ASSESSMENT OF PUBLIC COMMENT

Following the adoption of the emergency regulation on use of masks in child care programs on September 16, 2021, the Office of Children and Family Services (OCFS) received an abundance of feedback. The majority of this feedback came from parents. While there was some support for the face covering mandate; the overwhelming majority of the remarks voiced opposition. These remarks were related to the concept of masking children and providers, but not specifically to this rule.

Following the publication of the Emergency Adoption and Notice of Proposed Rule Making in the State Register on December 29, 2021, the Office of Children and Family Services (OCFS) received 15 comments, mostly from parents, regarding the face covering regulation for child care programs. OCFS reviewed the comments and after careful consideration concludes no changes to the proposed regulations will be made at this time. The public comment remains open through February 28, 2022.

COMMENT: The Office received comments alleging the mask mandate in child care is unconstitutional.

OFFICE RESPONSE: The OCFS mandate was initially implemented by emergency regulation on September 16, 2021 and readopted on December 13, 2021 in accordance with the State Administrative Procedure Act. Social Services Law §390(2-a) and 410-x(3) mandate OCFS establish minimum standards for health and safety, including infection control, at child care programs. Pursuant to OCFS’s authority and obligation, OCFS adopted these regulations to maintain health and safety at these programs consistent with guidance issued by the federal Centers for Disease Control and Prevention (CDC) and the NYS Department of Health. OCFS reviewed the comments and after careful consideration concludes no changes to the proposed regulations will be made at this time. The public comment period remains open through February 28, 2022.

COMMENT: The Office received comments requesting that the mask mandate for children in child care programs be repealed. The commenters cited various reasons to support their request, including: the absence of a state of emergency, the reduction in Delta variant cases, that COVID-19 has reached endemic status, that COVID-19 poses minimal risk to children, that children are experiencing developmental delays, that children do not know how to properly wear a mask, that cloth masks do not work, and that there was no mask mandate in child care programs at the beginning of the pandemic. Additionally, a few commenters requested data supporting the mandate.

OFFICE RESPONSE: Executive Order 11 declared a disaster emergency in the State of New York on November 26, 2021. This emergency has been extended by Executive Order 11.1 and 11.2 through February 15, 2022 and continues to be evaluated. While the Delta variant is no longer the predominant COVID-19 variant, new COVID-19 variants, such as the Omicron variant continue to emerge. The Omicron variant spreads more easily than the original virus that causes COVID-19 and the Delta variant. Additionally, the mask requirements are in line with guidelines issued by the CDC which recommend universal indoor masking in child care programs for everyone 2 years of age and older. Additionally, the American Academy of Pediatrics states that face masks can be safely worn by all children 2 years of age and older, including the vast majority of children with underlying health conditions, with rare exception. OCFS reviewed the comments and after careful consideration concludes no changes to the proposed regulations will be made at this time. The public comment period remains open through February 28, 2022.