



Ottawa County
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August 23, 2021

Ms. Lisa Stefanovsky
Health Officer
Ottawa County

Re: Regulation on disciplinary restraints and mask mandates

Dear Ms. Stefanovsky:

You have asked me to analyze whether there the mask mandate violates MCL §380.1307b, that prohibits airway restraints in schools.

In my opinion, the answer to your question is, “No.” The mask mandate does not violate R 380.1307b’s prohibition on airway restraints.

There are several strong reasons for this opinion. First, statute relates to “disciplinary restraints” such as a choke hold. Indeed, MCL §380.1307(2) clarifies that the statute is designed to encourage...best practices to reduce the occurrence of challenging behaviors, eliminate the use of seclusion and restraint, and increase meaningful instructional time for all pupils.” Thus, when MCL §380.1307b(h) prohibits “restraints that negatively impact breathing” it is discussing ONLY the disciplinary restraints, such as a choke hold. This statute was never intended to apply to breathing masks, which by the way, does not restrain breathing, but are designed to protect the airway from and against the dispelling of threatening viruses.

Second, even if there were conflict between the Education Code and The Michigan Public Health Code, MCL §333.2451 and MCL §333.2453, as well as R. 325.175(4), a pandemic order is given priority over other statutory authority. Indeed, the federal and state courts have consistently enforced mask mandates and have found they are override other statutes and regulations:

This statute [health officer’s authority] has been liberally construed. It has been recognized that these are exigent cases, and that the public safety demands the greatest diligence on the part of public officers to prevent public calamity. We find no error in this record.

The learned circuit judge, in his order above referred to granting the writ, followed the statute, and required the board of supervisors to do only that which by the plain terms of the law they should have done without the necessity of a court proceeding.”

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Bishop v Bd of Sup'rs of Ottawa Co, 140 Mich 177, 183 (1905)[Finding health officer's statutory powers trump board of commissioners' powers where pandemics are involved].

Thus, there is no applicability of this regulation to the mask mandate and, no conflict with your statutory authority to issue your pandemic order. Even if there was conflict, the Public Health Code takes priority over the School Code on this issue.

Very Truly Yours,



Douglas W. Van Essen
Ottawa County Corporation Counsel

Al Vanderberg, Ottawa County Administrator
John Shay, Deputy County Administrator