



**PENNSYLVANIA COALITION  
FOR INFORMED CONSENT**

February 26, 2021

The School District of Philadelphia  
440 N. Broad Street  
Philadelphia, PA 19130

To Whom It May Concern:

The Pennsylvania Coalition for Informed Consent is a statewide citizen advocacy group whose mission is to preserve the vital personal freedom and human right to informed consent, privacy, and choice for medical procedures in Pennsylvania.

It has recently come to our attention that you have instituted a policy requiring all students to submit to a COVID-19 Rapid Antigen Test upon their return to in-person learning. Specifically, you are requiring surveillance testing of both asymptomatic and symptomatic students, as well as weekly testing for students unable to wear a face mask due to a medical or mental health condition or disability as documented by their 504 plan or the IDEA.

As we are all learning how to navigate COVID-19, it is our mutual desire that schools would be opened safely in the best interest of all. It is no secret that prolonged school closures have created educational and mental health crises for our students due to loss from remote learning and isolation from their peers, sports, cultural activities, jobs and other support systems.

While we understand your interest in helping to combat the spread of COVID-19, unfortunately these policies are in violation of federal law. Currently, all COVID-19 tests are only available under the FDA's Emergency Use Authorization (EUA) and therefore cannot be made mandatory. EUA means that the products are *investigational and experimental*.

Pursuant to 21 U.S.C. § 360bbb-3 "Authorization for medical products for use in emergencies," individuals must be informed that they have "the option to accept or refuse administration of the product..." (§(e)(1)(A)(ii)(III)). Furthermore, the FDA has stated that "the terms and conditions of an EUA issued under section 564 preempt state or local law, [...] that impose different or additional requirements on the medical product for which the EUA was issued in the context of the emergency declared under section 564."

Furthermore, the CDC has stated that it is "unethical and illegal to test someone who does not want to be tested, including students whose parents or guardians do not want them to be tested." When a school chooses to implement a broad testing strategy, it is imperative that it be made voluntary. It is especially egregious to target children with legally protected disabilities by requiring them to undergo weekly testing. These children, especially, thrive most in an in-person educational setting where they undoubtedly receive the greatest measure of care and necessary interventions.

In December 2020, eight New York City parents and the Children’s Health Defense filed a lawsuit against the New York City Department of Education seeking to prevent mandatory COVID-19 testing for student participation in in-school and extracurricular activities. In response, Kathleen DiCataldo, Assistant Commissioner of the Office of Student Support Services issued a February 16 letter in which she stated that “parent/guardian consent for COVID-19 testing of students may not be a condition of in person learning or other school activities.” (Underlining from original).

For all of the reasons stated above, the School District of Philadelphia shall amend its surveillance COVID-19 testing program to make it voluntary. Failure to adhere to this standard will not only impede the social, emotional and behavioral health of Philadelphia students, but it will also put your district in glaring violation of federal law.

Thank you for your prompt attention to this matter.

Sincerely,

The Pennsylvania Coalition for Informed Consent Board of Directors