



Mohammed Choudhury
State Superintendent of Schools

Revised 12.7.21

TO: Members of the State Board of Education
FROM: Mohammed Choudhury
DATE: December 7, 2021
SUBJECT: COMAR 13A.01.07, *Face Coverings in School Facilities*
PERMISSION TO PUBLISH – EMERGENCY ACTION

PURPOSE:

Request permission to publish emergency action to repeal and replace immediately COMAR 13A.01.07 which expires February 25, 2022.

This proposed regulation extends the protection needed against COVID-19 and its variants by extending the face coverings in schools beyond the February 25, 2022, deadline, as needed. This proposed regulation also implements procedures to end face coverings in schools based upon vaccination status within the school facility or county or county transmission rates.

REGULATION PROMULGATION PROCESS:

This regulation is being proposed as an emergency regulation because the regulation is necessary to continue beyond the February 25, 2022, expiration date, to mitigate the spread of COVID-19 and its variants in Maryland public schools, prevent public school closures, and limit the number of students required to quarantine out of the classroom due to coronavirus pandemic. The adoption of a standard regulation, which requires a notice and comment period, cannot be completed in the timeframe required to prevent public school closures and limit necessary quarantines during the 2021-22 school year when the current emergency regulation expires on February 25, 2022. Thus, an emergency regulation is being proposed to fill any gaps in masking requirements.

An emergency regulation, which bypasses the normal public notice and comment period, remains in effect for a limited period of time - not to exceed 180 days - to meet exigent circumstances. Although an emergency regulation is not published in the Maryland Register before adoption, notice of the AELR Committee's receipt of the regulation is posted on the Maryland General Assembly's website. In addition, the State agency must post the text of the proposed emergency regulation 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. The emergency regulation will expire 180 days after filing or upon withdrawal by the promulgating agency.

BACKGROUND:

To support the return to safe, full-time in-person learning with minimal disruptions for the 2021-2022 school year due to the COVID-19 pandemic, the State Board passed an emergency regulation to require masks inside all public school facilities at its August 26, 2021, meeting. On September 14, 2021, the AELR Committee held a public hearing and the emergency regulation was approved. Since that time, the masking regulation has helped minimize quarantines and ensure a safe learning environment for Maryland students and staff. Without any further action, the existing emergency regulation will expire February 25, 2022.

At its October 26, 2021, meeting the State Board received reports regarding the reopening logistics and COVID-19 transmission rates in schools. On November 16, 2021, the State Board collected public input regarding face coverings in school from stakeholders and panelists and offered parents, students and educators across the state an opportunity to share multiple perspectives, experiences and thoughts on masking in schools. The meeting featured several panels that included parents and students, key education stakeholders and national public health experts on the topic. Additionally, the Maryland Department of Health (MDH) and MSDE provided an update on COVID-19 matters, including school metrics. MDH, the U.S. Centers for Disease Control and Prevention (CDC), the U.S. Food and Drug Administration (FDA) and the American Academy of Pediatrics, recommend vaccinating children aged 5 years and older who are eligible.

This proposed regulation incorporates and responds to the information gathered by the State Board and extends the protection needed against COVID-19 and its variants by extending the face coverings in schools beyond the February 25, 2022, deadline, as needed. This proposed regulation also implements procedures to end face coverings in schools based on vaccination status within the school facility or county or county COVID-19 transmission rates.

PROPOSED REGULATIONS:

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

The proposed regulation includes provisions and procedures to lift face coverings in schools if 80 percent of the students and school staff of a school facility are fully vaccinated or the county where a school is located has at least 80 percent of the county population fully vaccinated, as reported by MDH. If neither of the 80 percent thresholds are met, the proposed regulation includes provisions and procedures for the local superintendent to lift the face covering in schools if the county has sustained 14 consecutive days of moderate or low transmission rate of COVID-19 cases, as reported by the CDC. Furthermore, the proposed regulation includes provisions and procedures for the local superintendent to reinstate the face covering requirements if transmission rates of COVID-19 cases are substantial or higher for 14 consecutive days, as reported by the CDC. If the 80 percent thresholds are met, the transmission rate provisions and procedures do not apply. The proposed regulation provides that any

decision to lift the face covering requirement is not appealable to the State Board. The proposed regulation also requires the confidentiality of vaccination status consistent with federal and State law.

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

EXECUTIVE SUMMARY:

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

The proposed regulation includes three off-ramps from the face covering requirements in schools:

1. If at least 80 percent of the county population in the county where the schools are located is fully vaccinated, as reported by MDH, a county board or the governing authority of a public school that is not in a local school system, may lift the face covering requirements by passing a motion or resolution in a public meeting.

2. The local superintendent may lift the face covering requirement for a school facility or facilities after a principal or designated school official verifies that 80 percent of the school staff and students in the school facility have been fully vaccinated. The principal or designated school official submits a signed Department approved attestation form to the local superintendent, and the local superintendent then signs and submits the attestation form affirming the 80 percent vaccination rate to the State Superintendent of Schools.

If either the 80 percent vaccination thresholds are achieved, the following transmission rate provisions and procedures for lifting and reinstating the face covering requirements do not apply.

3. The local superintendent may lift the face covering in schools requirements if the county has sustained 14 consecutive days of moderate or low transmission rate of COVID-19 cases, as reported by the CDC. The local superintendent is required to reinstate the face covering requirements if transmission rates of COVID-19 cases are substantial or higher for 14 consecutive days, as reported by the CDC.

The proposed regulation provides that any decision to lift the face covering requirement is not appealable to the State Board. The proposed regulation also requires the confidentiality of vaccination status consistent with federal and State law.

ACTION:

Request permission to publish emergency action to repeal and replace COMAR 13A.01.07, *Face Coverings in School Facilities*.

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. §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.

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