

## LEGAL SERVICES ADVISORY

# Summary of the School Mask Mandate (Executive Order 251) & Vaccination/Testing Requirements (Executive Order 253)

### Executive Order 251 - Masking

This executive order requires masks to be worn in preK-12 settings beginning August 9, 2021 in the following circumstances, with limited exceptions explained below. These requirements will continue until the Executive Order is modified or revoked.

#### The mask requirement applies to:

- preK-12 settings
- public, private, charter, Renaissance, and parochial schools
- students, staff, and visitors
- indoors, not outdoors

#### Mask wearing is not required when:

1. it inhibits the individual's health, including extreme heat indoors;
2. the individual has trouble breathing, is unconscious, or is incapacitated;
3. a student's documented medical condition, reflected in an IEP or 504, precludes it;
4. the individual is under 2 years old;
5. the individual is engaging in an activity that cannot physically be performed with a mask – for example, eating, drinking, and playing an instrument;
6. the individual is engaged in a high intensity physical activity;
7. the individuals is engaged in a high intensity physical activity in a physical education class when the area is well ventilated and 6 feet of distance is able to be maintained; or
8. wearing a mask creates an unsafe condition to operate equipment or execute a task.

Requests for exemptions for reasons 1 through 3 above must be supported by medical documentation. Self-attestations and parental attestations are insufficient.

#### Other things to know:

- Municipalities and local Boards of Education cannot pass ordinances or policies that contradict this order, or impede or inhibit its enforcement.
- This EO does not affect the federal order requiring masks on all transportation, including school buses; that remains in effect.
- The DOE/DOH guidance, “The Road Forward,” states that “close contacts” for purposes of quarantining excludes students who would otherwise be considered close contacts when the infected student and the exposed student correctly and consistently wore well-fitting masks the entire time they were in contact with each other. This exception does not apply to adults.
- The State Police is tasked with enforcing this Order.

### Executive Order 253 – Vaccine or Testing Requirements

This executive order requires workers in preK-12 settings to submit proof of full vaccination or submit to COVID testing at least once or twice a week, effective October 18, 2021. This order will apply to all education workers, including full and part time employees, contractors, regular volunteers, and others working in the covered preK-12 settings school grounds. The order does not apply to those visiting the preK-12 setting to provide one-time or limited duration repairs, services, or construction. It applies to public, private, and parochial schools, including charter and Renaissance schools.

These are the accepted forms of proof of vaccination:

- a. The CDC COVID-19 Vaccination Card issued to the vaccine recipient by the vaccination site, or an electronic or physical copy of the same;
- b. Official record from the New Jersey Immunization Information System (NJIIIS) or other State immunization registry;
- c. A record from a health care provider's portal/medical record system on official letterhead signed by a licensed physician, nurse practitioner, physician's assistant, registered nurse or pharmacist;
- d. A military immunization or health record from the United States Armed Forces; or
- e. Docket mobile phone application record or any state specific application that produces a digital health record.

Those who do not submit proof of vaccination by October 18, 2021 will be required to be tested at least once or twice weekly. Employers can require testing more often than twice weekly if they chose. The test can either be antigen or molecular; rapid tests will not be accepted. It can be taken on-site by the employer or proof uploaded by the worker. If the worker is not on-site that week, they do not have to test. Test results must be stored according to the confidentiality provisions of the Americans with Disabilities Act and other applicable privacy laws. Employers must have a policy for tracking test results and report results to local health departments. The NJ Department of Health will be offering a testing program that will be funded by a combination of federal ESSER funds and state funding; details on that program have not yet been released.

For more information on the vaccine and testing requirements, visit <https://www.njea.org/njea-vaccine-faq/>