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TO: Members of the State Board of Education

FROM: Mohammed Choudhury

DATE: August 26, 2021

SUBJECT: COMAR 13A.01.07, *Face Coverings in School Facilities*
PROPOSED REGULATION

PURPOSE:

The purpose of this memorandum is to receive permission from the State Board of Education to publish emergency regulations Face Coverings in School Facilities.

REGULATION PROMULGATION PROCESS:

These regulations are being proposed as emergency regulations because 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 2021-22 school year due to COVID-19. The adoption of standard regulations, which require a notice and comment period, could not be completed in the timeframe required to prevent public school closures and limit necessary quarantines during the 2021-22 school year. Thus, emergency regulations are being proposed.

Emergency regulations, which bypass the normal public notice and comment period, remain in effect for a limited period of time - not to exceed 180 days - to meet exigent circumstances. Although emergency regulations are not published in the Maryland Register before adoption, notice of the Administrative, Executive, and Legislative Review (AELR) Committee's receipt of the regulation is posted on the Maryland General Assembly's website. In addition to notice on the General Assembly website, the Department must post the text of the proposed emergency regulations on the agency website within three business days of submission to the AELR Committee. If a member of the AELR Committee requests a public hearing on the emergency adoption of a regulation, the committee must hold the hearing. If no public hearing is requested, staff to the committee may poll the Committee members on the emergency regulation as soon as 10 business days after receipt of the regulation. Approval by the AELR Committee is required for an emergency regulation to take effect. This emergency regulation shall expire 180 days after filing or upon withdrawal by the promulgating agency.

BACKGROUND:

On March 5, 2020, Governor Larry Hogan issued a proclamation declaring a state of emergency and a catastrophic health emergency in Maryland regarding the novel coronavirus pandemic. The Governor's declaration of the state of emergency and a catastrophic health emergency has since been lifted.

On March 12, 2020, effective March 16, 2020, the State Superintendent of Schools announced the initial closure of Maryland's public local school systems, and students were instructed remotely and virtually. Remote and virtual instruction was extended through a series of announcements through the end of the 2019-2020 school year. The State Board, pursuant to its general control and supervision over the public schools in Maryland under Education Art. § 2-205, on April 27, 2021, issued Resolution #21-01 requiring county school systems to open for the 2021-2022 school year and to permit all students to attend school in person for at least 180 actual school days and a minimum of 1,080 school hours during a 10-month period for in-person, in-school instruction, with the teacher in the classroom. The Resolution requires State Board approval for any deviation from the required in-person and in-school instruction.

The State Board, pursuant to its general control and supervision over the public schools in Maryland under Education Art. § 2-205, also established guidelines for reopening schools with its June 2020 *Maryland Together: Maryland's Recovery Plan for Education: COVID-19 Response and the Path Forward* (as revised) and required the county school systems to submit plans to MSDE for review, comment and approval. On July 21, 2020, MSDE issued joint guidance with the Maryland Department of Health ("MDH") for *Response to a Confirmed Case of COVID-19 and Persons with COVID-19 Like Symptoms in Schools* (as revised). This guidance was last updated on July 23, 2021.

On August 27, 2020, MDH and MSDE published joint guidance *K-12 and Child Care COVID-19 Guidance* (as revised). This guidance was last updated on August 13, 2021. This guidance is to assist county school systems, nonpublic schools and child care programs to respond to the COVID-19 pandemic. For schools, the recommendations in the guidance are aimed to support opening for in-person learning at full capacity, as recommended by the Centers for Disease Control and Prevention ("CDC"). The guidance provides that schools should not limit a return to in-person learning at full capacity due to the inability to implement a certain prevention strategy, but rather focus on layered prevention strategies that can be implemented to keep students and staff safe and ensure continuous full-time, in-person instruction. The guidance strongly recommends, in alignment with the CDC guidance, that county school systems require indoor masking for all individuals aged 2 years and older, including students/children, teachers, staff, and visitors, regardless of vaccination status.

On January 29, 2021, effective February 2, 2021, the CDC issued an Order that requires face masks to be worn by all people while on public transportation. The guidance issued by the CDC clarifies that the Order applies to passengers and drivers on school buses, including buses operated by public and private school systems, subject to the exclusions in the CDC's Order.

As a result of the COVID-19 Delta variant, Maryland is experiencing an increase in COVID-19 cases. The Centers for Disease Control and Prevention (CDC) states that the Delta variant is highly contagious, nearly twice as contagious as previous variants. In addition, children under 12 years of age are not currently eligible to receive the COVID-19 vaccine. The CDC recommends universal indoor wearing of face coverings for all individuals in school settings. These emergency regulations respond to an imminent threat to school children and school staff by requiring face coverings to be worn by all individuals inside public school facilities.

PROPOSED REGULATIONS:

The proposed regulations for COMAR 13A.01.07 will apply to county boards of education and public schools in Maryland. It will require any person inside a school facility to wear a face covering, subject

to certain exemptions. The emergency regulations include newly defined terms and exemptions from the face covering requirement for certain individuals. The regulations require county boards of education and public schools to implement policies and procedures to ensure face coverings are worn in school facilities. The regulations do not prevent these entities from establishing and implementing policies and procedures that establish face covering requirements in addition to those set forth in this regulation.

If approved by the State Board and the AELR Committee, the emergency regulations will be in effect for 180 days after filing or upon withdrawal by the promulgating agency.

EXECUTIVE SUMMARY:

The proposed regulations for COMAR 13A.01.07 will apply to county boards of education and all public schools in Maryland. It will require any person inside a school facility to wear a face covering, subject to certain exemptions. The proposed regulations will establish newly defined terms and exceptions for specific individuals for the face covering requirement. The regulations require public schools to implement policies and procedures to ensure face coverings are worn in school facilities. The regulations do not prevent these entities from establishing and implementing policies and procedures that establish face covering requirements in addition to those set forth in this chapter.

ACTION:

Permission to publish emergency regulations.

ATTACHMENT A.

Title 13A
STATE BOARD OF EDUCATION
Subtitle 01 STATE SCHOOL ADMINISTRATION
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. §1400 et seq., 42 U.S.C. §12101 et seq., 29 U.S.C. § 794, et. seq.

.01 Scope.

This chapter applies to county boards of education including Baltimore City and all public schools in Maryland.

.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) “Person with a disability” means any individual with a disability pursuant to the Individuals with Disabilities Education Act 20 U.S.C. §1400, et. seq., the Americans with Disabilities Act 42 U.S.C. §12101, et. seq., or Section 504 of the Rehabilitation Act of 1973 29 U.S.C. § 794 et seq.

(3) “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.

(4) “School facility” means a building, enclosed structure, or school bus or vehicle that is owned, leased, or operated by an entity identified in Regulation .01 of this chapter.

.03 Face Covering Requirement.

A. All individuals, unless exempt under §B of this regulation, shall cover their nose and mouth with a face covering while inside a school facility.

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

- (1) Children who are under age two (2);
- (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; and
- (12) Any person who is receiving services requiring access to the face, mouth, or head.

.04 Implementation.

A. Entities identified in Regulation .01 of this chapter shall implement policies and procedures without delay to ensure face coverings are worn in school facilities as required by this regulation.

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

C. This chapter shall 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.