

## **Legal Consequences of Non-Compliance with COVID Orders**

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With the school year well underway and a seemingly no end in sight to COVID, many communities are becoming weary of COVID-related orders and mandates. Some exhausted administrators may begin to face their own temptation to not comply with policies, mandates or health department orders related to COVID. Alternatively, administrators may feel pressure from parents or upper-level administration to skirt policies, mandates, or health department orders. Doing so may lead to legal, licensure and employment issues.

One way in which administrators may see temptation to resist COVID-orders is by not reporting cases to health departments. On September 3, 2020, the Ohio Department of Health issued an Order requiring reporting and notification regarding COVID cases in K-12 schools. Specifically, “within twenty-four (24) hours of becoming aware of a student, teacher, staff member, or coach who tests positive or is diagnosed with COVID-19, each school shall report the case(s) to their local health department. Schools can use the reporting template located on the [coronavirus.ohio.gov](https://www.coronavirus.ohio.gov) website.” While some Department of Health Orders have since been rescinded, this particular Order has not. Thus, schools are still mandated to report COVID cases to their local health departments.

Under Ohio Revised Code §3701.352, “no person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.” Under O.R.C. §3701.99, violating a public health order is a second degree misdemeanor punishable up to 90 days jail time, a fine up to \$750 and probation for up to 5 years.

Under the Ohio Department of Education’s Licensure Code of Professional Conduct for Ohio Educators, one of the principles educators must abide by includes behaving “as professionals, realizing their actions directly reflect on the status and substance of the education profession.” Conduct unbecoming under this principle includes, “committing any violation of state or federal laws, statutes or rules although the conduct may not have resulted in a criminal charge, indictment, prosecution or conviction.” Administrators are therefore well advised to continue to follow all Health Department Orders to avoid potential criminal liability, potential licensure issues with ODE, and potential loss of employment.

Furthermore, while the Ohio Governor no longer has the authority to mandate a state-wide mask mandate, local jurisdictions may do so. Failure to follow mandates could expose administrators to similar criminal and ethical issues.

Boards of Education and/or Superintendents may impose their own directives or policies related to reporting to local health departments or mask mandates. State law will trump those directives and policies. Local ordinances will likely trump those directives and policies. Administrators who find themselves in the difficult position of having to navigate laws that conflict with school directives or policies will need to weigh the consequences of violating one over the other.

Presumably, administrators will want to avoid potential criminal law violations and ODE's potential investigation into conduct unbecoming. In complying with the law, administrators who are charged by their superintendent or school board for insubordination for failing to follow directives that conflict with state or local laws, will have an easier time defending themselves against potential employment actions if an administrator's defense is that he/she was following the law. Conversely, an administrator's argument that he/she was simply following school rules will not go far with a criminal prosecutor or ODE's Office of Professional Conduct.

In some scenarios, Ohio whistleblower laws may protect administrators who chose to comply with the law. Ohio's whistleblower protection act generally protects whistleblowers who report what an employee reasonably believes to be a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety. See O.R.C. §4113.52. In order to have protection under the law, an administrator must *orally* notify his/her supervisor or responsible officer of the employer of the violation and file with that person a *written* report that provides sufficient detail to identify and describe the violation. Both the oral and written report need to be made to the same person. The employer then has 24 hours to correct the violation. These reports must be made, in this order, to claim protection under the law. An employer cannot retaliate against an employee for making these reports.

Hopefully you will not be faced with the difficult decision of complying with the law or complying with supervisor orders. Superintendents and board members may not have a full or accurate understanding of the consequences of violating the law or Department of Health orders. You are encouraged to have open conversations with your supervisor about these consequences. If you would like assistance in figuring out how to approach this kind of conversation with your supervisor, contact OASSA.