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January 24, 2022

Mr. Joe Tarasovitch
Director
Erie County Technical School
8500 Oliver Road
Erie, PA 16509

RE: Recent federal court orders regarding masking

Dear Mr. Tarasovitch:

In the last week, two federal courts in Pennsylvania have issued temporary restraining orders requiring school districts to re-implement universal masking requirements for students. While these orders only pertain to those two school districts, it is important that you and your Board are aware of the trend developing in the federal courts in Western Pennsylvania.

On last Monday, January 17, 2022, the United States District Court for the Western District of Pennsylvania issued a Temporary Restraining Order preventing the North Allegheny School District from implementing a masking optional policy. Similarly, yesterday, on Sunday, January 23, 2022, the United States Court of Appeals for the Third Circuit, in a matter involving the Upper Saint Clair School District, granted the appellants motion for emergency injunctive relief preventing the school district from eliminating their universal masking mandate.

In both cases, the plaintiffs involved parents of students who were immunocompromised. The courts reasoned that under the Americans with Disabilities Act and section 504 of the Rehabilitation Act, immunocompromised students are entitled to “reasonable accommodations” of their disabilities. The courts have indicated that universal masking mandates likely constitute reasonable accommodations, while less restrictive options might not suffice. For example, in the North Allegheny School District case, the federal court for the Western District of Pennsylvania said that offering immunocompromised students a cyber-school option was not a sufficient accommodation by itself, since significant reductions in learning outcomes often accompany cyber-school. The court instead required the school district to re-implement its universal masking mandate. The Third Circuit Court of Appeals issued their emergency order in the Upper Saint Clair School District case relying on similar legal theories.

These orders are not permanent, and they do not compel any school districts other than North Allegheny and Upper Saint Clair from taking, or refraining from taking, any action. These orders constitute emergency relief, designed to protect disabled students’ rights by preserving the status quo while litigation proceeds.

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Nevertheless, the recent cases now constitute an important trend. When a federal judge grants or denies a temporary restraining order, he or she is making a prediction of the merits of the underlying lawsuit. By requiring districts to temporarily re-implement student mask mandates, the courts are signaling that universal masking likely constitutes a reasonable accommodation under the ADA and section 504 of the Rehabilitation Act and that less restrictive options may not suffice. A final ruling in either case will not be available until after a full hearing is held in the federal court. At that point the decision may be controlling for all school districts in the Western District of Pennsylvania.

While, at this time, whether and to what extent masking is required within a school district is left to the discretion of local school boards, school boards should be aware of this trend when reviewing their health and safety plans. We will continue to monitor, and keep you informed of, the development of these cases. Please do not hesitate to reach out to me, or your named solicitor, should you have any questions. I remain,

Very truly yours,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: 
Timothy S. Wachter

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cc: Timothy Sennett, Esquire