



**SCHOOL ENTITY ATTESTATIONS
IN AREAS OF SUBSTANTIAL COVID-19 TRANSMISSION
and
DOCUMENTATION OF ANY NON-COMPLIANCE
Prepared by the PSEA Legal Division
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I. Background

On November 23, 2020, the Secretary of the Pennsylvania Department of Health issued an order requiring every public school entity in a county with two consecutive weeks of “substantial” COVID-19 transmission to provide certain attestations in order to continue in-person instruction. A public school entity that is in a county with substantial transmission that is providing fully remote learning when submitting the attestation form but later moves to in-person instruction (including for small, targeted populations) must resubmit the attestation prior to providing in-person instruction. Each school entity’s superintendent (or executive director) and school board president must sign an attestation that the school entity is complying with the following:

1. The Updated Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings (including necessary exceptions and associated guidance) that took effect on November 18, 2020; and
2. The Pennsylvania Department of Education’s Recommendations for Pre-K to 12 Schools Following Identification of Case(s) of COVID-19.

Local leaders should familiarize themselves with those requirements in order to assess potential violations of the attestations and should be prepared to address any failures by their school entities to comply. The attached form can be used to report any violations of the attestation. If a school entity does not follow the requirements, it can no longer continue in-person instruction in any of its buildings and must cease all extra-curricular activities. The information that follows provides detailed explanations of the attestation compliance requirements and PSEA recommendations for local associations in areas of substantial transmission. If you have questions about any of this information or potential violations, please contact your PSEA UniServ Representative.

II. Updated Order of the Secretary of the Pennsylvania Department of Health (DOH) Requiring Universal Face Coverings

Under the updated Order, school entities must:

- Require all people, including teachers, staff, and students, to wear a face covering and take reasonable steps to enforce the face covering requirement.
- Mitigate or eliminate employee, teacher, student, and visitor exposure to people who cannot wear or refuse to wear a face covering.
- Post prominent signs that are visible to all people stating that face coverings are required by the Order.
- Provide reasonable accommodations to people who state they have a medical condition, mental health condition, or disability that makes it unreasonable for them to maintain a face covering. According to the DOH FAQ (the “associated guidance”), school entities may require medical documentation for exceptions.¹

In addition, school entities may allow students to remove face coverings in the following circumstances:

- When eating or drinking when spaced at least six feet apart; or
- When wearing a face covering creates an unsafe condition in which to operate equipment or execute a task; or
- When students are at least six feet apart during “face-covering breaks” to last no longer than 10 minutes.

The updated Order can be accessed at:

<https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/Updated%20Order%20of%20the%20Secretary%20Requiring%20Universal%20Face%20Coverings.pdf>

The DOH FAQ (associated guidance) can be accessed at:

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Guidance/Universal-Masking-FAQ.aspx#:~:text=The%20Order%20requires%20individuals%20to%20wear%20a%20face%20covering%20when%20to%20maintain%20sustained%20physical%20distance.>

¹ PDE’s guidance concerning face coverings for students (Public Health Guidance for School Communities, found at <https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/SchoolReopeningGuidance/ReopeningPreKto12/PublicHealthGuidance/Pages/default.aspx>, provides that children are required to wear a face covering unless they have a medical or mental health condition or disability, documented in accordance with Section 504 of the Rehabilitation Act or IDEA, that precludes the wearing of a face covering in school. It further provides that accommodations for such students should be made in partnership with the student’s health care provider, school nurse, and IEP/504 team. Regardless of the attestation process described herein, school entities should be complying with PDE’s public health guidance as well as the DOH Order and guidance.

III. Pennsylvania Department of Education’s (PDE) Recommendations for Pre-K to 12 Schools Following Identification of Case(s) of COVID-19

PDE recommends specific steps school entities should take following identification of confirmed and probable cases of COVID-19 in a school building. The recommendations depend on the following:

1. The level of community transmission in the county (low, moderate, or substantial).
2. The size of the school building (under 500 students, between 500-900 students, or over 900 students). Building size is based on the number of students who would be attending the school but for the pandemic.
3. The number of confirmed and probable cases in a rolling 14-day period in a school building. The rolling period begins on the date of the first positive test result of an individual physically present in the school setting (including extra-curricular activities) or, in the absence of a test result, the date the individual was symptomatic. Other individuals who subsequently test positive or are symptomatic are added to the case count in the rolling period. Individuals remain counted in the rolling period for 14 days from the date they entered the period. PDE, in the FAQ, provides the following example to demonstrate a rolling 14-day period:

[i]f a student is diagnosed with COVID-19 on December 1, and three more students in the building are diagnosed December 13, there are four total cases in the school’s rolling 14-day period until December 14 (14 days from the date that the first student was diagnosed). The other three students then would remain in the rolling 14-day period until December 26 (14 days from December 13).

As of the week ending December 4, 2020, there were 66 out of 67 counties with “substantial” transmission rates. The level of community transmission by week ending date can be found in the Excel table located at:

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

The specific recommendations for school entity actions following cases of COVID-19 appear in a chart and can be accessed at:

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

PDE’s FAQ addresses common questions about the PDE guidance and rolling period and can be accessed at:

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

Note that the CDC provides a definition of “probable” cases at:

<https://www.cdc.gov/nndss/conditions/coronavirus-disease-2019-covid-19/case-definition/2020/>

All school buildings in counties with substantial transmission rates should consider altering schedules to significantly decrease the number of students on site. In addition, depending on the size of the building and the number of cases, school entities must clean the exposed area or building and may be required to close the building for 3 to 7 days or close the building for 14 days. Schools may be able to reopen earlier than the designated days if case investigations, contact tracing, and cleaning and disinfecting can be accomplished in a faster time frame. In the event a building closes consistent with PDE guidance, the case count resets, and the rolling period restarts with the first new case after reopening. The guidance does not indicate that a case count can be reset when a school district conducts cleaning and disinfecting following identification of new cases but does not close the building. When a building reaches one of the identified case thresholds, the school administrator should contact public health staff from DOH or the County or Municipal Health Department, which will provide guidance and advice related to cleaning, contact tracing, quarantine recommendations, and closure.

IV. PSEA’s Recommendations for Local Associations in Areas of Substantial Transmission.

1. Ensure that your school entity completes and submits the attestation and posts the signed and completed form on the school entity’s public website. Ask for a copy of the attestation and contact your UniServ if the form has not been completed or has been altered by your school entity (e.g., if sentences have been added to the form), or if the employer refuses to provide a copy or to post it on the public website.
2. Follow up to ensure that your school entity is tracking the number of cases (both confirmed and probable) in each building in each rolling period. PSEA believes that any school entity providing an attestation should also provide current case counts to the community and its employees; otherwise, there is no way to ensure that the school entity is following the PDE requirements related to cleaning and closing buildings.

Because there are no agency requirements that school entities report case counts, PSEA suggests that local associations request school entities to provide the following:

- Daily case counts by building in the current rolling 14-day period; and
- In the event of active cases, the actions the school entity is taking to comply with the *PDE Recommendations for Pre-K to 12 Schools Following Identification of a Case(s) of COVID-19*, including school closure periods and efforts pertaining to cleaning and disinfection, case investigation, and contact tracing. If a school closure is implemented, the local association should request confirmation that these efforts were complete prior to reopening.

3. Ensure that school staff, students, and visitors comply with the face-covering mandate. Inform bargaining unit members of the mandates and the exceptions, and advise that (i) any failure of bargaining unit members to comply should be brought to the attention of the local association; and (ii) any failure of students to comply should be appropriately addressed with the student and then brought to the attention of administration, if needed.

4. Use the *PSEA Reporting Form for Failure of School Entity to Comply with Attestation Requirements in Areas of Substantial COVID-19 Transmission* to document any failure to comply with the attestation requirements and provide it to your PSEA UniServ for reporting to PDE as appropriate.