



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

MEMORANDUM

TO: District Superintendents

FROM: Molly M. Spearman
State Superintendent of Education

DATE: September 29, 2021

RE: Enforcement of Proviso 1.108

On September 28, 2021, the United States District Court for the District of South Carolina issued a temporary restraining order and a preliminary injunction prohibiting the enforcement of Proviso 1.108. In the case brought before the Court, the plaintiffs challenged the legality of Proviso 1.108 arguing that it violated Title II of the Americans with Disabilities Act (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504). The Court agreed with the plaintiffs, finding that Proviso 1.108 discriminated against children with disabilities.

The immediate effect of the Court's order is that both the state and local school districts are prohibited from enforcing Proviso 1.108 and school districts now have the discretionary authority to require masks.

In its order, the Court used strong language to share grave concerns about barriers to meaningful access to in-person education, programs, services, and activities for students with disabilities. The South Carolina Department of Education (SCDE) [previously issued a memorandum dated August 18, 2021](#), addressing the relevant requirements of the Individuals with Disabilities Education Act (IDEA), Title II, and Section 504. In light of the Court's ruling, the SCDE strongly suggests schools and districts consult with their legal counsel on actionable steps that may need to be taken to make reasonable accommodations for students with disabilities under these federal laws.

Under the American Rescue Plans (ARP) Act, school districts who received Elementary and Secondary School Emergency Relief Funding were required to create and post publicly on their website a [Safe Return to In-Person Instruction and Continuity of Services plan](#). In this plan,

districts were asked to address how they were addressing each of the Centers for Disease Control and Prevention's (CDC) recommendations for mitigating the spread of COVID-19, including the universal and correct wearing of masks. Those districts that made reference to Proviso 1.108 as rationale for not following the CDC's recommendations in their plan will need to revise their plans immediately as a result of the Court's order.

The SCDE will continue to monitor further action taken by the judicial system that may alter the aforementioned guidance and correspond with schools and districts accordingly.