

## Mask Mandate for Schools

*Sept. 7, 2021*

**Under a statewide order, everyone in pre-K-12 school buildings and childcare centers is required to wear a face covering inside school buildings and childcare facilities.**

- Pennsylvania Acting Secretary of Health Alison Bream issued a face covering order on Aug. 31, 2021. It takes effect Sept. 7, 2021 and will remain in effect until the Secretary determines that coverings are no longer necessary in schools to reduce the public health risk posed by COVID-19.
- The order requires that all students, staff, and visitors two years old and older wear a face covering when inside public and private pre-K-12 schools and childcare provider facilities, regardless of their vaccination status.
- The order includes exceptions, allowing students and staff members to not wear masks:
  - If wearing a face covering 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.
  - If wearing a face covering would cause a medical condition, or exacerbate an existing one.
  - When necessary to confirm an individual's identity.
  - When working alone and isolated from interaction with other people.
  - 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.
  - When an individual is engaged in an activity that cannot be performed while wearing a mask, such as eating and drinking, playing an instrument, or

participating in high-intensity physical activities, including during a physical education class in a well-ventilated location and able to maintain a physical distance of 6 feet from all other individuals.

- When a child or student is participating in a sports practice activity or event, whether indoors or outdoors.
- The order was issued under the authority of the Disease Prevention and Control Law, the Administrative Code, and Department of Health regulations. This authority is separate from the governor's emergency powers.
- The order is enforceable under the Disease Prevention and Control Law. Violations may result in summary offenses and fines. In addition, school officials who fail to adhere to the order may lose sovereign immunity protection and may face lawsuits in their personal capacity.

### **What should staff members do if any of their students are not wearing face coverings indoors, when their school administration is *NOT ENFORCING the state order*?**

- **PSEA members should comply with the order even if their school board has decided to defy the order or does not otherwise direct them to do so. Members should wear face coverings when in school buildings as required by the order.** Local associations should be in contact with PSEA UniServ representatives and PSEA Region attorneys to discuss appropriate action in light of the noncompliance.
- **School employees might face legal penalties if they do not wear face coverings as required by the order.** Criminal charges can be filed by any persons against school staff. Certified educators might place their certifications at risk if they do not follow the order.
- **If a school board decides not to enforce the order, school employees are not in a position to independently insist that students wear masks.** Local associations should follow up with PSEA UniServ representatives and Region attorneys to determine an appropriate response to the noncompliance.
- **If a school is not enforcing the order, members should notify their local association representatives.** Local associations should follow up with PSEA UniServ representatives and Region attorneys.

- Members should follow the guidance of their local associations regarding the reporting and documenting of students in attendance without face coverings.

**What should staff members do if any of their students are not wearing face coverings indoors, *when their school administration IS ENFORCING the state order?***

- If a school is acting in good faith to abide by the order, members should follow the policies and directives of the school administration.

**School officials and staff members are required to follow the order, or they may be subject to legal penalties.**

- It is important for all PSEA members to remember that this is a state order, not a guideline or a suggestion. Anyone who works in a pre-K-12 school or childcare facility is legally required to follow this order and wear a face covering in their buildings and facilities.
- The order can be enforced in a number of ways.
  - The order was issued pursuant to the Secretary's powers under the Pennsylvania Disease Prevention and Control Act of 1955, which gives the Secretary authority to issue orders for isolation, quarantine, and other control measures. Any person violating a provision of the Act can, for each offense, be convicted of a summary offense and sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of such payment be jailed for not more than thirty (30) days. Criminal complaints can be filed with the magistrate by the State Department of Health, County Departments of Health, or by any person with knowledge of the violation.
  - The Pennsylvania Administrative Code provides for similar penalties, in that any person who violates any order of the Department of Health may be convicted of a summary offense and sentenced to pay a fine of not less than ten (\$10.00) dollars and not more than fifty (\$50.00) dollars and costs, and in default of such payment be jailed for 30 days.

- The Pennsylvania Crimes Code provides that a person commits a misdemeanor of the second degree by intentionally obstructing, impairing, or preventing the administration of law by breach of official duty. An individual convicted may be sentenced to not more than two years in jail.
- School board members are obligated to follow the law and enact policies in a manner consistent with applicable constitutional and statutory authority. They can be removed from office for neglect of duty, by order of a county court upon petition by taxpayers.
- An educator misconduct complaint can be filed against the superintendent's letter of eligibility under the Educator Discipline Act. Under that Act, the Professional Standards and Practices Commission can revoke or suspend a letter of eligibility for several reasons, including negligence. In addition, the Commission can publicly or privately reprimand a letter of eligibility for a violation of the Code for Professional Practice and Conduct adopted by the Commission.
- The Code currently provides that educators must "comply with all Federal, State, and local laws and regulations and with written school entity policies" and that all educators shall "accurately report all information required by the local school board or governing board, State education agency, Federal agency or State or Federal law." A complaint can be filed by any person with the Department of Education, which then has the obligation to investigate the alleged misconduct and file a notice of charges where appropriate.
- School officials who refuse to enforce the order face potential personal liability. The Pennsylvania Tort Claims Act provides immunity from liability to elected public officials, except in certain circumstances. The Tort Claims Act provides that schools and school officials can be liable for their tortious acts causing injury to persons in cases of willful misconduct. If a school board or superintendent intentionally fails to implement a government Order aimed at protecting their students, they are potentially waiving any immunity they might have as to their liability for students who become sick or die from COVID-19.

- Even if school administrators choose to ignore the order or suggest that staff members don't need to comply with it, staff members are personally obligated to follow the order, or they could be subject to legal penalties.
- This is a state order. Choosing not to follow it is not optional – for a school or a staff member.

**Beyond the state order, why is it so important for everyone to wear masks in school? Because it's the best way to help keep schools open for in-person instruction and reduce health risks for students, school staff, and their families.**

- We all want a full, safe return to in-person instruction in every school in Pennsylvania.
- We want to begin the school year in person, continue in person, and end in person because we know that is the best learning environment for Pennsylvania's students.
- Masking up in our schools is a simple, proven way to help reduce serious health risks for students, staff, and their families, keep students in the classroom, and significantly reduce unnecessary interruptions to in-person learning.
- Think of it this way. Last year, COVID-19 was less transmissible than it is now, and schools took dramatic steps to protect students and staff, like social distancing, remote or hybrid learning, and universal masking.
- This year, the Delta variant is far more dangerous, particularly for young people. To protect against it, schools cannot eliminate all of the protections in place last year. It is even more important to require masks this year since students under the age of 12 aren't eligible to get the COVID-19 vaccines yet.
- If we don't take steps to protect students and staff in schools, people WILL get sick. And when they get sick, students will need to quarantine, and some schools will be forced to close. If we all wear masks, we can avoid unnecessary school closures.
- So, this isn't a choice between masking or not masking. It is a choice between helping to keep schools open for in-person learning or forcing far too many students to learn from the other side of a screen.

**Scientists and doctors have said that wearing masks in schools is a lifesaving safety measure that can help protect students and staff from contracting COVID-19.**

- It is very important to follow the science and listen to what scientists and doctors are saying about wearing masks in schools.
- On July 18, the American Academy of Pediatrics highly recommended that students and staff members wear masks in school.
- The AAP said: “As we start the 2021-22 school year, a large portion of students are not eligible to be vaccinated and there are COVID variants that are more contagious. Because of this and because we want to have all students in school, the AAP advocates for all students, teachers and staff to wear masks while indoors in school.”
- On Aug. 5, the Centers for Disease Control and Prevention also issued new guidelines about how to guard against the spread of COVID-19 in schools.
- The CDC guidance says: “CDC recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status. Children should return to full-time in-person learning in the fall with layered prevention strategies in place.”
- These are experts who know what they’re talking about, and we should listen to them.

**Gov. Wolf followed the science when the Pennsylvania Department of Health ordered students, staff, and visitors in all K-12 schools to wear masks in school buildings.**

- On Aug. 31, Gov. Tom Wolf announced that the Pennsylvania Department of Health had issued an order to require students, staff, and visitors in all K-12 schools to wear masks in school buildings, beginning Sept. 7.
- When he made the announcement, he reminded Pennsylvanians about the CDC and AAP recommendations and said that the statewide order was necessary to ensure that schools could remain open for in-person instruction.

- The governor also referenced the contentious local school board discussions about wearing masks in schools, noted that only a small percentage of school districts had made mask wearing mandatory, and reminded Pennsylvanians that leaders in the General Assembly had publicly refused to work with him on the issue.
- The bottom line is that the governor was concerned that if the Department of Health didn't issue a statewide order, both the health of everyone who learns and works in schools and the goal of keeping schools open for in-person instruction would be at risk.

### **This isn't about politics; it's about people's health.**

- Wearing masks in school has become a political issue. People are fighting about it in the news, on social media, and at school board meetings.
- But this shouldn't be about politics. It should be about protecting each other and keeping everyone safe and healthy.
- People should be able to make choices for themselves and their families. There's no doubt about that. However, that doesn't change the fact that there are rules in place that everyone needs to follow so we can protect each other.
  - There's a rule that cars drive on the right side of the road. If they drive on the left, the driver loses his license, or worse, causes an accident.
  - There's a rule that kids need to be vaccinated to go to school. If they don't have all of the mandatory vaccines against infectious diseases, they aren't allowed to go.
  - There's a rule that says kids can't play baseball unless they wear a helmet when they're up at bat. If they refuse to wear one, they can't play.
- A rule requiring everyone to wear a mask in school is similar to dozens of other rules we all follow every day. The difference is that the importance of wearing a mask now is even clearer. The COVID-19 pandemic has already disrupted student learning for a year and has taken the lives of more than 600,000 Americans. We can reduce further disruption of learning and loss of life by simply wearing a mask.

**We know what happens when students and staff don't wear masks in school. We see schools closing and people getting sick every day.**

- We all wish we were viewing a different landscape. Unfortunately, the COVID-19 Delta variant has been on the rise across the country. We cannot bury our heads and ignore this.
- In states with lax mask rules and high COVID-19 case counts, we're seeing the exact kind of news that we don't want to see in Pennsylvania. An increasing number of schools are experiencing outbreaks and, in some cases, closures.
- Universal masking in schools can help reduce serious health risks for students, staff, and their families, keep students in the classroom, and significantly reduce unnecessary interruptions to in-person learning.
- Clear, unambiguous direction on universal masking allows school staff to focus on educating their students in a safe environment.