

Enforcement of OAR 333-019-1015 Masking Requirements in Schools



Oregon is placing a priority on ensuring that every student in Oregon is able to attend school in-person for the entire school year. Students learn best when they are able to attend school in-person. In Oregon, students are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. Universal and correct use of face coverings keeps kids learning in-person, mitigating the spread of COVID-19 and preventing quarantine and school exclusion from exposure to others with COVID-19. The Oregon Department of Education (ODE), the Oregon Health Authority (OHA), the U.S. Centers for Disease Control (CDC) and the American Academy of Pediatrics (AAP) all agree that returning to full-time, in-person learning is best for our children.

State agencies and boards will first work to educate and help support schools to fully comply with the requirements in [OAR 333-019-1015 – Masking Requirements in Schools](#). If schools are unable to obtain compliance or indicate an intent to not comply with the masking requirements, the agencies and boards may consider the following tools to support compliance for the benefit of students and staff.

Oregon Occupational Safety and Health Administration (OROSHA)

There are currently two pathways to enforcement of face covering requirements in schools: [OAR 333-019-1015](#) adopted by OHA, and the Oregon Safe Employment Act (temporary amendment to rule to be adopted by OROSHA).

OAR 333-019-1015 is complaint driven. OROSHA will take the lead on responding to and investigating complaints.

- OHA and ODE will refer complaints to OROSHA for investigation under the [Oregon Safe Employment Act](#).
- OROSHA would enforce under the Oregon Safe Employment Act and penalty structure:
 - The process is complaint driven.
 - **Failure to enforce:** Fine based on serious violations, including an assessment for size of the business in line with the Oregon Safe Employment Act; \$100 to \$2,600.
 - **Willful negligence:** Fine based on size of the business, and would likely be on the higher end because of the larger size of many school districts; \$8,900 to \$126,749.
 - **Highest penalty:** Would be for employers with a willful violation, and having more than 251 employees.
 - **Daily penalty for continued noncompliance:** Could result in a failure to abate the citation with a minimum *\$250* and a maximum *\$12,675*.

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Oregon Health Authority (OHA)

- OHA also has authority to enforce the requirements in [OAR 333-019-1015](#).
 - OHA may rely on OROSHA's investigation and findings to take enforcement action as warranted to secure compliance, including imposing civil penalties.
 - Each separate school building that fails to comply may be considered a separate violation of OAR 333-019-1015 for the purposes of calculating civil penalties up to \$500 per day per school building.

Teacher Standards and Practices Commission (TSPC)

- Licensed educators who fail to obey this rule may face additional penalties. [OAR 584-020-0035](#) (3) *The ethical educator, in fulfilling obligations to the profession, will: (a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty.* There would also be a possible violation of [OAR 584-020-0025](#) (3)(a), related to leadership skills and legal requirements. Substantial deviation from these standards may subject the educator to discipline for gross neglect of duty, per [OAR 584-020-0040](#) (4)(n) & (o).
- Sanctions could range from a letter of reprimand to suspension or revocation depending on severity, willfulness, or frequency of the violation or degree of harm.
- Finally, the Commission would consider the actions of the educator within their scope of authority. If the administrator sufficiently educated staff and visitors on the rule, established and consistently followed a protocol for addressing violations, and adjusted procedures as warranted to ensure compliance, a single incidence of someone roaming around campus without a mask would not likely be conclusive of violation. The questions here would be how the educator dealt with the incident and what they did to prevent it from reoccurring.

District Enforcement

When students falter in consistently and correctly wearing a face covering, center grace and patience and reteach the expectation. Refrain from implementing punitive consequences that deny access to instruction as a result of these challenges. Schools and teams should continually provide instruction and positive reinforcement to help all students adapt to the changes in school facilities while avoiding punitive measures to remind, motivate and reinforce healthy practices.

In the case that a student or family chooses not to wear a face covering for reasons other than medical need or disability, schools should follow district processes to determine how to

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respond, keeping in mind both the responsibility for health and safety of everyone in the school setting and the student's need to access education. Schools may offer an online school option for students and families who choose not to wear a face covering.

Per current OHA rule and guidance, it is acceptable for both fully vaccinated and unvaccinated people to be outdoors without a face covering.

A face shield may be worn instead of a mask if an individual cannot wear a mask for medical reasons. Face coverings are preferred over face shields, as they provide better containment of small respiratory droplets that can be produced while talking.