
Face Covering Order and Reporting of Confirmed and Probable Cases of COVID-19 at Schools

By James J. Fleming / Oct 13, 2020

This alert will discuss two recent directives to school districts from the Michigan Department of Health and Human Services (MDHHS).

On October 6, 2020, the MDHHS issued "Reporting of Confirmed and Probable Cases of COVID-19 at Schools" (Tracing Order). The Tracing Order, effective October 12, 2020, mandates that school districts report positive COVID-19 tests among its students, teachers, staff members, coaches, volunteers, or any other person present on school property.

On October 9, 2020, the MDHHS issued "Gathering Prohibition and Face Covering Order" (Face Covering Order). The Face Covering Order, effective immediately, clarifies that face coverings must continue to be worn in the classroom and during the participation of athletics, except if swimming or when consistently maintaining six feet of social distance.

The Tracing Order

Under the Tracing Order, local health departments are required to notify a school district if there is a confirmed case of COVID-19 among a student, teacher, staff member, coach, volunteer, or any other person on school property. The local health department must share any affected buildings/locations or other helpful information with the school.

Within 24 hours of being notified by a local health department, the school must provide public notice that someone associated with the school or that was present on school property tested positive for COVID-19. This notice must be highly visible on the school website. The notice should also include which specific buildings/locations are potentially impacted. This requirement includes physical buildings, outdoor locations, or any other specific location on school grounds.

When issuing such notice, the Tracing Order encourages schools to include information about measures it is taking to prevent the transmission of COVID-19, as well as measures individuals can take to prevent transmission. However, the Tracing Order clarifies that schools are still required to directly notify persons who were, or are suspected to have been, in close contact with someone at the school who has contracted COVID-19. Close contact is defined as any individual who was within 6 feet of a COVID-19 infected person for at least 15 minutes starting from two days before illness onset (or, for asymptomatic patients, two days prior to positive specimen collection).

School districts should take care when they report cases of COVID-19 on their websites to the public to observe the privacy protections that students and staff members are afforded by the Family Education Rights and Privacy Act (FERPA) and the Americans with Disabilities Act ("ADA"). As a general rule, identifying individuals or providing specific information that clearly leads to the identification of individuals is prohibited.

The Face Covering Order

The Face Covering Order requires that all staff and students 5 years and older wear face coverings while in the classroom and indoor settings. The Face Covering Order encourages, but does not require, face coverings for children 2 years and older in the classroom and indoor settings. "Face covering" is defined in the Face Covering Order as "a covering that covers at least the nose and the mouth." The definition of face covering used in the order does not explicitly state that a face covering is to be construed as a mask, such as an N95, KN 95, surgical or cloth mask. However, the infographic from the MDHHS released with the Face Covering Order on October 9, 2020, expressly refers to "masks" which "must be worn over nose and mouth," along with graphics showing a person wearing a mask. Thus, while the Face Covering Order does not specifically use the word "mask," the infographic would suggest that the Face Covering Order requires the wearing of masks where indicated. However, at this point, there is no definitive guidance as to whether a face shield qualifies as a "face covering" under the MDHHS Order.

Face coverings in sections 2 (Grand Rapids region), 5 (Lansing region), and 6 (Traverse City region) are not required for individuals who: cannot medically tolerate one; are exercising outdoors and able to consistently maintain six feet of distance from others; are swimming; are receiving a service for which temporary removal of the face covering is necessary; or are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication.

Like past executive orders, the Face Covering Order requires athletes to wear a face covering except when swimming or consistently maintaining six feet of social distance when training for, practicing for, or competing in an organized sport.

Live audiences are limited to the guests of the athletes, with each athlete designating up to two guests. In the alternative, indoor events are limited to 20% capacity, and outdoor events are limited to 30% capacity. Concessions must not be sold at indoor sporting events.

If you have any questions about this order or any other concerns related to any COVID-19 requirements, please contact a member of Clark Hill's Education Law Group.