



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

September 8, 2021

[REDACTED]

[REDACTED]

[REDACTED],

On August 31, 2021, Pennsylvania’s Acting Secretary of Health issued an [Order \(the “Order”\) requiring face coverings to be worn in all school entities](#), including school districts, brick and mortar and cyber charter schools, private and parochial schools, career and technical centers, intermediate units, and early learning and other child-care settings. This Order is not "optional" and was effective beginning 12:01 a.m. on Tuesday, September 7, 2021.

Recent studies have clearly shown that mask-wearing in schools has contributed to lower levels of COVID-19 transmission among students and staff and allowed for continued in-person school attendance. Further, research supports that mask wearing has no significant adverse health effects for wearers. More information on the effectiveness of mask wearing, including published research, can be found on the [Centers for Disease Control and Prevention \(CDC\) website](#).

The Pennsylvania Department of Education (PDE) has received information indicating that [REDACTED] is flagrantly violating and does not intend to comply with the Order. Failure to implement and follow the control measures under the Order subjects a person, which includes you as a member of the governing board, to the penalty provisions of the Disease Prevention and Control Law of 1955. A violation occurs each day there is a violation and may be charged for each student or staff member attending the school.

Further, failing to implement or follow the control measures may also expose you to personal liability under 42 Pa.C.S. §8550 (relating to willful misconduct), as well as other remedies and actions as provided by law. Please be aware that this letter serves as official notice to you that failure to comply with the mask order is a violation of law and imparts knowledge of both the applicable law and your organization’s noncompliance. A knowing violation may be used by a plaintiff to establish personal liability in a negligence action per 42 Pa.C.S. § 8550.

As such, by failing to adhere to the order, you may personally face lawsuits from those who may be affected by noncompliance with the Order, including children who may become ill as a result of the district’s violation, or disabled children who are unable to attend school because of the district’s failure to follow the order. In such a situation, you could face suit and potential liability with no indemnification or protection. In this regard, the administration is aware that some



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districts' liability insurers have explored cancelling coverage as a result of those districts' possible illegal conduct and potential purposeful violations of law. Further, school districts' violations of law may negatively affect workers' compensation claims coverage and premium calculations.

We strongly suggest that officials inquire with their personal insurance professionals regarding the extent that personal insurance (homeowners, etc.) may or may not offer protection in the event that you are sued in your personal capacity.

In addition, districts that do not comply with or affirmatively elect to violate the law may be referred to the United States Department of Education's Office for Civil Rights for investigation. In particular, failure to comply with the Order may prevent immunocompromised and other susceptible students from attending class in violation of the IDEA, ADA, and Rehabilitation Act.

Finally, PDE has received inquiries regarding how superintendents, principals, and teachers should address school boards who direct them to violate the law. Please note that such individuals who report that district officials have instructed them to act in violation of law may be entitled to protection under the state whistleblower law.

Sincerely,

A handwritten signature in black ink, appearing to read "Noe Ortega".

Noe Ortega, Ph.D.
Secretary of Education