

## Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities

The 2019 novel coronavirus (COVID-19) is a contagious disease that continues spreading rapidly from person to person in the world, the United States, and this Commonwealth. Despite periods of time when the virus seemed to wane, it, like all viruses, has continued to mutate, and spread. As of the date of this Order, there have been 1,300,368 cases and 28,235 deaths in this Commonwealth caused by the still present and ongoing pandemic. At this time, the Centers for Disease Control and Prevention (CDC) estimates that the Delta variant is the predominant strain in the Commonwealth. COVID-19 can be transmitted from any person who is infected, even if they have no symptoms and, with the Delta variant, even if they have been vaccinated.<sup>1</sup> Symptoms of COVID-19 may include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Older adults and people who have serious chronic medical conditions were considered to be at higher risk for serious illness. Now, because of the rise of the Delta variant, increasing disease and hospitalizations, and the inability to obtain vaccines for a large part of that vulnerable group, children are more and more at risk.

There are several reasons for the increasing risk to children from COVID-19. The risk overall to the unvaccinated population is rising. Given the rise in hospitalizations and deaths, and despite COVID-19 vaccines being available, the Delta variant of the SARS-CoV-2 virus is causing the rate of cases of COVID-19 to increase.<sup>2</sup> The Delta variant is more infectious, and it is leading to increased transmissibility.<sup>3</sup> Additionally, data is suggesting that the Delta variant may cause more severe illness than previous strains of SARS-CoV-2.<sup>4</sup> Vaccination remains the most effective protection against all strains of SARS-CoV-2; however, not all of our population is able to get vaccinated. As of yet, no vaccine has been approved for children under the age of 12. As of August 26, 2021, the total number of cumulative cases reported in children in the Commonwealth was 23,974 in the 0-4 years of age cohort, 56,039 in the 5-12 years of age cohort, and 88,205 in the 12-18 years of age cohort.

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<sup>1</sup> Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021, *Weekly* / August 6, 2021 / 70(31);1059-1062 (last visited, August 26, 2021); Key Things to Know About COVID-19 Vaccines, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (Updated August 19, 2021) (last visited August 26, 2021).

<sup>2</sup> Delta Variant: What we Know about the Science, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Aug. 9, 2021); Rachel Herlihy, *et al.*, “Rapid Increase in Circulation of SARS-CoV-2 B.1.617.2 (Delta) Variant,” Aug. 6, 2021, CDC, [https://www.cdc.gov/mmwr/volumes/70/wr/mm7032e2.htm?s\\_cid=mm7032e2\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7032e2.htm?s_cid=mm7032e2_w) (last visited Aug. 9, 2021); Megan Scudellari, “How the Coronavirus Infects Cells – and Why Delta is so Dangerous,” *Nature*, <https://www.nature.com/articles/d41586-021-02039-y> (last visited Aug. 11, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

In addition to the concern that COVID-19 spreads quickly and dangerously among children, there are concerns that school closures create health issues for children, too. Maintaining in-person instruction at schools is imperative, since it has also been shown that in-person instruction and socialization are necessary for the health and well-being of our children.<sup>5,7</sup> In view of this serious concern for our nation's children, the CDC has issued a strong recommendation for masking of all persons, teachers, students and staff, within the nation's schools, regardless of vaccination status, to create a multi-layered approach for fighting COVID and to keep our schools open for in-person education. In addition, the American Academy of Pediatrics (AAP) has also strongly recommended masking in schools. Finally, recent studies have shown that mask-wearing in schools has contributed to lower levels of COVID-19 transmission among students and staff and allowed for the continued in-person attendance.<sup>8</sup> Requiring face coverings in schools, therefore, balances the concerns for the mental health of our children with the need to protect them against a disease that is growing more virulent as we struggle to protect the most vulnerable members of our population. In accordance with the recommendations of the CDC and the AAP and based upon the rising case numbers and hospitalizations in general in the Commonwealth, including the number of cases in our children, as well as the need to protect and maintain in-person education for the health and well-being of those children, I am issuing this Order to protect the ability of our schools to continue to educate our children, and of our children to receive in-person instruction in the safest environment possible.

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<sup>5</sup> Engzell P., Frey A., Verhagen M.D, "Learning loss due to school closures during the COVID-19 pandemic," *Proc Natl Acad Sci* 2021;118(17), <https://www.pnas.org/content/118/17/e2022376118> (last visited August 26, 2021).

<sup>6</sup> Barnett W.S., Jung, K., "Seven Impacts of the Pandemic on Young Children and their Parents: Initial Findings from NIEER's December 2020 Preschool Learning Activities Survey. 2021," New Brunswick, NJ: National Institute for Early Education Research.

<sup>7</sup> Verlenden J.V., Pampati S., Rasberry C.N., *et al.*, "Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic — COVID Experiences Survey, United States, October 8–November 13, 2020," *MMWR Morb Mortal Wkly Rep* 2021;70:369–376, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm> (last visited August 26, 2021).

<sup>8</sup> Zimmerman KO, Akinboyo IC, Brookhart MA, *et al.*, "Incidence and Secondary Transmission of SARS-CoV-2 Infections in Schools," *Pediatrics* 2021;147(4), <https://pubmed.ncbi.nlm.nih.gov/33419869/> (last visited August 26, 2021); Hershov R.B., Wu K., Lewis NM, *et al.*, "Low SARS-CoV-2 Transmission in Elementary Schools – Salt Lake County, Utah, December 3, 2020-January 31, 2021," *MMWR Morb Mortal Wkly Rep* 2021;70(12):442-448, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e3.htm> (last visited August 26, 2021); Falk P., Benda A., Falk P., *et al.*, "COVID-19 Cases and Transmission in 17 K-12 Schools – Wood County, Wisconsin, August 31-November 29, 2020," *MMWR Morb Mortal Wkly Rep* 2021;70(4):136-140, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7004e3.htm> (last visited August 26, 2021); Dawson P., Worrell M.C., Malone S., *et al.*, "Pilot Investigation of SARS-CoV-2 Secondary Transmission in Kindergarten Through Grade 12 Schools Implementing Mitigation Strategies – St. Louis County and City of Springfield, Missouri, December 2020," *MMWR Morb Mortal Wkly Rep* 2021;70(12):449-455, <https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e4.htm> (last visited August 26, 2021).

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures. This authority is 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. 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 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.

"Department" means the Department of Health of the Commonwealth.

"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:

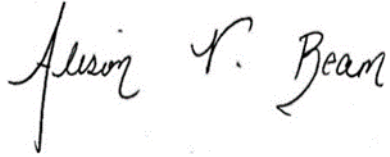
1. Require and enforce the requirement that all teachers, children/students, staff, and visitors (subject to the exceptions in Section 3) wear a face covering indoors, regardless of whether this Order is reflected in a school entity's Health and Safety Plan.
3. Post prominent signs in conspicuous locations for teachers, children/students, staff, and visitors stating that face coverings are required by the Order of the Secretary of Health.
4. 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.
5. 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.

Section 6. Effective Date and Duration

This Order shall take effect at 12:01 a.m. on September 7, 2021, and shall remain in effect until otherwise terminated.



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Alison V. Beam  
Acting Secretary of Health