

# Working to Inform NYS Residents of their Constitutional and Parental Rights



Sunday, January 30, 2022

# THE LAST NORMAL SCHOOL YEAR...

	for students currently in...	was
SY 2021-2022	12th Grade	Grade 9
	11th Grade	Grade 8
	10th Grade	Grade 7
	9th Grade	Grade 6
	8th Grade	Grade 5
	7th Grade	Grade 4
	6th Grade	Grade 3
	5th Grade	Grade 2
	4th Grade	Grade 1
	3rd Grade	Kindergarten
	2nd Grade	Never
	1st Grade	Never
	Kindergarten	Never

# PEOPLE'S COALITION FOR NEW YORK

<https://www.peoplescoalitionforny.org/purpose>

<https://www.facebook.com/PeoplesCoalitionforNY/>

<https://www.instagram.com/peoplescoalitionforny/>

<https://twitter.com/PeoplesCoalitNY>



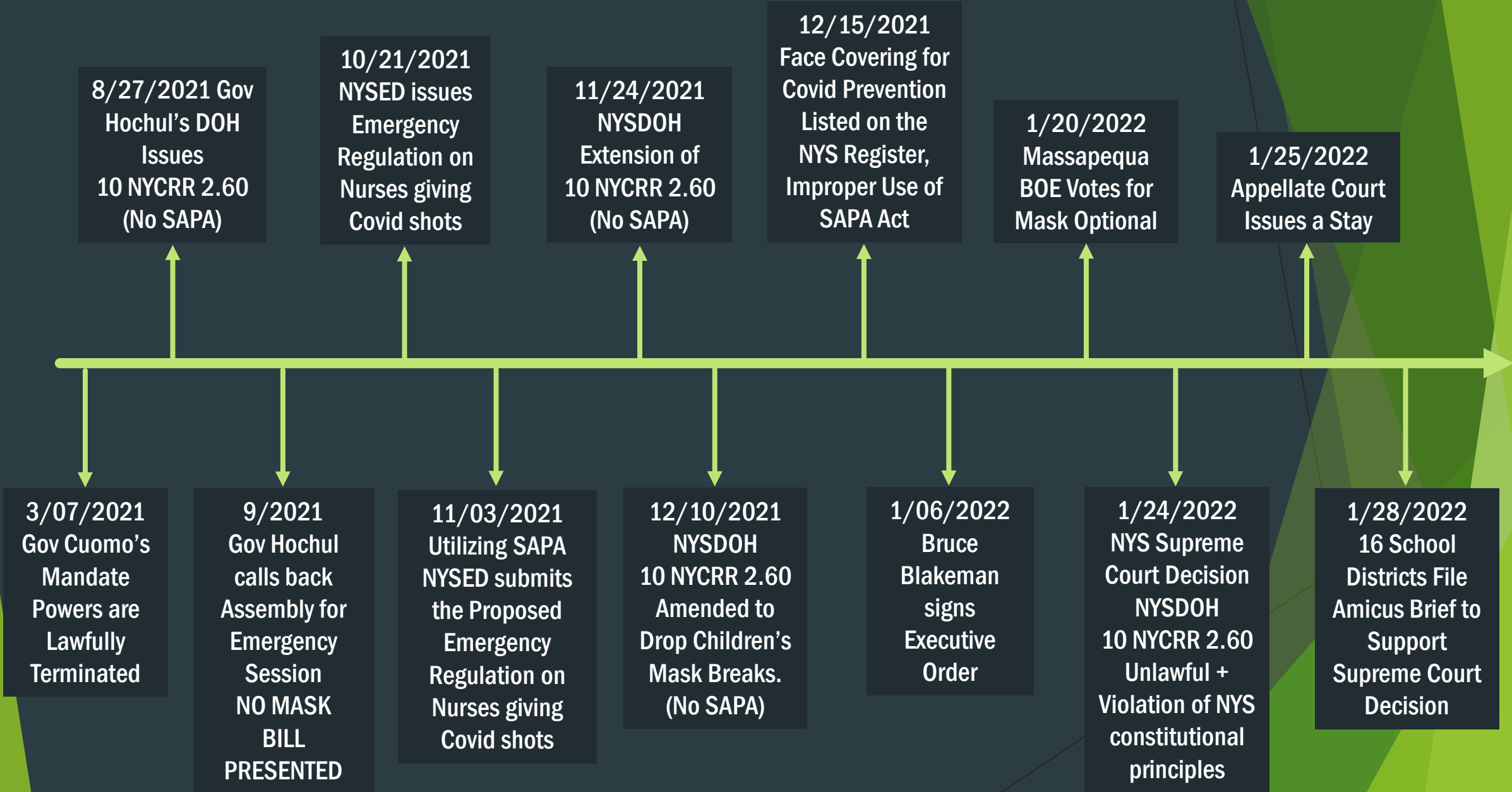
**THIS ENDS  
WHEN WE  
SAY NO**

to UNCONSTITUTIONAL  
MANDATES, REQUIREMENTS, ANNOUNCEMENTS

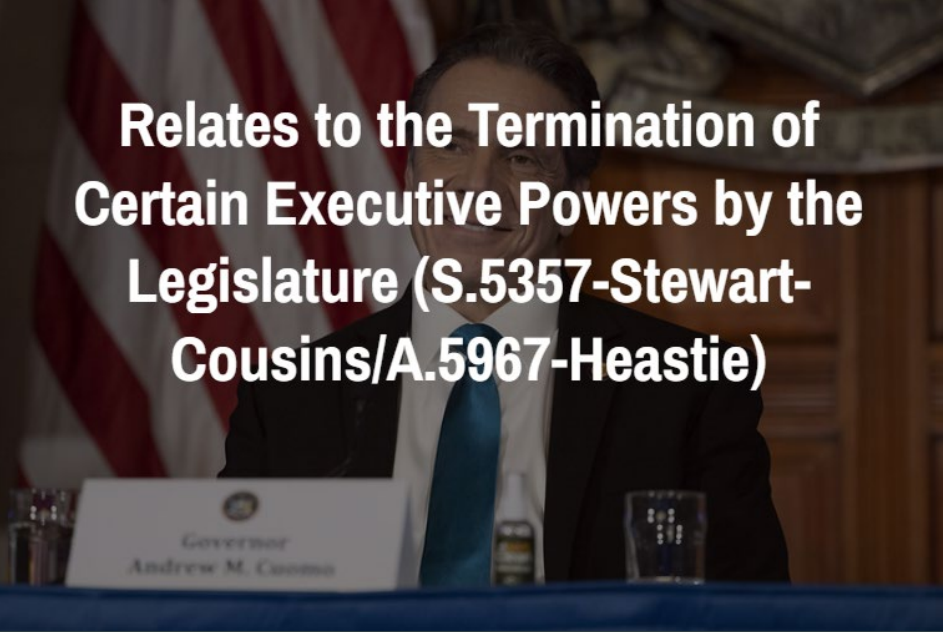
**CALL TO ACTION : Share this everywhere & change your FB cover**

- DO NOT COMPLY • NO MASK • NO PROOF
- DO NOT PATRONIZE any business that enforces

# PROGRESSION OF EXECUTIVE BRANCH OVER-REACH



# GOV CUOMO'S BROAD EXECUTIVE "MANDATE POWERS" WERE LAWFULLY TERMINATED BY THE ASSEMBLY THE BROAD POWER DID NOT TRANSFER TO GOV HOCHUL



Relates to the Termination of  
Certain Executive Powers by the  
Legislature (S.5357-Stewart-  
Cousins/A.5967-Heastie)

<https://www.governor.ny.gov/news/novel-coronavirus-briefing-governor-cuomo-declares-state-emergency-contain-spread-virus>

<https://www.nysenate.gov/legislation/bills/2021/A5967>

[https://www.albanyupdate.com/relates-to-the-termination-of-certain-executive-powers-by-the-legislature-s-5357-stewart-cousins-a-5967-heastie/?fbclid=IwAR2nkd7IG8wX8B\\_TrG81SiIJFOoC-TSHM-NAGRCaovKcvm09IMsje7XlaWQ](https://www.albanyupdate.com/relates-to-the-termination-of-certain-executive-powers-by-the-legislature-s-5357-stewart-cousins-a-5967-heastie/?fbclid=IwAR2nkd7IG8wX8B_TrG81SiIJFOoC-TSHM-NAGRCaovKcvm09IMsje7XlaWQ)

## CUOMO VS HOCHUL

In March 2020 Governor Cuomo signed a State Disaster Emergency Declaration to bring in Federal assistance. Subsequently, the NYS Assembly voted to give Governor Cuomo full-reign with broad executive powers, these temporary powers were later TERMINATED by a NYS Assembly Bill (Sponsored by Heastie, A5967) which Governor Cuomo signed into Law on 3/07/2021 and Cuomo's State Disaster Emergency Declaration ended in June 2021 and the mandates ended.

It must be remembered that Governor Cuomo's temporary powers were lawfully terminated and they did not transfer to Governor Hochul.

In contrast, on 9/27/2021 Governor Hochul signed an E.O. specific to Healthcare Staffing Shortages. And later she proceeded to direct the New York State Department of Health to issue determinations on masking. She did this despite the fact that she did not inherit Cuomo's broad powers, which were lawfully Terminated.

The NYSDOH is an agency and agencies don't make laws – agencies have a limited scope of authority. Agencies have the limited authority to make and uphold regulations needed to enforce and to put Laws into effect, but agencies do not make Laws. Laws can only be proposed and passed by elected members of the NYS Assembly and signed into Law by a Governor.

There's a big difference and it needs to be repeated: the regulations and determinations issued by Agencies have to be based on existing Laws.

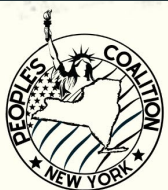
There is no LAW, passed in the NYS Assembly, and signed by a Governor, that requires Masks anywhere, not at school, not inside a business – nowhere. That is why in December Governor Hochul said at a press conference that she can't enforce masking and "left it to the counties to enforce, so counties can choose not to enforce."

NYSDOH determinations that are not based on a Law are illegal and unenforceable.



# Nassau County E.O. 1-2022

## Protecting Fundamental Rights of all Parents to Make Health and Education Decisions for their Children



# PERSONAL CHOICE

Bruce Blakeman signed 3 Executive Orders today, January 6, 2022

- Ordering all school boards to make a vote - bringing choice back to parents to wear masks
- Ordering Nassau County DOH, NCPD, & Fire Marshall not to ENFORCE mask mandates from NYS
- All county workers effective immediately, inside or outside, no mask mandate



Blakeman is providing N95s upon request from the districts to school faculty & staff.  
**There is no excuse to close schools.**  
He is also making test kits available and reopening up V sites for those who want access to them.

**TELL BELLONE TO STAND WITH BLAKEMAN**  
[county.executive@suffolkcountyny.gov](mailto:county.executive@suffolkcountyny.gov) or  
631.853.4000

## URGENT CALL TO ACTION BRUCE BLAKEMAN'S E.O.

### BOARDS VOTE MASK OPTIONAL STAND UP FOR OUR RIGHTS WITH BLAKEMAN

GOV HOCHUL + NYSED ARE WORKING TO UNDERMINE BLAKEMAN'S EXECUTIVE ORDERS BY THREATENING SCHOOL FUNDS, *NOT LEGAL ACTION* - GOV SHOWS SHE HAS NO LEGAL GROUND AND NYSED IS HER TOOL TO FORCE DISCRIT COMPLIANCE - SCHOOL BOARD MEMBERS TOOK AN OATH TO:

**UPHOLD THE U.S. CONSTITUTION  
FOLLOW FEDERAL, STATE & COUNTY LAWS  
PROTECT OUR RIGHTS**

#### ALL MUST REMEMBER

- THE U.S. CONSTITUTION IS THE SUPREME LAW OF THE LAND
- NO LAW OR E.O. CAN VIOLATE THE U.S. CONSTITUTION
- POWERS NOT GIVEN TO THE STATE ARE RETAINED BY THE PEOPLE
- CDC GUIDANCE IS NOT LAW. MANDATES ARE NOT LAWS
- ENFORCEMENT OF UNLAWFUL MANDATES IS COERCION

#### ENFORCEMENT OF UNLAWFUL MANDATES IS A VIOLATION OF

U.S. CONSTITUTION

9<sup>TH</sup> AMENDMENT- ENUMERATION OF RIGHTS

14<sup>TH</sup> AMENDMENT-NO LAW MAY ABRIDGE PRIVILEGE OR DEPRIVE DUE PROCESS, OR DENY EQUAL PROTECTION OF LAWS

5 U.S. CODE 7311 LOYALTY AND STRIKING

18 U.S. CODE 241 CONSPIRACY AGAINST RIGHTS

18 U.S. CODE 242 DEPRIVATION OF RIGHTS

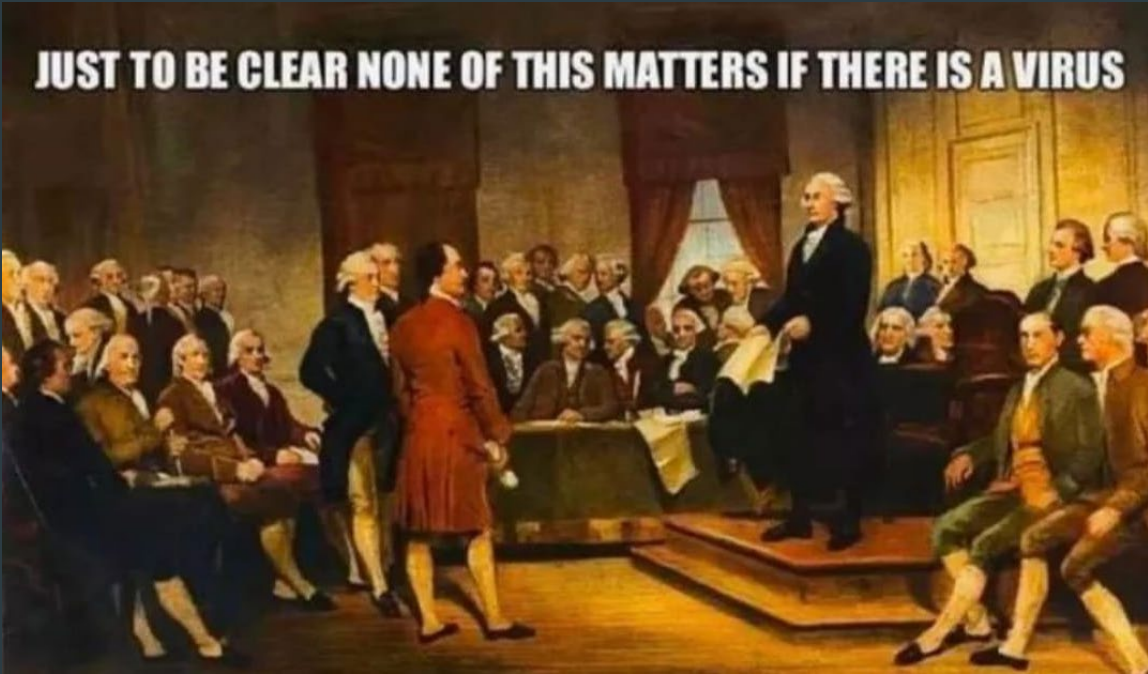
21 U.S. CODE 360bbb-3 CONDITIONS OF EUA MEDICAL DEVICE

THE COVID GUIDELINES ARE UP TO THE BOARD >>> If our Board does not make masks optional, they have assumed PERSONAL LIABILITY for any harm caused by masking -- due to enforcement of an UNLAWFUL mandate; and coercion of use of an unapproved medical device (mask) under EUA; Deprivation of Rights

CONTACT YOUR SCHOOL BOARD + SUPERINTENDENT ASAP

Emails should be addressed "President and Members of the School Board"  
close your email with your full name or it may not be acknowledged.

# NYSED Commissioner Rosa Admonishes School Boards to “follow all legal requirements”



<http://www.nysed.gov/news/2022/statement-commissioner-betty-rosa-nassau-county-executive-order>

## NYSED Commissioner Rosa’s Statement (1/06/2022) on Nassau Cty Exec Blakeman’s Executive Order 1-2022 Protecting Fundamental Rights of all Parents to Make Health and Education Decisions for their Children (1/06/2022)

Rosa: “State Education Department expects school boards **will follow all legal requirements, including the face-covering regulation.**”

Under the authority of Public Health Law § 206, the COVID-19 face-coverings regulation (10 NYCRR 2.60), and the Commissioner of Health’s determinations dated August 26 and December 10, 2021, counties are required to enforce school masking regulations. The regulation, which applies to schools and many other sectors, requires local health departments to enforce school mask mandates (10 NYCRR 2.60 [f] [ii]). The Commissioner of Health can additionally direct the local health department to enforce the regulation under the Public Health Law.

Counties do not have the legal authority to require boards of education to vote on specific issues. School officers take an oath to obey all legal requirements. The State Education Department expects school boards **will follow all legal requirements**, including the face-covering regulation.

**“all legal requirements”** Commissioner Rosa?  
Does all include...

**US CONSTITUTION  
BILL OF RIGHTS  
NYS CONSTITUTION  
NYS HUMAN RIGHTS LAWS  
ADA + USC TITLE 21 EUA**



Supreme Court of the State of New York, County of Nassau  
Michael Demetriou, et al. Lead Attorney Chad J. LaVeglia, Esq. v. NYSDOH, et al.

EXCERPTS of the 1/24/2022 Decision and Order Index: 616124/2021

- Court Holds that 10 NYCRR 2.60 ... **promulgated and enacted unlawfully** by an Executive branch state agency, and **therefore void and unenforceable...** [p 2 of 6]
- Court cannot find any law enacted by the State Legislature that specifically gives the Department of Health and its Commissioner the authority to enact a Law. [p 3 of 6]
- Further, the Court can find no law to which the respondents point that would serve as the “host law” for and from which 10 NYCRR 2.60 is enacted and intended to supplement. [p 3 of 6]
- ...nowhere in the Public Health Law is the Commissioner bestowed with the authority to make a law. [p 4 of 6]
- ...10 NYCRR 2.60 must fail as **violative of the State Administrative Procedure Act (SAPA)**. [p 5 of 6]
- To allow such agency law making would result in laws being changed at the whim of every new Commissioner...This is the very antithesis of constitutionally established representative government. [p 5 of 6]



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Index No. 616124/2021  
DECISION AND ORDER

-----X

MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated; ADRIANNA ALBRITTON as p/n/g of C.M., BRENDAN CURLEY as p/n/g of M.C., KAREN FERRARO as p/n/g of H.L., CATHERINE GRIMES as p/n/g of C. G., CHRISTINE BOCHAT-SMITH as p/n/g of G. S., CHRISTINE ENGLISH as p/n/g of R.E., DANIELE SHIPANO as p/n/g of J. S., ELIZABETH CUTLER as p/n/g of C.S.C., JENNIFER SAIA as p/n/g of V.S., KRISTEN DOUKAS as p/n/g of D.D., MARIA VASSEL as p/n/g of N.P., MYSTIE MCNEILL as p/n/g of A.B., KATHY TELEC as p/n/g of L.T., all on behalf of persons similarly situated.

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents

-----X

There can be no doubt of the good intentions behind 10 NYCRR §§ 2.60; 2.60(a). To be sure, every resident of New York wants to put this pandemic behind them and wishes to participate in ending the abnormality of the last couple of years. To that end, the prior Governor of this State issued Executive Orders under the general umbrella of public health and safety.

Former Governor Cuomo executed more than several Executive Orders under the rubric of a declared state emergency, which established and then continued a myriad of policies and

mandates to deal with the spread of COVID-19. Among some of the requirements, mandates, and policy initiatives were procedures and rules concerning social distancing, masking, contact tracing, and vaccination.

Eventually, in March 2021, the New York State Legislature curbed former Governor Cuomo's authority as well as any future Governor, to issue Executive Orders during a state disaster emergency. See Executive Law § 29-A. Essentially, Executive Law § 29-A prevents the type of mandates and directives that former Governor Cuomo included in his various COVID-19 related Executive Orders.

The issue presented here does not include a challenge to any Executive Order issued by Governor Hochul, but rather a challenge to the enactment of a "rule" promulgated on December 10, 2021, by an administrative official of an Executive branch agency; to wit, the Commissioner of Health for the State of New York, Mary T. Bassett, M.D. The subject "rule" has been endorsed and enforced publicly by Governor Hochul. Notably, in her Executive Order of November 26, 2021, Governor Hochul declared a disaster emergency in the State of New York; however, Respondents admit in their Answer that currently there is no state disaster emergency. (See Respondents Answer Paragraph 12). Ideally, the respondents would have the declaration of November 26, 2021, alone suffice to legally support the promulgation and enactment of 10 NYCRR §§ 2.60; 2.60(a) the "mask mandate" as well as the Commissioner's determination. It does not, particularly in view of the amendment of Executive Law § 29-A by the New York State Legislature as well as the Respondent's admission.

The subject rule, 10 NYCRR §§ 2.60; 2.60(a) requires, *inter alia*, all state residents to wear a face-covering (mask) if above the age of 2 and able to medically tolerate same while in a public place and not able to maintain social distancing. This has been decided and determined by Commissioner Bassett to include in part, schools and school children.

The petitioners herein bring this action on behalf of all minor school children and persons similarly situated within the State of New York alleging, *inter alia*, that 10 NYCRR §§ 2.60; 2.60(a) is a law and not a permissibly enacted rule, null and void as a matter of law, improperly enacted, constitutionally impermissible, violative of their constitutional rights, and unenforceable. Petitioners seek a judgment declaring 10 NYCRR §§ 2.60; 2.60(a) null and void, to permanently enjoin the respondents, including the Governor and Commissioner from enforcing 10 NYCRR §§ 2.60; 2.60(a), as well as a permanent injunction preventing the respondents from re-adopting same without specific legislative authority.

To be clear, this Court does not intend this decision in any way to question or otherwise opine on the efficacy, need, or requirement of masks as a means or tool in dealing with the COVID-19 virus. This Court decides only the issues of whether the subject rule was properly enacted and if so whether same can be enforced.

For the reasons stated herein, the Court holds that 10 NYCRR §§ 2.60; 2.60(a) is a law that was promulgated and enacted unlawfully by an Executive branch state agency, and therefore void and unenforceable as a matter of law.

To begin, had the Governor been able to enact a “mask mandate” such as 10 NYCRR §§ 2.60; 2.60(a), then same would have been included in the Executive Order of November 26, 2021, or it could have been included in another Executive Order subsequently, for example, on December 10, 2021, the date of the Commissioner’s determination. This did not occur. What did occur was that, being unable to include such a mandate in an Executive Order due to the State Legislature’s proscription against such broad ranging Executive branch law making powers (Executive Law § 29-A), the Governor utilized the New York State Department of Health to issue this “emergency” “rule”.

It is evident that the Legislature of the State of New York is the branch of government charged with enacting laws and the Executive branch is charged with enforcing the law. To some extent this clear division of authority and responsibility is blurred and difficult to define in many instances particularly when a state agency enacts administrative rules that relate to a law. But where the line of authority begins and ends lies at the core of our constitutionally established form of representative government. “At the heart of the present case is the question whether this broad grant of authority contravened the oft-recited principle that the legislative branch of government cannot cede its fundamental policy-making responsibility to an administrative agency. As a related matter, we must also inquire whether, assuming the propriety of the Legislature’s grant of authority, the agency exceeded the permissible scope of its mandate by using it as a basis for engaging in inherently legislative activities.” (*Boreali v Axelrod*, 71 NY2d 1, 9 [1987])

In the *Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene*, 23 NY3d 681 [2014], the Court of Appeals held that *Boreali* sets out four “coalescing circumstances” present in that case that convinced the Court “that the difficult-to-define line between administrative rule-making and legislative policy-making ha[d] been transgressed,” and explained that “[w]hile none of these circumstances, standing alone, is sufficient to warrant the conclusion that the [Public Health Council] has usurped the Legislature’s prerogative, all of these circumstances, when viewed in combination, paint a portrait of an agency that has improperly assumed for itself the open-ended discretion to choose ends” that is the “prerogative[ ] of [a] Legislature” (*id.*, at 11, 18 [internal quotation marks and square brackets omitted]). (*Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681, 696 [2014]).

In the instant matter, an important issue is whether 10 NYCRR §§ 2.60; 2.60(a) is a rule that gives more definition and guidance as it relates to a law enacted by the State Legislature or can it be considered a law enacted by an official of government other than the State Legislature. The former is permissible in many instances and well settled in New York jurisprudence. The latter is impermissible without question. Since on its face, 10 NYCRR §§ 2.60; 2.60(a) is called a rule, enacted by an Executive branch official, this Court turns to the laws upon which the legal existence of 10 NYCRR §§ 2.60; 2.60(a) relies upon and is purportedly derived from; to wit, the Public Health Law and the State Administrative Procedure Act.

The Court cannot find any law enacted by the State Legislature that specifically gives the Department of Health and its Commissioner the authority to enact a law. Further, the Court can find no law to which the respondents point that would serve as the “host law” for and from which

10 NYCRR §§ 2.60; 2.60(a) is enacted and intended to supplement (*Matter of General Electric Capital Corp. v. New York State Division of Tax Appeals*, 2 NY3d 249 (2004)). In fact, the only law enacted by the State Legislature regarding COVID-19 and related to the issue at bar is Title 8 of the Public Health Law which concerns contact tracing and not face coverings.

The legislative response to COVID-19 is contained in Title 8 of Article 21 of the Public Health Law. (Public Health Law §§ 2180 - 2182). This provision allows “contact tracers” and “contact tracing [entities]” to investigate, identify, and contact individuals for the purposes of containing the novel coronavirus. Title 8 limits contract tracing to efforts necessary to protect public health, and the legislature provided significant protection of personal and information privacy. (Public Health Law § 2181 [contact tracing; confidentiality]). Article 8 does not address the use of face masks to prevent COVID-19, and there are no specific statutory mandates contained in the Public Health Law to require or prescribe the use of facial coverings as a means to contain the spread of COVID-19.

In both *Boreali* and in the *Matter of New York State Coalition of Hispanic Chambers of Commerce*, the Court of Appeals considered public health initiatives which addressed second-hand cigarette smoke and the prohibition against food service establishments from selling sugary drinks in containers larger than 16 fluid ounces, respectively. Much like COVID-19, lung cancer, obesity, and diabetes present significant challenges to public health systems, and yet even in these instances, the Executive Branch was proscribed from engaging in overreach without a statutory grant of authority. Furthermore, the Legislature amended the Executive Law to limit the Governor’s ability to utilize her emergency power to issue “any directive during a state disaster emergency,” and added a provision to the Executive Law which allows the legislature to terminate by concurrent resolution executive orders issued [under Executive Law 29-a] at any time.” (Executive Law 29-a [4])

Public Health Law §§ 201; 206; and, 225 delineate the scope of authority of the Department of Health and concomitantly, the Commissioner. Surely the Commissioner has the authority to implement and apply rules concerning public health. However, nowhere in the Public Health Law is the Commissioner bestowed with the authority to make a law. While the Commissioner may enact rules that appear to have the full force, effect, and weight of a law, those rules must be tailored, necessarily related, and attached to a law that the State Legislature has passed lest the State Legislature become completely superfluous. Suffice it to state that there are too many examples of instances to mention wherein tolerating laws cloaked as agency rules that are not related to laws passed by the State Legislature would result in the demise of that co-equal branch of government. This Court does not need to contort the bounds of reality to imagine chaos in this State wherein laws were rules made from Executive branch appointees such as the Commissioner of the Department of Motor Vehicles issuing annually new and differing speed limits or other rules of the road.

Recent times further somewhat illustrate the requirement of and adherence to the separation of powers when one looks at recent bail reform. The issue of bail reform was one of many agendas for former Governor Cuomo. The issue was resolved in the form of an overhaul of criminal statutes

by the State Legislature. Most certainly, bail reform was not done by rules enacted by the Department of Corrections and Community Supervision Commissioners.

To allow such agency law making would result in laws being changed at the whim of every new Commissioner who could then be said to be beholden to their appointor but also it would surely result in a lack of representative government wherein only a select few appointees of the Governor make the laws. This is the very antithesis of constitutionally established representative government.

The Petitioners further argue that the Commissioner passed 10 NYCRR §§ 2.60; 2.60(a) in contravention of the State Administrative Procedure Act. 10 NYCRR §§ 2.60; 2.60(a) was promulgated as an emergency "regulation" however, respondents cannot support the "emergency" classification other than to say the Commissioner chose to call it an emergency.

It is clear that 10 NYCRR §§ 2.60; 2.60(a) was promulgated without any substantive justification for the emergency adoption as required by State Administrative Procedure Act §§ 202.6(d); 202.6(e) as the only justification the respondents offered for emergency adoption was entirely conclusory and in their answer to the instant matter the Respondents simply cite to the Commissioner's determination of December 10, 2021, alleging same was merely a re-adoption of a prior determination of August 27, 2021, except that the new rule included "peer reviewed research." As research is continuing daily, it is difficult to comprehend how the mere inclusion of "peer reviewed research" could not be used as a launching pad to continuously adopt the same rule every time the current rule expires *ad infinitum*. One could argue that the COVID-19 pandemic had been ongoing and therefore the need to explain the entire justification or rationale for emergency adoption of a rule was unnecessary. Perhaps a reasonable argument; however, it is one that is legally insufficient in this instance as it ignores the requirements and maybe more importantly, the purpose and spirit of the State Administrative Procedure Act which at its very core ensures against administrative law making. In this regard, the argument that the Commissioner's determination of December 10, 2021, complied with the minimum requirements contained in the State Administrative Procedure Act §§ 202.6(d); 202.6(e) is unsupported. As a result, the "emergency" "rule" that was declared by the Commissioner on December 10, 2021, as well as 10 NYCRR §§ 2.60; 2.60(a) must fail as violative of the State Administrative Procedure Act.

Lastly, inasmuch as petitioners have been and continue to be subject to an improperly enacted law that is void *ab initio*, as well as there being a violation of New York State constitutional principles, the irreparable harm suffered is patent and therefore, an injunction is warranted. See *Buffalo v. Mangan*, 49 AD2d 697 (4<sup>th</sup> Dept 1975); *Tucker v. Toia*, 54 AD2d 322 (4<sup>th</sup> Dept 1976).

As stated previously, there can be no doubt that every person in this State wishes, wants, and prays that this era of COVID ends soon and they will surely do their part to see that is accomplished. However, enacting any laws to this end is entrusted solely to the State Legislature. While the intentions of Commissioner Bassett and Governor Hochul appear to be well aimed squarely at doing what they believe is right to protect the citizens of New York State, they must

take their case to the State Legislature. Should the State Legislature, representative of and voted into office by the citizens of New York, after publicly informed debate, decide to enact laws requiring face coverings in schools and other public places then the Commissioner would likely be well grounded in properly promulgated and enacted rules to supplement such laws.

Until the New York State Legislature acts; based upon the arguments of counsel, a careful review of the moving papers and opposition thereto, and considering the equities, it is

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the New York State Constitution as promulgated and enacted and therefore null, void and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the State Administrative Procedure Act as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60, 2.60(a) are violative of the Public Health Law as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, is null, void, and unenforceable as a matter of law, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing 10 NYCRR §§2.60; 2.60(a), and it is further

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from re-adopting 10 NYCRR §§2.60, 2.60(a), and it is further,

ORDERED that all other relief requested herein is DENIED.

This constitutes the Decision, Order, and Judgment of the Court.

Dated: Mineola, New York  
January 24, 2022

  
HON. THOMAS RADEMAKER, J.S.C

**ENTERED**

**Jan 25 2022**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

# NYSED Commissioner Rosa' Statement upon Appeal: “*mask mandate remains in effect*”

FOR IMMEDIATE RELEASE

JANUARY 25, 2022

**For More Information Contact:**

JP O'Hare or Jeanne Beattie

(518) 474-1201

[www.nysed.gov](http://www.nysed.gov)



## Statement From Commissioner Rosa on Granting of Stay in Mask Case

We are pleased the Appellate Division granted the application by the Department of Health and the Governor's office, confirming the lower court's decision is stayed pending further proceedings. As such, the mask mandate remains in effect for schools across the state. We support Governor Hochul and the state Department of Health as they continue with the appeal. We thank the members of our school communities for their patience during this process.

# GOVERNOR SHOULD “STAND DOWN” WITHDRAW HER APPEAL



## Blakeman: Gov should “stand down” from mask mandate

Posted January 28, 2022



“ *The fact of the matter is, I would never, ever, ever endorse any policy that would put our children in jeopardy.* ”

BRUCE BLAKEMAN, NASSAU COUNTY EXECUTIVE

By Reine Bethany

an held a news conference on Tuesday on the steps of the Theodore Roosevelt Executive and Legislative Building in Mineola. He called on Gov. Kathy Hochul to accept Monday’s ruling regarding mask mandates by the Hon. Thomas Rademaker, justice of the NYS Supreme Court in Nassau County. Standing with Blakeman were Locust Valley School Board Vice President Margaret Marchand and Lauren Themis. Marchand later texted the Herald that she did not wish to comment.

Rademaker adjudicated a lawsuit that challenged the state mandate concerning masks inside public schools. His ruling declared the governor’s Dec. 10 state mandate that New York state public school students wear masks inside school buildings invalid.

Rademaker wrote in his ruling that because New York is not legally in a state of emergency, State Commissioner of Health Mary Bassett, M.D., could not direct masks be worn in schools, and Hochul could not issue a mandate based on that directive without approval from the state Legislature.

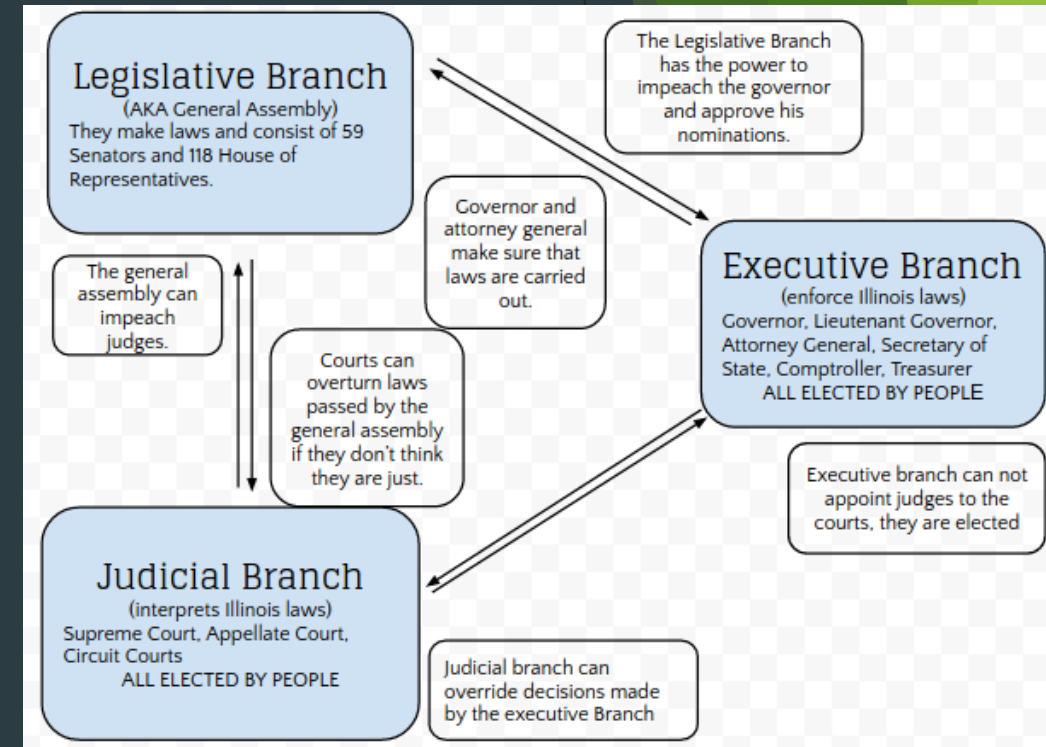
The basis of Bassett’s directive was a section of state regulatory code. Rademaker declared that Bassett’s and Hochul’s use of the code violated the state constitution, so the section “as promulgated and enacted” was unenforceable.

At the news conference, Blakeman said bluntly, “...we’re here today to request that the governor stand down, that she not further appeal the decision of Justice Rademaker.”

# THE THREE BRANCHES OF GOVERNMENT SHOULD BE

1. SEPARATE BUT EQUAL
2. WITH CHECKS AND BALANCES

- ▶ NYS GOVERNMENT'S CHECKS AND BALANCES HAVE ERODED
- ▶ AGENCIES UNDER THE EXECUTIVE BRANCH ARE BYPASSING THE ELECTED NYS ASSEMBLY TO MAKE NEW RULES PERMANENT
- ▶ AGENCIES ARE USURPING THE LAW-MAKING POWER OF THE LEGISLATIVE BRANCH
- ▶ AGENCIES ARE NOT ELECTED THEREFORE THEY ARE NOT ACCOUNTABLE TO THE PEOPLE



# GOV HOCHUL IS ABUSING HER AGENCIES' ABILITY TO MAKE REGULATIONS IN ORDER TO BYPASS THE NYS ASSEMBLY

1) LEGISLATIVE BRANCH:  
Elected Assembly/Senate  
Propose Legislation

2) LEGISLATIVE BRANCH:  
Debate; Pass or Fail

3) EXECUTIVE BRANCH:  
If Passed then Governor Signs  
or may Veto; a Signed Bill  
becomes a LAW

4) EXECUTIVE BRANCH:  
Unelected Agency Officials,  
who may be appointed by the  
Governor, make Regulation(s)  
to support and enforce a  
LAW. Regulations must be  
based on a Law and in line  
with all Federal and State  
Laws. As per the SAPA Act

UNPOPULAR BILL IS PULLED +  
INTRODUCED AS REGULATION

1) Unelected Agency Official  
makes Regulation  
**IMITATING** Unpopular Bill

2) Agency submits Regulation  
for public notice to NYS  
Register

3) Agency reviews  
Comments; ARRC  
Does Not Approve

4) Regulation is enforceable  
after Comment period

Regulations must be BASED on an EXISTING LAW and be IN LINE with ALL LAWS. Bypassing the NYS Assembly to bring about a controversial program through Regulations is a violation of the NYS SAPA Act

# NYS EXECUTIVE BRANCH IS USURPING THE LAW-MAKING POWER THAT BELONGS TO THE ELECTED NYS ASSEMBLY

## *Unelected Agencies Don't Make Laws*

- ✓ LAWS ARE PASSED IN THE NYS ASSEMBLY + SIGNED INTO LAW BY A GOVERNOR
- ✓ AGENCIES EXIST TO PUT LAWS INTO EFFECT THROUGH REGULATIONS + POLICIES
- ✓ AGENCIES HAVE LIMITED SCOPE OF AUTHORITY + REGULATIONS MUST CARRY OUT THE INTENT OF LEGISLATION
- ✓ REGULATIONS, POLICIES + DETERMINATIONS MUST BE IN LINE WITH ALL EXISTING FEDERAL AND STATE LAWS [CONSTITUTION, BILL OF RIGHTS]
- ✓ USING REGULATIONS TO “MAKE LAW” IS UNDEMOCRATIC + PROVIDES POLITICAL COVER





# SAYING SOMETHING DOESN'T MAKE IT A LAW



In December

**Unelected  
Gov Hochul**  
said that she

***CAN'T  
ENFORCE  
MASK  
MANDATES***



**WHY? Because it's *NOT A LAW*  
and instead, she is illegally  
threatening school aid.  
That's our school tax \$\$\$**

# STOP COMPLYING NOW! *Don't Be Part of the Problem*

**A MANDATE IS NOT A LAW!**

**mandate**  
mān'dāt  
noun  
1. An authoritative command or instruction.

**You are not my Kings that will command me!**  
**I do not give you authority to violate the 14th Amendment and force vaccinations or masks against my right to free will and liberty!**

**14th Amendment**  
Section 1.  
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. **No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.

## I AM LAWFULLY EXEMPT FROM GOV HOCHUL'S REQUIREMENT

**GOV HOCHUL MADE AN ANNOUCEMENT OF A REQUIREMENT – A REQUIREMENT IS NOT A LAW, OR A DOH MANDATE, OR AN EXECUTIVE ORDER – IT IS A SUGGESTION**

THE FOLLOWING OFFICIALS SAID THEY  
**WILL NOT ENFORCE THE REQUIREMENT**

Governor Hochul    Suffolk Cty Exec Steve Bellone  
Nassau Cty Exec Laura Curran    New Nassau Cty Exec Bruce Blakeman

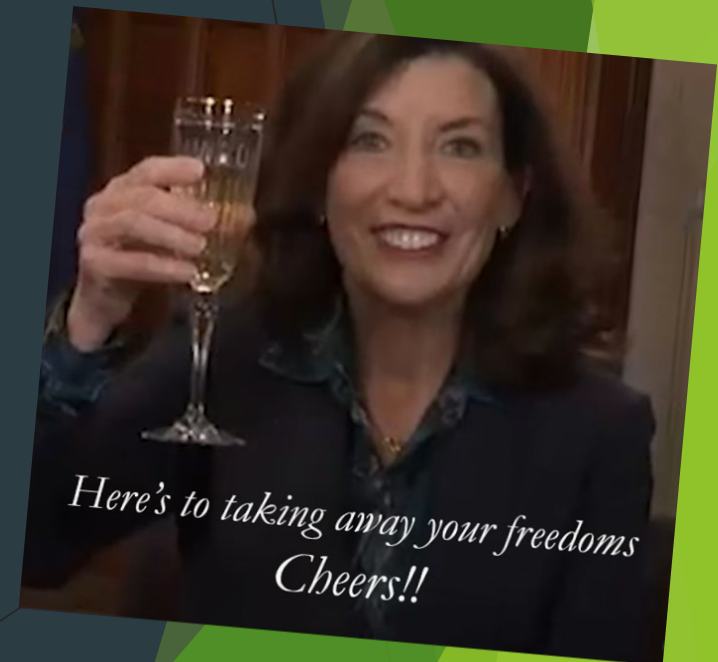
**UNDER FEDERAL CODE TITLE III REG 28 BUSINESSES ARE PUBLIC ACCOMMODATIONS**

**MUST BE OPEN TO ALL OF THE PUBLIC  
MAY NOT DENY PARTICIPATION**

**BUSINESSES MAY NOT DISCRIMINATE OR FORCE COMPLIANCE OF UNCONSTITUTIONAL AND ILLEGAL ORDERS**

*The US Constitution and Bill of Rights are the Supreme Law of the land, and may not be violated by any federal, state or county law or order. The Constitution can't be suspended due to an Emergency, Martial Law or War.*

- **9<sup>TH</sup> AMENDMENT of the US CONSTITUTION** - The enumeration of certain rights shall not be construed to deny or disparage others retained by the people.
- **14<sup>TH</sup> AMENDMENT of the US CONSTITUTION** - Section 1. No state shall make or enforce any law which shall abridge the privileges of the citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person equal protection of the laws.
- **CIVIL RIGHTS ACT OF 1964** – All persons have a legal right to enter and be served **BUSINESSES ARE OPEN TO THE PUBLIC – A CHARGE OF TRESSPASS IS A FALSE ACCUSATION PERSONAL MEDICAL STATUS DOES NOT HAVE TO BE DISCLOSED TO A BUSINESS**



# NYS DOH IS BYPASSING THE LEGISLATIVE PROCESS TO MAKE TEMPORARY RULES PERMANENT

By Using the State Administrative Procedure Act (SAPA)  
And the Review of the Administrative Regulations Review Commission (ARRC)

## State Administrative Procedure Act (SAPA)

- SAPA governs the rule making process in New York
- SAPA establishes a three-step process for all rule making activities of a permanent nature. To adopt a new rule, or to amend or repeal an existing rule, you must:
  1. Propose it through publication of a notice in the **New York State Register**
  2. The NYS Senate's Administrative Regulations Review Commission (ARRC) Receive and consider public comment; and
  3. Adopt the rule by filing the full text with us for incorporation into the NYCRR, along with a Notice of Adoption (again, for publication in the State Register). Remember, state agencies (NYSDOH) subject to the Governor's executive control must obtain approval through the Executive Chamber before submitting a proposal to us for publication in the State Register. Consensus rules are excepted.

<https://www3.dps.ny.gov/W/PSCWeb.nsf/ArticlesByTitle/12CF2646FACD05D885257687006F3AAD>

<https://www.nysenate.gov/committees/administrative-regulations-review-commission-arrc>



### ISSUES OF CONCERN

- ▶ Use of SAPA; and NYSED Policy Amendments to circumvent the LAWFUL established democratic Legislative process to make Health Emergency Regulations PERMANENT
- ▶ The Agency or Department makes and accepts their own regulations
- ▶ No Vote is Taken by any Elected Official
- ▶ ARRC (1 Senator + 2 Assemblymembers) review but do not approve

# Application and Use of SAPA

## State Administrative Procedure Act

### New York Codes, Rules, and Regulations

The NYCRR primarily contains state agency rules and regulations adopted under the State Administrative Procedure Act (SAPA). The 23 Titles include one for each state department, one for miscellaneous agencies and one for the Judiciary. The Office of Court Administration and the Judiciary are exempt from SAPA requirements.

#### Emergency Powers

SAPA generally applies to “any department, board, bureau, commission, division, office, council, committee or officer of the state” or to any “public benefit corporation or public authority” that has at least one member who is appointed by the governor and is authorized by law to make regulatory rules. SAPA § 102(1). The statute delegates to these state executive departments and administrative agencies certain “rule making powers,” in turn allowing these entities to promulgate and enforce rules and regulations consistent their mandates from the state legislature. Issuance of a new rule is a multi-step process. The agency must draft the text of the proposed rule, prepare supporting materials (such as a statement discussing the impact of the proposed rule on regulated parties), submit the proposed rule for public comment, and draft a fulsome response to those comments that summarizes the issues raised and explains why various suggestions were either incorporated into the rule or not. Given these steps, it often takes an agency many months to issue a new rule.

[Title 1 Department of Agriculture and Markets](#)

[Title 2 Department of Audit and Control](#)

[Title 3 Banking](#)

[Title 4 Department of Civil Service](#)

[Title 5 Department of Economic Development](#)

[Title 6 Department of Environmental Conservation](#)

[Title 7 Department of Corrections and Community Supervision](#)

[Title 8 Education Department](#)

[Title 9 Executive Department](#)

[Title 10 Department of Health](#)

[Title 11 Insurance](#)

[Title 12 Department of Labor](#)

[Title 13 Department of Law](#)

[Title 14 Department of Mental Hygiene](#)

[Title 15 Department of Motor Vehicles](#)

[Title 16 Department of Public Service](#)

[Title 17 Department of Transportation](#)

[Title 18 Department of Social Services](#)

[Title 19 Department of State](#)

[Title 20 Department of Taxation and Finance](#)

[Title 21 Miscellaneous](#)

[Title 22 Judiciary](#)

[Title 23 Financial Services](#)

# NYS DOH CIRCUMVENTING THE LEGISLATIVE PROCESS



## SAPA + Administrative Regulations Review Commission (ARRC)

Go To <https://www.peoplescoalitionforny.org/sapa>

### Proposed Regulations

#### NEW YORK STATE DEPARTMENT OF HEALTH

The regulatory process in the State of New York is governed primarily by Article 2 of the State Administrative Procedure Act (SAPA). This process is administered in the Department of Health by the Regulatory Affairs Unit.

12/15/2021	02/14/2022		Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)
12/15/2021	02/14/2022		Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)
12/15/2021	02/14/2022		Amendment of Section 415.3 of Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities)
12/15/2021	02/14/2022		Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)

New York State Department of Health  
Bureau of Program Counsel, Regulatory Affairs Unit  
Corning Tower, Empire State Plaza, Rm. 2438  
Albany, New York 12237-0031  
Phone: (518) 473-7488  
FAX: (518) 473-2019  
[regsqa@health.ny.gov](mailto:regsqa@health.ny.gov)  
Attention: Katherine Ceroalo

Questions or comments: [regsqa@health.ny.gov](mailto:regsqa@health.ny.gov)

<https://www.nysenate.gov/committees/administrative-regulations-review-commission-arrc>

[https://regs.health.ny.gov/regulations/proposed-rule-making?fbclid=IwAR1Im1mKkQ\\_uCPFTUakc-MsmL2CYcRvXYnQAYQP8KZr-Q4mmKNQPbPNTmE](https://regs.health.ny.gov/regulations/proposed-rule-making?fbclid=IwAR1Im1mKkQ_uCPFTUakc-MsmL2CYcRvXYnQAYQP8KZr-Q4mmKNQPbPNTmE)

[https://dos.ny.gov/system/files/documents/2021/12/121521.pdf?fbclid=IwAR2S\\_0KMd1F6XoeAU7NgXN8xt1qOpbsuJtmPQUlqqGGcWT4tcd1LyBqTDjY](https://dos.ny.gov/system/files/documents/2021/12/121521.pdf?fbclid=IwAR2S_0KMd1F6XoeAU7NgXN8xt1qOpbsuJtmPQUlqqGGcWT4tcd1LyBqTDjY)

December 15, 2021  
Vol. XLIII  
Issue 50

DEPARTMENT OF STATE  
Division of Administrative Rules

# NEW YORK STATE REGISTER

## Health, Department of

- 4 / Prevention of COVID-19 Transmission by Covered Entities (EP)
- 8 / Investigation of Communicable Disease; Isolation and Quarantine (EP)
- 10 / Face Coverings for COVID-19 Prevention (EP)

The Administrative Regulations Review Commission (ARRC) reviews newly proposed regulations to examine issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission  
State Capitol  
Albany, NY 12247  
Telephone: (518) 455-5091 or 455-2731

# NYS DOH CIRCUMVENTING THE LEGISLATIVE PROCESS

## Administrative Regulations Review Commission (ARRC) of the NYS Senate

### ARRC Chairman → NYS Senator Simcha Felder (D) 17<sup>th</sup>




### Contact Senator Simcha Felder 's Office

**DISTRICT OFFICE**  
1412 Avenue J,  
Suite 2E  
Brooklyn, NY 11230  
Phone: (718) 253-2015  
Fax: (718) 253-2030  
[map](#)

**ALBANY OFFICE**  
809 Legislative Office Building  
Albany, NY 12247  
Phone: (518) 455-2754  
Fax: (518) 426-6931  
[map](#)

**2ND DISTRICT OFFICE**  
4623 16th Avenue  
Brooklyn, NY 11219  
Phone: 718-484-3216  
Fax: 718-253-2030  
[map](#)

**EMAIL ADDRESS:**  
felder@nysenate.gov



# NYS DOH Proposed Reg + NY State Register, Emergency Proposal (EP)

## Proposed Regulations

### NEW YORK STATE DEPARTMENT OF HEALTH

The regulatory process in the State of New York is governed primarily by Article 2 of the State Administrative Procedure Act (SAPA). This process is administered in the Department of Health by the Regulatory Affairs Unit.

To initiate a regulatory proposal, SAPA requires submission of a Notice of Proposed Rulemaking to the Secretary of State for publication in the [New York State Register](#). If no public hearing is required, the notice must precede adoption by at least 60 days (45 days for revised rulemaking). Publication by the Secretary of State is the primary means of giving notice of proposed actions. However, any person or entity may file a standing request to receive notices from the Department directly.

If the text of the proposed notice exceeds 2,000 words, only a description of the subject purpose or substance of the rule will be published in the [New York State Register](#). Similarly, if the text of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and/or the Job Impact Statement exceeds 2,000 words a summary is required. To ensure the widest possible and most timely outreach, in conjunction with submission to the Secretary of State, the Department will post the complete version of all regulatory notices at this website including those exceeding 2,000 words.

These postings are equivalent to the corresponding official regulatory notices which are published in the [New York State Register](#). However, the Compilations of [Title 10](#) and [Title 18](#), which are located elsewhere in this website, are a current copy intended for informational use only. These compilations, although as accurate as possible, do not constitute an "official" copy. The "official" copy of the regulation is only available from [Thomson Reuters](#).

Questions or comments on the material posted at this website should be directed to:

New York State Department of Health  
Bureau of Program Counsel, Regulatory Affairs Unit  
Corning Tower, Empire State Plaza, Rm. 2438  
Albany, New York 12237-0031  
Phone: (518) 473-7488  
FAX: (518) 473-2019  
[regsqa@health.ny.gov](mailto:regsqa@health.ny.gov)  
Attention: Katherine Ceroalo

Questions or comments: [regsqa@health.ny.gov](mailto:regsqa@health.ny.gov)

#### Proposed Rule Making

Publication Date	Comment Period Expiration	
01/05/2022	03/07/2022	<a href="#">Amendment of Section 505.3(d)(2) of Title 18 NYCRR (Prescription Refills)</a>
12/15/2021	02/14/2022	<a href="#">Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)</a>
12/15/2021	02/14/2022	<a href="#">Amendment of Section 2.60 of Title 10 NYCRR &amp; Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)</a>
12/15/2021	02/14/2022	<a href="#">Amendment of Section 415.3 of Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities)</a>

## New York State Register

December 15, 2021/Volume XLIII, Issue 50

KEY: (P) Proposal; (RP) Revised Proposal; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal


Individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website ([www.dos.ny.gov](http://www.dos.ny.gov))

### Rule Making Activities

#### Financial Services, Department of

- 1 / Financial Statement Filings and Accounting Practices and Procedures; Risk-Based Capital (A)
- 2 / Debt Collection by Third-Party Debt Collectors and Debt Buyers (P)

#### Health, Department of

- 4 / Prevention of COVID-19 Transmission by Covered Entities (EP)
- 8 / Investigation of Communicable Disease; Isolation and Quarantine (EP)
- 10 / Face Coverings for COVID-19 Prevention (EP) 
- 12 / Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes (NH's) and Adult Care Facilities (ACF's) (EP)

#### Public Service Commission

- 14 / Submetering of Electricity (A)
- 15 / Submetering of Electricity and Waiver Request (A)
- 16 / Petition for Waiver of Cable Television Franchise Provisions (A)
- 16 / Request for CPCN and a Lightened Regulatory Regime (A)
- 16 / Motion for Waiver (A)
- 16 / Transfer of Street Lighting Facilities (A)
- 17 / Notice of Intent to Submeter Electricity and Request for Waiver (P)
- 17 / Implementation of the Host Community Benefit Program (P)
- 17 / Notice of Intent to Submeter Electricity (P)
- 18 / Implementation of the Host Community Benefit Program (P)
- 18 / Notice of Intent to Submeter Electricity (P)
- 18 / New York City's Proposal to Procure Tier 4 Renewable Energy Certificates (P)
- 19 / Implementation of the Host Community Benefit Program (P)
- 20 / Transfer of Street Lighting Facilities (P)
- 20 / Submetering of Electricity and Waiver Request (P)
- 20 / Notice of Intent to Submeter Electricity (P)

#### Hearings Scheduled for Proposed Rule Makings / 22

#### Action Pending Index / 23

#### Securities Offerings

73 / State Notices

# NYS Office of Mental Health

## Establishing Masking Program in its Facilities - No Basis in LAW



### Office of Mental Health

#### EMERGENCY RULE MAKING

#### Covid-19 Masking Program

**I.D. No.** OMH-40-21-00007-E

**Filing No.** 1267

**Filing Date:** 2021-12-15

**Effective Date:** 2021-12-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 556 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.07, 7.09 and 31.04

**Finding of necessity for emergency rule:** Preservation of public health and general welfare.

**Specific reasons underlying the finding of necessity:** The immediate adoption of this rule is necessary for the preservation of health, safety, and welfare.

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins' Coronavirus Resource Center, as of July 14, 2021, there have been over 188 million cases and over 4 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's facilities, it is imperative that these facilities facilitate the appropriate masking of their staff. Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect the residents of New York's facilities.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

**Subject:** Covid-19 Masking Program.

**Purpose:** To implement Covid-19 Mask Program.

**Text of emergency rule:** A new Part 556 titled COVID-19 Mask Requirement, is added to read as follows:

*556.1 Background and Intent.*



# NYS Agencies Are Making Covid Regulations With No Basis in LAW ...except for 1

January 26, 2022  
Vol. XLIV  
Issue 4  
Book 1 of 2

DEPARTMENT OF STATE  
Division of Administrative Rules

## NEW YORK STATE REGISTER

### CHILDREN AND FAMILY SERVICES, OFFICE OF

CFS-36-21-00010-EP	09/08/22	Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act	Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act
CFS-52-21-00002-EP	12/29/22	To establish minimum standards to control the spread of COVID-19	To establish minimum standards to control the spread of COVID-19
CFS-52-21-00003-EP	12/29/22	To establish minimum standards to control the spread of COVID-19 at residential congregate programs.	To establish minimum standards to control the spread of COVID-19 at residential congregate programs.

### EDUCATION DEPARTMENT

EDU-44-21-00008-EP	11/03/22	Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations	To ensure greater access to immunizations against COVID-19, as permitted by Education Law § 6909.
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### HEALTH, DEPARTMENT OF

HLT-50-21-00001-EP	12/15/22	Prevention of COVID-19 Transmission by Covered Entities	To require covered entities to ensure their personnel are fully vaccinated against COVID-19 subject to certain exemptions.
HLT-50-21-00002-EP	12/15/22	Investigation of Communicable Disease; Isolation and Quarantine	Control of communicable disease.
HLT-50-21-00003-EP	12/15/22	Face Coverings for COVID-19 Prevention	To control and promote the control of communicable diseases to reduce their spread.

### MENTAL HEALTH, OFFICE OF

OMH-40-21-00007-EP	10/06/22	COVID-19 Masking Program	To implement a COVID-19 mask program
OMH-43-21-00002-EP	10/27/22	COVID-19 Vaccination Program	To implement a COVID-19 vaccination program in OMH Operated or Licensed Hospitals

### LABOR, DEPARTMENT OF

LAB-34-21-00002-EP	11/17/22	New York Health and Essential Rights Act (NY HERO Act)	Airborne Infectious Disease Exposure Prevention Standard
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Labor's Regulation seems to be Based on a Law – but is it IN LINE with ALL existing Federal and State Laws ?

# NYS DOH → UTILIZING SAPA

## Turning Emergency Regulation into a *PERMANENT* Binding Rule

Face Coverings for COVID-19 Prevention

Effective date: 11/24/21

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be **effective upon filing with the Secretary of State**, to read as follows:

Subpart 66-3 is hereby repealed.

### Compliance Schedule:

**The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.**

### Compliance Schedule:

**The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.**

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to **be effective upon publication of a Notice of Adoption** in the New York State Register, to read as follows:

Subpart 66-3 is hereby repealed.

# PROGRESSION OF NYS DOH 10 NYCRR 2.60

1.

Face Coverings for COVID-19 Prevention

Effective date: 8/27/21

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.

Face Coverings for COVID-19 Prevention

Effective date: 11/24/21

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

3.



KATHY HOCHUL  
Governor

Department  
of Health

MARY T. BASSETT, M.D., M.P.H.  
Acting Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

Commissioner's Determination on Indoor Masking Pursuant to 10 NYCRR 2.60

December 10, 2021

Pursuant to [10 NYCRR 2.60](#), I hereby issue the following determination, which includes findings of necessity, to support the face masking/covering requirements set forth below, effective December 13, 2021:

## When do the new requirements go into effect?

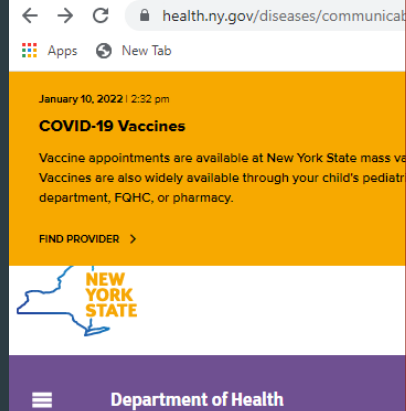
The new requirements go into effect at 12:01 a.m. on Monday December 13, 2021 through January 15, 2022, at which time the State will re-evaluate next steps.

## Do the new requirements (via the **December 10 Commissioner's Determination**) supersede the previous requirements (the **August 27 Commissioner's Determination**) on Indoor Masking?

Yes. This determination supersedes the August 27, 2021 determination that required face masks in certain settings such as healthcare settings, schools, correctional facilities and while on public transport or in transportation hubs. These settings are all still covered under the current masking determination.

You can read the [State Health Commissioner's December 10, 2021 Determination Letter](#).

# CDC N95 INTERIM GUIDANCE + NYSDOH POSITION STATEMENT



### 3. Neither N95 respirators nor surgical masks provide complete protection against infection from the influenza virus.

- o Healthcare workers must be thoroughly educated on the benefits and limitations of N95 respirators and surgical masks and how to use them most effectively.
- o Special care needs to be taken that N95 respirator use does not result in individuals becoming lax about other infection control issues.
- o The interim guidance begs the question of why N95 respirators are not recommended for protection against seasonal flu if they are believed to be the prudent choice, resulting in an inconsistent message to healthcare workers and an inaccurate public perception of the risk of exposure.

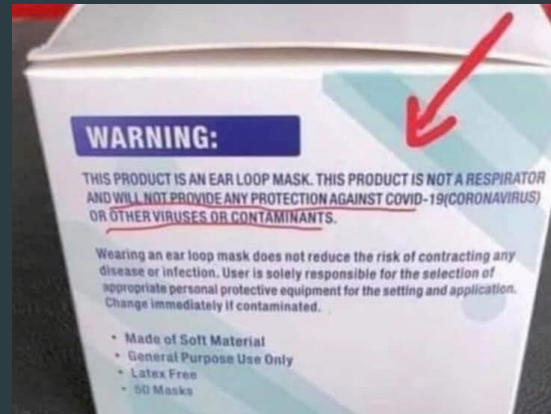
Home Page > Influenza Information for Health Care Providers > N95 Interim Guidance: NYSDOH Position Statement

## N95 Interim Guidance: NYSDOH Position Statement

1. DOH has a number of concerns about CDC's interim guidance on N95 respirator use by healthcare workers during a pandemic, including the lack of a solid evidence base for the recommendations, the possible adverse impact that focusing on respiratory protection will detract from other, more important infection control measures, and the difficulties with stockpiling sufficient N95 respirators and fit testing all staff who would use them.

- o As with other aspects of federal pandemic influenza recommendations with which DOH is not in complete agreement (i.e. current antiviral and vaccine prioritization schemes), DOH will incorporate this interim guidance into the state pandemic planning effort but will continue to raise these concerns to the federal government to influence subsequent updates of the federal guidance.
- o We recognize that the guidance is labeled as "interim" and thus may change, particularly if epidemiological data from a true pandemic becomes available showing use of N95 respirators is not necessary.
- o We are asking hospitals to relay their specific concerns regarding the guidance to the Department, and we will raise them with CDC.

2. It is important for healthcare providers to have NIOSH-approved N95 respirators available for all employees who will be working in high risk situations—such as performing intubation on a suspected or confirmed pandemic flu patient—and surgical masks for all others involved in direct care of a pandemic flu patient.



**INEXCUSABLE CONTRADICTION**  
DOH admits that masks don't work but continue to force our children to wear them without breaks

## Why were "mask breaks" eliminated for our School Children?

December 10, 2021

NYSDOH Commissioner Mary Bassett issues an extension of Determination 10NYCRR2.60 adding **Indoor Masking** For NYS and specifically

**ELIMINATE MASK BREAKS FOR ALL SCHOOL CHILDREN**

Since the start of the outbreak the "mask breaks" were always permitted and deemed **NECESSARY** in a K - 12 School setting.



**DOH Commissioner Bassett - The CDC Director & Dr. Fauci just said that MASKS DO NOT WORK!**

**why are you requiring it for our kids?**

[https://www.health.ny.gov/diseases/communicable/influenza/n95\\_interim\\_guidance.htm](https://www.health.ny.gov/diseases/communicable/influenza/n95_interim_guidance.htm)

<https://regs.health.ny.gov/volume-title-10/content/section-260-face-coverings-covid-19-prevention>

**JUST AS THE NYS DOH STARTED THE PROCESS  
TO MAKE ITS TEMPORARY RULES  
PERMANENT**

**SIMULTANEOUSLY**

**NYSED  
IS DOING THE SAME THING  
THROUGH SAPA + BOARD OF REGENTS**

# NYSED Updating its Education Policies To Be In Line with DOH Covid Rules ...no basis in LAW



EDUCATION DEPARTMENT			
*EDU-20-20-00008-ERP	02/14/22	Addressing the COVID-19 Crisis	To provide flexibility for certain regulatory requirements in response to the COVID-19 crisis
EDU-08-21-00002-RP	02/24/22	The Definition of the Term "University"	To clarify and broaden the definition of the term "university"
EDU-17-21-00011-RP	04/28/22	Education Law 310 Appeals to the Commissioner and Initiation Conduct of Proceedings for the Removal of School Officers	To make technical changes and other clarifying amendments to section 310 appeal procedures and requirements
EDU-21-21-00009-RP	05/26/22	School Counselor Bilingual & Supplementary Bilingual Education Extension & Registration Requirements	To create the bilingual education extension, supplementary bilingual education extension, and registration requirements for programs leading to the bilingual education extension for initial and professional school counselor certificates
EDU-39-21-00001-EP	09/29/22	Technical amendments relating to the School Safety and Educational Climate (SSEC) reporting system.	To make technical corrections rrelating to the SSEC reporting system.

NYS Register/December 15, 2021			Action Pending Index
Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>EDUCATION DEPARTMENT</b>			
EDU-39-21-00008-EP	09/29/22	Flexibility for accountability requirements in response to the COVID-19 crisis.	To provide flexibility for accountability requirements in response to the COVID-19 crisis.
EDU-39-21-00009-P	09/29/22	General Unprofessional Conduct Provisions for the Design Professions and Continuing Education Requirements for the Profession.	To conform regulations with the requirements of Chapter 160 of the Laws of 2020 and to make technical corrections.
EDU-39-21-00010-P	09/29/22	Licensure Examination, Licensure by Endorsement and Continuing Education Requirements in the Profession of Pharmacy	To provide flexibility in determining acceptable licensure examinations and to add compounding continuing education requirements
EDU-39-21-00011-P	09/29/22	Removing References to Regional Accreditation.	To remove references to "regional accreditation" in the Rules of the Board of Regents and Commissioner's regulations.
EDU-39-21-00012-P	09/29/22	Prohibits schools from filing a law suit against parents or guardians for unpaid meal fees.	To implement and conform Commissioner's Regulations according to Chapter 315 of the Laws of 2021.
EDU-44-21-00008-EP	11/03/22	Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations	To ensure greater access to immunizations against COVID-19, as permitted by Education Law § 6909.
EDU-44-21-00009-P	11/03/22	Removing face-to-face instruction requirement for the Dignity For All Students Act (DASA) Training.	To remove the face-to-face instruction requirement for DASA training.
EDU-48-21-00008-P	02/17/23	Special education impartial hearing officers and the special education due process system procedures.	To address volume of special education due process complaints in the New York City due process system
EDU-48-21-00009-P	12/01/22	Licensure of Psychologists.	To conform New York State's licensure requirements with national standards and create a pathway for licensure by endorsement.
EDU-48-21-00010-P	12/01/22	Definition of the term "year of experience" for permanent or professional certification.	To streamline the definition of "year of experience" for permanent or professional certification.
EDU-48-21-00011-P	12/01/22	School districts' exemption from the establishment of an internal audit function.	To align the student enrollment number for eligibility for such exemption with the applicable statute.
EDU-48-21-00012-EP	12/01/22	Annual visitation of voluntarily registered nursery schools and kindergartens.	To extend flexibility for the annual visitation of voluntarily registered nursery schools and kindergartens to the 2021-2022 SY.
EDU-48-21-00013-P	12/01/22	Records retention and disposition schedules	To revise records retention and disposition schedule LGS-1 and to remove superseded disposition schedules.



New York State  
EDUCATION DEPARTMENT  
BOARD OF REGENTS

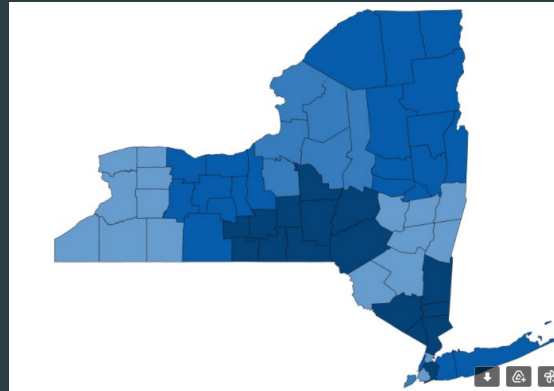
# BOARD OF REGENTS CONTROLS NYSED POLICY

The Regents are responsible for the general supervision of all educational activities within the State, presiding over The University and the New York State Education Department. The Regents are organized into standing committees, subcommittees and work groups whose members and chairs are appointed by the Chancellor.

## Leadership

CHANCELLOR | Lester W. Young, Jr.  
VICE CHANCELLOR | Josephine Victoria Finn

- BOARD SITS 17 MEMBERS
- ELECTED BY STATE LEGISLATURE
- REGENTS SERVE 5 YEAR TERMS
- UNSALARIED, REIMBURSED FOR TRAVEL + EXPENSES



## 2022 Regents Meeting Dates

- February 14 - 15 (Monday and Tuesday)
- March 14 - 15 (Monday and Tuesday)
- April 11 - 12 (Monday and Tuesday)
- May 16 - 17 (Monday and Tuesday)
- June 13 - 14 (Monday and Tuesday)
- July 11 - 12 (Monday and Tuesday)
- August - Recess
- September 12 - 13 (Monday and Tuesday)
- October 3 - 4 (Monday and Tuesday)
- November 14 - 15 (Monday and Tuesday)
- December 12 - 13 (Monday and Tuesday)

<https://www.regents.nysed.gov/>

<https://www.regents.nysed.gov/meetings/dates>

<http://www.nysed.gov/policy-guidance>

# BOARD OF REGENTS AUTHORITY + PURPOSE

IS NYSED USING  
TWITTER FOR  
PUBLIC NOTICE?



## Summary of Board of Regents Authority for Quality Assurance in Higher Education

SOURCE	AUTHORITY	PURPOSE
Education Law 201	Regents Purpose	- encourage and promote education, visit and inspect institutions
Education Law 207	Regents Legislative Power	- determine educational policies and establish rules relating to education
Regents Rule 13.1	Commissioner's Authority	- by extension of E.L. 207, Regents authorized the Commissioner to promulgate regulations governing the registration of courses of study
Education Law 210	Regents Authorized Activities	- register domestic and foreign institutions in terms of New York standards
Education Law 215	Regents Authorized Activities	- visit, examine into, and inspect any institution; require reports, as often as desired; suspend the charter or any of the rights and privileges of an institution
Education Law 216	Regents Authorized Activity	- incorporate any university, college...or other institution or association...for the promotion of...education in any way
Education Law 237	Regents Responsibility	- master planning for higher education in New York State

CAUTION expressed by Court in Moore vs. Board of Regents, 1978:

While upholding the Regents broad policy-making authority over both public and private higher education in the State, the Court cautioned that the Regents could not transform section 207 of the Education Law into an all-encompassing power permitting the Regents' intervention in the day-to-day operation of the institutions of higher education in New York.



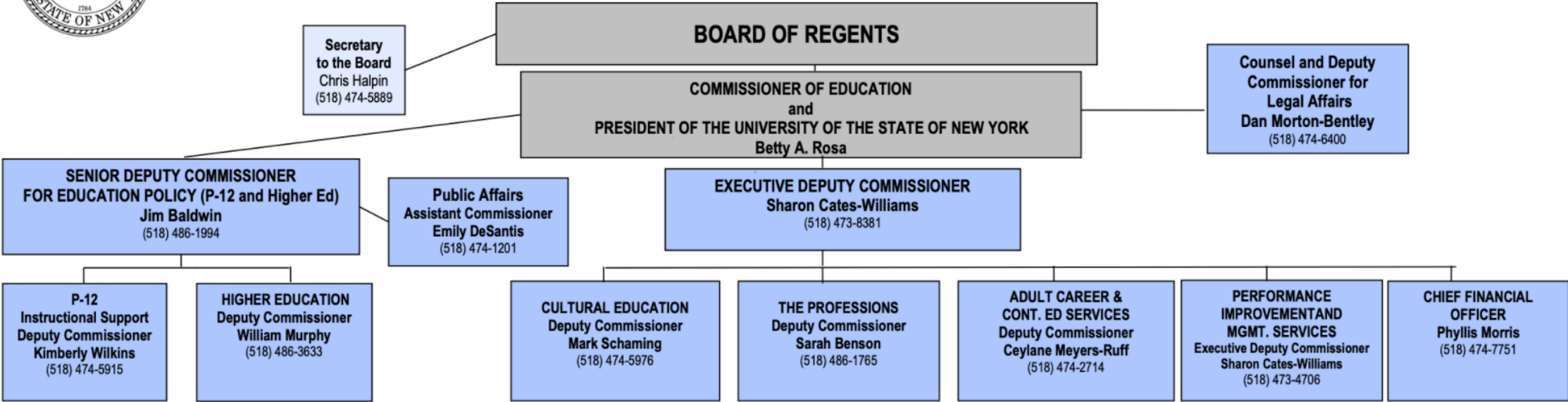
# BOARD OF REGENTS

## Vote on NYSED Policy

September 14, 2021



### NEW YORK STATE EDUCATION DEPARTMENT ORGANIZATION CHART



# BOARD OF REGENTS NYSED POLICY AMENDMENTS

## VOTE FOR PERMANENT ADOPTION - FEB 14-15

### Allowing Nurses to Administer C19 V for Non-Patient Specific Orders



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12242

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Sarah S. Benson *Sarah S. Benson*

**SUBJECT:** Proposed Amendment to Subdivision (a) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations

**DATE:** December 30, 2021

**AUTHORIZATION(S):** *Tom M. G. Scutts*

#### SUMMARY

#### Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education relating to the execution by registered professional nurses of non-patient specific orders to administer COVID-19 immunizations?

#### Reason(s) for Consideration

Review of Policy

#### Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the January 2022 Regents meeting. A copy of the proposed rule and a statement of facts and circumstances justifying emergency action are attached.

#### Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency

BR (CA) 11

rule at the October 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 3, 2021 for a 60-day public comment period.

Because the October emergency action will expire on January 16, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 26, 2022. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

#### Background Information

According to the United States Centers for Disease Control and Prevention (CDC), immunization is one of the best ways to protect infants, children, and adults from a variety of potentially harmful diseases. To increase immunization rates in New York State, Chapter 221 of the laws of 2002 (codified in Education Law §§6909[4] and [5]) was enacted. It authorizes registered professional nurses to administer immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. In 2005, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was adopted, which set forth criteria for administering specifically identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol. In 2019, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was amended to update criteria for administering identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol.

The COVID-19 pandemic continues to be a major public health threat in New York State and, therefore, immunizing persons against COVID-19 remains a top public health priority. To ensure greater access to immunizations against COVID-19, the proposed amendment to subdivision (a) of section 64.7 of the Commissioner's regulations would allow a registered professional nurse to administer COVID-19 immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. The proposed amendment requires that the COVID-19 immunizations be fully approved or authorized for emergency use by the federal Food and Drug Administration (FDA) to immunize persons against COVID-19. It also requires that the COVID-19 immunizations are administered in accordance with applicable FDA requirements and recommendations. These requirements help to ensure that the vaccinations against COVID-19 will be administered as safely as possible.

#### Related Regents Items

October 2021: [Proposed Amendment to Subdivision \(a\) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations](https://www.regents.nysed.gov/common/regents/files/1021ppca1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1021ppca1.pdf>)

#### Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 17, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to timely authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer COVID-19 immunizations in order to enhance the protection of the public health by expanding access to needed COVID-19 immunizations for children and adults during the ongoing COVID-19 pandemic and to ensure that the emergency action taken at the October 2021 meeting remains continuously in effect.

#### Timetable for Implementation

If adopted as an emergency rule at the January 2022 Regents meeting, the emergency rule will become effective January 17, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2022 Regents meeting, after publication of the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2022 meeting, the proposed rule will become effective as a permanent rule on March 2, 2022.

# BOARD OF REGENTS NYSED POLICY AMENDMENTS

VOTE FOR PERMANENT ADOPTION - FEB 14-15

## Allowing Nurses to Administer C19 V for Non-Patient Specific Orders

### Attachment A

#### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527,6902 and 6909 of the Education Law  
Subdivision (a) of section 64.7 of the Regulations of the Commissioner of

Education is amended, to read as follows:

(a) Immunizations.

(1) As used in this subdivision:

(i) Immunizing agents means vaccines and immunoglobulin drugs approved by the federal Food and Drug Administration to provide immunity against diseases caused by the infectious agents described in clauses (a) through (e[d]) of this subparagraph.

(a) In the case of adults, vaccines against the following infectious diseases: Hepatitis A, Hepatitis B, Influenza, Pneumococcus, Diphtheria, Tetanus, Measles, Mumps, Rubella, Varicella, Polio, Pertussis, Human Papilloma Virus, Meningococcus, and Herpes Zoster;

(b) In the case of infants and children under the age of 18, vaccines against the following infectious diseases: Diphtheria, Tetanus, Pertussis, Measles, Mumps, Rubella, Varicella, Haemophilus Influenzae Type b (Hib), Polio, Hepatitis B, Hepatitis A, Influenza, Meningococcus, Pneumococcus, Rotavirus, and Human Papilloma Virus[.].

(c) immunizing agents against an infectious disease that causes an epidemic or a community wide outbreak, provided that such immunizing agents are administered as part of a public health program established by the Commissioner of the Department of Health, a County Commissioner of Health, or a County Public Health Director to

### Attachment B

#### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The COVID-19 pandemic continues to be a major public health threat both statewide and nationally. Accordingly, immunizing persons against COVID-19 remains a top public health priority. The proposed amendment is necessary to ensure greater access to immunizations against COVID-19, as permitted by Education Law §6909. This law allows registered professional nurses to administer immunizations pursuant to non-patient specific orders issued by a licensed physician or a certified nurse practitioner in accordance with the Commissioner's regulations. The proposed amendment to subdivision (a) of section 64.7 of the Commissioner's regulations will permit a registered professional nurse to administer COVID-19 immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. Allowing more registered professionals nurses to administer COVID-19 immunizations pursuant to a non-patient specific order and protocol will protect more New Yorkers from this harmful and potentially deadly disease.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full board for adoption as an emergency rule at the October 2021 meeting of the Board of Regents, effective October 19, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the February 2022 Regents meeting.

Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February 2022 meeting, would be March 2, 2022, the date a Notice of Adoption would be published in the State Register. However, emergency adoption is necessary to maximize the potential health benefits of increasing access to COVID-19 vaccinations in New York State.

However, the emergency rule will expire on January 16, 2021. Therefore, a second emergency action is necessary at the January 2022 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement the proposed amendment to authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer COVID-19 immunizations in order to expand access to needed COVID-19 immunizations for children and adults during the ongoing COVID-19 pandemic and to ensure that the emergency action taken at the October 2021 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2022 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period mandated by SAPA for state agency rule making.

# ENTERING A CRITICAL PERIOD OF TIME

## Timeline for Permanent Rule Adoption

December 15  
December 15

NYS DOH 10 NYCRR 2.60  
NYS Register Vol. XLIII, Issue 50

Comment Period Start (60 days)  
Emergency And Proposal (EP)

February 14

NYS DOH Rulemaking

Comment Period Expiration

February 14-15

Board of Regents Meeting

Vote on NYSED Policy Amendments

New York State - Legislative Session Calendar

FEBRUARY 2022						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

2022 Regents Meeting Dates

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- December 12 - 13 (Monday and Tuesday)

FEBRUARY

21-25 - School Closed

February (15)						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

# We Must Act Now To Protect Our Rights



# RESIDENTS OF NYS → TIME TO ACT

## TIME TO ACT

New York State Residents

**GO TO YOUR NEXT SCHOOL BOARD MEETING  
TELL YOUR BOARD TO VOTE TO UNMASK OUR CHILDREN  
MAKE THEM GO ON RECORD**

### *Here's What You Need to Know*

- ▶ School Boards are named as the Responsible Party under your County's Dept of Health Covid School Guidelines – Boards are the ones who voted to adopt the masking and they have the power to modify or remove it.
- ▶ Any Executive Order supersedes the Determination or Regulation of any Agency (remember, Covid school guidelines are from the County DOH). Massapequa BOE vote to make masks optional on 1/20 proved it. The Governor has not filed an Injunction against Nassau County's E.O. or the Massapequa School District. The Governor can't legally withhold state aid to schools, and it would hurt the teachers and staff as well. Call Hochul's Bluff! The Health determination (10 NYCRR 2.60) was illegally extended and will expire. Stand together and Stop Complying – make masking optional.
- ▶ NYSED Commissioner Betty Rosa released a Statement on 1/6 in response to Nassau Cty E.O., at the end she wrote that Boards have to "follow all legal requirements" – YES they do... Boards took an Oath to uphold ALL laws including the US Constitution, NYS Constitution, Bill of Rights, ADA, NYS Human Rights Law, USC Title 21 prohibiting the requirement of medical devices under Emergency Use Authorization (FDA deemed masks as face coverings under EUA).
- ▶ State Agencies (NYSED, NYSDOH) don't make laws, only Regulations limited to their scope of authority. Laws have to be passed in the NYS Assembly and signed by the Governor. THERE IS NO MASKING LAW, that's why Hochul said in December that she can't enforce it and uses NYSED to pressure schools by empty threats of withholding state aid, and using State agencies to pressure businesses.

### **All District Residents have a Right to Speak at a School Board Meeting**

1. Before the start of the BOE meeting SIGN UP to speak. The District Clerk should have a sign up sheet. Usually 3 min is given to talk. This is your time, it helps to come prepared.
2. Make your personal statement, as a parent, grandparent, renter or a taxpayer residing in the school district. And urge the Board to stand up for all of our rights. You don't need to have kids enrolled in order to speak to the School Board.
3. To add a vote to the Agenda, a Member of the Board must make a Motion and it needs to be seconded by another BOE member. The Vote is then added on the Agenda of the next meeting.

## URGENT CALL TO ACTION STOP GOV HOCHUL + NYS DOH / NYS ED POWERGRAB

**DOH + NYSED ARE BYPASSING THE NYS ASSEMBLY TO MAKE  
COVID REGULATIONS PERMANENT  
THROUGH A BACKDOOR REGULATIONS APPROVAL PROCESS**

**Prevention of COVID-19 Transmission by Covered Entities (Schools)  
Investigation of Communicable Diseases; Isolation & Quarantine  
Face Coverings for COVID-19 Prevention**

**WHAT WILL HAPPEN IF THE EMERGENCY HEALTH DETERMINATIONS  
BECOME PERMANENT RULES ON THE NEW YORK STATE REGISTER?**

- ▶ IF ACCEPTED + FILED THE RULES WILL HAVE THE FULL WEIGHT OF THE LAW AFFECTING 19 MILLION NYS RESIDENTS
- ▶ THE APPOINTED DOH COMMISSIONER WILL HAVE FULL UNCHECKED POWER AND AUTHORITY TO CREATE HEALTH REGULATIONS THAT VIOLATE OUR CONSTITUTIONAL RIGHTS
- ▶ THE UNELECTED DOH WILL CIRCUMVENT THE LEGISLATIVE BRANCH OF STATE GOVERNMENT AND MAKE THE ASSEMBLY OBSOLETE IN PASSING HEALTH LAWS

**COMMENT PERIOD ENDS 2/14/2022  
INSTRUCTIONS TO COMMENT ARE ON THE BACK AND  
HERE <https://www.peoplescoalitionforny.org/sapa>**

December 15, 2021  
Vol. XLIII  
Issue 50

DEPARTMENT OF STATE  
Division of Administrative Rules

NEW YORK STATE  
**REGISTER**

LOOK UP HEALTH AND EDUCATION  
RULES LISTED FOR PERMANENT  
ADOPTION IN THE 12/15/2021  
NEW YORK STATE REGISTER:  
TO DOWNLOAD THE REGISTER  
GO TO (SCROLL DOWN):  
<https://dos.ny.gov/state-register>

# EXIT YOUR ECHO CHAMBER

***WE WILL NOT BE IGNORED BY THE MEDIA***

**EMAIL + TEXT YOUR FRIENDS**

**IF NEWS OUTLETS IGNORE US → THEN GO TO THEM**

- ▶ INCREASE AWARENESS
- ▶ SHOW SUPPORT FOR BLAKEMAN #ISTANDWITHBRUCE
- ▶ **ASK POLITICIANS TO STAND UP FOR OUR RIGHTS**
- ▶ EDUCATE READERS
- ▶ BE POLITE AND DON'T GET BLOCKED

**COMMENT ON >>** NEWS ORGANIZATIONS  
COMMUNITY GROUPS  
LEGISLATORS' SOCIAL MEDIA

NEWSDAY    NEWS 12    NY POST    LOCAL PAPERS  
PATCH.COM    PARENT GROUPS  
LEGISLATORS    NEWS PERSONALTIES

# TIPS FOR SOCIAL MEDIA COMMENTS

- ▶ DIRECT TO THE ACCOUNT OWNER → TAG or @
- ▶ TIE INTO POST'S TOPIC IF POSSIBLE
- ▶ INTRODUCE NEW INFORMATION TO EDUCATE READERS
- ▶ ASK WHY THE NEWS ORGANIZATION ISN'T COVERING AN EVENT
- ▶ ASK THE NEWS ORG TO STOP BIAS, FEAR MONGERING AND GIVE CONTEXT TO INFORMATION
- ▶ END WITH A HASHTAG #ISTANDWITHBRUCE #PARENTCHOICE #SCHOOLCHOICE
- ▶ USE YOUR DESKTOP COMPUTER: OPEN TABS, COPY + PASTE YOUR COMMENTS QUICKLY



@news12 this is your 5<sup>th</sup> post about the storm...can you cover Gov Hochul's overreach? She doesn't have the legal authority to issue mandates like Gov Cuomo did - his broad powers were lawfully terminated #parentchoice



# YOUR COMPLIANCE IS KEEPING IT ALIVE

*You Don't Need an Executive Order to Ignore a Mandate*

## NYS COUNTIES NOT ENFORCING THE INDOOR MASKING MANDATE:

- Cattaraugus
- Chautauqua
- Dutchess
- Genesee
- Greene
- Herkimer
- Livingston
- Madison
- Nassau
- Niagara
- Onodaga
- Ontario
- Orange
- Orleans
- Oswego
- Putnam
- Renssalaer
- Rockland
- Saratoga
- Steuben
- Suffolk and eight others

# STAY INFORMED WITH UP TO DATE INFORMATION FOLLOW THE PEOPLE'S COALITION FOR NEW YORK

- Upcoming Calls to Action
- In-Depth Information
- Informative Resources
- <https://www.peoplescoalitionforny.org/home>



## **OPPOSE THE VOTING RIGHTS ACT BILL AKA THE NASA BILL**

This bill already passed in the house of reps and has moved to the senate. If this passes in the senate, this means *anyone can vote without voter ID*. Our **CONSTITUTIONAL RIGHTS** regarding elections that our foundational fathers set-up are **NULL and VOID** if this bill passes.



1. Go to [www.senate.gov](http://www.senate.gov) THEN *hover over Senators* in the navigation and *click CONTACT* to find your senator
2. Call the Washington DC number that is listed for your senator
3. Tell your senator that you **OPPOSE** the NASA bill and hope that they **OPPOSE** the NASA bill too
4. Ask your senator to respond back - ***THIS IS IMPERATIVE!*** - Leave a message with your *phone number, email, and name*

# BOARDS CAN CALL A VOTE AT ANYTIME

## *The E.O. Gave BOE's the Opportunity but it's Their Right*

- Boards are named the Responsible Party in the County DOH Covid Guidelines
- As the Responsible Party, Boards have the authority to implement and modify the Covid guidelines → it's their Right to vote on the Mandates
- To place a Vote on the Agenda, 1 board member must make a Motion and another member must Second the Motion. The vote takes place at the next meeting.

### **ALL MUST REMEMBER**

- THE U.S. CONSTITUTION IS THE SUPREME LAW OF THE LAND
- NO LAW OR E.O. CAN VIOLATE THE U.S. CONSTITUTION
- POWERS NOT GIVEN TO THE STATE ARE RETAINED BY THE PEOPLE
- CDC GUIDANCE IS NOT LAW, MANDATES ARE NOT LAWS
- COMPLIANCE BY UNLAWFUL MANDATE IS COERCION

### **ENFORCEMENT OF UNLAWFUL MANDATES IS A VIOLATION OF**

#### **U.S. CONSTITUTION**

**9<sup>th</sup> AMENDMENT- ENUMERATION OF RIGHTS**

**14<sup>th</sup> AMENDMENT-NO LAW MAY ABRIDGE PRIVILEGE OR DEPRIVE DUE PROCESS, OR DENY EQUAL PROTECTION OF LAWS**

**5 U.S. CODE 7311 LOYALTY AND STRIKING**

**18 U.S. CODE 241 CONSPIRACY AGAINST RIGHTS**

**18 U.S. CODE 242 DEPRIVATION OF RIGHTS**

**21 U.S. CODE 360bbb-3 CONDITIONS OF EUA MEDICAL DEVICE**

# POLITICIANS NEED TO HEAR FROM US

SCAN ME



FIND MY NYS  
ASSEMBLYMEMBER

SCAN ME



FIND MY NYS  
SENATOR

## Current NYS Legislations

as of 12/30/2021

### Oppose

**A08398**

Limits exemptions from immunization requirements by local governments and private entities to medical exemptions; repeals religious exemptions for certain post-secondary students.  
*Sponsor: Dinowitz*

**A00416**

Relates to the removal of cases, contacts and carriers of communicable diseases that are potentially dangerous to the public health.  
*Sponsor: Perry*

**A00279/ S00075-A**

Requires a health care provider who administers an immunization to a person nineteen years of age or older to report such information to the department of health or to a regional health information organization unless such person objects to such reporting.  
*Sponsors: Gottfried, Hoylman; 17 Co-Sponsors: McDonald, Dinowitz, Paulin, etc.*

**A08378**

Authorizes the commissioner of health to develop and supervise the execution of a program of immunization against COVID-19 for purposes of state aid to schools; requires immunization against COVID-19 for attendance at school.  
*Sponsor: Dinowitz; Co-Sponsors: Steck, Gottfried*

**A02255/ S01653**

Relates to requiring immunization information systems to record data on the number of vaccine exemptions reported by each health care provider.  
*Sponsors: Dinowitz, Hoylman*

**A03192/ S03041**

Permits any child who is at least fourteen years of age to have administered to himself or herself, regardless of parental consent, certain immunizations required or recommended by law.  
*Sponsor: Fahy, Kreuger; Co-Sponsors: Dinowitz, Magnarelli, Hevesi, etc.*

### Support

**S4376/A4269**

Prohibits mandatory Covid-19 vaccination  
*Sponsors: Oberacker, Salk*

**S3659/A5277**

Restores religious exemptions to religious and private schools  
*Sponsor: Ortt, DiPietro*

**S5157/A7042**

Restores the right to sue for vaccine injuries  
*Sponsors: Lanza/DiPietro*

**S6107/A1894**

Restores a physician's authority to write medical exemptions  
*Sponsors: Plumbo, Santabarbara*

**S2677**

Restores the religious exemptions to public schools  
*Sponsor: Gallivan*

Find Your Senator  
<https://www.nysenate.gov/find-my-senator>

Find Your Assemblyperson <https://nyassembly.gov/mem/search/>



\*Bills that begin with an "A" - contact your assemblyperson • Bills that begin with a "S" - contact your senator

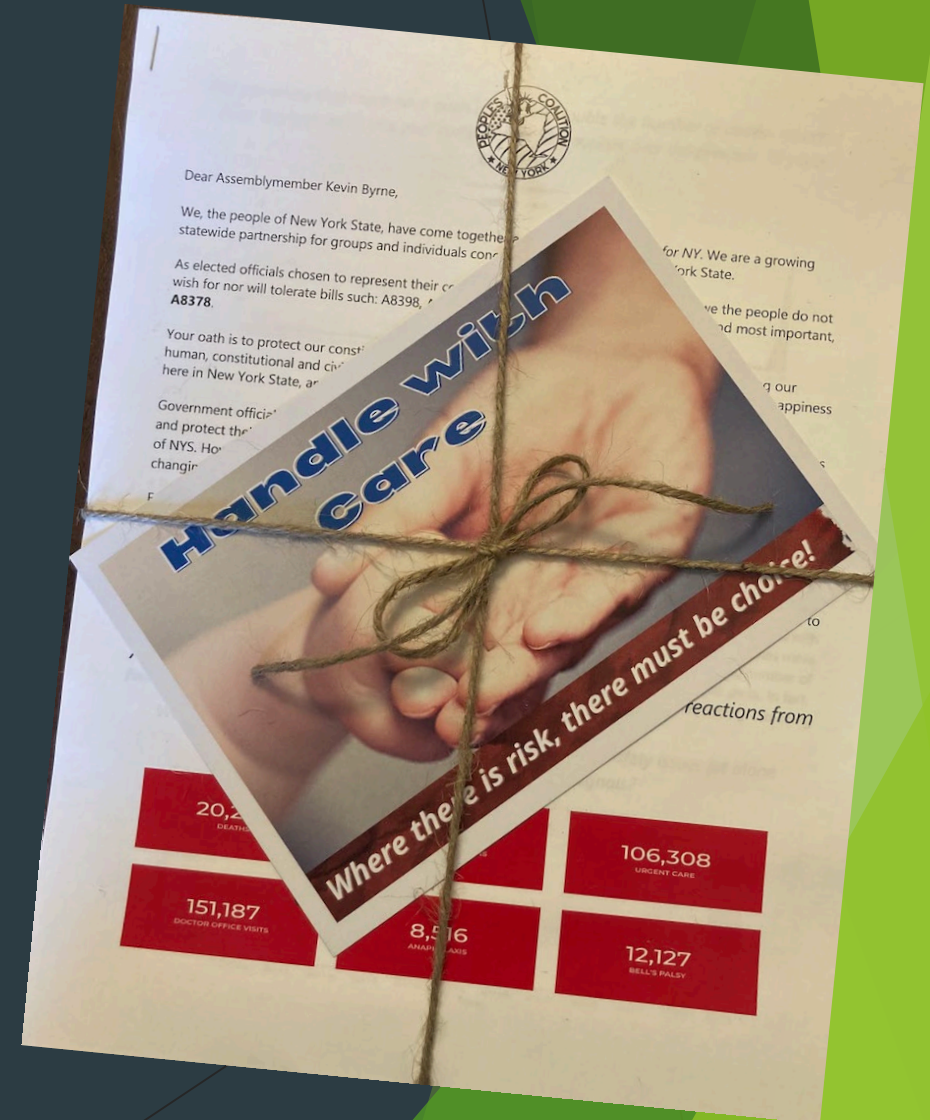
# SIGN THE PETITION >>>

- ▶ PETITION IS ON CHANGE.ORG BUT PLEASE SHARE FROM THE PEOPLES COALITION WEBSITE

<https://www.peoplescoalitionforny.org/calls-to-action>

- ▶ VIDEO LINK FOR PETITION

<https://www.peoplescoalitionforny.org/home>



# PREPARE + ORGANIZE

- ❑ Know Your Rights + Stay Informed
- ❑ Organize with like-minded people
- ❑ Run for school board
- ❑ Elect new State politicians
- ❑ Ensure Regents make policy within the Law
- ❑ Prepare to Homeschool
- ❑ Constitutional Sanctuary
- ❑ Constitutional Sheriff



# Constitutional Rights of Parents

NEARLY A CENTURY OF CONSISTENCY IN  
THE U.S. SUPREME COURT



# 14<sup>TH</sup> Amendment - Due Process Clause

## Meyer v. Nebraska (1923)

- ▶ The U.S. Supreme Court asserted that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.'
- ▶ 262 U.S. 390, 399, 401

## Troxel v. Granville (2000)

- ▶ June 5, 2000 - The U.S. Supreme Court declared that "It cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."
- ▶ 530 U.S. 2000, or 120 S.Ct. 2054, or also 147 L.Ed.2d 49

## Washington v. Glucksberg (1997)

- ▶ The Fourteenth Amendment prohibits the state from depriving any PERSON of 'life, liberty, or property, without due process of law.' The Court has long recognized that the Due Process Clause 'guarantees more than fair process.'
- ▶ 521 U.S. 702, 719



# 14<sup>TH</sup> Amendment - Due Process Clause

## Reno v. Flores (1993)

- ▶ The Due Process Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.
- ▶ 507 U.S. 292, 301302

## Elrod v. Burns (1976)

- ▶ The Court has held that the deprivation of fundamental liberty rights 'for even minimal periods of time, unquestionably constitutes irreparable injury.
- ▶ 96 S.Ct. 2673; 427 U.S. 347

# Claim Against An Individual State Actor

## Estate of Macias v. Lopez (1983)

In its analysis, the Court outlined the following elements:

1. [the plaintiff] possessed constitutional right's of which (s)he was deprived
2. the acts or omissions of the defendant were intentional;
3. the defendant acted under color of law; and
4. the acts or omissions of the defendant caused the constitutional deprivation.

To establish municipal liability, a plaintiff must show that:

1. [the plaintiff] possessed constitutional right's of which (s)he was deprived
2. the municipality had a policy or custom;
3. This policy or custom amounts to deliberate indifference to [the plaintiff's] constitutional right; &
4. the policy or custom caused constitutional deprivation.

# The Right to Raise your Children is Far More Precious Than Property Rights

Stanley v. Illinois	405 U.S. 645, 651 (1972)
May v. Anderson	345 U.S. 528, 533 (1953)
Skinner v. Oklahoma	316 U.S. 535, 541 (1942)
Meyer v. Nebraska	262 U.S. 390, 399 (1923)

# U.S. Supreme Court Rulings on the Nature of Parental Rights

Pierce v. Society of Sisters	268 U.S. 510, 534535 (1925)
Prince v. Massachusetts	321 U.S. 158 (1944)
Stanley v. Illinois	405 U.S. 645, 651 (1972)
Wisconsin v. Yoder	406 U.S. 205, 232 (1972)
Quilloin v. Walcott	434 U.S. 246, 255 (1978)
Parham v. J. R.	442 U.S. 584, 602 (1979)
Santosky v. Kramer	455 U.S. 745, 753 (1982)

