



PUBLIC HEALTH ORDERS FREQUENTLY ASKED QUESTIONS

(updated: 9/8/21)

Q: Who has the authority to issue a local public health order?

A: The Local Health Officer has the authority to issue local public health orders under Michigan's Public Health Code. By law, the local Health Officer has the responsibility to safeguard public health.

Q: What is the legal standard that must be met to issue a local public health order?

A: There are two kinds of local public health orders that can be issued during a public health emergency.

- When the local Health Officer determines that an **imminent danger to health or life** exists in the community, he or she is required by law to issue an order to avoid, correct or remove the imminent danger. An "Imminent danger" means a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.
- When the local health officer **determines that control of an epidemic is necessary to protect the public health**, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and **may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services** and enforcement of health laws.

Q: Can the Kent County Board of Commissioners or the County Administrator intervene in a local public health order?

A: No. The Board of Commissioners may not intervene in the local Health Officer's performance of his duties. The Board of Commissioners has no authority to second guess, override, veto, rescind, amend, or modify a local public health order.

Q: Can the Kent County Board of Commissioners remove its health officer for adopting a mask mandate?

A: No. The Michigan Supreme Court has expressly ruled that a Board of Commissioners may not use its powers to negate a Public Health Officer's decision.

The local Health Officer acted within his statutory authority in issuing the limited school mask mandate and the public health order meets all statutory, constitutional, and legal requirements. On August 23, 2021, the Sixth Circuit Court of Appeals upheld the legal basis for the mask mandates in Michigan against all challenges asserted. The court ruled that the Michigan Department of Health and Human Services (MDHHS) school mask order did not violate the free exercise of religion, equal protection, or substantive due process rights. The Kent County local public health order regarding masks was issued under the same Michigan law as the MDHHS mandates.

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KENT COUNTY
STATEMENT



Q: Can the Kent Board of Commissioners defund the health department because of the school mask mandate?

A: No. The Michigan Supreme Court has expressly held that a Board of Commissioners may not use budgetary considerations or refusal to fund to overrule a public health officer.

Q: If a health officer leaves office, will local health orders remain in place or rescinded?

A: The orders remain in place. Local health orders are issued in the local Health Officer's official capacity and remain in effect even after the individual leaves the office. If a Local Health Officer leaves office, all Local Health Orders in place remain effective unless and until rescinded by the successor Local Health Officer.

Q: Are masks a restraint prohibited by the school code?

A: No. A face mask worn during a pandemic is not a "restraint" under the Code. In the Michigan School Code, "restraint" is physically holding or restraining students from moving their bodies. "Restraint" is an action that prevents or significantly restricts a student's physical movement. It does not include safety or medical equipment. "Restraint that negatively impacts breathing" means physically holding a student in a way that inhibits breathing or makes it difficult for the student to breathe. The statute states that its intent is 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." MCL 380.1307h. It addresses how schools may handle students who are extremely disruptive or a danger to themselves or others. The School Code's "restraint" regulation has no applicability to a use of a face mask used to help prevent a disease from spreading.

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