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DATE: January 28, 2022

TO: Hearing Attendees and Commenters –
Oregon Administrative Rules chapter 333, division 19

- Masking Requirements in Schools
- COVID-19 Vaccination Requirements for Teachers and School Staff

FROM: Brittany Hall, Hearing Officer

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public Comment Period

Hearing Officer Report

Date of hearing: January 24, 2022

Purpose of hearing: To receive testimony regarding the Oregon Health Authority's (OHA) proposed adoption of OAR 333-019-1015 and 333-019-1030 related to requiring the wearing of masks in K-12 schools in Oregon, and requiring teachers and school staff to obtain vaccination against COVID-19, respectively.

In August 2021, OHA issued temporary administrative rules 333-019-1015 and 333-019-1030 in order to control the spread of COVID-19 and reduce hospitalizations in Oregon associated with COVID-19. Wearing face masks and obtaining COVID-19 vaccination are two important strategies that play a role in controlling COVID-19. Under [Oregon Revised Statute 183.335](#), temporary rules cannot be extended past six months. Because under Oregon law, temporary rules cannot be extended, OHA has proposed to adopt these rules as permanent until they are no longer needed as strategies to control spread of disease.

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Comments and testimony received: In [OHA's Notice of Proposed Rulemaking](#) OHA announced that individuals could submit written comments by sending them to OHA's designated email address for receiving such comments, or by fax or mail. In addition, OHA took public testimony at the public hearing that was held on January 24, 2022. OHA received oral testimony from 73 individuals at the public hearing and received

many written public comments. OHA staff have considered the written comments and public testimony received prior to deadline on January 24, 2022, at 5:00 p.m. OHA thanks all Oregonians who provided public comment and appreciates the varied input they have provided to the rulemaking process.

Themes of the testimony and written comments, in no particular order, are summarized below.

- OHA heard concerns from commenters that Oregon is not following the lead of other states in that Oregon is one of few states with a mask requirement.

Agency response: During the course of the COVID-19 pandemic, Oregon has had better outcomes than most other states in the country. Oregon has maintained lower case rates and death rates from COVID-19 than most states and has aligned with other western states on COVID-19 policies, including policies of Washington and California. Oregon has seen high levels of compliance with wearing of masks in accordance with state requirements. Oregonians have also outpaced many other states in obtaining vaccination and as a result has been able to maintain hospital capacity to ensure Oregonians have access to emergency care, even throughout the surges of Delta and Omicron variants. Currently the pediatric hospitalization rate for COVID-19 in Oregon is higher than during other points of the pandemic, though it remains lower than overall U.S. rate. The Oregon rate is rising, as the Omicron surge began here later than in other states. In Oregon we are following the science and the data and continue to believe that for now these rules remain necessary to control COVID-19.

- OHA heard concerns from commenters who believe that wearing masks regularly at school may be affecting the mental health of children.

Agency response: OHA recognizes, hears and acknowledges that some parents have concerns related to their children wearing masks for a prolonged period of time. OHA takes into account many factors, including broad risks and benefits, when making difficult decisions in the interest of the health of the public. The pandemic has affected mental health of children in a variety of ways from general anxiety due to uncertainty of how to meet basic needs, to social isolation. One of the main drivers of student mental health outcomes is disruptions to the predictable routine of school-days, peer interaction, and access to meals, health care, and emotional support. An unpredictable school schedule is also disruptive to family economic stability, and the ability of adults in the household to participate in the workforce. The evidence is clear that the benefits of mask wearing far outweigh any potential risk for children and adults, especially during periods of high rates of community spread (see studies linked below). Universal mask wearing as part of layered mitigation strategies in schools helps prevent transmission of COVID-19 and keeps students learning in person, where they learn best.

- OHA heard concerns from commenters that believe masks may not be as necessary for children as they are not as susceptible to bad outcomes from COVID-19.

Agency response: COVID-19 serious outcomes and deaths are lower in children compared to adults, but COVID-19 is not harmless to children. During this current surge in cases of COVID-19, pediatric hospitalizations are at their highest level of any time during the pandemic. Children can be affected by Post-Acute Coronavirus Syndrome. While deaths in children from COVID-19 are rare, COVID-19 ranks as one of the leading causes of death nationally in this age group. Children are also affected by the loss of caregiving adults or other family members who may be more likely to experience severe illness and death from COVID-19. Masks help protect others in the child's community who may be vulnerable to more severe COVID-19 disease such as grandparents or immunocompromised family members.

- OHA heard concerns from commenters that believe masks can be disruptive to the classroom learning process and a barrier to healthy child development.

Agency response: Universal mask wearing as part of layered mitigation strategies in schools helps prevent transmission of COVID-19 and minimize disruptions to consistent in-person instruction. Universal mask wearing keeps students learning in person, where they learn best. There are no known scientific studies that face masks negatively impact a child's speech and development (<https://healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Do-face-masks-interfere-with-language-development.aspx>). Face masks are not required outside or in non-public places.

- OHA heard concerns from commenters that believe there are studies that masks don't work to prevent the spread of COVID-19 or media outlets reporting that masks don't work to prevent the spread of COVID-19.

Agency response: Universal mask wearing as part of layered mitigation strategies in schools helps prevent transmission of COVID-19 and minimizes disruptions to consistent in-person instruction. Effectiveness has been demonstrated across multiple scientific studies:

- https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html
- <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>
- <https://www.bmj.com/content/375/bmj-2021-068302>

- OHA heard feedback from commenters that believe a mask requirement in schools is still necessary to protect vulnerable individuals such as those who are immunocompromised.

Agency response: OHA agrees that based on the science, masking in school remains an important COVID-19 mitigation strategy, for now, in order to protect all community members, particularly during this latest Omicron surge.

- OHA heard concerns from commenters that believe a broad mask requirement does not recognize the choices of families about whether children wear masks at school.

Agency response: Reducing the spread and burden of communicable disease relies on all of us to work together to implement protections that benefit individuals, as well as the entire community, including those in the community who may be more vulnerable to severe illness or death from disease. Masks are most effective when all individuals in indoor settings are wearing them consistently, acting as source control in the event that an individual has COVID-19 and protecting all individuals who are in close contact. That is why universal masking as part of layered mitigation strategies is important in school settings. Masking, along with other mitigation strategies protect all students, staff and volunteers and support protection of the general community.

- OHA heard concerns from commenters who believe that decisions about COVID-19 mitigation strategies should be made at the local level.

Agency response: OHA is proposing to adopt these rules until they are no longer needed statewide. COVID-19 does not recognize borders and Oregonians do travel between counties. Community spread of COVID-19 remains high in Oregon. OHA expects to lift the statewide restrictions when disease spread lowers significantly over a sustained period of time, available staffed hospital capacity increases, and epidemiologists and pediatric health care professionals agree that statewide policies in schools are no longer needed.

- OHA heard feedback from commenters believe that mask and vaccination requirements in schools have supported schools in staying open for in-person learning.

Agency response: OHA agrees that having the mask requirement in place for schools and requiring school and school-based program staff to be vaccinated have enabled safer in-person learning, and have significantly limited the amount of time students and staff are out sick with COVID-19. Universal mask wearing as part of layered mitigation

strategies in schools helps prevent transmission of COVID-19 and minimizes disruptions to consistent in-person instruction.

- OHA heard concerns from commenters who believe that the rule language is illogical because children are allowed to play sports indoors and engage in performances indoors without a mask.

Agency response: Attending school is a compulsory activity. Participating in indoor sports and performances are voluntary activities and OHA recognizes it may be difficult to wear masks consistently while participating in sports or performing. In addition, while masks are not required for participation in indoor sports and performances, they are strongly recommended especially if other measures to reduce risk of transmission are not possible.

- OHA heard concerns from commenters who believe that requiring masks in schools does not take into account accommodations needed for children with disabilities.

Agency response: OHA's rules require compliance with all federal, state and local disability laws, including providing accommodations under the Americans with Disabilities Act and the Individuals with Disabilities Education Act. OHA recognizes that children with disabilities have a right to accommodations to ensure equitable access to resources and education. In addition, OHA recognizes that teachers, volunteers and other staff are obligated to ensure equitable access. OHA works directly with Oregon Department of Education, districts, schools, community and other organizations to protect health and safety while ensuring access to in-person instruction.

- OHA heard concerns from commenters that believe masks may pose a danger to wearers.

Agency response: There are numerous scientific studies that prove masks do not deprive users of oxygen or lead to higher levels of carbon dioxide (https://healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Mask-Mythbusters.aspx?_gl=1*17f9xsf*_ga*MTc1NTY3MTI4My4xNjQwMjlyNTAw*_ga_FD9D3XZVQQ*MTY0MzIxMTgwOC4yLjAuMTY0MzIxMTgwOC4w&_ga=2.95677150.334903773.1643211809-1755671283.1640222500). Prolonged masking is safe and is common in many occupations to protect workers. This includes healthcare workers (e.g., performing prolonged surgery), construction (e.g., protection against dust and other particles) and environmental workers (e.g., removing mold).

- OHA heard concerns from commenters who believe that mask and vaccine mandates may have created a shortage of teachers and volunteers in the school

system.

Agency response: OHA has no data that indicates current worker shortages are due to mask or vaccine requirements. Across the economy there are worker shortages. In order to adequately protect students and staff, school masking and vaccination requirements are very important at this time.

- OHA heard recommendations from commenters that natural immunity, not just vaccine-induced immunity should be taken into account in the vaccine requirement rule.

Agency response: Studies show that COVID-19 vaccine in addition to prior COVID-19 infection provides protection from hospitalization and death resulting from COVID-19. The risk of hospitalization and death from COVID-19 is [extremely rare](#) in individuals who are fully vaccinated. Even as cases have risen sharply during the current surge, hospitalizations and deaths among the fully vaccinated individuals have remained low. In addition, there is no routine method for determining level of protection following recovery from COVID-19 using antibody testing as this only examines one measure of an individual's immune response.

- OHA heard concerns from commenters that vaccines may be causing thousands of injuries according to VAERS (Vaccine Adverse Event Reporting System) and therefore should not be required for anyone.

Agency response: VAERS is one of several systems to assess and monitor adverse events from COVID-19 and other vaccinations (<https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/index.html>). From the Centers for Disease Control and Prevention, “VAERS accepts and analyzes reports of possible health problems—also called “adverse events”—after vaccination. As an early warning system, VAERS cannot prove that a vaccine caused a problem. Specifically, a report to VAERS does not mean that a vaccine caused an adverse event. But VAERS can give CDC and FDA important information” (<https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/vaers/index.html>). These reports do not indicate causation of the adverse event from the vaccination but serve to raise issues studied in more depth in the other robust safety monitoring systems.

- OHA heard feedback from commenters recommending that OHA not lift any preventive measures for COVID-19 when the Omicron variant is still prevalent in communities and hospital capacity is low.

Agency response: OHA agrees that right now, during the Omicron surge, that the masking and vaccination requirements continue to be necessary to slow and stop

spread of COVID-19. OHA regularly reviews research and data on prevention and control of COVID-19. OHA intends to lift COVID-19 control requirements when they are no longer necessary statewide.

- OHA heard concerns from commenters there are no specific metrics for rescinding or suspending the rule so the public does not know when to expect the requirements to be lifted.

Agency response: OHA can rescind the masking requirements if it believes the rule or parts of the rule are no longer necessary to control COVID-19. OHA will consider at least, the following information in making that decision:

- (a) The degree of COVID-19 transmission, as measured by case rates, percent positivity, and any other objective metrics indicative of current or potential transmission in Oregon.
- (b) COVID-19 related hospitalizations and deaths.
- (c) Disparate COVID-19 related health impacts on communities of color and tribal communities.
- (d) Guidance from the U.S. Centers for Disease Control and Prevention.
- (e) Proportion of the population partially or fully vaccinated.

In making a decision whether to terminate the vaccination requirement, OHA would consider similar information.