



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: September 24, 2021

TO: Alanna Mozeik
Division of Public Health

FROM: Terri Hancharick – Chairperson TH
State Council for Persons with Disabilities

RE: Proposed DHSS Regulations on 4202 Control of
Communicable and Other Disease Conditions, 25 Del. Register
of Regulations 262 (September 1, 2021)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services, Division of Public Health's (DPHs), proposal to amend 16 Del. Admin. C. § 4202 which includes the regulations governing control of communicable and other disease conditions. The proposed amendments include requirements for mask use among all students, faculty, staff, and visitors inside K-12 school buildings, regardless of vaccination status, as well as a severability clause. Specifically, it adds sections 7.7 and 12.0, which add COVID-19 mitigation and prevention procedures and severability, respectively.

The proposed § 7.7 requires that all schools *require* mask use for children in kindergarten through twelfth grade as well as staff, faculty, and visitors

regardless of vaccination status. The proposed amendment also requires that “Authorities of the State...require masks in congregate settings.” 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. Proposed § 7.7.1.4 provides that for schools with student housing, masks are not required inside an individual student’s residence hall room. 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 school.

The adopted emergency regulations generally follow CDC’s guidance regarding masking requirements in schools. 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 assessments; and (6) developing emergency operations plans.

SCPD also recommends that DPH clarify proposed § 7.7.1.4 regarding the exception for student residence hall rooms. It is unclear whether this exception applies only to the student whose room it is or if the exception would apply to all students and visitors who enter that room. If it is the latter interpretation, it would be at odds with proposed § 7.7.1.3.3, which provides an exception to the mask requirement when in a personal space and others outside of the person’s household are not present.

SCPD endorses the proposed regulation but also encourages the inclusion of the aforementioned CDC recommendations and requests clarification regarding proposed Section 7.7.1.4.

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

cc: Dr. Karyl Rattay
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

25reg262 dph-covid 9-24-21