



October 7, 2021

Client Alert

FEDERAL JUDGE BLOCKS SCHOOL DISTRICT'S MASK OPTIONAL POLICY

WC, et al v. Warren County School District, et al, Civil Docket No. 1:21-cv-00273-SPB (US District Court for the Western District of Pennsylvania) (DOD 10/5/2021)

In less than one week, three Federal Court judges have acted on complaints brought seeking Temporary Restraining Orders (TRO) regarding masking mandates in the Commonwealth of Pennsylvania.

On October 5, 2021, United States District Judge for the Western District of Pennsylvania (Hon. Susan Paradise Baxter) granted a TRO preventing Warren County School District from continuing its optional COVID mask policy which allowed student to get out of wearing face coverings without providing medical documentation. In response to the ruling, the Warren County School District posted a statement on its website that read as follows:

“Starting tomorrow, Wednesday, October 6th, mask exceptions will not be permitted as a means for not wearing a mask. Only those students who have exemptions and accommodations through the 504 and IDEA process will be accepted.”

In her three-page Order, Judge Baxter stated:

“Defendants’ September 13, 2021 vote, ‘Mr. Stewart’s Recommended Action,’ on whether to eliminate the universal masking requirement that had gone into effect upon the authority of the Pennsylvania Department of Education on September 10, 2021, occurred without any advance notice, sufficient hearing, of any of the standard procedures for changing School District policy.

Judge Baxter further ruled:

“Plaintiffs are likely to suffer irreparable injury in light of the fact that the Defendants undertook said September 13, 2021, vote without proper notice and full opportunity for hearing which impacts their procedural due process rights.”

The Judge then stated:

“This temporary restraining order will serve the public interest as well as the health, safety and welfare of the school students in the School District.”

According to the relief granted, the Judge stated:

1. Defendants are enjoined from further implementation of the result of the September 13, 2021, vote on whether to adopt “Mr. Stewart’s Recommended Action,” which would eliminate the universal masking requirement within the School District.
2. The effect of this Order maintains the status quo of the August 31, 2021, Order of the Acting Secretary of the Pennsylvania Department of Health which required universal masking for all school student within the Commonwealth.
3. It is further ordered that Defendants shall immediately notify the affected public, student body, and staff regarding the Order of this Court.
4. This Temporary Restraining Order shall remain in effect until further Order of Court or until further School Board Action that complies with all procedural requirements.

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The Court also ruled that a full hearing shall be held by the Court on October 13, 2021 on Plaintiff's Motion for a Preliminary Injunction.

Background Facts:

On January 29, 2021, the Center for Disease Control ("CDC") entered an Order requiring universal masking on public transportation, including school buses, in order to limit the risk of exposure to infection from COVID-19, Delta Variant, the Erie County Health Department Ordered universal masking for all school students who are subject to the Erie County Health Department. Warren County School District is subject to the Orders of the Erie County Health Department.

On August 31, 2021, due to the increase in the rate of infection from COVID-19, Delta Variant, and because many school districts were permitting parents the option to have their children not wear masks while in school, (a/k/a optional masking), the Acting Secretary of the Pennsylvania Department of Health Ordered universal masking to be required of all school students in Pennsylvania effective September 7, 2021.

On September 10, 2021, the Pennsylvania Department of Education sent a directive to all school districts in the Commonwealth, reinforcing with the school districts that parents do not have an option to sign a waiver form to except their children from the Department of Health Order, unless the parental waiver form is supported by medical documentation which provides verifiable medical proof that the student requires an accommodation from a health risk to the student caused by mask wearing.

Per the allegations of the Plaintiffs in their Complaint for Injunctive Relief, they stated, three (3) days later on September 13, 2021, the Warren County School Board, in direct defiance of the CDC Order, the Erie County Health Department Order, the Pennsylvania Department of Health Order and the Pennsylvania Department of Education directive, voted by a 6-3 majority to permit parents the option to sign a waiver form to except (exempt) their children from the Department of Health Order WITHOUT supporting medical documentation.

Approximately nine (9) students, through their parents, sought to enjoin the School District from allowing this to occur.

Per paragraph 5 of the Complaint for Injunctive Relief, the Plaintiffs alleged as follows:

"Plaintiffs herein include children with health disabilities and children under 12 who are unable to be protected from COVID-19 from a vaccine. The risk of COVID-19 exposure is increased needlessly to all the children in the school district because of this scientifically and medically unsupported policy of permitting parents the option to have their children to not wear masks. Indeed, as September 18, 2021, parents of over 400 students (which is 10% of the Warren County School District), had submitted exemption forms WITHOUT medical documentation. Also, as of September 18, 2021, there were 50 positive cases within the district and 434 students had been denied entry – quarantined – due to close contacts. There are 4,000 students in Warren County School District, so this means that over 10% of the students have been quarantined in the first month of school had have not received in-person instruction during their periods of quarantine."

Also within its Complaint, the Plaintiffs challenged the School District by outlining that the School Board permits parents the option to have their children not wear masks while attending school and at the same time the School Board is providing itself with greater protection from infection from COVID-19 than they are providing the school children because the School Board is taking the "best" action to avoid non-mask wearing attendees at school board meetings by holding virtual meetings to decrease the risk of exposure and infection from COVID-19 to the school board members. Plaintiffs then cited that the Board had acted to hold its regular school board meeting on Monday October 11, 2021 at 6 p.m. via teleconference.

Plaintiffs went on to outline the Board's vote on September 13, 2021, violates the Constitutional substantive and procedural due process and will result in irreparable harm to the Plaintiffs, staff, students and visitors

and the local community at large. Plaintiffs further cited that currently Warren County is in the “High” COVID-19 transmission level which is highest community transmission rating set by the CDC .

Judge Baxter held a hearing before ruling on the Motion for a Temporary Restraining Order. According to reports, the District had no legal representation at the hearing.

As outlined above, the next hearing on the Motion for Preliminary Injunction will be held on October 13, 2021. According to reports of those who attended the meeting, it was outlined that a representative for the District stated that no doctors in Warren County area said they would provide medical documentation for students to be exempted from wearing masks.

This decision will be followed to see what outcome occurs as a result of the hearing scheduled for October 13, 2021 on the Motion for Preliminary Injunction.

Again, this now makes the third consecutive Federal District Court in Pennsylvania to rule on the August 31, 2021 masking order in less than a week.

Commentary:

Please be aware that there are two suits pending involving the Central Bucks School District.

In the one case (Case No. 2:21-cv-03846-PD), the Plaintiffs who filed an Amended Complaint are alleging the District is not enforcing the August 31, 2021 masking Order because it is granting an exemption freely without requiring a health care provider signature and/or medical documentation supporting same.

Additionally, a group of parents and/or citizens likewise filed a Complaint seeking an Order from the Court that neither the District or Secretary of Health has the authority to enforce the masking Order.

Other Pending State Cases

There are two other pending cases in the Commonwealth of Pennsylvania.

Most publicized is one where Senator Jake Corman along with parents have brought a claim against the Department of Health relative to the masking order of August 31, 2021. Corman v. Beam, No. 294 MD 2021 (Pa. Cmmw. Ct. filed Sept. 3, 2021).

In addition, there is another claim pending in Commonwealth Court wherein five or six parents likewise are bringing a similar suit against the Secretary and Department of Health. J.W., S.H., C.H., N.J., R.M., and C.A. individually and on behalf of minor children v. Allison Beam, No. 297 MD 2021.

There should be further guidance on these cases in the ensuing weeks.

Please also see our October 2021 Special Edition of the Beard Legal Group Education Law Report reporting on the Tredyffrin/Easttown School District (Federal District for Eastern District of Pennsylvania) and the Montoursville Area School District (Federal District for Middle District of Pennsylvania).

As with all other Client Alerts, these guidelines/recommendations are subject to change on a daily or weekly basis depending on Order from Governor Wolf, the Pennsylvania Department of Education or Pennsylvania Secretary of Health.

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.