

Statement of Emergency
702 KAR 1:195E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, welfare, or the environment. The regulation is necessary to mitigate the spread of COVID-19 in Kentucky public schools and prevent public school closures during the 2021-22 school year due to COVID-19. Specifically, this emergency administrative regulation requires all individuals inside public school facilities to wear a face covering over the nose and mouth, absent an exemption set forth in the regulation. Pursuant to KRS 13A.190(1)(a), the promulgating agency has attached documentary evidence demonstrating the imminent threat to public health, safety, and welfare of public school students and the need for this regulation to be placed into effect immediately. Due to promulgation time, an ordinary administrative regulation would not be effective for approximately nine months, leaving public school children unnecessarily exposed to COVID-19 infection in public schools, and threatening in-person learning during the 2021-22 school year. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because the promulgating agency anticipates the imminent threat to public health, safety, and welfare will have substantially subsided upon expiration or withdrawal of this emergency regulation. This emergency regulation shall expire 270 days after filing or upon withdrawal by the promulgating agency.

Andy Beshear, Governor

Jacqueline Coleman, Secretary
Education and Workforce Development Cabinet

Lu Young, Chair
Kentucky Board of Education

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Emergency Administrative Regulation)

5 702 KAR 1:195E. Face Coverings in School Facilities

6 RELATES TO: KRS 156.070

7 STATUTORY AUTHORITY: KRS 156.070, 156.160

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 designates the Kentucky
9 Board of Education as the entity with the management and control of the common schools and
10 all programs operated in the common schools. KRS 156.070 provides that the Kentucky Board
11 of Education may prescribe administrative regulations it deems necessary for the efficient
12 management, control, and operation of the schools and programs under its jurisdiction. Pursuant
13 to KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations
14 necessary or advisable for the protection of the physical welfare and safety of the public school
15 children. The Commonwealth has experienced a significant and alarming increase in COVID-19
16 cases since mid-July 2021. Furthermore, the Centers for Disease Control and Prevention (CDC)
17 states that the COVID-19 Delta variant is highly contagious, nearly twice as contagious as
18 previous variants. CDC data shows that hospitalization of children is increasing due to COVID-
19 19 infection. This emergency administrative regulation responds to an imminent threat to public
20 health, safety, or welfare by requiring face coverings to be worn by all individuals inside public
21 school facilities.

1 Section 1. Definitions. (1) “Face covering” means a material that covers the nose and mouth to
2 prevent respiratory droplets from being expelled into the air and that:

3 (a) 1. Is secured to the head with ties, straps, or loops over the ears; or 2. Is wrapped around the
4 lower face;

5 (b) May be made of a variety of materials, including cotton, silk, or linen;

6 (c) Shall have two (2) or more layers; and

7 (d) Shall be factory-made, homemade, or improvised from household items such as a scarf,
8 bandana, or t-shirt.

9 (2) “Person with a disability” means any individual with a disability pursuant to the Individuals
10 with Disabilities Education Act 20 U.S.C. §1400, et seq., the Americans with Disabilities Act 42
11 U.S.C. §12101, et seq., or Section 504 of the Rehabilitation Act of 1973.

12 (3) “School facility” means a building, enclosed structure, or vehicle, that is owned, leased, or
13 operated by a school district, and where one or more students are present therein.

14 Section 2. Face Coverings Required in School Facilities. (1) All individuals, including students,
15 school employees, contractors, and visitors, shall cover their nose and mouth with a face
16 covering while inside a school facility.

17 (2) School district superintendents shall implement procedures to ensure face coverings are worn
18 in school facilities as required by this administrative regulation.

19 (3) School districts shall provide face coverings to individuals in school facilities who do not
20 furnish their own face covering, but shall not be required to provide more than two (2) face
21 coverings to any single individual.

1 (4) This administrative regulation shall not prevent a school district from establishing and
2 implementing policies or procedures that establish face covering requirements in addition to
3 those set forth herein.

4 Section 3. Exemptions from Required Face Coverings. (1) Notwithstanding Section 2 of this
5 administrative regulation, the following are exempt from wearing a face covering while inside a
6 school facility:

7 (a) Children who are under age two (2);

8 (b) Any person with a disability whose disability prevents the person from safely wearing a face
9 covering, or any person with a physical or mental impairment documented by a medical
10 professional as preventing the person from safely wearing a face covering;

11 (c) Any person who is deaf or hard of hearing and is actively communication, or any person who
12 is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a
13 distance of six (6) feet from all individuals who are not members of the person's household;

14 (d) Any person engaged in work that a state or federal regulator has concluded would make
15 wearing a face covering a risk to their health or safety;

16 (e) Any person who is seated and actively consuming food or beverage;

17 (f) Any person who is obtaining a service that requires temporary removal of the face covering in
18 order to perform the service;

19 (g) Any person who is required to temporarily remove the face covering to confirm their identity
20 for security or screening purposes;

21 (h) Any person who is giving a speech or broadcast to an audience and is able to maintain a
22 distance of six (6) feet from all individuals who are not members of the person's household;

23 (i) Any person who is in a swimming pool or other body of water;

- 1 (j) Any person who is actively engaged in exercise;
- 2 (k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a
- 3 face covering; or
- 4 (l) Any person who is sleeping or unconscious, or who cannot otherwise remove the face
- 5 covering on their own.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Jason E. Glass, Ed.D.
Commissioner & Chief Learner

(Date)

Lu Young, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October XX, 2021, at XXam in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

702 KAR 1:195E

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This emergency administrative regulation responds to an imminent threat to public health, safety, welfare, or the environment by requiring face coverings in Kentucky public school facilities when students are present therein.

(b) The necessity of this administrative regulation:

As a result of the COVID-19 Delta variant, Kentucky is experiencing an alarming increase in COVID-19 cases. The Centers for Disease Control and Prevention (CDC) states that the Delta variant is highly contagious, nearly twice as contagious as previous variants. Furthermore, hospitalizations of Kentuckians testing positive for COVID-19, including children, is increasing at alarming rates. The CDC recommends universal indoor wearing of face coverings for all individuals in school settings. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative “regulations necessary or advisable for the protection of the physical welfare and safety of the public school children.”

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 156.070 designates the Kentucky Board of Education as the entity with the management and control of the common schools and all programs operated in the common schools. KRS 156.070 states that the Kentucky Board of Education may prescribe administrative regulations it deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative “regulations necessary or advisable for the protection of the physical welfare and safety of the public school children.” This emergency regulation responds to an imminent threat to public health, safety, welfare, or the environment by requiring face coverings in Kentucky public school facilities when students are present therein. This is consistent with recommendations of the CDC to implement indoor universal face coverings in school settings, regardless of vaccination status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative “regulations necessary or advisable for the protection of the physical welfare and safety of the public school children.” The CDC recommends universal face coverings in school settings, regardless of vaccination status. Furthermore, KRS 13A.190(1)(a) provides for emergency administrative regulations in order to respond to an imminent threat to public health, safety, welfare, or the environment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
N/A. This is a new emergency regulation.

(b) The necessity of the amendment to this administrative regulation:
N/A. This is a new emergency regulation.

(c) How the amendment conforms to the content of the authorizing statutes:
N/A. This is a new emergency regulation.

(d) How the amendment will assist in the effective administration of the statutes:
N/A. This is a new emergency regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
Kentucky public school districts, public school district employees/staff, public school students, and visitors to public schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
All individuals, including students, school employees, contractors, and visitors, will be required, subject to exemptions, to cover their noses and mouths with face coverings while inside a school facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
School districts will experience minimal costs implementing this administrative regulation, specifically to provide face coverings to those individuals who do not furnish their own face covering.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Research indicates that face coverings mitigate the spread of COVID-19, including the Delta variant. The CDC recommends universal face coverings in school settings, regardless of vaccination status. Universal face coverings inside school facilities will mitigate the spread of COVID-19 and prevent mass school community quarantines, and improve the likelihood of uninterrupted in-person learning.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially:
School districts will experience minimal costs providing face coverings to those individuals who

do not furnish their own face covering.

(b) On a continuing basis:

This is an emergency administrative regulation which will expire in 270 days after filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Federal emergency relief funds to public schools can be utilized to purchase face coverings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:

No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 702 KAR 1:195E

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
KRS 156.070 and KRS 156.160.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
This administrative regulation will not directly generate revenue, implementation will improve the likelihood of uninterrupted in-person learning, which has an impact on the revenue of Kentucky public school districts and the Kentucky economy.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
This is an emergency administrative regulation which will expire in 270 days after filing.

(c) How much will it cost to administer this program for the first year?
School districts will experience minimal costs providing face coverings to those individuals who do not furnish their own face covering. School districts may utilize federal COVID-19 relief funding to purchase face coverings.

(d) How much will it cost to administer this program for subsequent years?
This is an emergency administrative regulation which will expire in 270 days after filing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.