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August 30, 2021

The Honorable Jake Corman  
President Pro Tempore  
Pennsylvania Senate  
350 Main Capitol Building  
Harrisburg, PA 17120

The Honorable Bryan Cutler  
Speaker  
Pennsylvania House of Representatives  
139 Main Capitol Building  
Harrisburg, PA 17120-2100

**RE: *Mandating Universal Masks in Schools to Support Safe In- Person Learning and Address Widening Educational Inequities***

Dear Senator Corman and Speaker Cutler:

On behalf of the undersigned organizations, we write to urge you to undertake swift action to ensure safe learning environments for students during the pandemic. There is convincing evidence that a return to in-person learning should be a top priority, and that safe, uninterrupted student learning cannot be achieved without sufficient protections for students, faculty, and staff. We urge you to take whatever steps are necessary to allow a universal statewide mask mandate in all Pennsylvania public schools, with appropriate exceptions for students and school staff with qualifying disabilities.

Last week Governor Wolf requested that the General Assembly pass legislation mandating the use of masks in K-12 classrooms and child-care centers throughout Pennsylvania, and we support such legislation.<sup>1</sup> We are also aware that the Administration has sufficient authority to take such action under the Public Health Code and urge you not to interfere with this authority if you are unable to pass legislation. Masks have been proven to be very effective at reducing the spread of COVID-19 in general,<sup>2</sup> and in schools in particular<sup>3</sup> and the need for masking is well

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<sup>1</sup> *Wolf Administration Welcomes Pennsylvania Students Back To School*, Aug. 23, 2021, available at <https://www.media.pa.gov/Pages/Education-Details.aspx?newsid=1182> and *CDC Guidance for COVID-19 Prevention in K-12 Schools*, last updated Aug. 13, 2021, available at <https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/SchoolReopeningGuidance/ReopeningPreKto12/CDCGuidanceInformation/Pages/default.aspx>.

<sup>2</sup> “Experimental and epidemiological data support community masking to reduce the spread of SARS-CoV-2.” CDC, *Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, May 7, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

<sup>3</sup> See, e.g., *The ABC’s of North Carolina’s Plan A, Final Report*, The ABC Science Collaborative and Duke Clinical Research Institute, Jun. 30, 2021, (finding that NC schools were highly successful in preventing transmission of

established. We believe that issuing an explicit directive requiring schools to mandate masks is essential to ensuring the health and safety of all our students, teachers, parents, school staff and communities. Such a directive is also vital to address widening disparities in educational opportunity suffered by Black and Brown students and to ensure that students with disabilities can fully participate in in-person instruction.

### ***Mandatory Universal Masking is Needed to Protect the Health of Children and School Staff***

COVID-19 is a clear threat to the public's health, for which Pennsylvania's Secretary of Health may order control measures, including a mask mandate that can be fully implemented and enforced by the Governor and the Department of Education. Specifically, the Secretary of Health possesses emergency authority to undertake any disease control measure appropriate to protect the public from the spread of infectious disease.<sup>4</sup> It is pursuant to this authority that the Secretary issued its previous orders requiring universal face coverings.<sup>5</sup>

On July 27, 2021, the CDC released updated guidance outlining the urgent need to increase measures to protect against the spread of COVID-19 in response to an alarming rise in COVID cases and hospitalization rates around the country. This directive included a specific recommendation that everyone in areas of substantial or high transmission wear a mask in public indoor places, even if they are fully vaccinated. We know that the Delta variant is more than twice as contagious as previous variants and the greatest risk of transmission is among unvaccinated individuals – including children -- who are far more likely to contract, and therefore transmit the virus. The CDC therefore concluded that “[g]iven what we know about the Delta variant, vaccine effectiveness, and current vaccine coverage, layered prevention strategies, such as wearing masks, are needed to reduce the transmission of this variant.”<sup>6</sup> As a fourth wave of the coronavirus surges, polls show that Americans overwhelmingly support protecting the common good by mandating that individuals wear protective masks as "a matter of health and safety" in schools.<sup>7</sup>

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COVID-19 within school buildings by requiring masks and minimal physical distancing), available at <https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf>

<sup>4</sup> Disease Prevention and Control Law, 35 P.S. § 521.5; 71 P.S. §§ 532(a), and 1403(a); 28 Pa. Code § 27.60. See also 71 P.S. §§ 532(a), and 536; and Department of Health's regulations at 28 Pa. Code §§ 27.60-27.68.

<sup>5</sup> See e.g., *Updated Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings*, November 18, 2020 available at <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/Updated%20Order%20of%20the%20Secretary%20Requiring%20Universal%20Face%20Coverings.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> See e.g., *School mask, vaccine mandates supported in US: AP-NORC poll* (6 in 10 Americans say students and teachers should be required to wear face masks while in school, according to poll from The Associated Press-NORC Center for Public Affairs Research) (August 23, 2021) available at <https://apnews.com/article/lifestyle-health-education-coronavirus-pandemic-only-on-ap-0440d83602da918c571d506a3de9f44b>; *No vaccination? Americans back tough rules and mask mandates to protect the common good* (August 22, 2021) (An overwhelming 72% v. 28% of those surveyed by USA TODAY and Ipsos called mask mandates "a matter of health and safety") available at <https://www.usatoday.com/story/news/nation/2021/08/22/americans-back-mask-covid-vaccine-mandate-protect-common-good/8134392002/>.

## ***Legal Basis to Undertake Action***

The [Education Law Center](#) has received multiple calls and inquiries from parents and community members across the state who are seeking to challenge policy decisions of their school boards and districts which have refused to establish universal mask requirements. In some cases, districts have also refused to require COVID-19 testing or quarantining in the event that students or staff test positive for COVID-19. Notably, in one case, a federal court recently granted a restraining order against North Allegheny School District and ordered the District to reinstate a mandatory mask policy based in part on a finding of irreparable harm to the school staff, students, and visitors.<sup>8</sup>

The state’s policy must address the concerns raised by parents regarding the health, safety, and welfare of their children by issuing a clear directive that schools must require masks and address potential infections among school community members. The failure to require universal masking not only fails to qualify as a reasonable measure to ensure the health and safety of students but affirmatively places schoolchildren and school staff at significant risk of foreseeable, direct and substantial harm of infection by a known highly contagious and potentially deadly virus.<sup>9</sup> It also increases the likelihood of additional infections that will lead to classroom and school closures and undermine the goal of full in-person instruction.

Policies which make masks optional or fail to address COVID-19 outbreaks also disproportionately impact students with disabilities in violation of federal disability laws, including Title II of the Americans with Disabilities Act, 42 USC §12132; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; and the Individuals with Disabilities Education Act, 20 U.S. Code § 1400 et seq. Children with disabilities are often more susceptible to infection and at higher risk for severe illness and therefore may not be able to attend public school in the absence of a mask mandate. Optional masking policies operate to exclude students with disabilities from participating in public education, fail to make services, programs, and activities “readily accessible” to students with disabilities, and have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.<sup>10</sup> Reasonable, science-based exceptions can be included for those students for whom masks impede in-person instruction. Importantly, pursuant to disability law, including the Americans with Disabilities Act and Section 504, universal mask requirements must be subject to modification on a case-by-case basis as needed to accommodate students and school staff with qualifying disabilities.<sup>11</sup>

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<sup>8</sup> *U.S. judge to North Allegheny School District: Everyone has to wear a mask*, Pittsburgh Post Gazette (April 23, 2021), <https://www.post-gazette.com/news/education/2021/08/23/North-Allegheny-School-District-na-mask-mandate-requirement-parents-students-restraining-order/stories/202108230063>

<sup>9</sup> While as a general rule, school entities are shielded from liability under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S. § 8541, there are exceptions to the doctrine of qualified immunity, including claims of a “state created danger” whereby “the harm ultimately caused was foreseeable and fairly direct; a state actor acted with a degree of culpability that shocks the conscience; the plaintiff was a foreseeable victim or a “member of a discrete class of persons subjected to the potential harm brought about by the state’s actions”; and a state actor affirmatively used their authority in a way that created a danger to the citizen or rendered the citizen more vulnerable to danger.

<sup>10</sup> See 42 U.S.C. § 12132; 28 C.F.R. § 35.130; 34 C.F.R. § 104.34(a); 28 C.F.R. § 35.150 and 34 C.F.R. § 104.34(a).

<sup>11</sup> See e.g., 34 CFR §§ Part 104.

## ***Universal Masking Will Support Learning***

It is well documented that ***students benefit far more from in-person learning*** and therefore safely returning to in-person instruction in the fall of 2021 must be a priority. Studies show that while in school, students can concentrate better as there are fewer distractions and fewer opportunities to leave the class. In-person schooling results in more teacher to student time, helps students develop deeper understandings of the material, and gives teachers the tools and information they need to help their students. As a result, student completion rates of teacher-led classes are almost 5 times higher than online learning and students are less likely to disengage from school.<sup>12</sup> Teachers in two separate surveys also estimated that only about 60% of their students were regularly participating or engaging in distance learning<sup>13</sup> while two-thirds to three-quarters of teachers said their students were less engaged during remote instruction than before the pandemic, and that engagement declined even further over the course of the semester.<sup>14</sup>

Universal masking in schools is an important component of supporting such in-person learning, particularly as children under 12 cannot receive the vaccine, and masks now have a track record of effectiveness. A recent study conducted by Duke University analyzing data from 100 school districts and 14 charter schools in North Carolina from March through June 2021 (involving over 864,500 students and 160,549 staff) disclosed that **wearing masks is the most effective mitigation strategy to prevent in-school COVID-19 transmission.**<sup>15</sup> Due to the circulating and highly contagious Delta variant, **the CDC expressly recommends universal indoor masking** by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.<sup>16</sup>

## ***Universal Masking Will Reduce Disparities***

It is also well documented that COVID-19 has significantly deepened educational inequities across the Commonwealth and across the country, and ***without mask mandates to ensure safe in-person learning these negative impacts will continue to be borne disproportionately by students living in poverty, students of color, and students with disabilities.***

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<sup>12</sup> See *The Virtual Divide: Online vs. In-Person Learning in Fall 2020* available at <https://students4sc.org/2020/09/23/the-virtual-divide-online-vs-in-person-learning-in-fall-2020/>. In contrast, a 2019 study of cyber charter schools in Pennsylvania revealed that the average student at a cyber charter in Pennsylvania lost 106 days of learning in reading and 118 days in math compared to their traditional school counterpart. See *Charter School Performance in Pennsylvania*, Center for Research on Education Outcomes at Stanford University (2019) available at [https://credo.stanford.edu/sites/g/files/sbiybj6481/f/2019\\_pa\\_state\\_report\\_final\\_06052019.pdf](https://credo.stanford.edu/sites/g/files/sbiybj6481/f/2019_pa_state_report_final_06052019.pdf).

<sup>13</sup> Kraft, Matthew A. & Nicole S. Simon, Teachers' Experiences Working from Home During the COVID-19 Pandemic, Upbeat (Summer 2020), [https://f.hubspotusercontent20.net/hubfs/2914128/Upbeat%20Memo\\_Teaching\\_From\\_Home\\_Survey\\_June\\_24\\_2020.pdf](https://f.hubspotusercontent20.net/hubfs/2914128/Upbeat%20Memo_Teaching_From_Home_Survey_June_24_2020.pdf)

<sup>14</sup> Voices from the Virtual Classroom: A Survey of America's Teachers on COVID-19 Related Education Issues, Educators for Excellence (2020), [https://e4e.org/sites/default/files/voices\\_from\\_the\\_virtual\\_classroom\\_2020.pdf](https://e4e.org/sites/default/files/voices_from_the_virtual_classroom_2020.pdf)

<sup>15</sup> *The ABC's of North Carolina's Plan A, Final Report*, The ABC Science Collaborative and Duke Clinical Research Institute, Jun. 30, 2021, <https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf>

<sup>16</sup> CDC, COVID-19: K-12 Schools Guidance, Updated Aug. 5, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

Early studies show that educational gaps—in access, opportunities, achievement, and outcomes—widened greatly during the pandemic and students who are most underserved, particularly Black and Brown students, multilingual learners, and students with disabilities have suffered the most significant harm due to lack of access to in-person learning. In particular, in September 2020, 72% of Black students and 61% of Hispanic students attended all-virtual school compared to 24% of their white counterparts. By June of 2021, ***Pennsylvania ranked second highest in the nation for racial disparity*** as the proportion of white students with access to full time in-person learning was 21.5 percentage points greater than the proportion of non-white students for the entire 2020-2021 school year.<sup>17</sup>

Children living in poverty are less likely to access remote learning during school closures due to lack of high-speed internet at home, language barriers, and the absence of instructional support and access to educational opportunities that wealthier parents can provide. School closures also increase food insecurity, undermine social emotional learning, and create new needs for mental health supports.<sup>18</sup> During the pandemic, children living in the poorest 20% of U.S. neighborhoods were most negatively impacted and more likely to suffer long-lasting effects of school closures. One study estimates that one year of school closures will cost ninth graders in the poorest communities a 25% decrease in their post-educational earning potential, even if followed by three years of normal schooling. By contrast, research shows no substantial losses for students from the richest 20% of neighborhoods.<sup>19</sup>

**Requiring universal masking is critical to ensuring that Black and Brown students, children living in poverty, multilingual learners and students with disabilities are not left even further behind due to illness and school closures.**

We know that the COVID-19 school closures present exceptional and daunting challenges for local school districts, administrators, teachers, staff, students and parents -- as well as the legislature, Governor, and Departments of Health and Education. Issuing an order mandating universal masking in schools is essential to enabling our schools to meet these challenges, ensure the health and safety of our children and teachers, and ensure access to rigorous in-person instruction for all students. Our letter seeks to inform and support these efforts.

The evidence of the value of in-person learning is compelling, and parents, educators, and state lawmakers have made the reopening of schools a priority. This goal is unattainable without a mask mandate. The rapid spread of COVID among children has already resulted in new cases,

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<sup>17</sup> *Inequity in Pennsylvania School District Reopening Decisions: How Districts' Mode of Delivery Varies*, Dulaney & Frankenberg, [https://cecr.ed.psu.edu/sites/default/files/COVID\\_Fall\\_2020\\_plans\\_in\\_PA.pdf](https://cecr.ed.psu.edu/sites/default/files/COVID_Fall_2020_plans_in_PA.pdf); *Disparities in Learning Mode Access Among K–12 Students During the COVID-19 Pandemic, by Race/Ethnicity, Geography, and Grade Level — United States*, September 2020–April 2021 *Weekly* / July 2, 2021 /70(26);953–958, at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7026e2.htm>.

<sup>18</sup> *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students*, June 2021 available at <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

<sup>19</sup> *When the Great Equalizer Shuts Down: Schools, Peers, and Parents in Pandemic Times*, National Bureau of Economic Research, (Dec. 2020) available at <https://www.nber.org/papers/w28264>.

will contribute to a renewal of instructional disruptions, or even school closures. A strong mask mandate will help allow schools to stay open and prevent additional, significant learning losses.

We acknowledge that there are many individuals who oppose mask mandates. Since students are compelled by the state to attend school, state policy must ensure that schools are safe environments and that the actions of individuals do not interfere with the health of others.

Thank you for considering this request.

Sincerely,



Deborah Gordon Klehr  
Executive Director

cc:

Hon. Kim Ward, Senate Majority Leader  
Hon. Jay Costa, Senate Democratic Leader  
Hon. Kerry Benninghoff, House Majority Leader  
Hon. Johanna McClinton, House Democratic Leader

Signed:

**A+ Schools Pittsburgh**

**ACLAMO**

**AFT – Pennsylvania**

**Attic Youth Center**

**Black on Black Education**

**Black Women for a Better Education**

**Center City Pediatrics**

**Centro de Cultura, Arte, Trabajo y Educación (CCATE)**

**Children First**

**Chinatown Disability Advocacy Project**

**Disability Rights Pennsylvania**

**Education Law Center - PA**

**Education Law Partners, P.C.**

**Education Voters of PA**

**HIAS Pennsylvania**  
**Homeless Children's Education Fund**  
**HUNE Inc.**  
**Isaacs Bernstein, P.C.**  
**Jewish Family and Children's Service of Greater Philadelphia**  
**Juvenile Law Center**  
**La Puerta Abierta**  
**Law Office of Benjamin J Hinerfeld**  
**Liberty Resources, Inc.**  
**Lutheran Settlement House**  
**NAACP – PA**  
**PA Budget and Policy Center**  
**PA Chapter, American Academy of Pediatrics**  
**PA Education Scholars**  
**PA Parent and Family Alliance**  
**PARENT POWER**  
**Pennsylvania American Academy of Pediatrics - School Health Committee**  
**Pennsylvania Association of School Nurses and Practitioners**  
**Pennsylvania State Education Association**  
**Philadelphia Family Voices**  
**Public Interest Law Center**  
**Raffaele & Associates, LLC**  
**Support Center for Child Advocates**  
**Swarthmore College Department of Educational Studies**  
**Teach Plus**  
**The Arc of Philadelphia**  
**The Empowering Lives Foundation**  
**The Field Center for Children's Policy, Practice & Research**  
**The Law Offices of Caryl Andrea Oberman, LLC**  
**The Philadelphia School**

**The Village of Arts & Humanities**  
**Uplift Center for Grieving Children**  
**Vision for Equality**  
**We The People-PA**