



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

September 24, 2021

The Honorable Susan Bunting
Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, Delaware 19901

- RE: DDOE Emergency Order on 105 Residential Child Care Facilities and Day Treatment Programs, 25 Del. Register of Regulations 223 (September 1, 2021)
DDOE Emergency Order on 105 Residential Child Care Facilities and Day Treatment Programs, 25 Del. Register of Regulations 225 (September 1, 2021)
DDOE Emergency Order on 815 Health Examinations and Screening, 25 Del. Register of Regulations 227 (September 1, 2021)
DDOE Emergency Order on 815 Health Examinations and Screening, 25 Del. Register of Regulations 229 (September 1, 2021)
DDOE Emergency Order on 933 DELACARE: Regulations for Early Care and Education and School-Age Centers, 25 Del. Register of Regulations 233 (September 1, 2021)
DDOE Emergency Order on 933 DELACARE: Regulations for Early Care and Education and School-Age Centers, 25 Del. Register of Regulations 235 (September 1, 2021)
DDOE Emergency Order on 934 Regulations for Family and Large Family Child Care Homes, 25 Del. Register of Regulations 237 (September 1, 2021)

DDOE Emergency Order on 934 Regulations for Family and Large Family Child Care Homes, 25 Del. Register of Regulations 239 (September 1, 2021)
DDOE Emergency Order on 938 Regulations for Youth Camps, 25 Del. Register of Regulations 242 (September 1, 2021)
DDOE Emergency Order on 938 Regulations for Youth Camps, 25 Del. Register of Regulations 244 (September 1, 2021)

The State Council for Persons with Disabilities (SCPD) has reviewed the emergency regulations in the above subject lines issued by the Delaware Department of Education (DDOE) which were published in the September 1, 2021 issue of the register of regulations. SCPD has the following recommendations.

Essentially, DDOE adopted emergency regulatory amendments pursuant to its authority under 29 Del. C. § 10119, which authorizes it to adopt emergency regulations when an agency determines it is necessary to protect the public health, safety, or welfare from imminent peril. The emergency orders add a section which prescribes requirements for the mitigation and prevention of COVID-19. DDOE is adopting this Emergency Order to establish its tiered strategy to mitigate the spread of the COVID-19 virus. The tiered strategy combines encouraging vaccination with additional steps, including continued mask usage. This approach is based on guidance from the Centers for Disease Control and Prevention (CDC).

DDOE adopted Emergency Orders, which repealed and replaced earlier adopted Emergency Orders because the earlier language was “inadvertently broad and resulted in requirements that were not intended.”

The adopted Emergency Order requires that all persons or associations conducting child care and schools *recommend* mask use for children aged two (2) through pre-kindergarten and *require* mask use for children in kindergarten through twelfth grade as well as staff, family members, and visitors regardless of vaccination status. These recommendations and requirements extend to transportation provided by the school or child care facility. There are exceptions to the mask requirement, which include when seated at a table to eat or drink, when sleeping, when engaged in an activity where masking is not feasible (e.g. swimming), when outdoors, when children are not present in the building, or when a person is in a personal space and nobody from that person’s household is present. It further provides that an individual with a medical condition or disability which prevents them from wearing a mask may request a reasonable accommodation from the child care facility.

The Emergency Orders are set to expire 120 days after August 15, 2021 with an option to renew the order for a period not to exceed 60 days.

The adopted emergency regulations generally follow CDC's guidance regarding masking requirements. CDC recommends that individuals over the age of two (2) who are not fully vaccinated should wear masks indoors, including children and staff. CDC also recommends that masks be worn outdoors if the individual is not fully vaccinated and it is either in a crowded setting and / or during an activity where there is sustained close contact with others who are not vaccinated, especially in areas of substantial high transmission.¹

However, masking is not the only recommendation made by the CDC for mitigating the spread of COVID-19. Instead of only incorporating masking requirements in the Emergency Orders, SCPD recommends that DDOE also include some of the other applicable CDC recommendations for mitigating and preventing the spread of COVID-19. Those other recommendations include but are not limited to (1) physical distancing and cohorting; (2) improving ventilation; (3) cleaning and disinfecting; (4) limiting nonessential visitors, volunteers, and activities involving external groups or organizations with people who are not fully vaccinated; (5) conducting workplace hazard assessments²; and (6) developing emergency operations plans.³

Lastly, CDC also indicates that where to lax or remove their layered prevention strategies, each strategy should be removed one at a time and monitored for any resulting outbreaks or increases in COVID-19 cases. It recommends entities work closely with local public health officials for this as well as other monitoring.

While SCPD endorses the Emergency Regulations, Council recommends that DDOE include some of the other aforementioned CDC recommendations for mitigating and preventing the spread of COVID-19, and a requirement that the entities covered under these regulations work closely with the Division of Public Health (DPH) and DDOE on monitoring and implementation of these tiered strategies.

Thank you for your consideration and please contact the SCPD if you have any questions or comments regarding our observations and recommendations on the Emergency Regulations.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html>.

² <https://www.osha.gov/safety-management/hazard-identification>

³ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html>

Sincerely,



Terri Hancharick, Chairperson
State Council for Persons with Disabilities

cc: Mary Ann Mieczkowski, Department of Education
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Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

DOE emergency regs COVID mitigation 9-24-21