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September 13, 2021

The Honorable Samuel I. Rosenberg  
Maryland General Assembly  
365 House Office Bldg.  
Annapolis, MD 21401  
*Via email*

Dear Delegate Rosenberg:

You asked about any precedent for the State Board of Education adopting regulations regarding health issues that apply to all local school systems. Below is a list of some current Board regulations regarding health matters:

- COMAR 13A.05.05: Coordinated program of pupil services for all students which shall include but not be limited to: (1) School counseling; (2) Pupil personnel; (3) School psychology; and (4) Health services.
- COMAR 13A.04.18: Instructional programs in comprehensive health education.
- COMAR 13A.02.04: Tobacco-Free School environments.
- COMAR 13A.04.13: Physical Education including CPR and AED training, health related fitness testing.
- COMAR 13A.06.06.01: Protective Eye Devices.
- COMAR 13A.06.08.01: Concussion awareness and prevention.
- COMAR 13A.08.02.24: Conditions for Disclosure in Health and Safety Emergencies.

The legal authority for the State Board to issue regulations governing student health in schools derives from several statutory provisions. Fulfilling the constitutional directive in Article VIII of the Maryland Constitution, “the General Assembly has created a structure for the operation and maintenance of public schools that weaves together State and local responsibilities.” *Building Materials Corp. of America v. Board of Educ. of Baltimore County*, 428 Md. 572, 576 (2012).

The State Board issues regulations, Educational Article (“ED”), § 2-205(c), guidelines for instruction, ED § 2-205(h), and coordinates the overall “growth and development of elementary and secondary education in the State.” ED § 2-205(g). The local boards have “control” over the “educational matters” within the county schools, ED § 4-101(a), and “determine . . . the educational policies of the county school system.” ED § 4-108(3). In all respects, however, the local boards operate “[s]ubject to this article and to the applicable bylaws, rules, and regulations of the State Board.” *Id.* As the Court of Appeals has stated:

The State Board of Education and the State Superintendent of Schools set the overall educational policy of the State and provide general direction and supervisory authority over the system, but, subject to that State direction and authority, it is predominantly the school boards and school superintendents in each of the 23 counties and Baltimore City that operate the public schools.

*Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 359 (2005). *See also Zeitschel v. Bd. of Ed. of Carroll County*, 274 Md. 69, 80 (1975) (explaining that through the exercise of its power granted by the legislature, the State Board has “the last word on any matter concerning educational policy or the administration of the system of public education”).

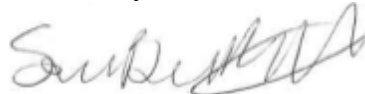
Nearly 30 years ago, the Attorney General recognized that the State Board’s statutory powers extend to student health.

As a general proposition, these grants of statutory authority are sufficient to authorize the State Board to regulate aspects of the school environment that pose a risk to the health of students. The ‘general control and supervision over the public schools’ surely extends to aspects of the school environment that pose immediate health or safety risks or long-term health risks.

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*77 Opinions of the Attorney General* 56, 58 (1992). Similarly, the State Board has legal authority to impose a mask mandate in public school as part of a COVID-19 mitigation strategy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra Benson Brantley".

Sandra Benson Brantley  
Counsel to the General Assembly