

1 AN ACT relating to facial coverings in educational settings.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 199.896 is amended to read as follows:

- 4 (1) No person, association, or organization shall conduct, operate, maintain, or
5 advertise any child-care center without obtaining a license as provided in KRS
6 199.892 to 199.896.
- 7 (2) The cabinet may promulgate administrative regulations pursuant to KRS Chapter
8 13A relating to license fees and may, in the administrative regulations, establish
9 standards of care and service for a child-care center, criteria for the denial of a
10 license if criminal records indicate convictions that may impact the safety and
11 security of children in care, and procedures for enforcement of penalties which are
12 not in contravention of this section.
- 13 (3) Each initial application for a license shall be made to the cabinet and shall be
14 accompanied by a fee that shall not exceed administrative costs of the program to
15 the cabinet and shall be renewable annually upon expiration and reapplication when
16 accompanied by a renewal fee that shall not exceed administrative costs of the
17 program to the cabinet. Regular licenses and renewals thereof shall expire one (1)
18 year from their effective date.
- 19 (4) No child-care center shall be refused a license or have its license revoked for failure
20 to meet standards set by the secretary until after the expiration of a period not to
21 exceed six (6) months from the date of the first official notice that the standards
22 have not been met. If, however, the cabinet has probable cause to believe that an
23 immediate threat to the public health, safety, or welfare exists, the cabinet may take
24 emergency action pursuant to KRS 13B.125. All administrative hearings conducted
25 under authority of KRS 199.892 to 199.896 shall be conducted in accordance with
26 KRS Chapter 13B.
- 27 (5) If, upon inspection or investigation, the inspector general finds that a child-care

1 center licensed under this section has violated the administrative regulations,
2 standards, or requirements of the cabinet, the inspector general shall issue a
3 statement of deficiency to the center containing:

- 4 (a) A statement of fact;
- 5 (b) A statement of how an administrative regulation, standard, or requirement of
6 the cabinet was violated; and
- 7 (c) The timeframe, negotiated with the child-care center, within which a violation
8 is to be corrected, except that a violation that poses an immediate threat to the
9 health, safety, or welfare of children in the center shall be corrected in no
10 event later than five (5) working days from the date of the statement of
11 deficiency.

12 (6) The Cabinet for Health and Family Services, in consultation with the Office of the
13 Inspector General, shall establish by administrative regulations promulgated in
14 accordance with KRS Chapter 13A an informal dispute resolution process through
15 which a child-care provider may dispute licensure deficiencies that have an adverse
16 effect on the child-care provider's license.

17 (7) A child-care center shall have the right to appeal to the Cabinet for Health and
18 Family Services under KRS Chapter 13B any action adverse to its license or the
19 assessment of a civil penalty issued by the inspector general as the result of a
20 violation contained in a statement of deficiency within twenty (20) days of the
21 issuance of the action or assessment of the civil penalty. An appeal shall not act to
22 stay the correction of a violation.

23 (8) In assessing the civil penalty to be levied against a child-care center for a violation
24 contained in a statement of deficiency issued under this section, the inspector
25 general or the inspector general's designee shall take into consideration the
26 following factors:

- 27 (a) The gravity of the threat to the health, safety, or welfare of children posed by

- 1 the violation;
- 2 (b) The number and type of previous violations of the child-care center;
- 3 (c) The reasonable diligence exercised by the child-care center and efforts to
- 4 correct the violation; and
- 5 (d) The amount of assessment necessary to assure immediate and continued
- 6 compliance.
- 7 (9) Upon a child-care center's failure to take action to correct a violation of the
- 8 administrative regulations, standards, or requirements of the cabinet contained in a
- 9 statement of deficiency, or at any time when the operation of a child-care center
- 10 poses an immediate threat to the health, safety, or welfare of children in the center,
- 11 and the child-care center continues to operate after the cabinet has taken emergency
- 12 action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee
- 13 shall take at least one (1) of the following actions against the center:
- 14 (a) Institute proceedings to obtain an order compelling compliance with the
- 15 administrative regulations, standards, and requirements of the cabinet;
- 16 (b) Institute injunctive proceedings in Circuit Court to terminate the operation of
- 17 the center;
- 18 (c) Institute action to discontinue payment of child-care subsidies; or
- 19 (d) Suspend or revoke the license or impose other penalties provided by law.
- 20 (10) Upon request of any person, the cabinet shall provide information regarding the
- 21 denial, revocation, suspension, or violation of any type of child-care center license
- 22 of the operator. Identifying information regarding children and their families shall
- 23 remain confidential.
- 24 (11) The cabinet shall provide, upon request, public information regarding the
- 25 inspections of and the plans of correction for the child-care center within the past
- 26 year. All information distributed by the cabinet under this subsection shall include a
- 27 statement indicating that the reports as provided under this subsection from the past

1 five (5) years are available from the child-care center upon the parent's, custodian's,
2 guardian's, or other interested person's request.

3 (12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and
4 certification applications shall be paid into the State Treasury and credited to a
5 special fund for the purpose of administering KRS 199.892 to 199.896 including the
6 payment of expenses of and to the participants in child-care workshops. The funds
7 collected are hereby appropriated for the use of the cabinet. The balance of the
8 special fund shall lapse to the general fund at the end of each biennium.

9 (13) Any advertisement for child-care services shall include the address of where the
10 service is being provided.

11 (14) All inspections of licensed and unlicensed child-care centers by the Cabinet for
12 Health and Family Services shall be unannounced.

13 (15) All employees and owners of a child-care center who provide care to children shall
14 demonstrate within the first three (3) months of employment completion of at least
15 a total of six (6) hours of orientation in the following areas:

- 16 (a) Basic health, safety, and sanitation;
- 17 (b) Recognizing and reporting child abuse; and
- 18 (c) Developmentally appropriate child-care practice.

19 (16) All employees and owners of a child-care center who provide care to children shall
20 annually demonstrate to the department completion of at least six (6) hours of
21 training in child development. These hours shall include but are not limited to one
22 and one-half (1.5) hours one (1) time every five (5) years of continuing education in
23 the recognition and prevention of pediatric abusive head trauma, as defined in KRS
24 620.020. Training in recognizing pediatric abusive head trauma may be designed in
25 collaboration with organizations and agencies that specialize in the prevention and
26 recognition of pediatric head trauma approved by the secretary of the Cabinet for
27 Health and Family Services The one and one-half (1.5) hours required under this

1 section shall be included in the current number of required continuing education
2 hours.

3 (17) The Cabinet for Health and Family Services shall make available either through the
4 development or approval of a model training curriculum and training materials,
5 including video instructional materials, to cover the areas specified in subsection
6 (15) of this section. The cabinet shall develop or approve the model training
7 curriculum and training materials to cover the areas specified in subsection (15) of
8 this section.

9 (18) Child-care centers licensed pursuant to this section and family child-care homes
10 certified pursuant to KRS 199.8982 shall not use corporal physical discipline,
11 including the use of spanking, shaking, or paddling, as a means of punishment,
12 discipline, behavior modification, or for any other reason. For the purposes of this
13 section, "corporal physical discipline" means the deliberate infliction of physical
14 pain and does not include spontaneous physical contact that is intended to protect a
15 child from immediate danger.

16 (19) Notwithstanding any other law, administrative regulation, executive order, or
17 executive directive to the contrary, no child-care center shall be refused a license
18 or certification, have its license or certification revoked, be subject to any fine, or
19 be otherwise penalized for refusing to require the wearing of any type of facial
20 covering in response to the COVID-19 virus or any mutated strain of the COVID-
21 19 virus.

22 **(20)** Child-care centers that provide instructional and educational programs for
23 preschool-aged children that operate for a maximum of twenty (20) hours per week
24 and that a child attends for no more than fifteen (15) hours per week shall:

25 (a) Notify the cabinet in writing that the center is operating;

26 (b) Meet all child-care center licensure requirements and administrative
27 regulations related to employee background checks;

1 (c) Meet all child-care center licensure requirements and administrative
2 regulations related to tuberculosis screenings; and

3 (d) Be exempt from all other child-care center licensure requirements and
4 administrative regulations.

5 ~~(21)~~~~(20)~~ Child-care centers that provide instructional and educational programs for
6 preschool-aged children that operate for a maximum of twenty (20) hours per week
7 and that a child attends for no more than ten (10) hours per week shall be exempt
8 from all child-care licensure requirements and administrative regulations.

9 ~~(22)~~~~(21)~~ Instructional programs for school-age children shall be exempt from all child-
10 care licensure administrative regulations if the following criteria are met:

11 (a) The program provides direct instruction in a single skill, talent, ability,
12 expertise, or proficiency;

13 (b) The program does not provide services or offerings that are not directly related
14 to the single talent, ability, expertise, or proficiency;

15 (c) The program operates outside the time period when school is in session,
16 including before or after school hours, holidays, school breaks, teaching
17 planning days, or summer vacation;

18 (d) The program does not advertise or otherwise represent that the program is a
19 licensed child-care center or that the program offers child-care services;

20 (e) The program informs the parent or guardian:

21 1. That the program is not licensed by the cabinet; and

22 2. About the physical risks a child may face while participating in the
23 program; and

24 (f) The program conducts the following background checks for all program
25 employees and volunteers who work with children:

26 1. Check of the child abuse and neglect records maintained by the cabinet;
27 and

1 2. In-state criminal background information check from the Justice and
2 Public Safety Cabinet or Administrative Office of the Courts.

3 ~~(23)~~~~(22)~~ Directors and employees of child-care centers in a position that involves
4 supervisory or disciplinary power over a minor, or direct contact with a minor, shall
5 submit to a criminal record check in accordance with KRS 199.8965.

6 ~~(24)~~~~(23)~~ A director or employee of a child-care center may be employed on a
7 probationary status pending receipt of the criminal background check. Application
8 for the criminal record of a probationary employee shall be made no later than the
9 date probationary employment begins.

10 ~~(25)~~~~(24)~~ The cabinet shall promulgate administrative regulations to identify emergency
11 care providers who provide essential child-care services during an identified state of
12 emergency.

13 ~~(26)~~~~(25)~~ Notwithstanding any state law, administrative regulation, executive order, or
14 executive directive to the contrary, during the 2020 or 2021 state of emergency
15 declared by the Governor in response to COVID-19, including but not limited to
16 any mutated strain of the COVID-19 virus, the cabinet shall not establish any
17 restrictions on capacity for class or group size or the ability to combine classes and
18 groups for capacity limits in the morning or afternoon that is below the number that
19 was in effect on February 1, 2020.

20 ➔Section 2. KRS 199.898 is amended to read as follows:

21 (1) All children receiving child-care services in a day-care center licensed pursuant to
22 KRS 199.896, a family child-care home certified pursuant to KRS 199.8982, or
23 from a provider or program receiving public funds shall have the following rights:

24 (a) The right to be free from physical or mental abuse;

25 (b) The right not to be subjected to abusive language or abusive punishment; and

26 (c) The right to be in the care of adults who shall meet their health, safety, and
27 developmental needs.

- 1 (2) Parents, custodians, or guardians of children specified in subsection (1) of this
 2 section shall have the following rights:
- 3 (a) The right to have access to their children at all times the child is in care and
 4 access to the provider caring for their children during normal hours of
 5 provider operation and whenever the children are in the care of the provider;
- 6 (b) The right to be provided with information about child-care regulatory
 7 standards, if applicable; where to direct questions about regulatory standards;
 8 and how to file a complaint;
- 9 (c) **The right to refuse the use of any type of face covering by their child**
 10 **without any retribution against the parent, custodian, guardian, or child;**
- 11 **(d)** The right to file a complaint against a child-care provider without any
 12 retribution against the parent, custodian, guardian, or child;
- 13 **(e)**~~(d)~~ The right to obtain information from the cabinet regarding any type of
 14 licensure denial, suspension, or revocation of an operator, and cabinet reports
 15 that have found abuse or neglect by any child-care provider or any employee
 16 of a child care provider. Identifying information regarding children and their
 17 families shall remain confidential;
- 18 **(f)**~~(e)~~ The right to obtain information from the cabinet regarding the
 19 inspections and plans of correction of the day-care center, the family child-
 20 care home, or the provider or program receiving public funds within the past
 21 year; and
- 22 **(g)**~~(f)~~ The right to review and discuss with the provider any state reports and
 23 deficiencies revealed by such reports.
- 24 (3) The child-care provider who is licensed pursuant to KRS 199.896 or certified
 25 pursuant to KRS 199.8982 shall post these rights in a prominent place and shall
 26 provide a copy of these rights to the parent, custodian, or guardian of the child at the
 27 time of the child's enrollment in the program.

1 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO
2 READ AS FOLLOWS:

3 *Notwithstanding any state law, administrative regulation, executive order, executive*
4 *directive, school board policy, or school policy to the contrary, any requirement to wear*
5 *any type of facial covering on any public school premises, on school-sponsored*
6 *transportation, or at a school-sponsored event that is imposed in response to the*
7 *COVID-19 virus or any mutated strain of the COVID-19 virus shall provide a parent or*
8 *guardian the opportunity to opt a student out of the requirement for any reason.*

9 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
10 READ AS FOLLOWS

11 *No state law, administrative regulation, executive order, executive directive, or*
12 *governing board of a public postsecondary education institution shall require the*
13 *wearing of any type of facial covering at any public postsecondary education*
14 *institution or property located in the Commonwealth that is owned, leased, or operated*
15 *by the institution in response to the COVID-19 virus or any mutated strain of the*
16 *COVID-19 virus, except:*

17 *(1) If it was previously required by a state licensing board prior to January 1, 2020,*
18 *for an individual health care practitioner to wear a facial covering for the*
19 *delivery of health care services; or*

20 *(2) If required to maintain the integrity of the clinical research conducted by the*
21 *institution if the requirement is not responsive to the COVID-19 virus or any*
22 *mutated strain of the COVID-19 virus.*