

JONATHAN MATHENY,

Appellant

v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 21-12

ORDER

Appellant filed this appeal challenging the mask policy announced in St. Mary's County Public Schools ("SMCPS") on August 11, 2021, requiring the wearing of masks in schools based on a student's vaccination status and biweekly determinations of the local board considering community transmission levels. The local board filed a motion to dismiss the appeal for failure to exhaust administrative remedies.

Since the time Appellant filed this case, events have occurred that impact it. On August 25, 2021, the State Board adopted an emergency regulation imposing a statewide mask mandate in Maryland's public schools. On September 14, 2021, the Administrative, Executive, and Legislative Review Committee approved the emergency regulation, COMAR 13A.01.07, and the regulation became effective immediately upon its approval. Thus, all Maryland public schools must comply with the regulation, which has the force and effect of law.¹

"It is well established that a question is moot when 'there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide.'" *Mallardi v. Carroll County Bd. of Educ.*, MSBE Op. No. 00-07(2000) (quoting *In Re Michael B.*, 345 Md. 232, 234 (1997)). The State Board's emergency regulation requiring masks in Maryland's public schools renders the appeal moot. The emergency regulation remains in effect for up to 180 days, unless the State Board withdraws it prior to that time. If such circumstances occur and the Appellant wishes to revive his appeal, he may do so at that time.

Accordingly, it is this 26th day of October 2021, by the Maryland State Board of Education, ORDERED, that the appeal is dismissed without prejudice based on mootness. *See* COMAR 13A.01.05.03B.

MARYLAND STATE BOARD OF EDUCATION
Signature on File:

Clarence C. Crawford
President

¹ To the extent that the Appellant contests the State Board's regulation, an appeal to the State Board is not the proper venue for such a challenge.