of testing. SAU41 is currently exploring collaborating with Convenient MD for mobile site-based testing for the 2021-2022 school year.

g. Efforts to provide vaccinations to school communities:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs:

In partnership with Walgreens and the Department of Health and Human Services, SAU41 held a regional vaccination clinic that was made available to all Hollis, Brookline, Milford, Mason, Amherst and Mont Vernon educators in both the public and private school settings. SAU41 will explore an option to offer a summer vaccination clinic to help facilitate distribution of the vaccine to elementary age students.

h. Appropriate accommodations for children with disabilities with respect to health and safety policies:

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs:

SAU41 has gone to great lengths to ensure access and equity to all students identified with disabilities during the pandemic. This included conducting compensatory education meetings for all students in the first month of school to determine if students had made meaningful progress on their goals. Additional staff were hired specifically to work with students with disabilities that were not able to access their education from the physical school building.

For the 2021-2022 school year SAU41 will work closely with families of students with disabilities who are not able to return to the physical school environment to ensure that they are able to receive a Free and Appropriate Public Education (FAPE).

i. Coordination with state and local health officials (please check one):

During SY20-21 (check one): Yes: Somewhat: No:
During SY21-22 (check one): Yes: Somewhat: No:

Description of both SYs:

SAU41 has worked closely with both Nashua Public Health and the Department of Health and Human Services. This includes participating in the weekly DHHS partner calls as well as working collaboratively with Nashua Public Health and the Department of Health and Human Services to host an educator vaccination clinic.

IV. Continuity of Services

1. The LEA has provided continuity of services in addressing student academic needs:

Description during SY20-21: SAU41 was one of the only school districts to offer a full in-person option last spring (2020) to students with significant disabilities. SAU41 has a robust Response to Instruction (RTI) model that continues to: identify students with learning gaps, provide targeted intervention, and monitor ongoing student progress. Additionally, SAU41 will transition their Response to Instruction (RTI) model to the Multi-tiered Systems of Support (MTSS) which addresses the social, emotional, and behavioral needs of students.

Description during SY21-22: Through our annual school district budget and available ESSER Funds, SAU41 has committed additional resources to our RTI program that will assist in identifying potential learning loss and gaps in students content knowledge. The emphasis of SAU41 will be reducing learning gaps, providing

necessary learning supports for vulnerable populations, providing staff training to emphasize student well-being, and encouraging programs that prove to be effective for achievements gains, including non-traditional opportunities.

2. The LEA has provided continuity of services in addressing student social, emotional, mental, and other health needs, which may include student health and food services:

Description during SY20-21: 2019-2020 school year SAU41 implemented the social and emotional learning program, Choose Love. The prep work from the prior school year allowed for a fluid continuation of the program into the 20-21 school year. This program has been implemented with Fidelity in all 6 schools and offered both a personalized and community approach to social and emotional learning during the Covid-19 Pandemic.

Description during SY21-22: SAU41 will continue with the Choose Love program and is currently exploring additional resources to support the social and emotional wellbeing of both students and staff.

3. The LEA has provided continuity of services in addressing staff social, emotional, mental, and other health needs:

Description during SY20-21: Staff well-being during the pandemic has been paramount. Staff have been provided with early release Fridays to allow for the opportunity for staff to collaborate and support one another. Additionally, changes had been made to the supervision and evaluation model that both reduced the number and narrowed the scope of formal classroom observations. In conjunction with local parent groups, staff have been provided with various appreciation opportunities throughout the school year.

Description during SY21-22: Staff well-being will continue to be a focus during the 2021-2022 school. SAU41 is currently exploring a variety of wellness opportunities for staff. This summer the SAU41 Administrative Team will read, "Putting Teachers First" by Brad Johnson. Employees will be encouraged to access additional wellness resources available through the Employee Assistance Program (EAP) from HealthTrust.

V. Plan Review

1. The LEA will meet the federal regulatory requirement to review and, as appropriate, revise its Safe Return to In-Person Instruction and Continuity of Services Plan at least every six months through September 30, 2023 (the award period including the Tydings period). (Note an LEA that developed a plan before ARPA was enacted on 03/11/2021 that complied with the federal statutory requirements for public posting and comments but does not meet all of the requirements above must revise its plan no later than six months after the LEA receives LEA ESSER funds.)

Yes: No:

Description: SAU41 recognizes that the Safe Return to In-Person Instruction and Continuity of Services Plan needs to be a living and breathing document. The document will be reviewed monthly by the SAU41 Leadership team and adjustments

will be made based upon guidance from local, state, and federal agencies.

2. In doing so, the LEA will meet the federal statutory requirement to seek public input and take such input into account in determining whether to revise the plan and, if revisions are determined necessary, on the revisions it makes to its plan.

Yes: X No:

Description: It is the intention of SAU41 to continue to seek input from the public on the Safe Return to In-Person Instruction and Continuity of Services Plan

3. In doing so, the LEA will also meet the federal regulatory requirement to address CDC safety recommendations and, if the CDC has updated its safety recommendations at the time the LEA is revising its plan, each of the updated CDC safety recommendations.

(Note federal regulation on this plan requires such reporting but does not require adoption of CDC safety recommendations. The NH DOE recognizes schools will implement localized safety measures based on the guidance provided by the CDC, NH Public Health, and local public health officials.) Yes: X No:

Description: SAU41 will continue to implement the guidelines established by the Department of Health and Human Services when making adjustments to the Safe Return to In-Person Instruction and Continuity of Services Plan.

VI. Authorization

LEA Superintendent's Signature: Date:

VIII. Appendices

Appendix A. ARPA Statutory Excerpt

“(i) Safe return to in-person instruction.—

(1) IN GENERAL.—A local educational agency receiving funds under this section shall develop and make publicly available on the local educational agency’s website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services.

(2) COMMENT PERIOD.—Before making the plan described in paragraph (1) publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

(3) PREVIOUS PLANS.—If a local educational agency has developed a plan for the safe return to in-person instruction before the date of enactment of this Act that meets the requirements described in paragraphs (1) and (2), such plan shall be deemed to satisfy the requirements under this subsection.”

Appendix B. Interim Final Requirements of ARP ESSER Excerpt

“(3) *LEA Plan for Safe Return to In-Person Instruction and Continuity of Services.*

(a) An LEA must describe in its plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services—

(i) how it will maintain the health and safety of students, educators, and other

staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC:

- (A) Universal and correct wearing of masks.
 - (B) Modifying facilities to allow for physical distancing (*e.g.*, use of cohorts/ podding).
 - (C) Handwashing and respiratory etiquette.
 - (D) Cleaning and maintaining healthy facilities, including improving ventilation.
 - (E) Contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments.
 - (F) Diagnostic and screening testing.
 - (G) Efforts to provide vaccinations to school communities.
 - (H) Appropriate accommodations for children with disabilities with respect to health and safety policies.
 - (I) Coordination with State and local health officials.
 - (ii) how it will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health, and other needs, which may include student health and food services.
- (b) (i) During the period of the ARP ESSER award established in section 2001(a) of the ARP Act, an LEA must regularly, but no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools), review and, as appropriate, revise its plan for the safe return to in person instruction and continuity of services.
- (ii) In determining whether revisions are necessary, and in making any revisions, the LEA must seek public input and take such input into account.
 - (iii) If at the time the LEA revises its plan the CDC has updated its guidance on reopening schools, the revised plan must address the extent to which the LEA has adopted policies, and describe any such policies, for each of the updated safety recommendations.
- (c) If an LEA developed a plan prior to enactment of the ARP Act that meets the statutory requirements of section 2001(i)(1) and (2) of the ARP Act but does not address all the requirements in paragraph (a), the LEA must, pursuant to paragraph (b), revise and post its plan no later than six months after receiving its ARP ESSER funds to meet the requirements in paragraph (a).
- (d) An LEA's plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services must be—
- (i) In an understandable and uniform format;
 - (ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and
 - (iii) Upon request by a parent who is an individual with a disability as defined by the ADA, provided in an alternative format accessible to that parent.”

Hollis-Brookline Diversity, Equity and Inclusion Initiative

SAU41 is committed to nondiscrimination and strives to be an inclusive community. The district recognizes that issues of diversity, equity, and inclusion affect all members of the Hollis-Brookline community regardless of their background.

NH Senate Bill 263 came into effect in September 2019 including:

Section 193:39 Discrimination Prevention Policy Required. Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin or any other classes protected under RSA 354-A.

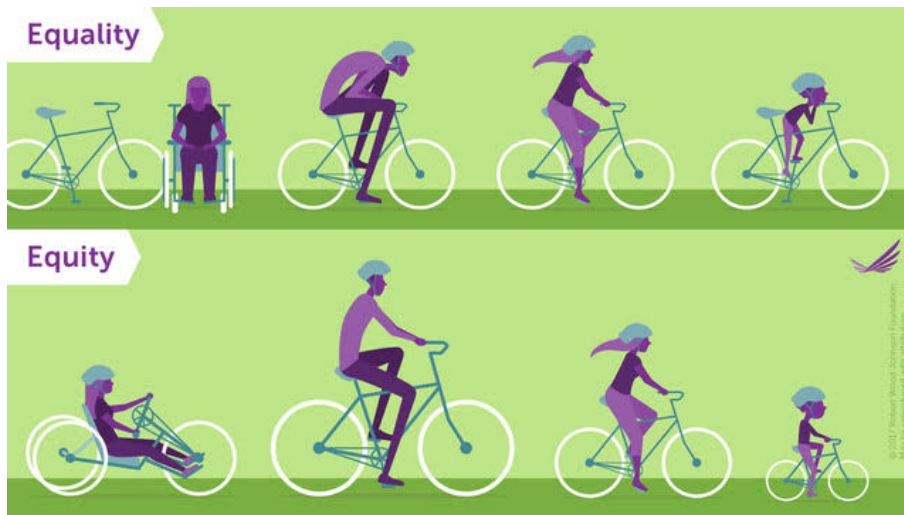
While this law is a benchmark, we are committed to create an even better environment for all students in the Hollis-Brookline community. HB Class of 2020 President, Joshua Ide, said in his graduation speech “I encourage you not just to be tolerant but seek to understand other people. It’s only then they will be willing to listen to your ideas.”

In envisioning the Hollis Brookline graduates of the future, it is the intention of the District to be explicit in the cultivation of a culture that values, respects and encourages our students to engage in difficult conversations with the goal of understanding each other and the world around them. We affirm freedom of speech, logic, reason, debate, and civil discourse and aim to graduate young adults who value those qualities and seek to be known for the content of their character.

For SAU #41, Diversity, Equity and Inclusion are defined as:

Diversity: We commit to honoring diversity, which is expressed in many forms, including race and ethnicity, gender and gender identity, sexual orientation, socioeconomic status, language, culture, national origin, religious commitments, age, (dis)ability status, physical appearance, cultural and personal experience, and political perspective. While group identity is important, we affirm the centrality of the individual student who is ultimately responsible for his or her own thoughts and actions.

Equity: Our vision of equity is best displayed in a visual.



Equity provides fairness in resources and opportunities so that all individual students get what they need. As a district, we seek to provide equality of opportunity (not outcomes) to each of our students, helping them access their education in the best way possible for their individual needs and allowing our students to excel to the best of their abilities going forward to prepare to enter a competitive world. We are committed to a policy of equal opportunity for all persons and do not discriminate on the basis of race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, (dis)ability, religion, height, weight, or medical condition. Whether our students experience safe, nurturing home environments or are impacted by physical, economic or developmental challenges, our community recognizes that our schools can play an integral role in the facilitation of a student's experience by modeling positive interactions. We understand that creating a culture of mutual respect and value of perspectives can plant seeds of positive change in a child's life.

Inclusion: We commit to pursuing deliberate efforts to ensure that our school community is a place where differences are welcomed, different perspectives are respectfully heard and where every individual feels a sense of value, belonging, and inclusion. We know that by creating a vibrant climate of inclusiveness, we can more effectively leverage the resources of diversity to advance our collective capabilities.

Therefore, may it be resolved that:

1. The SAU #41 school districts will make diversity, equity, and inclusion a strategic priority by actively supporting such efforts.
2. SAU #41 will review its policies and procedures relative to diversity, equity, and inclusion and release a plan to address its findings as a part of SAU #41's strategic five year plan to be developed and voted on by the school boards in 2021.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2021-CV-00277

Maria Nardi Hubert, individually, and on behalf of K.H., her child;
Paul and Lisa Bresciano, individually, and on behalf of P.B., their child;
Jason and Lindsay Machado, individually, and on behalf of A.G. and T.M., their children;
Werner and Heather Niebel, individually, and on behalf of A.N., E.N., and S.N., their
children

v.

Hollis/Brookline School District, School Administrative Unit #41

ORDER ON PENDING MOTIONS

The plaintiffs have filed this action against Hollis/Brookline School District, School Administrative Unit #41 (“SAU 41”) seeking declaratory and injunctive relief. The plaintiffs previously filed an ex parte motion for a preliminary injunction, which the Court denied. The Court thereafter held a hearing on the plaintiffs’ request for a preliminary injunction on June 4, 2021. Prior to the hearing, the defendant filed a motion to dismiss the complaint. For the reasons that follow, the defendant’s motion to dismiss is GRANTED, which renders the plaintiffs’ request for preliminary injunctive relief MOOT.

Standard of Review

In ruling on a motion to dismiss, the Court considers “whether the allegations in the complaint are reasonably susceptible of a construction that would permit recovery.” Kurowski v. Town of Chester, 170 N.H. 307, 310 (2017). The Court must “assume all facts pleaded in the complaint to be true and construe all reasonable inferences drawn from those facts in the plaintiff[s]’ favor,” but “need not . . . assume the truth of statements in the pleadings that are merely conclusions of law.” Id. Dismissal is appropriate if the facts pled do not constitute a basis for legal relief. Id.

Background

The Court draws the following facts from the complaint. The plaintiffs have children that attend primary or secondary schools in Hollis and Brookline. These schools are all within school districts that are members of SAU #41.¹ In response to the global pandemic caused by the novel coronavirus, SARS-CoV-2 and the disease it causes, COVID-19, the District adopted a policy that required students to wear

face masks or coverings when riding the bus, entering/exiting buildings, arriving to/leaving a classroom, engaging in small group classroom activities, walking in the hallways and other common areas, and whenever asked to do so by a District employee. It also included wearing face masks or coverings when engaged in physical activity.

(Compl. ¶ 28.)² The plaintiffs' children follow (or followed)³ the mask mandates as required. However, the plaintiffs allege that their children have difficulty breathing when they wear masks. As a result, the plaintiffs filed this action seeking a declaration that the mask mandates violate RSA 126-U:4, a statute prohibiting the use of "dangerous restraint techniques" in schools. The plaintiffs also seek an injunction prohibiting the District from enforcing the mask mandates. The defendant now moves to dismiss, arguing that the mask mandates do not fall within the purview of RSA chapter 126-U.

Analysis

Because the plaintiffs' sole claim is based on alleged violations of RSA chapter 126-U, the resolution of the defendants' motion to dismiss requires the Court to engage

¹ As the defendant notes, the plaintiffs sued the wrong party. School administrative units provide administrative services to member school districts. They do not make policies for any of the member districts or for any of the schools within the member districts. As such, the plaintiffs should have brought this action against the school districts in which their children attend schools. Although the plaintiffs have failed to recognize this distinction, and dismissal would arguably be appropriate on that basis alone, for ease of analysis, the Court will refer to all of the collective school districts within SAU #41 as the "District."

² The Court will collectively refer to all of these policies as "mask mandates."

³ As the plaintiffs acknowledge in their objection, the school year has ended. It is therefore likely that this entire case is moot.

in statutory interpretation. In interpreting a statute, the Court first looks “to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” State v. Beattie, 173 N.H. 716, 720 (2020). The Court interprets “legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. The Court construes “all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. The Court does “not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Id. This enables the Court “to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Id.

In 2010, the legislature enacted RSA chapter 126-U, entitled “Limiting the Use of Child Restraint Practices in Schools and Treatment Facilities.” The express purpose of the chapter is “to eliminate child restraint techniques which endanger children and to promote the overall reduction of the use of restraint of children in schools and treatment facilities in New Hampshire.” Laws 2010, 375:1. To that end, RSA 126-U:4, I provides, in pertinent part, that:

No school . . . shall use any of the following restraint and behavior control techniques:

- I. Any physical restraint or containment technique that:
 - (a) Obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing; . . .
 - (d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or
 - (e) Endangers a child's life or significantly exacerbates a child's medical condition.

RSA 126-U:4, I(a), (d), (e) (emphasis added). The plaintiffs contend that “[t]here is no question requiring children to wear face masks or coverings contradicts” these three prohibitions. (Compl. ¶ 58.) The Court disagrees.

By its plain language, all of the prohibitions listed in RSA 126-U:4, I only apply to a school’s use of a “physical restraint” or a “containment technique.” The legislature has specifically defined a “physical restraint” as “occur[ring] when a manual method is used to restrict a child’s freedom of movement or normal access to his or her body.” RSA 126-U:1, IV(c) (emphasis added). The term “manual method” is not defined in the statute. However, the definition of “manual” is “worked by hand” or “requiring or involving physical skill or energy.” Webster’s Third New International Dictionary 1378 (unabridged ed. 2002). Thus, a “manual method” of restraint—and consequently a “physical restraint”—only occurs when the restraining person uses his or her own hands or body (without the aid of a mechanical device) to effectuate the restraint. See, e.g., Or. Admin. R. 411-054-0005.80(a) (2021) (defining “manual method” of restraint to mean “physically restraining someone by manually holding someone in place”). Clearly, the mask mandates do not require school staff to use their own hands or bodies to force the plaintiffs’ children to wear masks. Rather, the mask mandates require students to put on their own face masks using their own hands. As such, the Court cannot find that the mask mandates involve the use of “physical restraints.”

Alternatively, the plaintiffs claim in conclusory fashion that “a face mask is certainly a ‘containment technique.’” (Pls.’ Obj. at 9.) In the Court’s view, the legislature’s use of the term “containment technique” implies some sort of established process or known method used by school officials to physically restrain an individual.

See, e.g., Thornton v. Lymous, 489 F. Supp. 3d 470, 495 (E.D. La. 2020) (noting that “upper torso” maneuver was a restraint technique); McAdams v. Salem Children’s Home, 701 F. Supp. 630, 632 (N.D. Ill. 1988) (noting that “baskethold restraint” was a restraint technique); State v. Rios, 314 S.W.3d 414, 420 (Mo. Ct. App. 2010) (noting that State produced evidence that defendant “was trained to employ a technique known as the unilateral vascular neck restraint”). A “containment technique,” therefore, does not include a *policy* that requires students to wear a piece of fabric—here a face mask.⁴ Notably, the plaintiffs have offered no authority or even a developed argument to the contrary. Moreover, if the Court were to agree that the mask mandates are “containment techniques,” then science teachers could not require students to wear masks during chemical experiments, gym teachers could not require students to use helmets protecting their mouths, and, taken to the extreme, schools could not even require students to wear any clothing at all. The legislature surely could not have intended such an absurd result, and the Court declines to interpret the statute in such a manner.

Simply put, RSA chapter 126-U has no bearing on the legality of the District’s mask mandates. The plaintiffs’ argument to the contrary is based on a twisted and tortured reading of the statute. It is an affront to children who have *actually* been subject to unnecessary and dangerous physical restraints while at school. Because the Court concludes that the District’s mask mandates do not violate the prohibition on dangerous restraint techniques outlined in RSA 126-U:4, and the plaintiffs’ entire

⁴ Similarly, the statute limits the definition of “restraint” to “actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.” RSA 126-U:1, IV. As the plaintiffs state in their complaint, the mask mandates “require[] a child to cover his or her face.” (Compl. ¶ 58.) In other words, the student is the person taking the action—not the school official. Thus, the mask mandates do not involve “restraints” as that term is used in the statute.

complaint was premised on that faulty premise, the Court concludes that the plaintiffs have failed to state a claim for which relief may be granted. The defendants' motion to dismiss is therefore GRANTED. In light of this ruling, the plaintiffs' motion for a preliminary injunction is MOOT.

Finally, the Court is troubled by the factual assertions made in the complaint. In particular, the complaint cites to outdated statements made by Dr. Anthony Fauci, Dr. Robert Redfield, and Dr. Jerome Adams regarding the need to face wear masks during the pandemic. (See compl. ¶¶ 40–42.) These doctors made the statements referenced in the complaint at the beginning of the pandemic when little was known about the spread of SARS-CoV-2 and health care workers were scrambling to find adequate protective gear. However, as any reasonable person would know, all three of the doctors subsequently changed their opinions on face masks as more information emerged about SARS-CoV-2. Indeed, it is well-known that all three of these doctors later embraced the efficacy of face masks. As a result, they unequivocally and repeatedly encouraged members of the public to wear face masks throughout the pandemic. The complaint conveniently omits this information, leaving the reader with the impression that three top government doctors—including the chief medical advisor to the President (Fauci), the former C.D.C. director (Redfield), and the former surgeon general (Adams)—are still against the use of masks.⁵ Attorneys have a professional obligation to present accurate information to the courts in which they appear, or, at the very least, to not present information that they know is misleading. The complaint's

⁵ In addition, the complaint cites extensively to one study that the plaintiffs *knew* was withdrawn. (See Compl. at 10 n.10.) The plaintiffs also cited to German case that was apparently overturned on appeal, but the plaintiffs did not advise the Court of that fact.

reliance on outdated and misleading information in an attempt to obtain injunctive relief does not meet this standard.

So ordered.

Date: July 2, 2021

A handwritten signature in black ink, appearing to be 'Charles S. Temple', written over a horizontal line.

Hon. Charles S. Temple,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 07/06/2021