



New Secretary of Health Order Regarding Face Coverings in School Entities

Prepared by PSEA Legal Division
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On August 31, 2021, Alison Beam, Acting Secretary of Health, issued an [Order Directing Face Coverings in School Entities](#) set to take effect on September 7, 2021. The Order is to remain in effect until the Secretary determines that the public health risk is sufficiently reduced such that face coverings are no longer necessary as public health tools in school entities. See [PDE FAQ](#).

Authority for the Order

The Order was issued under the authority of the Disease Prevention and Control Law, the Administrative Code, and Department of Health regulations. See 35 P.S. §521.5; 71 P.S. §§532(a) and 1403(a); and 28 Pa. Code §27.60. This authority is derived from state statutory law and is separate from the Governor's emergency powers.

Requirements of the Order

The Order requires that all students, staff, and visitors ages two years and older wear a face covering when inside public preK-12 schools, brick and mortar or cyber charter schools, private and parochial schools, career and technical centers (CTCs), intermediate units (IUs), PA Pre-K Counts programs, Head Start Programs, Family Centers, Preschool Early Intervention programs, Private Academic Nursery Schools and locally funded prekindergarten activities, and all child care providers licensed by the Department of Human Services regardless of vaccination status unless an exception applies.

The Order applies to all indoor activities in the school entity regardless of when the activity occurs.

School entities must provide reasonable accommodations for individuals who state they have a medical condition, mental health condition, or disability that makes it unreasonable for the person to maintain a face covering.

Exceptions

The Order contains the following specific exceptions to the face covering requirement:

- A) If wearing a face covering while working would create an unsafe condition in which to operate equipment or execute a task as determined by local, state, or federal regulators or workplace safety guidelines.
- B) If wearing a face covering would either cause a medical condition, or exacerbate an existing one, including respiratory issues that impede breathing, a mental health condition or a disability.
- C) When necessary to confirm the individual's identity.
- D) When working alone and isolated from interaction with other people with little or no expectation of in-person interaction.
- E) If an individual is communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication.
- F) When the individual is under two (2) years of age.
- G) When an individual is:
 - 1. Engaged in an activity that cannot be performed while wearing a mask, such as eating and drinking, or playing an instrument that would be obstructed by the face covering; or
 - 2. Participating in high intensity aerobic or anerobic activities, including during a physical education class in a well-ventilated location and able to maintain a physical distance of six feet from all other individuals.
- H) When a child/student is participating in a sports practice activity or event, whether indoors or outdoors.

Enforcement

The Order is enforceable under the Disease Prevention and Control Law, which provides that violations may result in summary offenses and fines. In addition, school officials who fail to adhere to the order may lose protection of sovereign immunity and may face lawsuits in their personal capacity. The PDE FAQ specifically notes that the failure to implement or follow the control measures may expose individuals to personal liability related to willful misconduct under 42 Pa.C.S. §8550 of the state Tort Claims Act. *See* [PDE FAQ](#).

School entities are not to enforce face covering requirements when there is an applicable exception or when it is unsafe to do so. In addition, school entities are not to restrain, use force, or physically remove individuals who refuse to comply with the Order when it would not otherwise be legal to do so and are not to violate other laws, including anti-discrimination laws.