

MARYLAND REGISTER

## Emergency Action on Regulations

### Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Emergency Action is not more restrictive or stringent than corresponding federal standards.

**COMAR Codification:** 13A.01.07.01—.06

**Corresponding Federal Standard:**

Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 C.F.R §99

**Discussion/Justification:**

The proposed action requires a student's vaccination status to remain confidential and to only be disclosed as permitted by 20 U.S.C. §1232g, 34 C.F.R §99.

### TO BE COMPLETED BY DBED

-Agree

-Disagree

**Comments:**

Name:

Date:

-Submit to Governor's Office

**Governor's Office Response**

**Comments:**

<b>TO BE COMPLETED BY AELR COMMITTEE</b>	<b>EMERGENCY Transmittal Sheet</b>	<b>TO BE COMPLETED BY DSD</b>
Date Received by AELR Committee		Date Filed with Division of State Documents
12/09/2021		Document Number
Emergency Status Approved		Date of Publication in MD Register
_ -Yes _ -No		
Emergency Status Begins On		
Emergency Status Ends On		
Name of AELR Committee Counsel		

**1. COMAR Codification**

**Title Subtitle Chapter Regulation**

13A 01 07 01—.06

**2. Name of Promulgating Authority**

Maryland State Department of Education

**3. Name of Regulations Coordinator**

Charlene L Necessary

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**4. Name of Person to Call About this Document**

Elliott L. Schoen

**Telephone No.**

410-576-6465

**Email Address**

eschoen@oag.state.md.us

**5. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

- Repeal of Existing Regulations

- Incorporation by Reference of Documents Requiring DSD Approval

**6. Date Requested for Emergency Status to Begin:** 1/3/2022

**Date Requested for Emergency Status to Expire:** 7/1/2022

**7. Agency Will Take the Following Action on These Regulations**

- Promulgate them in accordance with State Government Article, §§ 10-101 -- 10-126

- Allow them to expire

**8. Is there proposed text which is identical to emergency text:**

- Yes  - No

**9. Check the following item if it is included in the attached document:**

- Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**10. Reason for Request for Emergency Status**

The regulations are 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.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Elliott L. Schoen, Assistant Attorney General, (telephone #410-576-6465) on December 9, 2021. A signed copy of the approval is on file at this agency.

**Name of Authorized Officer**

Mohammed Choudhury

**Title**

State Superintendent of Schools

**Telephone No.**

410-767-0467

**Date**

December 9, 2021

**Title 13A**  
**A STATE BOARD OF EDUCATION**  
**Subtitle 01 STATE SCHOOL ADMINISTRATION**

### **13A.01.07 Face Coverings in School Facilities**

Authority: Education Article, §1-101, 2-205, and 2-303, Annotated Code of Maryland; Federal Statutory References: 20 U.S.C. §1232 et seq., 20 U.S.C. §1400 et seq., 29 U.S.C. §794 et seq., 42 U.S.C. §12101 et seq.

#### **Notice of Emergency Action**

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to repeal existing emergency Regulations .01—.04 under COMAR 13A.01.07 Face Coverings in School Facilities and replace with new emergency Regulations .01—.06 under 13A.01.07 Face Coverings in School Facilities.

**Emergency status began:**

**Emergency status expires:**

#### **Comparison to Federal Standards**

There is a corresponding federal standard to this emergency action, but the emergency action is not more restrictive or stringent.

#### **Estimate of Economic Impact**

The emergency action has no economic impact.

#### **Economic Impact on Small Businesses**

The emergency action has minimal or no economic impact on small businesses.

#### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2022

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal relief funds, American Recovery Plan (ARP); Elementary and Secondary School Emergency Relief funds.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Response to small business worksheet:

## Attached Document:

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### Chapter 07 Face Coverings in School Facilities

Authority: Education Article, §1-101, 2-205, and 2-303, Annotated Code of Maryland; Federal Statutory References: 20 U.S.C. §1232 et seq., 20 U.S.C. §1400 et seq., 29 U.S.C. §794 et seq., 42 U.S.C. §12101 et seq.

#### **.01 Scope.**

This chapter applies to county boards of education including Baltimore City and all public schools in Maryland to support the return to safe, full-time in-person learning and to protect the health, welfare and safety of students due to the COVID-19 pandemic.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Face covering" means a material that covers the nose and mouth to prevent respiratory droplets from being expelled into the air and that:

- (a) Is secured to the head, including with ties or ear loops;
- (b) Fits snugly but comfortably against the side of the face; and
- (c) Is either manufactured or homemade and is a solid piece of material without slits, exhalation valves, or punctures.

(2) "Fully vaccinated" means 14 days after receiving the last required dose of an FDA-authorized COVID-19 vaccine as monitored and publicly reported by the Maryland Department of Health.

(3) "Local superintendent" means the county superintendent of a local school system or the chief executive officer of a public school that is not in a local school system.

(4) "Person with a disability" means any individual with a disability pursuant to:

- (a) The Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq.;
- (b) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.; or
- (c) The Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

(5) "Public school" means the schools in the public elementary and secondary education system of Maryland as defined in Education Article, § 1-101(k), Annotated Code of Maryland.

(6) "School facility" means a building or enclosed structure that is owned, leased, or operated by an entity identified in Regulation .01 of this chapter.

(7) "School staff" means all school employees, volunteers, and contractors who provide services within a school facility.

#### **.03 Face Covering Requirements.**

A. All individuals shall cover their nose and mouth with a face covering while inside a school facility unless exempt under §B of this regulation or the face covering requirements have been lifted under Regulation .05 of this chapter.

B. The following individuals are exempt from the requirements to wear a face covering while inside a school facility:

- (1) Children who are younger than 2 years old;
- (2) Any person with a disability whose disability prevents the person from wearing a face covering;
- (3) Any person with a physical or mental impairment documented by a physician as preventing the person from safely wearing a face covering;
- (4) Any person while communicating with a person who is hearing impaired when the ability to see the mouth is essential for communication;
- (5) Any person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations;
- (6) Any person who is seated and actively consuming food or beverage;
- (7) Any person who is swimming in a swimming pool;
- (8) Any person who is actively engaged in exercise;
- (9) Any person who is actively playing a musical instrument requiring the removal of the face covering;
- (10) Any student who is engaged in authorized sleep time;
- (11) Any person who is required to temporarily remove the face covering to confirm their identity for security or screening purposes;
- (12) Any person who is receiving services requiring access to the face, mouth, or head; and
- (13) Any student who is participating in a school approved fine arts dress rehearsal or performance.

#### **.04 Implementation.**

A. Entities identified in Regulation .01 of this chapter shall implement policies and procedures to ensure face coverings are worn in school facilities as required by this chapter.

B. The State Superintendent of Schools is authorized to enforce this chapter consistent with Education Article §2-303(b).

C. This chapter may not prevent an entity identified in Regulation .01 of this chapter from establishing and implementing policies and procedures in addition to those set forth in this chapter.

#### **.05 Lifting Face Covering Requirements.**

A. The face covering requirements under Regulation .03 of this chapter may be lifted when:

- (1) The county where an entity in Regulation .01 of this chapter is located has at least 80 percent of the county population fully vaccinated as reported by the Maryland Department of Health; or
- (2) At least 80 percent of the students and school staff of a school facility are fully vaccinated.

B. County Provisions. When 80 percent of the population of the county is fully vaccinated as reported by the Maryland Department of Health, a county board or the governing authority of the entity identified in Regulation .01 of this chapter may lift face covering requirements set forth in Regulation .03 of this chapter by motion or resolution adopted during a public meeting.

C. Fully Vaccinated Students and School Staff.

- (1) Except as exempted in §C(2) of this regulation, calculation of the 80 percent fully vaccinated threshold includes all enrolled students who are eligible for vaccination based on age in the school facility and any school staff regularly providing services in the school facility.
- (2) Students and school staff who are exempt from vaccination because of medical contraindication or religious exemption may not be counted towards the 80 percent threshold.
- (3) The principal or designated school official of the school facility shall verify the vaccination status of the school staff and students by reviewing a copy of the completed vaccination record card for the school staff and students included in the 80 percent threshold and submit a signed Department approved attestation form in writing to the local superintendent.
- (4) The local superintendent shall submit a signed Department approved attestation form in writing to the State Superintendent of Schools verifying that a school facility has achieved the 80 percent fully vaccinated threshold and may lift the school facility face covering requirements set forth in Regulation .03 of this chapter.

D. County Transmission Rate.

- (1) This section only applies if face covering requirements have not been lifted under §A of this regulation.
- (2) A local superintendent may lift the face covering requirements set forth in Regulation .03 of this chapter if:
  - (a) The county where the entity identified in Regulation .01 of the chapter is located has sustained 14 consecutive days of moderate or low transmission rates of COVID-19 cases, as reported in Centers for Disease Control data;
  - (b) The local superintendent has notified school staff, students and their parents or guardians of the date and time that face covering requirements will be lifted; and
  - (c) The date and time when face coverings are lifted is not before the first school day following the local superintendent's notification.
- (3) The local superintendent shall:

(a) Reinstate the face covering requirements set forth in this chapter if county transmission rates of COVID-19 cases are substantial or higher for 14 consecutive days, as reported in Centers for Disease Control data;

(b) Promptly notify school staff, students and their parents or guardians of the date and time that face covering requirements under Regulation .03 of this chapter will be reinstated; and

(c) Reinstate face covering requirements under Regulation .03 of this chapter not later than the first school day following the local superintendent's notification.

E. The local superintendent's and the county board's decision to lift the face covering requirements set out in this chapter may not be appealed under COMAR 13A.01.05.

**.06 Confidentiality of Vaccination Status.**

A. A student's vaccination status is a student record as defined in COMAR 13A.08.02.03 and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

B. An individual student's vaccination status is confidential and may only be disclosed subject to the requirements of COMAR 13A.08.02, 20 U.S.C. §1232g.

C. A staff member's vaccination status is confidential and may only be disclosed as permitted by law.

MOHAMMED CHOUDHURY  
State Superintendent of Schools