

**Maryland General Assembly  
Department of Legislative Services**

**Emergency Regulations  
State Board of Education  
(DLS Control No. 21-237)**

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**Overview and Legal and Fiscal Impact**

These regulations set forth the universal school masking requirements, including exceptions and circumstances under which the universal masking requirements may be lifted.

These regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**State Board of Education:**

State School Administration: Face Coverings in School Facilities: COMAR 13A.01.07.01 through .06

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**Legal Analysis**

**Background**

In September 2021, in response to concerns related to increased community spread of the delta variant of the coronavirus leading to an increase in COVID-19 cases and hospitalizations, the State Board of Education (State board) adopted emergency regulations establishing a universal mask mandate in public schools in all local school systems in the State.

On October 29, 2021, the federal Food and Drug Administration authorized for emergency use the Pfizer BioNTech COVID-19 Vaccine for children ages 5 through 11. This authorization means the vast majority of all school-aged children have access to a vaccine to protect against the effects of COVID-19.

**Summary of Regulations**

These regulations restate the emergency regulations adopted by the State board in September 2021 by requiring all individuals, except as specified in Regulation .03B, to wear a face covering that covers the nose and mouth while inside a school facility in each public school in every local school system in the State. Students who are participating in a school approved fine arts dress rehearsal or performance are added to the list of students exempt from being required to wear a face covering. The State Superintendent of Schools is authorized to enforce this requirement

as provided in law. Regulation .02 adds the definitions of “fully vaccinated”, “local superintendent”, and “school staff” as they pertain to these regulations to the other defined terms.

These regulations *authorize* a county board of education or other school governing body or a local superintendent to lift the face covering requirement at public schools in a local school system or in a single public school if (1) at least 80% of the county population is fully vaccinated as reported by the Maryland Department of Health, or (2) at least 80% of specified students and staff at a public school are determined to be fully vaccinated. Regulation .05 establishes the method for calculating vaccine thresholds, procedures for the verification of the vaccination status of students and staff at a public school, and a process for attesting to the verified vaccination status of students and staff by specified education officials. A local superintendent is *required* to reinstate the face covering requirements if county transmission rates of COVID-19 cases are substantial or higher for 14 consecutive days. Regulation .06 provides that the vaccination status of a student is deemed a student record, and that the vaccination status of a staff member and students are required to be kept confidential and may be disclosed only as authorized by law.

## **Legal Issues**

These regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The State board cites §§ 1-101, 2-205, and 2-303 of the Education Article and 20 U.S.C. § 1400 et seq., 42 U.S.C., § 12101 et seq., and 29 U.S.C. § 794, et seq. as state statutory authority and federal regulatory authority for these emergency regulations. More specifically, §§ 2-205(b), (c), and (g) and 2-303 of the Education Article and 20 U.S.C. § 1401, 42 U.S.C. § 12102, and 20 U.S.C. § 794 are sufficient legal authority for these regulations.

Section 2-205(b), (c), and (g) provides that the State board has the authority to determine and carry out the elementary and secondary educational policies of the State and is required to adopt rules and regulations for the administration of the public schools. Regulations adopted by the State board have the force of law and apply to each county, including Baltimore City, as specified. The State board exercises its general control and supervision over public schools and educational interests of the State through the State Superintendent.

Section 2-303 requires the State Superintendent to enforce the provisions of the Education Article and, in relevant part, the regulations of the State board.

The references to 20 U.S.C. § 1401 (federal Individuals with Disabilities Education Act), 42 U.S.C. § 12102 (federal Americans with Disabilities Act), and 20 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) are references to the definition of child with a disability and definition of disability in federal law.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Emergency Status**

The State board requests emergency status beginning January 3, 2022 and expiring July 1, 2022. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The State board indicates the emergency status is necessary to mitigate the spread of COVID-19 in Maryland public schools, prevent public school closures, and limit the number of students required to quarantine out of the classroom during the 2021-2022 school year due to COVID-19.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. No additional local expenditures are required for local school systems to implement policies and procedures related to face coverings, including collecting vaccination information to lift the face covering requirement.

Local school systems must ensure that face coverings are worn in school facilities as specified. However, as detailed in the regulations, a local board of education or specified governing bodies may choose to lift the face covering requirement if 80% of the county or 80% of the students and staff in a particular school are fully vaccinated. If the 80% vaccination threshold is not met, a local superintendent of schools may lift the face covering requirement if the county has sustained 14 consecutive days of moderate or low transmission rates of COVID-19 cases, as specified. The local superintendent must reinstate the face covering requirement if the county transmission rates are substantial or higher for 14 consecutive days.

Local school systems routinely implement policies regarding individuals inside their facilities and routinely collect information about student vaccinations; thus, there is no fiscal impact.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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