

**BOARD OF EDUCATION OF
CARROLL COUNTY,
125 N. Court Street
Westminster, Maryland 21157**

* **IN THE**
* **CIRCUIT COURT**
* **FOR**
* **CARROLL COUNTY**

and

**TARA A. BATTAGLIA
1602 Auburn Court
Westminster, Maryland 21157**

* **Case No.**

and

**DONNA M. SIVIGNY
1141 Ridge Road
Finksburg, Maryland 21048**

C-06-CV-22-000055

Petitioners

v.

**MARYLAND STATE BOARD
OF EDUCATION**

**Serve on: Clarence C. Crawford,
President
200 W. Baltimore Street
Baltimore, Maryland 21201**

**and on:
Brian E. Frosh
Attorney General of Maryland
200 Saint Paul Place
Baltimore, Maryland 21202**

Respondent

* * * * *

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioners, Board of Education of Carroll County (hereinafter, “the County Board”), Tara A. Battaglia (“Battaglia”), and Donna M. Sivigny (“Sivigny”) by their undersigned attorneys, respectfully seek a Declaratory Judgment in accordance with Md. Code Ann., State

Gov't. § 10-125 against the Maryland State Board of Education (the "State Board") for the limited purpose of having this Honorable Court determine the validity of portions of the State Board's Emergency Regulation codified at COMAR Title 13A Subtitle .01 Chapter .07 concerning "Face Coverings in School Facilities" which Petitioners contend violate provisions of the Constitution of the United States, the Maryland Constitution and Declaration of Rights, and which exceed the State Board's statutory authority. As discussed herein, the State Board's regulations concerning face coverings in school facilities violate the rights of Petitioners Battaglia and Sivigny as parents of children attending the Carroll County Public Schools and further thrust an irreconcilable dilemma upon the County Board, its elected Board Members, and its Superintendent of Carroll County Public Schools, all of whom are statutorily required to carry out and enforce State Board regulations in accordance with Md. Code Ann., Educ. § 4-108. The Petitioners further seek preliminary and permanent injunctive relief preventing the State Board from enforcing those portions of the State Board's regulations concerning face coverings in school facilities that are contrary to law as discussed further herein.

As grounds for declaratory and injunctive relief, the Petitioners state the following:

PARTIES, JURISDICTION, AND VENUE

1. The County Board is a body politic and corporate existing pursuant to the provisions of Md. Code Ann., Educ. § 3-103, *et seq.* and § 3-401, *et seq.* In accordance with Md. Code Ann., Educ. § 4-101, the County Board is charged with the responsibility to "seek in every way to promote the interests of the schools under its jurisdiction" and is the employer of the Superintendent of Carroll County Public Schools and all public school employees in Carroll County. In accordance with Md. Code Ann., State Gov't. § 10-121, the County Board "is

entitled, to the same extent as other legal entities, to be an interested person, party, or petitioner” in this action.

2. Battaglia is a resident of Carroll County, Maryland, is the parent of children attending the Carroll County Public Schools, and was elected by the voters of Carroll County to serve on the County Board where she currently holds the office of vice-president.

3. Sivigny is a resident of Carroll County, Maryland, is the parent of children attending the Carroll County Public Schools, and was elected by the voters of Carroll County to serve on the County Board.

4. The State Board is established in accordance with the provisions of Md. Code Ann., Educ. § 2-201, *et seq.* and, in accordance with the provisions of Md. Code Ann., Educ. § 2-205, determines the elementary and secondary education policies of the State of Maryland, adopts regulations for the administration of the public schools that have the force of law when adopted and published, and is responsible for deciding all controversies and disputes under these provisions. In accordance with Md. Code Ann., Educ. § 4-205(c)(3), the State Board is required to consider all appeals from decisions made by the various county boards across the State.

5. The Circuit Court for Carroll County has jurisdiction and venue over this action in accordance with Md. Code Ann., State Gov’t. § 10-125 (a) (2) which provides that a petition for declaratory judgment “shall be filed with the circuit court for the county where the petitioner resides or has a principal place of business.”

FACTUAL BACKGROUND

6. The allegations set forth in paragraphs 1-5 of this Petition are incorporated by reference as though set forth fully herein.

7. On March 5, 2020, the Governor of the State of Maryland issued a Proclamation declaring a state of emergency related to the COVID-19 pandemic. After the Governor's emergency declaration, various executive orders were issued relating to the use of face covering in businesses and public facilities including public and private schools.¹

8. On May 14, 2021, the Governor issued the last in a series of orders and amended orders which, in pertinent part, directed the wearing of face coverings on school buses and "indoors in any portion of a School where interaction with others is likely, including without limitation, classrooms, hallways, cafeterias, auditoriums, and gymnasiums."²

9. On June 7, 2021, the County Board voted to send the Governor and then State Superintendent Karen Salmon a Resolution noting that Maryland had met its goal reaching a 70% vaccination rate and requesting that the Governor rescind the portion of Order Number 21-05-14-01 requiring the wear of face coverings in Maryland's schools.

10. On June 15, 2021, the Governor issued an Order terminating various emergency orders relating to the COVID-19 pandemic effective July 1, 2021, including Order Number 21-05-14-01, which required the wear of face coverings in schools and on school buses.³

11. As a result of the Governor lifting the statewide mask mandate in Maryland's schools effective July 1, 2021, the Carroll County Public Schools operated its summer program throughout the remainder of summer 2021 permitting, but not requiring, the wear of face coverings.

¹ The Proclamation may be accessed via the internet at <https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf>.

² Order Number 21-05-14-01 may be accessed via the internet at <https://governor.maryland.gov/wp-content/uploads/2021/05/Gatherings-24th-AMENDED-5.14.21.pdf>.

³ Order Number 21-06-15-01 may be accessed via the internet at <https://governor.maryland.gov/wp-content/uploads/2021/06/Termination-Roadmap-6.15.21.pdf>.

12. On August 26, 2021, the State Board met and determined to adopt an emergency regulation imposing a statewide face covering mandate in Maryland's public schools. The emergency regulation was approved by the General Assembly's Administrative, Executive, and Legislative Review (AELR) Committee on September 14, 2021, and became effective immediately upon its approval. In accordance with Md. Code Ann., State Gov't. § 10-111(b)(4)(ii), the emergency regulation was set to expire within 180 days.

13. The County Board fully complied with the emergency regulation adopted by the State Board from its effective date through January 5, 2022, when it was superseded by the current emergency regulation concerning face coverings in school facilities as set forth in COMAR 13A.01.07, et seq.,

14. The current emergency regulation concerning face coverings in school facilities was adopted by the State Board on December 7, 2021, was approved by the AELR Committee on January 5, 2022, and is set to expire on July 1, 2022. The County Board has been fully compliant with the current emergency regulation from its effective date through the date of the filing of this Petition.

15. The current emergency regulation concerning face coverings in school facilities extended the predecessor emergency regulation requiring the wearing of face coverings in public school facilities beyond 180 days and differs from the predecessor emergency regulation only with respect to the provision of three so-called "off-ramps" for local school boards as set forth in COMAR 13A.01.07.05 entitled "Lifting Face Covering Requirements."

16. The first off-ramp set forth in COMAR 13A.01.07.05A(1) and 13A.01.07.05B allows a local board to lift the face covering requirement for a school facility or facilities by

passing a motion or resolution in a public meeting if the county “has at least 80 percent of the county population fully vaccinated as reported by the Maryland Department of Health.”⁴

17. The second off-ramp set forth in COMAR 13A.01.07.05A(2) and COMAR 13A.01.07.05C applies when “[a]t least 80 percent of the students and school staff of a school facility are fully vaccinated.” In accordance with COMAR 13A.01.07.05C, the following individuals are not counted towards the 80 percent threshold: (1) students who are not eligible for vaccination based upon age; and (2) “[s]tudents and school staff who are exempt from vaccination because of medical contraindication or religious exemption.”

18. In order to discontinue the required wearing of face coverings under the second off-ramp, the following actions are specifically required by COMAR 13A.01.07.05C(3) and (4): First, “[t]he principal or designated school official of the school facility shall verify the vaccination status of the school staff and students by reviewing a copy of the completed vaccination record card for the school staff and students included in the 80 percent threshold and submit a signed Department⁵ approved attestation form in writing to the local superintendent.” Second, a local superintendent must then “submit a signed Department approved attestation form in writing to the State Superintendent of Schools verifying that a school facility has achieved the 80 percent fully vaccinated threshold and may lift the school facility face covering requirement.”

19. The third off-ramp set forth in COMAR 13A.01.07.05D is based upon a county having “sustained 14 consecutive days of moderate or low transmission rates of COVID-19 cases, as reported in Centers for Disease Control data.”

⁴ The 80% county-wide vaccination metric is contrary to the 70% “herd immunity” target of the Maryland Department of Health as discussed at the County Board’s December 8, 2021 meeting by the Acting Carroll County Health Officer who expressed confusion on how the State Board came up with the 80% requirement rather than the 70% metric. See <https://www.youtube.com/watch?v=9DCYfsF0X1k&t=8434s> at 2:21:11/4:56:48 (last accessed February 10, 2022).

⁵ The “Department” refers to the Maryland State Department of Education.

20. The current emergency regulation provides at COMAR 13A.01.07.05E that “[t]he local superintendent’s and the county board’s decision to lift the face covering requirements set out in this chapter may not be appealed under COMAR 13A.01.05.” COMAR 13A.01.05 covers not only the process for appeals from the local superintendent to the county board and then to the State Board in accordance with Md. Code Ann., Educ. § 4-205(c) but also includes the process for petitions for declaratory relief to the State Board in accordance with Md. Code Ann., Educ. § 2-205 (e).

COUNT I
Lack of a “Department Approved Attestation Form”

21. The allegations set forth in paragraphs 1-20 of this Petition are incorporated by reference as though set forth fully herein.

22. The only way that a school facility owned or operated by a county board can lawfully meet the second-off ramp in compliance with COMAR 13A.01.07.05A(2) and COMAR 13A.01.07.05C is if a school principal or designated school official of a school facility and the local superintendent complete, sign, and submit the “Department approved attestation form[s]” as required by COMAR 13A.01.07.05C.

23. Neither the State Board nor the AELR Committee had ever reviewed the “Department approved attestation form” as of the January 5, 2022 AELR Committee hearing.

24. Requests during the month of January for a copy of the “Department approved attestation form” as required by COMAR 13A.01.07.05C, were replied to with a response that they were “working on it,” and at a meeting held on February 4, 2022, the State Superintendent of Schools advised that the “Department approved attestation form” had not yet been created.

25. Upon information and belief, the County Board has school facilities, including but not limited to the County Board’s central office building and schools attended by Battaglia and

Sivigny’s children, that either currently meet or will in the near future meet, the 80 percent fully vaccinated threshold; however, such verification is not possible without the “Department approved attestation form” for completion by school principals, designated school officials, and the Superintendent of Carroll County Public Schools.

26. The lack of the “Department approved attestation form” for review by the AELR Committee resulted in the approval of the current emergency regulation set forth at COMAR 13A.01.07, *et seq.*, in a manner that was contrary to the statutory requirements for the adoption of the provision.

27. The lack of the “Department approved attestation form” rendered the second off-ramp set forth in COMAR 13A.01.07.05A(2) and COMAR 13A.01.07.05C a mere illusion. Without the “Department approved attestation form,” it was impossible for any Maryland school system to possibly achieve the second off-ramp and effectively nullified and voided COMAR 13A.01.07.05A(2) and COMAR 13A.01.07.05C because the creation of a regulatory provision that cannot be met exceeded the State Board’s statutory authority to adopt regulations for the administration of the public schools of Maryland consistent with requirement of Art. VIII, Section 1 of the Maryland Constitution for a “thorough and efficient System of free public schools.”

28. More than two months after the State Board adopted the current emergency regulation at its December 7, 2021 meeting, the Maryland State Department of Education finally disseminated to local superintendents the “Department approved attestation form” on the morning of February 11, 2022. A true and correct copy of the communication from the Maryland State Department of Education is attached hereto as Exhibit 1 and is incorporated by

reference herein, and the “Department approved attestation form” is attached hereto as Exhibit 2 and is incorporated by reference herein.

29. The “Department approved attestation form” disseminated by the Maryland State Department of Education on February 11, 2022 and attached as Exhibit 2 deviates from the requirements of COMAR 13A.01.07.05C in that the regulatory language requires an attestation only after “reviewing a copy of the completed vaccination record card for the school staff and students” while the “Department approved attestation form” allows for the review of *either* “vaccination records or other reliable proof” without any guidance as to what would suffice as “other reliable proof.”

30. The inconsistency between the specific language in COMAR 13A.01.07.05C and the vague “other reliable proof” set forth on the February 11, 2022 “Department approved attestation form” makes it unlikely that superintendents, principals, and other school officials will make the necessary attestation and will lead to inconsistencies from one school system to the next in a manner inconsistent with the requirement of Art. VII, Sect. 1 of the Maryland Constitution for a “thorough and efficient System of free public schools.”

31. As the parents of children who attend the Carroll County Public Schools and who fully comply with the State Board’s face covering requirements but who nonetheless desire for their children to attend school without face coverings as soon as possible, Battaglia and Sivigny are harmed by the lack of the “Department approved attestation form” in compliance with the specific language in COMAR 13A.01.07.05C making it impossible or unlikely for the schools attended by their children to meet the second off-ramp.

32. The lack of the “Department approved attestation form” in compliance with the specific language in COMAR 13A.01.07.05C places the County Board, its elected Board

members including Battaglia and Sivigny, its Superintendent of Carroll County Public Schools, and its principals in an untenable dilemma because if they try to meet the second off-ramp without violating of the express provisions of COMAR 13A.01.07.05 they may be subject to the enforcement provisions set forth in COMAR 13A.01.07.04 and Md. Code Ann., Educ. § 2-303(b).

Wherefore, the Petitioners Board of Education of Carroll County, Tara A. Battaglia, and Donna M. Sivigny respectfully pray that this Honorable Court issues a Declaratory Judgment in accordance with Md. Code Ann., State Gov't. § 10-125 to the effect that the provisions of COMAR 13A.01.07, *et seq.*, are invalid because they violate the provisions of Art. VII, Sect. 1 of the Maryland Constitution, exceed the statutory authority of the State Board, and were enacted in a manner that failed to comply with the statutory requirements for adoption, and further seek preliminary and permanent injunctive relief preventing the State Board from enforcing the provisions of COMAR 13A.01.07, *et seq.* as contrary to law.

COUNT II
Improper Extension of Emergency Regulation Beyond 180 Days

33. The allegations set forth in paragraphs 1-32 of this Petition are incorporated by reference as though set forth fully herein.

34. In accordance with Md. Code Ann., State Gov't. § 10-111(b)(4)(ii), emergency regulations must expire within 180 days.

35. The predecessor emergency regulation concerning face coverings in school facilities was adopted by the State Board on August 26, 2021 and was approved by the AELR Committee on September 14, 2021. That regulation was set to expire within 180 days.

36. Rather than allowing that regulation to expire, the State Board on December 7, 2021 adopted the current emergency regulation, which was approved by the AELR Committee

on January 5, 2022. The current emergency regulation re-stated sections 1 through 4 of the predecessor emergency regulation thereby impermissibly extending the face covering requirement beyond 180 days from September 14, 2021 in violation of Md. Code Ann., State Gov't. § 10-111(b)(4)(ii).

37. The extension of the emergency regulation on face coverings beyond 180 days places the County Board, its elected Board members including Battaglia and Sivigny, its Superintendent of Carroll County Public Schools, and its principals in an untenable dilemma because they believe the County Board believes the current emergency regulation violates the provisions of Md. Code Ann., State Gov't. § 10-111(b)(4)(ii). The improper extension of the current emergency regulation further impedes the County Board, its Superintendent of Carroll County Public Schools, and its principals in their inability to enforce the lawfully enacted school dress codes requiring that "one's face must be visible at all times." However, if they fail to comply with the current emergency regulation, they are in violation of the express provisions of COMAR 13A.01.07.05 and may be subject to the enforcement provisions set forth in COMAR 13A.01.07.04 and Md. Code Ann., Educ. § 2-303(b).

Wherefore, the Petitioners Board of Education of Carroll County, Tara A. Battaglia, and Donna M. Sivigny respectfully pray that this Honorable Court issues a Declaratory Judgment in accordance with Md. Code Ann., State Gov't. § 10-125 to the effect that the provisions of COMAR 13A.01.07, *et seq.*, are invalid because they violate the 180-day provision of Md. Code Ann., State Gov't. § 10-111(b)(4)(ii), exceed the statutory authority of the State Board, and thus were enacted in a manner that failed to comply with the statutory requirements for adoption, and further seek preliminary and permanent injunctive relief preventing the State Board from enforcing the provisions of COMAR 13A.01.07, *et seq.* as contrary to law.

COUNT III
Violation of Religious Liberties

38. The allegations set forth in paragraphs 1-37 of this Petition are incorporated by reference as though set forth fully herein.

39. The only way that a school facility owned or operated by a county board can lawfully meet the second-off ramp in compliance with COMAR 13A.01.07.05A(2) and COMAR 13A.01.07.05C(1) is if a school principal or designated school official of a school facility conducts a “calculation of the 80 percent fully vaccinated threshold [which] includes all enrolled students who are eligible for vaccination based on age in the school facility and any school staff regularly providing services in the school facility” while not counting towards the 80 percent threshold those “[s]tudents and school staff who are exempt from vaccination because of medical contraindication or religious exemption.”

40. Maryland does not have a vaccination mandate for public school students or employees. Since there is no vaccination mandate, there can be no vaccination “exemption” based upon “medical contraindication or religious exemption.”

41. The County Board fully complies with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act, and, thus, in making reasonable accommodation determinations for eligible employees and students with disabilities may reasonably request medical information from which may include information as to whether vaccination against COVID-19 is medically contraindicated. However, the County Board and its employees do not, and legally cannot, engage in faith-based inquiries of its students or their parents or guardians.

42. The Equal Employment Opportunity Commission provides guidance to public and private sector employers whose employees seek various religious accommodations in the

workplace under Title VII of the Civil Rights Act of 1964,⁶ but the State Board has not provided any guidance to local school boards on how principals should determine the “religious exemption” status of students and/or their families for purposes of calculating the 80 percent threshold requirement set forth in COMAR 13A.01.07.05C(2).

43. Students attending the Carroll County Public Schools and their families enjoy the free exercise of religious liberties enshrined in the Free Exercise Clause of the First Amendment to the Constitution of the United States. In addition, Article 36 of the Maryland Declaration of Rights provides that “Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.”

44. The requirement set forth in COMAR 13A.01.07.05C(2) that school principals scrutinize the religious beliefs of public school students and their families in order to determine whether students as young as five years of age are entitled to a “religious exemption” from vaccinations and, thus, not “counted towards the 80 percent threshold” violates the fundamental religious rights of students and families enshrined in the First Amendment of the United States Constitution, Article 36 of the Maryland Declaration of Rights.

45. As the parents of children who attend the Carroll County Public Schools and who fully comply with the State Board’s face covering requirements but who nonetheless desire for their children to attend school without face coverings as soon as possible, Battaglia and Sivigny are harmed because the lack of guidance in COMAR 13A.01.07.05C(2) will inevitably lead to the improper inclusion of unvaccinated students with religious objections in the 80 percent

⁶ “Generally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information.” *See* EEOC Technical Assistance Questions and Answers, at L.2 (updated November 17, 2021).

calculation thereby making it more difficult for the schools attended by their children to meet the second off-ramp.

46. The requirement set forth in COMAR 13A.01.07.05C(2) that school principals scrutinize the religious beliefs of public school students and their families in order to determine whether students are entitled to a “religious exemption” from vaccinations and, thus, not “counted towards the 80 percent threshold” places the County Board, its elected Board members including Battaglia and Sivigny, its Superintendent of Carroll County Public Schools, and its principals in an untenable dilemma because if they follow the requirements set forth in COMAR, they run the risk of being subjected to suit for violating the rights of students and families. Conversely, if they simply accept a student or family’s articulation of a religious objection, they run the risk of having the State Superintendent reject the school facility’s pursuit of the second off-ramp and may be subject to the enforcement provisions set forth in COMAR 13A.01.07.04 and Md. Code Ann., Educ. § 2-303(b).

Wherefore, the Petitioners Board of Education of Carroll County, Tara A. Battaglia, and Donna M. Sivigny respectfully pray that this Honorable Court issues a Declaratory Judgment in accordance with Md. Code Ann., State Gov’t. § 10-125 to the effect that the provisions of COMAR 13A.01.07, *et seq.*, are invalid because they violate the provisions of the Free Exercise Clause of the First Amendment to the Constitution of the United States and Article 36 of the Maryland Declaration of Rights, and further seek preliminary and permanent injunctive relief preventing the State Board from enforcing the provisions of COMAR 13A.01.07, *et seq.* as contrary to law.

COUNT IV
Lack of an Appeals Process

47. The allegations set forth in paragraphs 1-46 of this Petition are incorporated by reference as though set forth fully herein.

48. The provision in COMAR 13A.01.07.05E that “[t]he local superintendent’s and the county board’s decision to lift the face covering requirements set out in this chapter may not be appealed under COMAR 13A.01.05” is contrary with the statutory provisions set forth in Md. Code Ann., Educ. § 4-205(c)(3) which clearly establishes that any “decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent . . . [and] may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.”

49. The provision in COMAR 13A.01.07.05E that “[t]he local superintendent’s and the county board’s decision to lift the face covering requirements set out in this chapter may not be appealed under COMAR 13A.01.05” is also contrary with the statutory provisions set forth in Md. Code Ann., Educ. § 2-205(e) which provides for direct relief to the State Board and is governed by the same procedures set forth in COMAR 13A.01.05 which are nullified by COMAR 13A.01.07.05E.

50. The State Board may not contravene the statutory provision designed to provide students, parents, and employees with a free and accessible administrative remedy. *See Board of Education of Garrett Co. v. Lendo*, 295 Md. 55 (1982) (holding that "the State Board is required to hear appeals taken under either section 2–205 or 4–205").

51. The State Board’s exercise of appellate jurisdiction furthers the state-wide interest of “a thorough and efficient System of Free Public Schools” embodied in Article VIII, Section 1 of the Maryland Constitution and cannot be contravened by regulation.

52. As the parents of children who attend the Carroll County Public Schools and who fully comply with the State Board's face covering requirements but who nonetheless desire for their children to attend school without face coverings as soon as possible, Battaglia and Sivigny are harmed because COMAR 13A.01.07.05E deprives them, and their children, of a free and effective statutory appeals process that would otherwise be available under Md. Code Ann., Educ. § 4-205(c)(3) should they ever disagree with a decision by the Superintendent of Carroll County Public Schools or the County Board regarding face covering requirements affecting their children.

53. The provision in COMAR 13A.01.07.05E depriving students, parents, and employees with a free and accessible administrative appeals remedy in accordance with Md. Code Ann., Educ. § 2-205(e) and § 4-205(c)(3) places the County Board, its elected Board members including Battaglia and Sivigny, and its Superintendent of Carroll County Public Schools in an untenable dilemma because they run an increased risk of being subjected to civil suits by families, students, and employees who will only have recourse in the courts due to the improper elimination of an administrative appeals remedy.

Wherefore, the Petitioners Board of Education of Carroll County, Tara A. Battaglia, and Donna M. Sivigny respectfully pray that this Honorable Court issues a Declaratory Judgment in accordance with Md. Code Ann., State Gov't. § 10-125 to the effect that the provisions of COMAR 13A.01.07, *et seq.*, are invalid because they contravene the express provisions of Md. Code Ann., Educ. §§ 2-205(e) and 4-205(c)(3), and further seek preliminary and permanent injunctive relief preventing the State Board from enforcing the provisions of COMAR 13A.01.07, *et seq.* as contrary to law.

Respectfully submitted,

/s/

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