

# Legal Update

August 2020

## Masks Required

At the time of publication, the Ohio Department of Health is slated to issue a health order requiring that K-12 students wear face coverings while at school.

The mandate stems from the Ohio Children's Hospital Association and American Academy of Pediatrics Ohio Chapter issuing a joint letter recommending widespread use of masks in schools.

The letter excludes from the recommendation children who:

- are under age 2
- are unable to remove the covering without assistance
- have a significant behavioral or psychological issue undergoing treatment that is exacerbated specifically by use of a face covering (e.g. severe anxiety or a tactile aversion)
- are severely autistic or with extreme developmental delay who may become agitated or anxious wearing a mask
- have a facial deformity that causes airway obstruction



## School Reopening

### Remote Learning Plan

HB 164 permits certain public schools, including brick and mortar community schools, that have not otherwise been approved to use blended learning to adopt a plan for providing instruction using a remote model for the 2020-2021 school year.

If a school adopts and implements such a plan, the school will then be considered to have complied with legal requirements regarding the minimum number of school hours and a student who receives instruction under the plan will be considered a full FTE for funding.

Plans must include:

1. Description of how student instructional needs will be determined and documented.
2. Method to be used for determining competency, granting credit, and grade level promotion.
3. Attendance requirements, including how participation will be documented.

4. Description of how student progress will be monitored.
5. Description as to how equitable access to quality instruction will be ensured.
6. Description of the professional development activities that will be offered to teachers.

Plans must be submitted to ODE by August 21, 2020, but your sponsor may require submission to their office at an earlier date. The Department will not be approving the plans, but again your sponsor may conduct its own review and approval process.

It is recommended that documentation of your plan's implementation be kept as auditors and/or FTE reviewers will likely be assessing adherence to the plan. Relatedly, as discussed elsewhere in this publication, attendance policies and tracking practices should be reviewed and revised as necessary.



## Attendance Considerations

Brick and mortar charter schools that will be implementing remote learning must be mindful of attendance considerations as they do so. Schools should track attendance for all students, regardless of the mode or location of learning. ODE has stated that unlike e-schools, brick and mortar schools' attendance tracking "does not have to be so precise as to know what every student is doing at every moment with regard to the student's educational experience" but the attendance information collected must be *reported* in hourly increments.

Community schools must continue to ensure remote learning attendance procedures are in place that reflect the "72 hour rule" which requires automatically with-drawing a student if the student without a legitimate excuse fails to participate in seventy-two consecutive hours of the learning opportunities offered.

As such, schools may want to consider revising their attendance policies to address:

- Temporary internet outages
- Technical difficulties with software and passwords
- Absence due to COVID-19 illness, exposure, and related family matters

- Updating the definition of medically excused absences, perhaps waiving doctor's note requirements and/or accounting for quarantine
- Redefining the process and timeline by which an excuse must be received
- Prescribing procedures for tracking attendance under different modes of learning
- Allowing otherwise healthy students who may be under quarantine or isolation to continue to participate in education
- Ensuring as much as practicable that policies do not penalize staff or students who contract COVID-19

## Reopening Considerations

Numerous factors must be considered as schools plan to reopen in the fall. Some topics about which your board may want to ask leadership include:

- Student safety
- Staff safety
- Training of staff & students
- Limiting visitors
- Procedures when someone has COVID symptoms or has been exposed
- Academic expectations
- Attendance, participation & engagement
- Social & Emotional needs
- Equitable access
- Extra-curriculars
- Family communications
- Connectivity and technology
- Transportation
- Cleaning/Sanitizing

ODE's guidance addressing restart considerations can be found at:

<http://education.ohio.gov/Topics/Reset-and-Restart>

**Q: Will our school's funding be reduced for the 2020-2021 school year?**

**A:** As of the date of this publication, the amount the state may reduce foundation payments is unknown.

Keep in mind that the CARES Act Elementary and Secondary School Emergency Relief (ESSER) Funds may help offset state funding reductions. ESSER funds are provided by the federal government to address the impact of COVID-19.

All schools accepting federal funds should have submitted their applications. Once the application has been submitted, schools may start encumbering funds which can be used for sanitizing supplies, planning for long-term closures, providing meals to students, providing technology for, purchasing software or connectivity, providing mental health services, and other activities necessary to maintain the operation of the school.

Efforts are underway to urge the federal government to allocate additional funds to schools as well.

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