

Two Pennsylvania Federal District Courts Weigh in on August 31, 2021 Masking Mandate

Pennsylvania Federal District Court Rules on Pennsylvania’s Masking Order

Geerlings, et al. v. Tredyffrin/Easttown School District, 2:21-CV-04024-MSG (United States District Court for the Eastern District of Pennsylvania).

On September 27, 2021, Judge Goldberg denied the Plaintiffs’ Petition for a Temporary Restraining Order and Preliminary Injunction.

As we are all aware, on August 31, 2021, Pennsylvania’s Secretary of Health issued an Order mandating masks in all Pennsylvania schools effective on September 7, 2021. On September 8, 2021, four parents filed a Complaint for Declaratory Judgment and Permanent Injunction in the United States District Court for the Eastern District of Pennsylvania. Parents were seeking a declaration that the mask mandates promulgated by the Acting Secretary of the Pennsylvania Department of Health, and Defendant Tredyffrin/Easttown School District, are unlawful and that a permanent injunction against enforcing the mandate should be issued. Plaintiffs’ Complaint included a Petition for a Temporary

Restraining Order (TRO) and Injunctive Relief as well as a Brief in support of same.

On September 13, 2021, the Defendant District filed a Response in opposition to the Request for TRO and Preliminary Injunction.

On September 14, 2021, a hearing was held before Eastern District Federal Judge Mitchell S. Goldberg wherein the four Plaintiffs and a District official testified. While the Plaintiffs had requested additional time be set aside to question the District’s Pandemic Officer and offer testimony of a physiologist regarding the alleged unsafe effects of masks, the Judge concluded that none of these individuals would assist the Plaintiffs in meeting the high burden of proof necessary to obtain the extraordinary emergency relief that they sought through a TRO.

Judge Goldberg outlined the Plaintiffs claims into three (3) categories as follows:

1) Secretary of Health’s school mask Order infringes on their constitutional right to practice their

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religious beliefs pursuant to the First Amendment.

2) Plaintiffs argue the District cannot require students to wear masks because, under the Food, Drug and Cosmetic Act, 21 U.S.C. §301 et seq., masks are “medical devices,” which have not been approved by the Food and Drug Administration.

3) Plaintiffs insist the District’s policy cannot be enforced because the Pennsylvania Secretary of Health lacked authority to issue the Order that the District is implementing.

Within his September 27, 2021 Opinion, Judge Goldberg summarized the testimony of each of the four Plaintiffs.

Sarah Marvin (Plaintiff #1). Within the Opinion it outlined Ms. Marvin is a Christian and previously attended a Presbyterian church in Devon, Pennsylvania, where she was and still is a deacon. However, Ms. Marvin left the church when it started requiring masks. It was outlined that Ms. Marvin testified she does not share all beliefs with her church, instead following the Christian Bible. Ms. Marvin believes people are made in the image of God and it therefore dishonors God to cover our faces. Judge Goldberg further outlined that Ms. Marvin stated that the Bible—specifically, one of the Epistles of Paul to the Corinthians—instructs that face coverings dishonor God, though she did not name a specific book or verse.

Alicia Geerlings (Plaintiff #2). Ms. Geerlings is also a Christian who used to attend an Episcopal church but, like Ms. Marvin, recently left the church when they started requiring masks. Ms. Geerlings believes the body is a temple and must not be harmed, and in her view, masks violate the prohibition on harming the body because they are unhealthy. Ms. Geerlings went on to explain that wearing a mask caused “maskne” (mask acne) and sinus infections for which she has been taking antibiotics, and her son has experienced severe headaches on the days he has worn a mask. Ms. Geerlings acknowledged on cross examination that her son would voluntarily wear a mask to enter a clubhouse to play squash, though he removed the mask while playing. Ms. Geerlings also agreed that communicable diseases are harmful and that God, in her view, would want us to protect

ourselves from communicable diseases.

David Governanti (Plaintiff #3). Mr. Governanti does not belong to any organized religion, does not pray to God, and stated that he could not pin his religious beliefs on a Bible or church. Mr. Governanti does, however, believe there is “something else out there” and that it is not “just us.” Accordingly, Mr. Governanti came to believe that he must not harm his daughter, which, in his view, means he must not allow his daughter to wear a mask. According to the Plaintiff, he has seen his daughter come home from school lethargic and suffering from headaches and anxiety, which he concluded was due to wearing a mask. Mr. Governanti acknowledged that his daughter went to school and wore a mask last school year, but he now objects to her wearing a mask this year because he now knows more about the harmful effects of masks.

Andrew McLellan (Plaintiff #4). Although Mr. McLellan believes that “Jesus ... [is] the son of God” and “died for our sins,” he described his beliefs as less of a “religion” and more of a “spirituality.” He does not go to church. Mr. McLellan believes God intervened in his life to save him from certain trauma, and that masks are a mockery of the gift of life because they cover what makes us human and show a lack of gratitude to the creator. Mr. McLellan acknowledged that his son wears a helmet for football and a head covering for wrestling.

Medical and Disability Issues

The Court then turned to the medical and disability issues outlining that Plaintiffs have not pled a claim related to their children’s medical conditions nor have they formally submitted applications for such exemptions to the District.

Nonetheless, two of the Plaintiffs maintained that their children should receive a medical or disability exemption from the mask mandate. The Court went on to address these issues. According to one Plaintiff, the mask makes her son feel nauseous and he has almost fainted although the Plaintiff has indicated her son does not have a diagnosed respiratory condition. The other Plaintiff indicates that her son should receive a medical exemption because he experiences

sinus issues and migraines. The Plaintiff outlined that on the days her son has worn a mask, he has come home with severe headaches.

The Court was clear in its decision that the Secretary of Health's Order specifically allows for medical exemptions to the mask policy. However, before the District will consider a medical exemption, it requires a waiver of the student's medical privacy under HIPAA so that it can obtain information about the alleged medical condition. In this case, none of the Plaintiffs seeking medical exemptions were willing to waive their children's rights under HIPAA.

Legal Standard

The Court then outlined a burden of proof that the Plaintiffs must establish in order to secure a TRO. In his decision, Judge Goldberg outlined that a Plaintiff seeking an injunction must establish:

- 1) That he is likely to succeed on the merits.
- 2) That he is likely to suffer irreparable harm in the absence of preliminary relief.
- 3) That the balance of equities tips in his favor, and
- 4) That an injunction is in the public interest.

Judge Goldberg was very clear that a ruling on a request for a TRO and preliminary injunction is not a ruling on the ultimate merits of the case. Rather, the question at this early state of the litigation is only whether the movant has met the high standard necessary to order a remedy before a full trial of the movant's claims.

The Judge then indicated that after having heard the evidence presented at the hearing and considering the additional evidence, he found Plaintiffs could not meet their burden to show that they are reasonably likely to succeed on the merits of their claims. Absent such a showing, the Plaintiffs are not entitled to the "extraordinary remedy" of a preliminary injunction.

The Court then went on to address the basis upon which his decision was arrived.

Religious Discrimination

The Court addressed the Plaintiffs' primary

argument that Secretary of Health's school mask Order infringes on their constitutional right to practice their religious beliefs pursuant to the First Amendment. The Court outlined that the First Amendment to the United States Constitution, made applicable to states through the Fourteenth Amendment, protects the right of the people to practice their religion. The Court outlined that all four Plaintiffs asked the District to grant their children religious exemptions from having to wear masks in school. It was noted that the District will not grant any religious exemption to any student and takes the position that it is prohibited from doing so by the Secretary of Health's Order. While the Court expressed some concern with the Order of the Secretary of Health, the Court did comment that the District's obligations to protect students' legitimate constitutional right to practice their religion cannot be set aside by an order from the Secretary of Health of Pennsylvania; moreover, the fact that the District's Policy may raise constitutional issues does not automatically provide Plaintiffs with a clear path to successfully challenge that policy. In his decision, the Judge outlined, before a person can obtain relief from government action based on religious objections, that person must come forward with a sincere religious belief that is contrary to the challenged action. The Judge went on to indicate that before he can consider whether the District should be required to accommodate religious objections to mask-wearing, he must determine whether Plaintiffs have sincere religious beliefs that are burdened by the District's policy. The Court then outlined that a sincere religious belief must satisfy two requirements.

1. The belief must be "sincerely held."
2. The belief must be "religious in nature, in the claimant's scheme of things."

The Court then pointed out that in order to add some structure to the question of which beliefs count as religious, the Third Circuit has offered three guideposts.

"First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-

system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.”

The Judge ultimately concluded that although each of the four Plaintiffs have a passionate objection to wearing masks, none of them have a belief that warrants First Amendment protection.

The Judge then went on to address each objection brought forth by each of the four Plaintiffs before outlining that none of the reasons they put forth in their testimony were sufficient to overcome religious objections to wearing masks.

Unapproved Medical Device

The Court addressed the Plaintiffs’ second claim that the District cannot require students to wear masks because, under the Food, Drug and Cosmetic Act, 21 U.S.C. §301 et seq., masks are “medical devices,” which have not been approved by the Food and Drug Administration. Citing to specific references to the Food, Drug and Cosmetic Act, the Court concluded these provisions do not limit the ability of the District to require that students wear masks.

Secretary of Health’s Authority

On the third claim by Plaintiffs that the District’s policy cannot be enforced because the Pennsylvania Secretary of Health lacked authority to issue the Order that the District is implementing, the Court commented that the Plaintiffs have not explained why it would be appropriate for a federal court to issue a remedy regarding a state order. Citing to other district courts, Judge Goldberg stated “Even if Plaintiffs are ultimately correct that the Governor should have complied with the procedures set out in the [state statute] in implementing his response to COVID-19, they still will not have established a federal constitutional violation.”). The Court then commented that the Secretary’s authority to issue the August 31 Order is the subject of ongoing litigation in the Pennsylvania Commonwealth Court and cited to the standing case of *Corman v. Beam*.

As to any remaining evidentiary issues, the Court stated “Whether masks are overall helpful or

harmful in light of all potential health effects is a complex policy question that belongs to policymakers like the Secretary and the District, and Plaintiffs have not advanced a claim that these policies are so arbitrary as to amount to a violation of their rights.” The Judge then concluded “Because Plaintiffs have not shown that they are likely to succeed on the merits of their claims, Plaintiffs are not entitled to the extraordinary remedy of a preliminary injunction.”

This opinion is particularly significant as it demonstrates that school entities denying religious exemptions have support for doing so.

It will still be up to Commonwealth Court to address the main debate whether the Department of Health’s Acting Secretary had authority to issue the mask mandate at the outset. However, this Opinion will help to take some pressure off of school entities that have been bombarded with requests for religious/philosophical exemptions.

Other Pending 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.

Another case in the United States District Court for the Middle District involves the Montoursville Area School District where, unlike the *Tredyffrin/Easttown* case, the Secretary of Education has been enjoined as a party to that action. The Complaint seeking a TRO has been filed. Responsive pleadings to include briefs by both parties as well as the Office of the Pennsylvania Attorney General, have been filed in this case. The federal court issued an opinion on September 30, 2021 addressing the matters in that case which is discussed in a separate article in this

Report Oberheim, et al. v. Bason, Montoursville Area School District, et al., 4:21-CV-01566.

Another Federal District Court Rules on Pennsylvania's Masking Mandate

Oberheim, et al. v. Bason, Montoursville Area School District, et al., 4:21-CV-01566

Less than three days after the Eastern District Federal Court for Pennsylvania ruled in the Tredyffrin/Easttown School District case, the United States District Court for the Middle District of Pennsylvania ruled on legal challenges that were brought by the parents of two students in the Montoursville Area School District.

In a nutshell, Judge Brann of the Middle District issued an order denying the injunction requested by the Plaintiffs and holding the School District's compliance with the masking order is lawful and required by law and not subject to a mandatory debate at a school board hearing as the Plaintiffs argued before the Court.

Facts and Background

Montoursville Area School District, like other schools, began preparing for the upcoming 2021-2022 school year as it relates to getting its Health and Safety Plan in order. In July the School Board held a meeting on the Health and Safety Plan. At that time, the Board approved a proposal to include a "mask optional policy" which provided that the School "will maintain mask optional status for the 2021-2022 school year." The Board voted on that plan by a vote of 8-0. While this information had been communicated to the District's parents, as noted by the Court, by the end of the following month, the public health landscape concerning COVID-19 had

changed dramatically. Between July and August 2021, Pennsylvania's COVID-19 case count increased "from less than 300 cases per day to more than 3,000 cases per day." In total, "there were 1,300,368 cases and 28,235 deaths in this Commonwealth caused by COVID-19." Particularly troubling for Pennsylvania schools, the number of COVID-19 cases "among school-aged children . . . increased by 11,000 in a one-month period and by more than 79,000 since the beginning of the year." This surge in new cases was attributable, at least in part, to a highly transmissible, "more infectious" strand of the virus: the Delta variant.

In response to these developments, on August 31, 2021, the Acting Secretary of the Pennsylvania Department of Health, Defendant, issued the following mandate to school entities, including public Pre-K–12 grade schools: "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." After receiving this directive from the Department of Health, the Superintendent announced a new policy for the School District requiring all students and teachers to wear masks on school premises and buses.

According to the Plaintiffs, the Superintendent only consulted with the Board President, she did not solicit input from other members of the School Board, and the School Board did not hold a regular or special meeting on the Department of Health's masking directive before the new masking requirement was put in place.

Less than two weeks later on September 13, 2021, the parents filed a complaint against the Board President and School Board arguing that the District's Mask Mandate violated their children's constitutional rights under the First, Fifth and Fourteenth Amendments. The Plaintiffs were, in essence, asking the Court to issue a temporary restraining order (TRO) and preliminary injunction to stop the School Board from enforcing the mask mandate.

Plaintiffs filed the necessary Complaint and Petition and ultimately both the Plaintiffs and the District, to include the Pennsylvania Attorney General's Office, filed responsive briefs in this case

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and a hearing was held in this matter on September 24, 2021.

It needs to be noted that what is strikingly different from this case and noticeably absent in the Tredyffrin/Easttown School District, is that in this case the Pennsylvania Acting Secretary of Health was joined as a Co-Defendant in the case.

The Judge subsequently rendered his decision on September 30, 2021, denying the request for a TRO and injunctive relief. As was outlined in Tredyffrin/Easttown School District, the same burden of proof was involved in this case and it is not necessary to again recite same. At the end of the day, the Judge held that Plaintiffs could not sustain the high burden and denied their request to prevent the District from enforcing the mask mandate.

In the first paragraph of the Judge's Memorandum Opinion, he stated, inter alia:

But the Constitution does not shield us from all things we dislike. Here, parents of schoolchildren in Montoursville, Pennsylvania filed suit against the local school district, challenging the constitutionality of the district's policy requiring students to wear masks while on school premises and buses. Despite the ongoing global COVID-19 pandemic, these parents ask the Court to immediately suspend the school district's mask mandate pending the resolution of their case. The Court declines to do so, as the parents failed to establish that such an extraordinary remedy is warranted in this circumstance. The Constitution does not guarantee students a right to attend school without wearing a mask and being required to do so neither inflicts irreparable harm nor in any way violates students' right to freely associate and assemble with others. For these reasons, as explained in further detail below, the parents' Motion for Preliminary and Permanent Injunction is denied.

The Court then set about the task of addressing the three claims of the Plaintiffs concerning 1) Procedural Due Process; 2) Substantive Due Process; and 3) Right to Free Association. Below is a brief overview of how the Court addressed and disposed of all three of these arguments.

Liberty Interest

The Court stated that it was not aware of any cases standing for the proposition that school

masking violates parents' right to raise their children. The Court went on to state: *"Although parents possess the right to raise their children as they see fit, they are not entitled to undermine the Government's public health efforts during a global pandemic by refusing to have their children comply with a school masking requirement."*

Property Interest

The Court indicated at the hearing that Parents' counsel stated he was not asserting a property interest; however, he did invoke during the hearing the students' *"right to public education,"* which the Supreme Court has recognized as a property interest protected by the Due Process Clause. In addressing this argument, the Court stated that the *"Plaintiffs have failed to demonstrate an infringement of their children's entitlement to a public education because the Montoursville Mask Mandate does not prevent kids from attending public school."* The Court held that while students possess a *"legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause,"* however, a student's *"entitlement to a public education is not without limits."* The Court outlined examples as to where these rights are limited. In so doing, the Court stated: *"Indeed it is well settled that requiring immunization as a precondition to attending school does not constitute an unlawful deprivation of students' legitimate entitlement to public education."*

According to the Court, the School District mask mandate does not in any way exclude students from schools inasmuch as they are permitted to attend school, go to class, and perform all other functions associated with receiving their education; however, they must wear masks while doing so.

According to the Court: *"Just as a school district's immunization requirement does not unlawfully deprive its students of their legitimate entitlement to public education, neither does a mask mandate."*

Due Process of Law

The Court commented because the Plaintiffs failed to identify any protected liberty or property interest, the Plaintiffs cannot establish that the District's mask mandate infringes upon either of their children's Fourteenth Amendment rights.

The Court ended its analysis on this issue by stating: *“Even if the Court were to find that the Montoursville Mask Mandate implicates a protected interest, the procedural due process claim would nevertheless fail because the Plaintiffs have not demonstrated that they were deprived due process.”*

Judge Brann indicated that because the Plaintiffs were not challenging the legality of Secretary Beam’s Order directing the use of face coverings in school entities, the Court must therefore determine *“... only whether the School District was obligated to follow this presumptively lawful order, and, if yes, whether doing so without first holding an open School Board meeting on the matter deprived the Plaintiffs of their constitutionally-guaranteed right to be heard.”* As was outlined above, ultimately the Court determined there was no obligation on the part of the School Board to have such a hearing or a meeting to determine same.

In his Opinion, Judge Brann outlined that the Court agrees with the Commonwealth that *“[o]nce [Secretary Beam’s] Order was issued, the School Board was mandated to follow it.”*

The Court then looked at the Disease Prevention and Control Law which provides that the Pennsylvania 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.”*

In this case, the Plaintiffs argued that the School Board (not the Department of Health) has the sole authority to make decisions about the appropriate disease control measures for schools within the District. The Court then looked at the arguments put forth and did not find them supportive of the Plaintiffs’ arguments. According to the Court, *“Because the General Assembly specifically delegated the responsibility for “disease control in public and private schools” to the Department of Health, the Court finds that the School District was required to follow Secretary Beam’s order.”*

The Court also stated *“[G]iven the compulsory nature of Secretary Beam’s order, the Plaintiffs were not unconstitutionally deprived of due process when [Superintendent] issued the Montoursville Mask Mandate.”* The Court aptly noted that the Superintendent, Board President and School District all asserted that they have *“done nothing except comply*

with [Secretary Beam’s] Order.” The Court opined:

“The Plaintiffs have not cited, and the Court is not aware of, any legal authority showing that where there is a valid, generally applicable state order, due process requires municipal entities to hold open meetings to consider whether to follow the law.”

Substantive Due Process

The Court then addressed the other aspect of the Fourteenth Amendment’s substantive component, which “limits what government may do regardless of the fairness of procedures that it employs.” Substantive due process rights are violated by “the exercise of power without any reasonable justification in service of a legitimate government objective.”

The Court went through a very extensive discussion of this particular argument but ultimately concluded that the District’s mask mandate does not infringe on a fundamental right. The Court commented that:

“[A]lthough parents possess a fundamental right to raise their children without undue state interference, this right does not extend to the Plaintiffs’ decision to disregard the School District’s policy by having their children attend school without wearing masks. Likewise, their children do not have a fundamental right to attend school without masks on.”

In disposing of this argument the Court stated:

Given that the Montoursville Mask Mandate followed an express decree issued by Secretary Beam—requiring “[e]ach teacher, child/student, staff, or visitor working, attending, or visiting a School Entity [to] wear a face covering indoors, regardless of vaccination status”—the Court finds that the Mask Mandate is rationally related to the legitimate interest in reducing the spread of COVID-19. The Mask Mandate thus satisfies rational basis review. For this reason, the Plaintiffs have not established a reasonable probability of succeeding on their substantive due process claim.

Freedom of Association

The Court states that the Plaintiffs assert that the District’s mask mandate “deprived [students] the right of free association guaranteed by the First

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Amendment” because they “can no longer associate safely, or potentially at all.”

The Court commented that while this has been alleged in the pleadings: “Plaintiffs do not allege how requiring students to wear masks at school impinges on their ability to “enter into and maintain certain intimate human relationships” or “associate for the purpose of engaging in those activities protected by the First Amendment.””

Ultimately, the Court concluded “Requiring students to wear masks while at school or on a school bus does not prevent them from assembling or associating with others. Indeed, other courts that have addressed similar claims have held that “mask mandates seem to have, at most, a minimal impact—and certainly not the alleged ‘substantial impact’—on Plaintiff’s rights to assemble and associate.”

The Court stated that since the District’s mask mandate does not place a significant burden on students right to freely associate, the Plaintiffs’ First Amendment claim is also unlikely to succeed.

Before closing out its ruling in this case, the Court commented:

The School District has “a right to rely on the recommendations given by reputable public health authorities . . . when deciding how to combat COVID-19, which has caused the worst public health crisis in a century.” Here, the Pennsylvania Department of Health did not merely recommend that students wear masks while in school, it explicitly ordered school districts to require masks in schools. The Court finds it is not in the best interest of the public to interfere with that order.

Commentary:

It is evident from Tredyffrin/Easttown School District and Montoursville, that we now have two of Pennsylvania’s three Federal Courts weighing in relative to the Department of Health’s August 31, 2021 masking order.

Please keep in mind that there are still two pending cases before the Commonwealth Court that may further clarify this issue in the next few weeks.

Based upon a review of both the Tredyffrin/Easttown School District and Montoursville cases, it is clear that two of Pennsylvania’s Federal District Courts

have addressed and disposed of many arguments that have been brought forward at countless school board meetings over the last two months. We must now wait to see how Commonwealth Court addresses the claims that are raised in the two pending claims before it.

Education Law Conference 2021

October 26, 2021

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Penn State College of Education, and the
Partners of Beard Legal Group ask you to
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8:45 AM — Workshop I: Special Education Litigation: Taking a Plane Crash Instead of a Car Crash, Approach

10:30 AM — Workshop II: Special Education Update and Learning from Other People’s mistakes

1:15 PM — Workshop III: Student Free Speech after Supreme Court Decision in Manahoy City School District (dealing with hate speech)

2:30 PM — Workshop IV: Title IX Update and What We Have Learned over the Past Year (Investigations, Hurdles, and Litigation)

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Subsequent Issues

If you have a school law question or topic you would like to have addressed in subsequent issues of the newsletter, please send an email to:

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