

For clarification on the legality of the mask mandate, we contacted our legal council. Below is an explanation of the law and how Washington County School District will proceed.

At this point we have no intention of changing the requirement for someone who wants to be exempt from wearing any type of face covering (mask or shield) unless they meet the conditions outlined in the published State Public Health Order. This order allows the District to require a medical directive from a Doctor of Medicine (MD), Doctor of Osteopathic Medicine (DO), Physician Assistant (PA), Advanced Practice Registered Nurse (APRN) before their request will be considered. In justification of this position, the State Assistant Attorney General provided the following information to the Utah State Board of Education.

Pursuant to UCA § 53-2a-202 the Utah Legislature granted to the governor of this state and its political subdivisions special emergency disaster authority to deal with existing and increasing threats that affect the health, safety, and welfare of the people of this state. Under this statute the Governor's Executive Orders and the State Public Health Order have the power and effect of law to protect the lives and property of the people.

In addition to this, the Utah Supreme Court long ago determined that it is within the power of the government of the state to take all necessary steps to prevent the spread of contagious diseases including restrictions on a student's school attendance. In *State v. Board of Education of Salt Lake City*, the Utah Supreme Court held that such power may be exercised to exclude from school, any child who refused to be vaccinated, until danger from a smallpox epidemic had passed.

The Court recognized that *"under our laws a child has the right to attend school, but this privilege may be lost by misconduct or refusal to obey the rules or submit to proper school discipline."* The decision went on to say that if a student can be expelled from school for a violation of rule that is meant to promote the efficiency of the school in general, certainly one which is intended and calculated to promote the health of the scholars ought to be sustained.

The Court supported its conclusion that the legal mandate was a valid exercise of authority because:

1. The rule arose from a known emergency, a reasonable apprehension that smallpox would become epidemic in Salt Lake City;
2. The order "had no effect beyond the existence of the emergency;" and
3. "The child could only be excluded from school, upon her refusal to be vaccinated, until danger from an epidemic had passed."

As the imposition of a vaccination requirement would be considered to be a much more intrusive restriction upon an individual than the temporary wearing of a face covering, it highly likely that a court, in applying the same analysis, would find the application of the Governor's Executive Order that all students wear face coverings in school to be valid exercise of this authority. A student who

refuses to follow the mandate could be excluded from school until the emergency passes in order to protect the health of the student body as a whole.¹

Soon after this case, the United State Supreme Court heard a similar case about a Massachusetts law mandating all citizens be immunized against smallpox. The petitioner claimed to have scientific and personal evidence of harm that could come from the vaccine. The Court, in supporting the government mandate stated:

“The fact that the belief (vaccines are effective) is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases.”²

In summary, the District will comply with the STATE PUBLIC HEALTH ORDER dated August 14, 2020, until it is rescinded, amended, or replaced.

¹ State v. Board of Education of Salt Lake City, 60 P. 1013 (Utah 1900)

² Jacobsen v. Commonwealth of Massachusetts, 197 U.S. 11 (1905)