



**Commissioner's Determination on Indoor Masking Pursuant to 10 NYCRR 2.61**

**August 27, 2021**

Pursuant to 10 NYCRR 2.61, I hereby issue the following determination, which includes findings of necessity, to support the face masking/covering requirements set forth below:

**Findings of necessity:**

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice as transmissible as the SARS-CoV-2 strain. Since early July, cases have risen 10-fold, and 95 percent of sequenced recent positives in New York State were the Delta variant.

Certain settings and areas (e.g., healthcare, schools, and public places located in CDC-identified areas of substantial or high community transmission) pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable populations served, the disproportionate percentage of individuals (e.g., children) who are not yet eligible for the COVID-19 vaccination, and/or the substantial to high levels of community transmission.

The above findings demonstrate the necessity for the implementation of layered prevention strategies, which includes face coverings/masks. COVID-19 spreads through respiratory droplets, and several studies have shown that appropriate face coverings/masks reduce the spray of droplets when worn correctly, fully covering one's nose and mouth. Additionally, [as noted by the CDC](#), multiple real-world studies have shown a substantial decrease in SARS-CoV-2 transmission, including:

- Mask use during an outbreak aboard the USS Theodore Roosevelt, a close, congregate environment, was associated with 70% decrease in risk of infection.
- A study from Thailand documented that those who reported mask use during high-risk exposures experienced a more than 70% reduced risk of acquiring the disease compared to those who did not report such mask use during high-risk exposures.
- A study in China demonstrated that mask use by both the index patient and family contacts before symptom onset reduced secondary transmission within households by 79%.

Further, as also reported by the CDC, research supports that there are no significant health effects or changes in oxygen or carbon dioxide levels from mask wear.

Accordingly, based on the foregoing findings of necessity, I hereby issue the following masking requirements:

**Face Covering/Masking Requirements<sup>1</sup>**

<sup>1</sup> Nothing in this determination shall be interpreted as inconsistent with the Americans with Disabilities Act (ADA), workplace safety guidelines, or applicable federal regulations.

1. Healthcare settings:
  - a. *Personnel:* After careful review and consideration of [CDC recommendations](#) for face masks in healthcare settings regulated by the Department, I hereby adopt such recommendations, imposing them as requirements, where applicable. Accordingly, all personnel, regardless of vaccination status, in a healthcare setting (i.e., facilities or entities regulated under Articles 28, 36 and 40 of the Public Health Law) shall wear an appropriate face mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded.
  - b. *Visitors to Healthcare Facilities:* After careful review and consideration of [CDC recommendations](#), all visitors over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in health care facilities, regardless of vaccination status, subject to applicable CDC exceptions, and until this determination is modified or rescinded.
2. Adult care facilities (ACFs) regulated by the Department:
  - a. *Personnel:* After careful review and consideration of the core principles for infection control to protect the health and safety of both fully vaccinated and unvaccinated residents, all ACF personnel, regardless of vaccination status, shall wear an appropriate face mask if providing direct medical care and at a minimum, a cloth face covering by other staff in such settings, in accordance with any applicable CDC exceptions, until this determination is modified or rescinded.
  - b. *Visitors:* After careful review and consideration of [CDC recommendations](#), unvaccinated visitors, who are over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in such setting, subject to CDC exceptions, and until this determination is modified or rescinded.
3. P-12 school settings:
  - a. After careful review and consideration of [CDC recommendations](#) for face coverings/masks in school settings, I hereby adopt such recommendations, imposing them as requirements, where applicable, until this determination is modified or rescinded<sup>2</sup>. Accordingly, universal masking of teachers, staff, students, and visitors to P-12 schools over age two and able to medically tolerate a face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded. Such requirement is subject to applicable CDC-recommended exceptions.
4. Correctional facilities and detention centers:
  - a. *Incarcerated/Detained Persons and Staff:* After careful review and consideration of [CDC recommendations](#) for face coverings/masks, all incarcerated/detained Persons and staff shall wear an appropriate face covering/mask when social distancing cannot be maintained, and in accordance with applicable CDC exceptions (e.g., eating and sleeping), until this determination is modified or rescinded.
  - b. *Visitors:* After careful review and consideration of [CDC recommendations](#) for face coverings/masks in correctional facilities and detention centers, all visitors over age two and able to medically tolerate a face covering/mask shall wear an appropriate face covering/mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded. Correctional facilities and detention centers may impose their own policies for private visitation.
5. Homeless Shelters (including overnight emergency shelters, day shelters, and meal service providers):
  - a. After careful review and consideration of [CDC recommendations](#), all clients, visitors, staff, and volunteers over age two and able to medically tolerate a face covering/mask shall wear an appropriate face mask/covering regardless of vaccination status, when social distancing cannot be

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<sup>2</sup> Guidance from [American Academy of Pediatrics](#) was also reviewed when making face covering/masking determinations in school settings, which is consistent with the above referenced CDC recommendations.

maintained and in accordance with applicable CDC exceptions (e.g., eating and sleeping), until this determination is modified or rescinded.

6. Public Transportation Conveyances and at Transportation Hubs

- a. After careful review and consideration of CDC recommendations for face coverings/masks on public transportation conveyances and at transportation hubs, all persons, over age two and able to medically tolerate a face covering/mask, regardless of vaccination status, shall wear an appropriate face covering/mask while in indoor areas of conveyances or while indoors at transportation hubs, in accordance with applicable CDC exceptions, until this determination is modified or rescinded.

Updates to the above referenced CDC recommendations will not necessarily require issuance of a revised or modified determination. However, such CDC recommendations will be continuously monitored by the Department, and updated determinations issued, as appropriate.

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August 30, 2021

**PRIVILEGED & CONFIDENTIAL**

**MEMORANDUM**

TO: Chief School Administrators  
Boards of Education

RE: 2021-2022 School Year Mask Mandate

This memorandum is intended to serve as guidance relating to the mask mandate, effective immediately, for the upcoming 2021-2022 school year.

On Friday, August 27<sup>th</sup>, the New York State Department of Health (“NYSDOH” or “Department”) filed emergency regulations with the Secretary of State which, in relevant part, provide the Commissioner of Health with the authority to determine when face coverings may be required.<sup>1</sup> The Commissioner’s determinations are based on “COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread” and apply to any person who is over age two and able to medically tolerate a mask or face-covering.<sup>2</sup> The Commissioner’s determinations may apply when individuals are either (1) in a public place and unable to maintain, or when not maintaining, social distance or (2) in certain settings as determined by the Commissioner, including schools. The emergency regulations further

<sup>1</sup> The emergency regulation repeals and replaces 10 NYCRR §2.60 and repeals 10 NYCRR §66-3.1 entirely which was set to expire on September 20, 2021. The previous emergency regulation required any person over the age of two, able to medically tolerate a face-covering, to cover their nose and mouth at all times with a mask while indoors in pre-kindergarten through twelfth grade school buildings or other settings where mask use is otherwise required by federal or state law or regulation.

<sup>2</sup> Face coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person’s nose and mouth. 10 NYCRR §2.60(e).

provide the Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

The Commissioner of Health promptly issued a determination on Friday, pursuant to the authority contained within the above emergency regulation, adopting the CDC recommendations for face coverings and masks in school settings and imposed the same as requirements.<sup>3</sup> Accordingly, effective August 27, 2021, “universal masking of teachers, staff, students and visitors to P-12 schools over age two and able to medically tolerate face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded.” The aforementioned mask mandate is subject to CDC exceptions including those individuals who cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act, or a person for whom wearing a mask would create a risk to workplace health, safety or job duty as determined by relevant workplace safety guidelines or federal regulations.<sup>4</sup>

It is our understanding Superintendents and other school administrators statewide received an email Friday evening from the Department summarizing the emergency regulation and determination. The referenced email stated masks may be removed when eating, drinking, singing, or playing a wind instrument as long as individuals are spaced six feet apart. Neither the emergency regulations nor the Commissioner’s determination reference this issue specifically. The Governor’s Office has shared that the Department is developing further guidance. The Governor’s Office also noted the NYSDOH is applying CDC guidance with respect to physical distancing, quoting: “because of the importance of in-person learning, schools should implement physical distancing to the extent possible within their structures but should not exclude students from in-person learning to keep a minimum distance requirement.”<sup>5</sup>

Individuals or entities that violate the new regulation are subject to a maximum fine of \$1,000 for each violation. 10 NYCRR §2.60. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation. *Id.*

We will continue to keep you apprised of all developments and guidance related to the implementation of the universal mask mandate.

VIA EMAIL  
GGDOCS-1858866013-1733

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<sup>3</sup> “Commissioner’s Determination on Indoor Masking Pursuant to 10 NYCRR 2.61” (August 27, 2021), *available at*: [https://coronavirus.health.ny.gov/system/files/documents/2021/08/2.61\\_determination\\_0.pdf](https://coronavirus.health.ny.gov/system/files/documents/2021/08/2.61_determination_0.pdf) (last accessed August 29, 2021). Please note the cited regulation appears to be a typographical error; the correct citation is 10 NYCRR §2.60.

<sup>4</sup> *Id.*; see CDC, Guidance for COVID-19 Prevention in K-12 Schools, “Section 2: Consistent and Correct Mask Use” (updated August 5, 2021), *available at*: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> (last accessed August 29, 2021)

<sup>5</sup> *Id.* at “Section 3: Physical Distancing”.