

Compiler's Note: Found deficient by ARRS, then remained in effect notwithstanding the finding of deficiency. Voided by 2021 SS SB 1, 9-9-2021.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Emergency Amended at ARRS Committee)

702 KAR 1:195E. Face coverings in school facilities.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: 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 provides 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. Pursuant to KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The Commonwealth has experienced a significant and alarming increase in COVID-19 cases since mid-July 2021. Furthermore, the Centers for Disease Control and Prevention (CDC) states that the COVID-19 Delta variant is highly contagious, nearly twice as contagious as previous variants. CDC data shows that hospitalization of children is increasing due to COVID-19 infection. This emergency administrative regulation responds to an imminent threat to public health, safety, or welfare by requiring face coverings to be worn by all individuals inside public school facilities.

Section 1. Definitions.

(1) "Face covering" means a material that covers the nose and mouth to prevent respiratory droplets from being expelled into the air and that:

(a)

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

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

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

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

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

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

Section 2. Face Coverings Required in School Facilities.

(1) All individuals, including students, school employees, contractors, and visitors, shall cover their nose and mouth with a face covering while inside a school facility.

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

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

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

Section 3. Exemptions from Required Face Coverings.

(1) Notwithstanding Section 2 of this administrative regulation, the following are exempt from wearing a face covering while inside a school facility:

- (a) Children who are under age two (2);
 - (b) Any person with a disability whose disability prevents the person from safely wearing a face covering, or any person with a physical or mental impairment documented by a medical professional as preventing the person from safely wearing a face covering;
 - (c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;
 - (d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;
 - (e) Any person who is seated and actively consuming food or beverage;
 - (f) Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;
 - (g) Any person who is required to temporarily remove the face covering to confirm their identity for security or screening purposes;
 - (h) Any person who is giving a speech or broadcast to an audience and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;
 - (i) Any person who is in a swimming pool or other body of water;
 - (j) Any person who is actively engaged in exercise;
 - (k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering;
 - (l) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own; or
 - (m) Any person who is in an enclosed room and no other individuals are located inside the enclosed room, other than individuals who are members of the person's household.
- 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).

Section 4. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on August 17, 2021.

FILED WITH LRC: August 17, 2021 at 4:05 p.m.

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