

COVER SHEET

APPEAL OF ORDINANCE VIOLATION

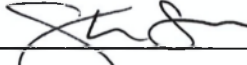
Name of the person appealing: Dr. Stephen Shipp, on behalf of
Seven Oaks Classical School, Inc.

School address: 200 E. Association St.
Ellettsville, IN 47429

School phone: 812-935-5003

Issue that is the basis of the appeal: Citation related to face coverings under Regulation 305-2

Enclosed: 1. Copy of citation
2. Appeal of ordinance violation
3. Seven Oaks 2021-2022 COVID protocols

Signature: 

Date: 8/25/21



Ticket # 1879



COMPLAINT/NOTICE OF VIOLATION
MONROE COUNTY HEALTH DEPARTMENT
501 N. Morton Street, Suite XX
Bloomington, IN 47404
(812) 349-2543

Day	Month	Year	Time
<u>Severn Oaks Classical School</u>			
Last Name ^{to} <u>Stephen Shipp</u>		First Name	M.I.
<u>200 E. Association St.</u>			
Address			
<u>Ellettsville, IN</u>		<u>47429</u>	
City		State	Zip Code
<u>812-935-5003</u>			
Phone		D.O.B.	

This ticket is issued to the above-listed person for violating a Monroe County Health Department Regulation, per Monroe County Code (MCC) Chapter 305:

	<u>MCC</u>	<u>Description</u>	<u>Class Penalties</u>
<input checked="" type="checkbox"/>	305-2	Face Covering Regulation	C
<input type="checkbox"/>	Other _____		

FINE AMOUNT: \$ 250.00

ADDITIONAL INFORMATION:

Observed few masks
although some students,
faculty staff had masks
on.

WARNING

ORDINANCE VIOLATION

Issuer's Signature Berry Council

[Signature] 8/19/21
Signature of Recipient Date

Your signature, above, is an acknowledgment of receipt, not an admission of guilt.

PAYMENT DUE WITHIN TEN (10) DAYS AT THE MONROE COUNTY TREASURER'S OFFICE OR APPEAL TO THE MONROE COUNTY LEGAL DEPARTMENT
****SEE REVERSE FOR DETAILS****

APPEAL OF ORDINANCE VIOLATION

Seven Oaks Classical School, Inc., an Indiana not-for-profit corporation (“Seven Oaks”) with an address of 200 East Association Street, Ellettsville, Indiana 47429 and a telephone number of (812) 935-5003, hereby appeals the attached citation (the “Citation”), pursuant to Monroe County Code Section 307 (enacted by Ordinance 2021-20 on May 12, 2021). The Citation was issued in connection with an alleged violation of the Monroe County Health Department’s emergency order dated August 5, 2021 (the “Order”) as pertains to mask wearing. This appeal is submitted by Seven Oaks through its Headmaster, Dr. Stephen Shipp, acting in such capacity.

Seven Oaks Classical School is deeply concerned about the well-being of all in the school community. The school also prizes obedience to the law and the cultivation of civic virtue. We rejoice that there are formal institutions and processes to resolve disagreements over what the law requires, and we see it as a point of civic virtue to make use of those institutions and processes where disagreements arise that cannot be resolved informally.

Pursuant to Section 307-5 of the Monroe County Code, each appeal of an enforcement action under the Order, such as the Citation, is to be reviewed by the County Commissioners to determine if implementation of the Order causes harm in any *one* of the manners set forth in Section 307-5.

For the reasons set forth below, Seven Oaks contends that implementation of the Order against Seven Oaks in connection with the activities described in the Citation causes harm in *all* of the manners set forth in Section 307-5, and thus requests that the Citation be vacated and that the Health Department be restrained from issuing further citations or other notices of violation under the Order in connection with the activities noted in the Citation.

Examining each of the standards set forth in County Code Section 307-5 in turn, Seven Oaks contends that:

I. Enforcing the health order would have an inverse [sic] impact to individuals experiencing a disability.

1. According to the Order, exceptions are granted to “individuals who are hearing or speaking impaired and whom a face covering is an obstacle to communication.” Roughly 13% of the student body at Seven Oaks qualifies for special education services. For many of these students, the inability to distinctly see and hear classmates and teachers, or to have the benefit of social cues, presents a barrier to effective learning, whether academic or social and emotional. Yet the Order lacks clear guidance on who should be considered an “individual experiencing a disability,” and no inquiry was made into what percentage of the student body was an individual experiencing a disability prior to the issuance of the citation.
2. Not only do face masks in schools present a potentially adverse effect on those currently experiencing a disability, but it also presents a potentially adverse impact on those facing a potential disability. As noted, face coverings on teachers and students are

often found to be an obstacle to effective communication. Many elementary teachers report difficulties teaching phonics when they cannot hear students as well, when they cannot see the way students form their mouths, and when they cannot themselves be seen in turn. Last year, nearly a third of students at Seven Oaks who were screened for dyslexia were found to be at risk or at some risk. Foreign language teachers report the same challenge. In the case of Seven Oaks, not only are all students taught reading, including correct pronunciation, but also all are taught a foreign language. Thus, the mask mandate presents a significant impediment to effective education in ways that pose grave risk of exacerbating potential future disabilities. In this way, the mask mandate is highly preferential to those who are less prone to learning challenges, which also risks significant inequity in education.

II. The appellant has a compelling interest that justifies deviation from the health order and have taken measures [sic] that insures [sic] public health

1. Schools have a compelling interest in educating those entrusted to their care. As noted, the inability of teachers and students to see faces and hear one another unmuffled presents a significant impediment to excellence and equity in education. At a time when the state has expressed concerns about learning losses arising from COVID-related disruptions, not least because of the most recent state assessment data, it is critical that we minimize those losses to the extent possible. And, given that no COVID-related death has been recorded on the state's COVID dashboard for any resident of Monroe County below the age of 50, a policy that allows for optional masking among students seems both possible and reasonable.
2. The Order includes an exception for "individuals who are engaged in a form of indoor exercise that is incompatible with wearing a face covering." The Order thus already explicitly recognizes that some activities are not compatible with wearing a face covering. Similarly, an exception ought to be made for individuals engaged in indoor academic exercises of the sort found in a school setting that are likewise not compatible with wearing a face covering. It would be strange if physical exercise was treated as a good that outweighs concerns related to masking, but academic exercises were not. Given the compelling interest schools have in academic excellence and equity, it would seem appropriate to interpret the current exception for "indoor exercise" to include academic exercises.
3. Schools have a compelling interest in the total well-being of their students. Well-being encompasses health concerns that extend beyond a single focal point. In addition to health, schools have an interest in the social and emotional well-being of their students. COVID is dangerous, but so too are depression, anxiety, and suicide, for instance. These dangers have increased in tandem with COVID prevention measures and appear to be claiming more school-age children than COVID itself. Given the growing concerns about the detrimental effects of limiting social interaction among young people, in part through enforced mask wearing, schools do well to consider ways to mitigate these potential harms to students. As Diane Wells of the Owen County Health Department recently observed, the public health of a community includes social and

emotional health in addition to physical health, and seeking good public health in a community requires considering all such aspects holistically.¹

4. Schools have a compelling interest in maintaining a healthy partnership with parents, who bear the primary responsibility for the education and well-being of their children. In part, this partnership means permitting parental choice where doing so is consistent with a school's educational mission. As noted, the school is faced with a situation where there is a range of competing goods—social, emotional, physical, educational. We are also at a point where parents have had time to weigh the risks involved in wearing or not wearing masks, in receiving or not receiving a vaccine, etc., as they attempt to sort out the competing costs and benefits for themselves and their children. Furthermore, the choice of one parent poses minimal risk to other parents and their students. Presumably, wearing a mask is equally effective at preventing the intake of aerosol droplets as it is at preventing exhalation.
5. The school has taken significant measures to ensure public health. See attached 2021-2022 COVID Protocols. It should be noted that these protocols are substantially similar to last year's, under which we followed our regular academic calendar, meeting all year, exclusively in person. Under the terms of last year's protocols, masks were optional when students were stationary and at least 3 feet from the nearest person, but mandatory when transitioning. Our rates of infection were within the normal range relative to schools that had stricter masking policies or that spent portions of the year hybrid or remote learning. After observing the manner in which school-age children use masks, and with growing evidence from the scientific community questioning the efficacy of masks and even the potential for harms arising from mask use in a school setting, the school altered its policy to allow masks to be optional both when stationary and when in motion indoors. It is notable, perhaps, that in the midst of a county-wide surge, the school is aware of one confirmed case among staff or students—a mild case in a fully vaccinated individual—which was duly reported to state and local authorities, with care to quarantine all close contacts. It might be further noted that this rate of infection is little different and, in some cases, significantly better than confirmed case numbers in other local schools operating under a mandatory masking policy. And beyond physical health, Seven Oaks firmly believes that its current policy is in the best interest of the social and emotional health of the community, as described above.
6. For these reasons, Seven Oaks contends that it has multiple compelling interests justifying deviation from the Order and has also taken measures that ensure public health, as demonstrated by the past and current results of such measures.

III. Appellant appeals that no violation of the emergency health order occurred.

1. The language of the Order itself subordinates the Order to authority delegated to Seven Oaks by the State of Indiana.

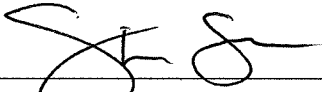
¹ <https://www.heraldtimesonline.com/story/news/education/2021/08/21/mask-order-spencer-owen-schools-covid-vaccine-health-requirements/8194495002/>, accessed August 25, 2021

2. Section 5 of the Order provides that “nothing in this paragraph is intended to or does alter or modify any state or federal law requirements imposed upon or authority provided to schools.” In other words, among other things, the Mandate does not and is not intended to affect authority provided to schools by the state.
3. Section 4 of the Governor's Executive Order 21-19, dated July 29, 2021 (the “EO”), confirms that K-12 schools themselves are responsible for implementing local mitigation measures in their buildings, facilities, and grounds, except that schools are explicitly required to report known Covid-19 cases as prescribed by the Indiana Department of Health and cannot do otherwise in their discretion. It would be logically incoherent to explicitly exclude that state requirement from the general grant of authority to K-12 schools if the first portion of Section 4 was intended to require schools to implement “local measures” in the sense of local health department regulations and requirements, because the continued effect of state requirements would then be assumed; instead, the most reasonable interpretation of “local measures” is to understand the phrase to mean local measures determined and adopted by the school with respect to its grounds and facilities.
4. The governor has made public statements confirming his intent to put issues such as mask mandates and other mitigation measures in the hands of local school leaders: “...it’s gonna be the school’s call.”²
5. Section 5 of the EO clarifies that the EO does not modify the authority of local health departments with respect to quarantines or closures, implying that the remainder of the EO does modify/limit the authority of local health departments.
6. Finally, Section 6 of the EO permits local orders to be more restrictive, “unless prohibited by an Executive Order.” Given that Section 4 of the EO explicitly gives responsibility for these matters to schools themselves, the overriding of that authority through a local health order should be seen as directly contrary to the EO and thus prohibited by it.
7. However, as noted at the beginning, even if the Order were not deemed to be prohibited by the EO, the language of the Order makes it subordinate to authority granted to schools: “nothing in this paragraph is intended to or does alter or modify any state or federal law ...authority provided to schools.” The governor’s EO rests authority in the hands of schools. The Order expressly states that it does not modify that authority. Therefore, if a school determines to implement measures different from the Order, the school’s decision should supersede the Order.
8. For the reasons set forth above, Seven Oaks contends that by the language of the Order itself, no violation of the Order occurred.³

² <https://www.indystar.com/story/news/education/2021/07/29/indiana-covid-gov-eric-holcomb-mask-mandate-schools-vaccine-requirement/5415103001/>, accessed August 25, 2021.

³ It should be noted that even if the Order was determined to supersede both the EO and the policy adopted by the Seven Oaks board, Section 5 of the Order states that K-12 schools shall follow CDC, IDOE and ISDH guidelines. However, it does not establish a priority among them, require that schools follow the most restrictive of them, or otherwise require that if one such organization's guidelines conflict with another's, that a school must follow the guidelines of the one over the other; and it does not establish that a “recommendation”—as opposed to a requirement—of such an organization should be considered a “guideline.” None of the referenced organizations

For the reasons set forth above, Seven Oaks requests that the Monroe County Commissioners review the Notice of Violation issued by the Monroe County Health Department and determine under Monroe County Code Chapter 307 that the Citation be vacated and that the Health Department be restrained from issuing further citations or other notices of violation under the Order in connection with the activities noted in the Citation. The undersigned submits this appeal in his capacity as Headmaster of Seven Oaks, affirming under the penalties for perjury that the above information is true and correct to the best of the undersigned's information, knowledge and belief.



Dr. Stephen Shipp

Headmaster, Seven Oaks Classical School, Inc.

have mandated masking in K-12 schools but have instead recognized that circumstances vary among schools and that recommendations are to be interpreted and implemented (or not) in light of such circumstances.



Seven Oaks COVID Protocols: 2021-2022

Introduction

Seven Oaks is deeply concerned about the well-being of its staff and students—socially, emotionally, physically, academically. Consistent with this commitment to overall well-being, our goal is to offer in-person instruction to as many as possible, with as much normalcy as we can reasonably provide.

But we also recognize that in-person instruction carries with it risk of exposure to communicable diseases, including COVID-19. The following steps detail some of the steps we are taking to mitigate the risk, within the parameters set by the Board of Directors.

Thankfully, our situation is relatively favorable. We have a full-time nurse who is focused exclusively on our school. Our total campus population is relatively small. So too are our class sizes. At the same time, our individual rooms are large. Each classroom has windows that open to aid air circulation, and our closed-loop heating and air-conditioning system means that air is not being recirculated throughout the building.

Our campus culture is also well-suited in many ways to the state's recommendations. We already have grammar students sitting at individual desks in assigned seats, facing the front of the room. We already have more orderly transitions in the hallways, and less sharing of school supplies. We do not have buses or a hot lunch program. Parents bring their students, and students bring their lunches.

Of course, developments related to COVID-19 remain fluid. In general, our primary source of guidance is the Indiana State Department of Health (ISDH), which itself takes into account recommendations from the CDC. It is anticipated that this plan will be refined and adjusted in response to local conditions, state and local guidelines and ordinances, decisions by the Board of Directors, and discussions with parents, employees, and community members.

Protocols & Precautions

- The school follows ISDH guidelines for when faculty, staff, and students should remain out of school based on exposure or infection. The school nurse will screen students suspected of symptoms to aid intelligent implementation of these recommendations.
- Per the decision by the Board of Directors, face masks are welcomed but not required. However, masking may affect who is considered a close contact.
- The school nurse is the only person who will inquire about staff or students' vaccination status. Inquiries will be made solely to determine whether close contacts are required to quarantine. While there is no obligation to respond to the nurse's inquiries, the school must assume a person is unvaccinated unless told otherwise for purposes of quarantining.
- Students will have as many days to make up their work as the number of days they were out for an excused absence. Student absences due to compliance with the CDC's recommendations for COVID-19 will be considered excused.

- Parents are required to provide notice of the reason for any student absence in writing. Students gone for more than 3 days consecutively will be required to provide documentation from a health provider.
- Where feasible, passing periods and bathroom breaks have been staggered to minimize hallway traffic, and students are trained to make orderly transitions.
- Students have assigned seats in their classrooms, as well as the lunchroom. Classroom desks have been spaced to the extent that our rooms allow. Upper school teachers have been directed to share seating charts with the goal of aligning them to minimize close contacts.
- Drinking fountains remain closed. Touch-free filtered water bottle fillers have been installed in their place.
- Teachers are encouraged to open windows in their classrooms whenever weather permits.
- Each classroom is equipped with hand sanitizer and cleaning supplies. There are disinfecting stations throughout the building for employee and student use. The school will provide students with additional opportunities for handwashing and/or disinfecting, including at the start of the school day, before eating, after using the restroom, after recess, after using shared equipment, and after coughing, sneezing, or blowing one's nose.
- Students are explicitly taught basic hygiene aimed at reduction in the spread of disease (e.g., handwashing, covering one's mouth when coughing).
- The school has designated a separate quarantine space for students with symptoms of a contagious disease. Students will be required to wait in this space for further observation, evaluation, or pick-up.
- The school will not offer common lunchroom supplies (e.g., napkins, plasticware), unless individually packaged.
- The school nurse and facilities team are coordinating to ensure the adequacy of cleaning supplies, planning, and training.

Communications

- The school will communicate relevant updates to appropriate constituencies. For example, the school will make the broader school community aware of positive cases. The school nurse will notify individuals who are close contacts.
- The school follows all reporting requirements to state and local health authorities.
- The school will distribute information to parents on self-screening and recognition of symptoms of COVID-19. The school will urge daily self-screening for all students and employees.

Contingency Planning

- Should it become necessary for individuals or classes to return temporarily remote learning, the homeroom teachers will communicate more detailed plans at that time. Those plans will be tailored to the circumstances.
- The school has increased the number of contingency days in the school calendar by designating the teacher workdays as potential make-up days.
- The school is seeking to increase the number of substitute teachers and teaching aides. (To that end, your recommendations are welcome!)