



CLIENT ALERT
August 20, 2020

Coronavirus (COVID-19)

Updated Masking Requirements

As many be aware, on August 17, 2020, the Pennsylvania Department of Education (“PDE”) released an update to the guidance released on July 16, 2020 in collaboration with the Pennsylvania Department of Health (“DOH”) to reflect the DOH’s updated requirement that **students wear face coverings at all times while in schools, even when six feet of social distancing can be achieved, with limited exceptions**. This change, coming mere days before many schools are set to reopen, was attributed to updated guidance released by the [American Academy of Pediatrics \(AAP\)](#) strongly recommending children age two and older should wear face coverings **at all times** to help mitigate the spread of the COVID-19 virus. The updated guidance, which also includes new sections addressing schools’ responses to positive COVID-19 tests, and may be accessed here:

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

The following are initial considerations to be noted regarding this development:

I. What has (really) changed?

Old language (from 7/16/2020 guidance):

- Schools should provide face covering breaks throughout the day. Maintain a distance of at least 6 feet during these face covering breaks. Schools may allow students to remove face coverings when students are:
 - Eating or drinking when spaced at least 6 feet apart;
 - Seated at desks or assigned workspaces at least 6 feet apart;
 - Engaged in any activity at least 6 feet apart (e.g., face covering breaks, recess, etc.); or
 - When wearing a face covering creates an unsafe condition in which to operate equipment or execute a task.

New language (as of 8/17/2020):

- Schools may allow students to remove face coverings when students are:
 - Eating or drinking when spaced at least 6 feet apart; or
 - When wearing a face covering creates an unsafe condition in which to operate equipment or execute a task; or
 - At least 6 feet apart during “face-covering breaks” to last no longer than 10 minutes

II. Social Distancing and Face-Covering Breaks

As of 8/17/2020, the guidance confirms that six feet of social distancing is still required in order for a mask to be taken off during a face-covering break, which is now clarified as being allowed to last no longer than 10 minutes.

1. If schools want to have face-covering breaks, at all, they must occur in a socially distanced setting.
2. The fact that face-covering breaks are limited to 10 minutes suggests that there might be multiple breaks during the day, as opposed to just one at recess or in the cafeteria, for example, since they can only last 10 minutes.

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3. The requirement clearly expects that students will be wearing masks at all times, with the exception of eating or drinking in a socially distanced setting, situations where the mask renders operations unsafe, and/or the maximum 10-minute face-covering breaks occurring in socially distanced settings.
4. If there is no reduction of the number of students present to permit social distancing, then affording face-covering breaks would appear to require some sort of shift or transition of the students that may not be feasible, or at least highly disruptive, along the lines of the following options, all of which beg the question of how often face-covering breaks should be provided:
 - a. Some degree of relocation of the students to a larger space, in rooms where there simply is not enough space;
 - b. Separation or division of students to allow space within the classroom, in rooms where there simply isn't enough space to socially distance for purposes of affording the face-covering break
 - c. Rearrangement/reconfiguration of the students within the classroom, in rooms where there is enough space, in order to allow sufficient distancing, every time a maximum 10-minute face-covering break is to be taken.

All of the above, most urgently, raises the question of *should Districts be reducing class sizes to ensure social distancing or not?*

The Instructional Model Recommendations suggest that the answer to that question is yes, particularly if the District is in a Moderate Risk County.

III. PDE/DOH Instructional Models – Moderate Risk

The above-referenced July 16, 2020 guidance, as updated on August 17th, is specifically identified by PDE and DOH as setting forth minimum standards, with the caveat that more rigorous measures may be required depending on community transmission rate (i.e., low, moderate, substantial risk). The guidance states, specifically, that it “serves as minimum standards for practices across all Pre-K to 12 schools with the understanding that more rigorous measures may be required in certain areas depending on community transmission of COVID-19.”

With to community transmission and recommendations on reducing numbers of students in order to ensure social distancing, the updated guidance does not alter anything about the recommended instructional model(s) for Schools Districts based on their County’s transmission rate.

In Counties with a Moderate Risk, the recommended instructional model is to be either Blended (Hybrid) Learning Model or full Virtual/Remote instruction. For School Entities in Moderate Risk Counties that are pursuing a Blended (Hybrid) Learning Model, it is important to note that the definition of Blended (Hybrid) Learning model very clearly contemplates altering schedules or differentiating between the learning model available to certain grade levels to achieve social distancing.

1) The Blended (Hybrid) Learning model is defined as follows:

- **Blended (Hybrid) Learning Model:** Any model in which the number of students in a school building is reduced to allow for social distancing of 6 feet. This may be accomplished in many ways, including split schedules, schedules that rotate by day or week, or similar approaches. For these recommendations, blended learning also includes scaffolded approaches that treat grade levels in a differentiated manner.

2) This definition links to the original 7/16/2020 guidance on schools reopening (now updated in relation to mask removal as of 8/17/2020). That guidance, as referenced in the Blended (Hybrid) Learning Model definition, states as follows:

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a. **Social/Physical Distancing Measures**

- i. Social distancing, also called "physical distancing," means keeping a safe space between yourself and other people who are not from your household. Social Distancing is fundamental to lowering the risk of spread of COVID-19, as the primary mode of transmission is through respiratory droplets by persons in close proximity.
 - ii. **All Pre-K to 12 schools should implement strategies that limit the number of individuals in classrooms and other learning spaces, and interactions between groups of students. All schools should have protocols for distancing student desks/seating and other social distancing practices that allows at least 6 feet of separation among students and staff throughout the day to the maximum extent feasible.**
- b. The guidance also includes specific directives on spacing of desks within classrooms to afford appropriate social distancing.

IV. Medical Documentation for Mask Exception

In the August 17, 2020 PDE “Answers to FAQs: Universal Face Covering Order” PDE addressed the issue of medical documentation that is needed to be provided to be exempted from wearing face coverings.

The following was presented and answered:

Q: Must an individual provide evidence that they qualify for an exception to the Order?

A: Schools must require all students over 2 years of age to wear face coverings, except for any student who has a medical or mental health condition or disability that precludes the wearing of a face covering in school. **Notwithstanding Section 3, Paragraph B of [Secretary Levine’s July 1, 2020 Order regarding face coverings](#), schools may require such students to provide medical documentation.** PDE recommends that any documentation that is provided be in accordance with Section 504 of the Rehabilitation Act or IDEA of such medical or mental health condition or disability.

Note: This is a complete about-face from the previous position that Districts could not ask for proof of medical documentation to be exempted from wearing a face covering.

While the change to the masking requirement certainly signifies a shift in the understanding of what was permissible when students were appropriately socially distanced, it is clear that the masking and social distancing requirements are not necessarily competing options, however, and we caution School Entities to avoid any understanding that views the two matters as mutually exclusive. The Blended (Hybrid) Learning Model remains defined by a reduction of the number of students within a school entity to afford social distancing, and masking requirements do not alter or impact that definition.

Current and ongoing discussions of this masking requirement suggest that PDE and DOH may be issuing further guidance on the requirement which is expected to confirm that it applies at all times, even while students are engaging in activities outdoors. This remains to be confirmed, formally, however as of now it is clear that masking is required at all times, with very limited exceptions.

As with all other Client Alerts, these guidelines/protocols/recommendations are subject to change on a daily or weekly basis depending on Orders from Governor Wolf, Secretary Rivera and Secretary Dr. Levine.

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 of Special Counsel for advice related to their specific circumstances.