

DEPARTMENT OF EDUCATION

Office of the Secretary

Statutory Authority: 14 Del. C. 3003A and 29 Del. C. §10119 (14 Del. C. § 3003A, 29 Del. C. §10119)

EMERGENCY ORDER

9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs

AUTHORITY

Pursuant to 14 Del. C. §3003A and 29 Del. C. §10119, the Department of Education (“Department”) is adopting emergency regulatory amendments to 9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs. Additionally, 29 Del. C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del. C. §10115. Also, 14 Del. C. §3003A(c), authorizes the Department’s Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 Del. C. §3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware’s tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs is amended by adding Section 3.7 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

3.0. General Provisions

3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs

3.7.1. All persons or associations conducting child care as defined in 14 Del.C. § 3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

3.7.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

3.7.3 Masks are not required in child care facilities:

3.7.3.1 When seated at a table to eat or drink.

3.7.3.2 When asleep.

3.7.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

3.7.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

3.7.3.5 When outdoors.

3.7.3.6 When children are not in the building.

3.7.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOE.regulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. §3003A and 29 Del.C. §10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education



Susan S. Bunting, Ed.D., Secretary of Education