



## **Statewide Emergency Ends: What Should Public Schools Do Now?**

On June 4, 2021, Governor Murphy signed a bill (A5820/S3866) and Executive Order 244 to terminate the public health emergency declaration issued on March 9, 2020 due to COVID-19. Accordingly, most of the restrictions, limitations, and requirements imposed via Executive Orders as a result of the pandemic will be rescinded effective thirty (30) days from June 4, 2021. Similarly, on May 24, 2021, Executive Order 242 lifted many of the mask mandates and social distancing requirements that previously applied to indoor public spaces.

The State will continue to retain limited authority to manage the impact of COVID-19, with respect to vaccination efforts; testing; health resource and personnel allocation; data collection, retention, sharing and access; coordination of local health departments; and implementation of CDC recommendations to prevent transmission. This authority will remain in effect until January 11, 2022, and may be extended with the passage of a concurrent resolution by the Legislature.

As of June 4, 2021, there are now no longer any limitations on the total number of attendees permitted at indoor or outdoor gatherings, regardless of the size of the venue. This removal of the capacity limitations previously applicable to such gatherings will assist school districts in more easily planning graduations and similar events for the remainder of the school year.

Because the majority of the Executive Orders issued during the pandemic will be lifted entirely in thirty (30) days, school districts will need to assess the extent to which they are prepared to return to their pre-pandemic operations, particularly as they plan to reopen for the 2021-2022 school year. Effective upon the first day of the 2021-2022 school year, public schools will be required to provide full-day, in-person instruction and the provisions of Executive Order 175 allowing remote learning will be rescinded. The following is a summary of the ongoing requirements that remain in effect despite the passage of the new bill and Executive Order 244, and additional factors that school districts may need to consider as they begin to gradually resume pre-pandemic operations.

### **Graduations and Other Events and Gatherings**

The general removal of the mask requirement for indoor and outdoor gatherings means that graduations and other events planned to celebrate the end of the school year may proceed without mandating that attendees must wear a face covering, although individuals may of course wear a mask if they choose to do so. Nevertheless, the New Jersey Department of Education (“NJDOE”) has advised that school districts are strongly encouraged to continue to implement health and safety protocols when holding graduations and other events, such as having a mask policy.<sup>1</sup> The NJDOE has noted that under current CDC guidance, individuals who are not fully vaccinated (defined as two weeks after receiving the second shot of a two-dose vaccination, or two weeks after receiving a single-dose vaccination) are strongly encouraged to continue masking and social distancing.

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<sup>1</sup> See “Considerations for Graduation Ceremonies and Other End-of-Year School Events 2020-2021,” <https://www.nj.gov/education/covid19/boardops/commencement.shtml>

### **Face Coverings in Public Schools**

Effective Friday, May 28, 2021, individuals generally are not required to wear masks or other face coverings in outdoor public spaces or in most indoor public spaces, but may do so if they choose. However, face coverings remain required for students and staff indoors in school buildings and facilities, in accordance with current CDC guidelines. Under the new bill signed on June 4, 2021, the Governor will not have authority to impose any requirements regarding face coverings in schools that extend beyond the CDC recommendations, unless there is a substantial increase in the State's COVID-19 statistics.

On June 7, 2021, the Governor stated via social media that schools may permit students and staff to remove their masks due to extreme heat, although the State has not issued any formal guidance or directive to date stating that extreme heat is an exception to the mask requirement. Since then, pursuant to the Governor's informal guidance, the NJDOE, through advisories issued by multiple Executive County Superintendents, has indicated that districts may determine, at their discretion and based on an assessment of the individual circumstances, that extreme heat warrants removal of masks while indoors. Therefore, both the Governor and the NJDOE have now confirmed that because Executive Order 175 provides an exception to the mask requirement if wearing a mask would inhibit an individual's health, that exception may be interpreted to allow students and staff to remove their masks indoors during periods of extreme heat.

### **Social Distancing in Public Schools**

Under Executive Order 244, as well as Executive Order 242 issued on May 24, 2021, graduation ceremonies and other large indoor and outdoor events also will not be required to adhere to the social distancing requirements that were placed into effect under previous executive orders. Nevertheless, the same social distancing requirements that have been implemented since September 2020 will remain in effect for public schools through the conclusion of the 2020-2021 school year, as the provisions of Executive Orders 149 and 175 regarding social distancing will not be formally rescinded until July 4, 2021.

### **School Board Meetings**

For school boards which already have been conducting public meetings in-person or are now planning to do so, Executive Order 242 provides that social distancing is not required at any indoor public spaces, and individuals in indoor public spaces are not required to wear masks. Of course, unvaccinated individuals are strongly advised to continue to wear masks whenever they are present in indoor public spaces, and any individuals who choose to wear a mask should be permitted to do so with no questions asked. However, Executive Order 242 recognizes that it is not practical to determine an individual's vaccination status and allow only the vaccinated to be exempt from a face covering requirement, and therefore, given the State's current vaccination rates and COVID-19 statistics, the Governor has rescinded the mask requirement for indoor public spaces.

Regarding school boards which have not yet resumed in-person meetings, notwithstanding the new bill and Executive Order 244 signed by the Governors on June 4, 2021, it appears that the emergency regulations previously issued by Department of Community Affairs Emergency Regulations, will remain in effect for the time being. Specifically, N.J.A.C. 5:39-1.3(a) describes the circumstances under which a local public body may hold a remote public meeting during a declared emergency for conducting public business, and states that “a local public body may hold a remote public meeting to conduct public business during a declared emergency if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present.”

Because Executive Order 244 expressly indicates that “[t]he State of Emergency declared in Executive Order No. 103 (2020) . . . continues to exist in the State of New Jersey,” the condition for holding a remote public meeting in N.J.A.C. 5:39-1.3(a) requiring the existence of a “declared emergency” is satisfied. However, the regulation also requires that “the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present.” Therefore, in order to conduct any future public meetings remotely as permitted by N.J.A.C. 5:39-1.3, a board of education would be required to first determine that the ongoing State of Emergency reasonably prevents the board from safely conducting its public business at a physical location with members of the public in attendance.

In view of the State’s recent progression toward scaling back many of the public health and safety measures previously required in the earlier days of the COVID-19 pandemic, it is not entirely clear whether any school board will be able to strongly support such a determination, insofar as public bodies are currently permitted to hold meetings in-person without even requiring face coverings or social distancing. Accordingly, any school board planning considering whether to conduct its upcoming public meetings remotely or in-person would be well-advised to consult with its board attorney with respect to whether a remote meeting may or may not be permissible under N.J.A.C. 5:39-1.3.

The Busch Law Group will continue to provide legal updates on these and other significant issues related to board of education meetings as a result of COVID-19, as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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