

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
State Board of Education**
(DLS Control No. 21-110)

Overview and Legal and Fiscal Impact

These emergency regulations require all individuals, except under certain circumstances, to wear a specified face covering inside a school facility in each public school in every local school system in the State. Each local school system is required to expeditiously adopt policies and procedures to implement this requirement.

These emergency regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

State Board of Education:

State School Administration: Educational Equity: COMAR 13A.01.06.01 through .04

Legal Analysis

Background

On August 26, 2021, the State Board of Education (State board) held a meeting to discuss a universal mask mandate in public schools in all local school systems in the State. At the time of the meeting, 5 of the 24 local school systems in the State had adopted a permissive masking policy in contrast to other local school systems requiring universal masking of students and staff.

Despite Maryland's high rate of vaccination, at this time the State is experiencing increased community spread of the delta variant of the coronavirus leading to an increase in COVID-19 cases and hospitalizations, including many children. Many school systems in other parts of the country that do not require universal masking in schools are experiencing increased student positivity rates and large numbers of students and staff quarantining for exposure to COVID-19 positive individuals in schools.

Summary of Regulations

These emergency regulations require all individuals, except as specified in Regulation .03B, to wear a face covering that covers the nose and mouth while inside a school facility in each public school in every local school system in the State. Each local school system is required to expeditiously adopt policies and procedures to implement this requirement. A local school system may establish and implement additional policies and procedures not in conflict with this requirement. The State Superintendent of Schools is authorized to enforce this requirement as provided in law. Regulation .02 defines the terms “face covering”, “person with a disability”, “public school”, and “school facility” as they pertain to these regulations.

Legal Issues

These emergency regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The State board cites §§ 1-101, 2-205, and 2-303 of the Education Article and 20 U.S.C. § 1400 et seq., 42 U.S.C., § 12101 et seq., and 29 U.S.C. § 794, et seq. as state statutory authority and federal regulatory authority for these emergency regulations. More specifically, §§ 2-205(b), (c), and (g) and 2-303 of the Education Article and 20 U.S.C. § 1401, 42 U.S.C. § 12102, and 20 U.S.C. § 794 are sufficient legal authority for these regulations.

Section 2-205(b), (c), and (g) provides that the State board has the authority to determine and carry out the elementary and secondary educational policies of the State and is required to adopt rules and regulations for the administration of the public schools. Regulations adopted by the State board have the force of law and apply to each county, including Baltimore City, as specified. The State board exercises its general control and supervision over public schools and educational interests of the State through the State Superintendent.

Section 2-303 requires the State Superintendent to enforce the provisions of the Education Article and, in relevant part, the regulations of the State board.

The references to 20 U.S.C. § 1401 (federal Individuals with Disabilities Education Act), 42 U.S.C. § 12102 (federal Americans with Disabilities Act), and 20 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) are references to the definition of child with a disability and definition of disability in federal law.

This authority is correct and complete, and these regulations comply with the legislative intent of the law.

Emergency Status

The State board requests emergency status beginning August 30, 2021, and expiring February 25, 2022. This emergency period is within the normal time frames approved by the

Joint Committee on Administrative, Executive, and Legislative Review. The State board indicates the emergency status is necessary to mitigate the spread of COVID-19 in Maryland public schools, prevent public school closures, and limit the number of students required to quarantine out of the classroom during the 2021–2022 school year due to COVID-19.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. No additional local expenditures are required for local school systems to expeditiously implement policies and procedures to ensure face coverings are worn in school facilities as required by the regulations. Local school systems routinely implement policies regarding individuals inside their facilities.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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