



**August 31, 2021**  
**Client Alert**

**COVID-19 MASK MANDATE**  
**AND FAQs**

As many may be aware, on August 31, 2021 Governor Wolf announced that all schools K-12 would be mandated to wear masks. **This order goes into effect on September 7, 2021.** This order comes through the authority issued under the Department of Health and specifically through the Secretary of Health.

Such Authority was listed within the Order as being granted to the Secretary of Health pursuant to Pennsylvania law. *See* section 5 of the Disease Prevention and Control Law, 35 P.S. § 521.5; section 2102(a) of the Administrative Code of 1929, 71 P.S. § 532(a); and the Department of Health’s regulation at 28 Pa. Code § 27.60 (relating to disease control measures). Particularly, the Department of Health (Department) has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. *See* 35 P.S. § 521.5; 71 P.S. §§ 532(a), and 1403(a); 28 Pa. Code § 27.60.

The **Order**, in pertinent part, specifically provides as follows:

With the opening of the 2021 school year at hand, and case counts and hospitalizations continuing to rise, there is a need for additional action to protect our Commonwealth’s children.

...

Accordingly, on this day, August 31, 2021, in order to prevent and control the spread of disease, I [*the Governor*] hereby order:

**Section 1. Definitions**

For purposes of this Order, the listed terms have the following meanings:

“Alternative to a face covering” may include a plastic face shield that covers the nose and mouth, extends below the chin and to the ears, and leaves no exposed gap between the forehead and the shield’s headpiece. The Centers for Disease Control and Prevention (CDC) has advised there is currently not enough evidence to determine how much protection a face shield provides to individuals around the person wearing the face shield because of gaps where respiratory droplets may escape. The CDC does state, however, that face shields may still be an option in situations where wearing a cloth face covering is not otherwise feasible.

“Face covering” means covering of the nose and mouth with material that is secured to the head with ties, straps, or loops over the ears or is wrapped around the lower face. A “face covering” can be made of a variety of synthetic or natural fabrics, including cotton, silk, or linen. A “face covering” may be factory-made, sewn by hand, or be improvised from household items, including, but not limited to, scarfs, bandanas, t-shirts, sweatshirts, or towels. While procedural and surgical masks intended for health care providers and first responders, such as N95 respirators, meet those requirements, these specialized masks should be reserved for appropriate occupational and health care personnel.

"School Entity" means any of the following:

- (1) A public PreK-12 school.
- (2) A brick and mortar or cyber charter school.
- (3) A private or parochial school.
- (4) A career and technical center (CTC).
- (5) An intermediate unit (IU).
- (6) A PA Pre-K Counts program, Head Start Program, Preschool Early Intervention program, or Family Center.
- (7) A private academic nursery school and locally-funded prekindergarten activities.
- (8) A child care provider licensed by the Department of Human Services of the Commonwealth.

## **Section 2: General Masking Requirement**

Each teacher, child/student, staff, or visitor working, attending, or visiting a School Entity shall wear a face covering indoors, regardless of vaccination status, except as set forth in Section 3.

## **Section 3: Exceptions to Covering Requirement**

The following are exceptions to the face covering requirements in Section 2. All alternatives to a face covering, including the use of a face shield, should be exhausted before an individual is excepted from this Order.

- 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 anaerobic 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.

## **Section 4. School Entity Obligations**

### **A. A School Entity must:**

1. Require and enforce the requirement that all teachers, children/students, staff, and visitors (subject to the exceptions in Section 3 wear a face covering indoors, regardless of whether this Order is reflected in a school entity's Health and Safety Plan.
2. Post prominent signs in conspicuous locations for teachers, children/students, staff, and visitors stating that face coverings are required by the Order of the Secretary of Health.
3. 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.
4. A School Entity should not:
  - a. Enforce face covering requirements when there is an exception under Section 3 or if it is unsafe to do so.

- b. Restrain, use force, or physically remove, teachers, children/students, staff, or visitors who refuse to comply with this Order when it would not otherwise be legal to do so.
- c. Violate other laws, including state and federal anti-discrimination laws.

## **Section 5. Federal Requirements Relating to Transportation**

This Order shall not impact the obligation of any School Entity to comply with requirements issued by the CDC, including requirements for masking on public transportation conveyances, such as school district transportation.

Please find below the link to the FAQs which were put out by the DOH on August 31, 2021.

<https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/SchoolReopeningGuidance/ReopeningPreKto12/MaskingOrder/Pages/FAQs.aspx>

One specific question and answer provision speaks to penalties associated with the failure to adhere to the mask mandate. The FAQ states specifically:

### **“What are the potential consequences if a school entity fails to comply with the Order?”**

Failure to implement and follow the control measures under the Order subjects a person to the penalty provisions of the Disease Prevention and Control Law of 1955. Failing to implement or follow the control measures may also expose individuals to personal liability under 42 Pa.C.S § 8550 (relating to willful misconduct), as well as other remedies as provided by law.

Non-compliance with the Order for child care providers licensed by the Department of Human Services will be cited under 55 Pa. Code §3270.14, §3280.14 (relating to compliance with pertinent laws and regulations) as well as 55 Pa. Code §3270.21, §3280.20, and §3290.18 (relating to general health and safety).”

Additionally, the FAQs state that “regardless of whether the Acting Secretary’s August 31, 2021 Order is reflected in the school entity’s Health and Safety Plan, all school entities must comply with and enforce the Order.”

**\*\*School Districts are reminded that their insurance carriers have already provided opinions regarding Orders issued by the Department of Health.**

**As with all other Client Alerts, these guidelines/protocols/recommendations are subject to change on a daily or weekly basis depending on Orders from the Governor, Secretary of Education and Secretary of Health and further guidance from applicable agencies.**

*While the Beard Legal Group Client Alert is designed to provide information on topics of concern to Pennsylvania Public Schools, it is not legal advice and School Districts should contact their Solicitor, Labor or Special Counsel for advice related to their specific circumstances.*