

# SOUTH ALLEGHENY SCHOOL DISTRICT

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Dear South Allegheny Family,

Over the past week or so, I have received a few questions about clarifications to the Face Covering Order. I wanted to elaborate on what has been shared with me as a superintendent. I will also hopefully clear up some of the questions and concerns you may have, as we all work to learn together as continued changes are made and new challenges are faced with regards to this pandemic. As always, I am in regular communication with PA Department of Education, PA Department of Health, PA School Administrators' Association, the Allegheny Intermediate Unit, and the Allegheny County Health Department in order to obtain the information I need to be able to make informed decisions which are for the best interest of South Allegheny.

## **What is the difference between a Law and Mandate or Order?**

A law, mandate, and order essentially all have the same power, but it is how they came to be which is the difference. A law is passed by the general assembly and signed by the governor. An order and mandate are interchangeable, and are made by the executive branch like a governor or Department of Health Secretary with the power given to them by the legislature.

## **Why is the Face Covering Order mandatory if it is just an Order?**

In short, because the Order is issued under the following law:

### Disease Prevention and Control Law of 1955

#### *Section 3 - Responsibility of Disease Prevention and Control*

- (a) Local boards and departments of health shall be primarily responsible for the prevention and control of communicable and noncommunicable disease. Including disease control in public and private schools, in accordance with the regulations of the board and subject to the supervision and guidance of the department (*i.e. PA Department of Health*).
- (b) The department (*i.e. PA Department of Health*) shall be responsible for the prevention and control of communicable and noncommunicable disease in any municipality which is not served by a local board or department of health, including disease control in public and private schools.

## Section 5 - Control Measures

Upon receipt by a local board or department of health or by the department (*i.e. PA Department of Health*), as the case may be, of a report of a disease which is subject to isolation, quarantine, or any other control measure, the local board or department of health or the department (*i.e. PA Department of Health*) shall carry out the appropriate control measures in such manner and in such place as is provided by the rule or regulation (*i.e. Face Covering Order*).

There is also reference to this in PA Code:

### 28 Pa. Code § 27.60:

- (a) The Department or local health authority shall direct isolation of a person or an animal with a communicable disease or infection; surveillance, segregation, quarantine or modified quarantine of contacts of a person or an animal with a communicable disease or infection; and any other disease control measure the Department or the local health authority considers to be appropriate for the surveillance of disease, when the disease control measure is necessary to protect the public from the spread of infectious agents (*i.e. Face Covering Order*).
- (b) The Department and local health authority will determine the appropriate disease control measure based upon the disease or infection, the patient's circumstances, the type of facility available and any other available information relating to the patient and the disease or infection (*i.e. Face Covering Order*).

## **Has there been any additional clarification on Face Covering Order Exceptions?**

Yes. On Friday, September 10th, the District received an official correspondence from the Pennsylvania Department of Education that was also sent to all Pennsylvania school district superintendents. The message confirmed the district's position that a doctor's signature is necessary for requesting an exception to the Face Covering Order. Please find below a copy of the statement that was sent to all school districts that clarifies many questions regarding the order:

*(From Sherri L. Smith, Ed. D., Acting Deputy Secretary, Department of Education)*

*"On Wednesday, PDE issued a communication to a school district that has exhibited significant noncompliance with the Acting Secretary of Health's Face Coverings Order . While this letter responds to a specific set of circumstances in a single school entity, the cautions and conditions are broadly applicable to all school entities – both public and nonpublic.*

*Relatedly, this Order is **not a mask optional policy** . Any school entity simply permitting a parent's sign-off without evidence that the student has a medical or mental health condition or disability that precludes the wearing of a face covering is not in compliance with the Order. Under the Order, and as set forth in PDE's Answers to FAQs , school entities must require all individuals, two years of age and older, to wear face coverings unless the individual has a medical or mental health condition or disability that precludes the wearing of a face covering.*

*In accordance with Section 3 of the Order, before an individual is excepted from the Order, all alternatives to a face covering, including a face shield, are to be exhausted. It is recommended that any exception be in accordance with eligibility under Section 504 of the Rehabilitation Act or IDEA for such medical or mental health conditions or disability. School entities should follow their established processes for determining student eligibility under those*

laws, including any medical documentation that they would normally require. There are exceptions to the Order; however, a parent's opposition to the Order **is not** one of them."

Unless otherwise modified through legislative action, the South Allegheny School District will continue to follow our procedure for accepting requests for exceptions to the Face Covering Order which includes medical documentation.

### **What other mandates must we adhere to as a District which fall under Health and Safety?**

742 Lead Testing  
1303 Immunizations  
1402 Mandated Health Services  
1403 Mandated Dental Services  
1410 Employment of School Health Personnel  
1414.1 Possession and Use of Asthma Inhalers and Epinephrine Auto-Injectors  
1414.2 School Access to Emergency Epinephrine  
1414.3 Education of School Employees in Diabetes Care  
1414.4 Diabetes Care in Schools  
1414.5 Possession and Use of Diabetes Medication and Monitoring Equipment  
1414.9 Administration of Epinephrine Auto-Injectors by School Bus Drivers and Crossing Guards  
1414.10 Sun Protecting Measures for Students  
1423 Automatic External Defibrillators (AEDs)  
1424 CPR Training  
1547 Student Assistance Program  
5323 Concussions and Traumatic Brain Injuries  
5333 Sudden Cardiac Arrest  
Title 18, Section 6306.1 Use of Tobacco Products in Schools  
Title 28, Chapter 23 – Required Health Services  
Title 35, Section 807.1 – Anabolic Steroids

### **Why must the South Allegheny School District Follow the Face Covering Order?**

The Secretary of Education is now issuing warnings to districts that do not comply with the Face Covering Order. The warnings have clearly identified the consequences for school districts through sanctions, as well as for individual school officials (school board members, school district administrators, etc.) for not enforcing the Face Covering Order.

[Please click here for a warning letter sent to a district regarding noncompliance.](#)

### **What are the Consequences of Not Enforcing the Face Covering Order?**

As per the Pennsylvania Department of Education, please find below a list of possible consequences for not enforcing the Face Covering Order in our facilities. This includes all student learning and extracurricular activities, community activities in our facilities, and community meetings such as school board meetings.

Failure to implement and follow the control measures under the Order subjects each board member to the penalty provisions of the Disease and Control Law of 1955. A violation occurs each day that the Order is not enforced, and each board member may be charged a financial penalty for each student or staff member attending the school.

Failure to implement and follow the control measures under the Order exposes each board member to personal liability under 42 Pa.C.S. §8550 (relating to willful misconduct), as well as other remedies and actions as provided by law. PDE is serving notice to each board member that failure to comply with the mask order is a violation of law. A knowing violation may be used by a plaintiff to establish personal liability in a negligence action per 42 Pa.C.S. § 8550.

Each board member may 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.

Each board member may bear potential liability with no indemnification or protection.

School districts' liability insurers are exploring cancelling coverage as a result of those districts' possible illegal conduct and potential purposeful violations of law.

School districts' violations of law may negatively affect workers' compensation claims coverage and premium calculations.

Districts that do not comply with or 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.

Employees who report non-compliance may be entitled to protection under the state whistleblower law.

### **What is being updated in the Health and Safety Plan?**

As required by PDE, the Health and Safety Plan must now reflect the Order and be reapproved. The language in the Plan states that the District will adhere to the Order as long as it is in place, and once we are no longer required to follow the Order, we will return to our previous plan (masking optional). This Plan must be submitted to PDE as part of the ESSER ARP grant application.

### **Can a Mandate be overturned?**

The legislature can overturn any order or mandate with a 2/3 majority.

As we continue to work through all of these challenges, and are faced with a variety of opinions, beliefs, and viewpoints, I completely respect and value that frustration, and even anger, is inevitable. We will continue to evaluate this situation and make operational changes as soon as we are permitted to do so.

I am respectfully asking that we consider the importance of practicing positivity for our students, some of whom are just returning to our buildings after being outside of them since March of 2020. We want our children to know we are here for them and we are here to provide a safe and supportive environment where their social, emotional, and academic needs can be met.

As we can see through our new newsletter, The Weekly, we have so very much to celebrate with what is happening in our buildings and with our amazing students, even during these challenging times. We are and will continue to be #SAProud, and we will get through this together.

Sincerely,

Dr. Lisa N. Duval  
Superintendent