



KALAMAZOO COUNTY GOVERNMENT

In the Pursuit of Extraordinary Governance...

MEMORANDUM

TO: Kalamazoo County School Superintendents
FROM: Kalamazoo County Health & Community Services Department
DATE: August 24, 2021
RE: Further Guidance on Issued 8.18.21 Public Health Order

On August 18, 2021, our office issued an Emergency Public Health Order pursuant to the Michigan Public Health Code, MCL 333.2451 and 333.2453, as well as R. 325.175(4), which is an administrative rule promulgated by the Michigan Department of Health and Human Services pursuant to MCL 333.2226(d). The Health Order requires that within educational institutions children in kindergarten through grade six must consistently and properly wear a facial mask covering both nose and mouth while inside any enclosed building or structure of the institution. The Order also requires all persons, regardless of vaccination status, providing services to any child in kindergarten through grade six, and all persons providing services to students identified as medically fragile regardless of age, properly and consistently wear a face mask while inside any enclosed building or structure of the institution. The Order is effective immediately, and remains in effect until six weeks past the date the COVID-19 vaccine is authorized and available to persons age five years through age eleven, or until further notice from the Health Officer.

As anticipated, like us, you have most likely been inundated with calls and emails from your families with a variety of questions regarding the mandate. As you know, in our society today, questionable data and misguided professional opinions regarding COVID-19 are readily available and have proliferated. Many of the questions that we have received are asking for the data that we used to justify the Mask Mandate. We know that people have different ideas about data and which experts and organizations are trustworthy. Unfortunately, there is very little that our department can do to resolve those differences during these extremely polarizing times.

In addition to our own expertise, we review data from a multitude of sources, and trust and rely upon data, research, and ultimately the recommendations from established, credible public health and medical professional sources, such as the Center for Disease Control and Prevention (CDC), the Michigan Department of Health and Human Services (MDHHS), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP). Unanimously, each of these organizations have strongly recommended and support indoor face masks for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.

HEALTH AND COMMUNITY SERVICES DEPARTMENT

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We also place our trust in our local healthcare systems and their medical expertise. Below is a statement from Dr. Gregory Tiongson, Medical Director of Bronson Children's Hospital:

"Since the beginning of the pandemic Bronson has had 2,800 pediatric COVID-19 positive test results. There have been 1,700 alone just since the beginning of 2021. It is a fallacy that children are unlikely to have COVID-19. They consistently represent 20-25% of all positive test results of the tests administered by Bronson throughout our region. This is a considerably higher proportion than this age group represents in our community. There have been a total of 76 pediatric COVID-19 positive admissions to Bronson Children's Hospital including 51 since the beginning of 2021. Those hospital admissions have included several children from newborns to age 17 years with respiratory failure in some cases requiring ventilators and intubation. There have also been several children of all ages admitted with Multi Inflammatory Syndrome in Children (MIS-C).

These children with MIS-C and other children with even mild COVID-19 infections are at a yet to be determined but demonstrable risk for lasting cardiac problems.

In my clinical opinion it is never trivial when a child has a COVID-19 infection. Using wise safe and proven infection control practices which include frequent handwashing, social distancing, mask wearing when indoors, and vaccination for those approved, will help prevent the spread of COVID-19 and protect the children of our community from unnecessary and preventable risk."

Further, our local medical school, Western Michigan University Homer Stryker M.D. School of Medicine, has publicly stated,

"Masking is safe, effective and essential to preventing COVID-19 transmission within K-12 schools at a time when the Delta variant is circulating and many children remain unvaccinated. The Medical School supports the Health Department's action to protect children with a masking requirement for all in K-6 schools and strongly supports masking for all in K-12 settings."

Finally, our medical officer, Dr. William Nettleton, board certified in both family medicine and preventive medicine/public health, has reminded us that half of COVID-19 infections occur in those without knowing they are infected, and thus masks remain essential to capture exhaled respiratory droplets and aerosols that may contain the virus, thereby protecting others and not just the mask wearer. The benefit of masking increases when all are wearing masks indoors.

The community transmission data continues to show that our county is seeing an increase in cases. Per the CDC Level of Community Transmission, the risk level of Kalamazoo County has been elevated to High – the highest category. The U.S Department of Health & Human Services maintains the website healthdata.gov and releases a regular COVID-19 Community Profile Report. Per the recent report, Kalamazoo County has been classified an area of concern and a hotspot community, along with the

lower half of Michigan. This classification means a community has reached a threshold of disease activity considered to be a high burden. Also, Kalamazoo County as well as the remaining lower half of Michigan are classified as counties with a rapid rise in cases over the past two weeks. The MDHHS MI COVID Response Data and Modeling Update from August 17, 2021 states that all data indicators are showing increases, and models are projecting a continued increase in hospitalizations and deaths over the next four to six weeks, and possibly longer.

Our prior experience, and some evidence from last year's in-person learning, demonstrated that transmission of COVID-19 in the learning environment, such as classrooms, was low. However, this experience was predicated upon a layered prevention strategy and several factors:

1. Schools were less populated with students (some were hybrid or virtual)
2. Masking for all students and staff was in place
3. A less contagious form of the virus was circulating

We unfortunately are still in the midst of a pandemic with a virus that has mutated to a very contagious form. While disease severity of the Delta variant remains undetermined, we have still experienced hospitalizations locally and deaths nationally due to COVID-19 within children and adolescents. This group (K-6) remains unvaccinated and are therefore at a higher risk of contracting the disease. With current Delta variant transmission levels being high (as designated by the CDC), it is critical that we take proactive steps as a community to slow the spread of the virus.

Local public health departments have a duty to protect the public's health. In fact, MCL 333.2433 (1) states, "A local health department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups..." The decision to issue a public Health Order was made based on two very simple yet extremely important objectives of the Health Department:

1. Keep children healthy and physically present for in-person learning and in the safest environment as possible this school year. Sick or quarantined children miss out on school.
2. Reduce transmission of COVID-19 in learning environments given the more contagious Delta variant is circulating at a time when K-6 students have not had the opportunity to be vaccinated.

In addition to masking, employing layered mitigation strategies focused on vaccination, in addition to ventilation, hand washing, physical distancing, contact tracing and isolation and quarantine when indicated, remain important.

Legal ramifications:

Our department has been asked by several Superintendents what would happen if a school district decides to not comply with the Emergency Order. Non-compliance with the Emergency Order is a violation of the law, and the Health Department would issue a citation and impose a fine upon the person or entity in violation.

If a school district intends to not comply with the Order, we are requesting a formal letter be submitted to the Health Officer stating those intentions. If a school district does not send a formal letter, and complaints are received, then the Health Department shall conduct an investigation. If it is found that the Order is not being complied with by a school district, either by self-reporting or through an investigation, then the next steps will include correspondence from our Corporation Counsel outlining further legal action.

Exemptions:

Medical exemptions are allowed as outlined in the order:

- Students with developmental conditions of any age attending school, although supervised masking is encouraged.
- Teachers who are working with children who are hard of hearing or students with developmental conditions who benefit from facial cues. These teachers or staff must be vaccinated or comply with masking directive.
- Persons who have a current medical reason confirmed in writing from a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO) currently licensed to practice medicine in the State of Michigan.

There is no religious exemption to the Mask Mandate. Courts in our federal district and the Sixth Circuit have recently dismissed such religious challenges. See *Resurrection Sch. v. Gordon*, 507 F. Supp. 3d 897, 902 (W.D. Mich. 2020), *aff'd sub nom Resurrection Sch. v. Hertel*, ___ F.3d ___ (6th Cir., Aug. 23, 2021). The court found nothing in the near-universal mask requirement order of the Michigan Department of Health and Human Services Director that infringed on religious freedoms. See also *Commonwealth v. Beshear*, 981 F.3d 505, 507 (6th Cir. 2020) (holding that a religious school would likely not prevail on the merits of its claim that an executive order that prohibited in person learning due to COVID-19 infringed on their religious freedoms, since the order applied to every school equally).

In summation, with a new school year starting next week, we are asking for your continued unwavering support and partnership. It remains of utmost importance that we are coordinated and functioning in a unified manner to assure that we have a successful and hopefully safe and healthy school year. We want to continue to stress our desire to allow us to be able to remove the masks as soon as possible. Ideally, a vaccine for the 5-11 year old population will be available soon, allowing us to rescind the Order.

Resources:

- ABC Science Collaborative: <https://abcsciencecollaborative.org/year-in-review-path-forward/> and <https://abcsciencecollaborative.org/masking-in-schools-the-abc-science-collaborative-provides-clarity-on-questions/>
- CDC Scientific Brief on Cloth Masks to Control the Spread of SARS-CoV-2: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>
- American Academy of Pediatrics: <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>
- American Academy of Family Physicians: <https://www.aafp.org/news/media-center/statements/aafp-supports-covid-safety-guidance.html>
- MDHHS Recommendations for Safer School Operations during COVID-19: https://www.michigan.gov/documents/coronavirus/COVID-19_Guidance_for_Operating_Schools_Safely_728838_7.pdf
- 08.12.21 Joint Report from the American Academy of Pediatrics and the Children's Hospital Association: https://gis.cdc.gov/grasp/covidnet/COVID19_5.html
- 08.17.21 MDHHS MI COVID Response Data and Modeling Update: https://www.michigan.gov/documents/coronavirus/20210816_Data_and_modeling_update_Media_003_733150_7.pdf
- CDC National Pediatric Hospitalization Data Sources: https://gis.cdc.gov/grasp/covidnet/COVID19_5.html
- U.S. Department of Health & Human Services, COVID-19 Community Profile Report: <https://healthdata.gov/Health/COVID-19-Community-Profile-Report/gqxm-d9w9>
- CDC COVID Data Tracker: <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>
- MDHHS COVID-19 Case Dashboard: https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html
- Mi Safe Start Map: <https://www.mistartmap.info/>
- Kalamazoo County COVID-19 Data Hub Page: <https://www.kalcounty.com/hcs/datahub/covid19.php>