EXECUTIVE ORDER NO. 251

WHEREAS, on March 9, 2020, I issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act("EHPA"), N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the New Jersey Civilian Defense and Disaster Control Act ("Disaster Control Act") N.J.S.A. App A:9-33 et seq., in the State of New Jersey for Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, 222, 231, 235, and 240, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, October 24, 2020, November 22, 2020, December 21, 2020, January 19, 2021, February 17, 2021, March 17, 2021, April 15, 2021, and May 14, 2021, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey, I have issued a series of Executive Orders pursuant to my authority under the Disaster Control Act and the EHPA, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos.

186-187, Nos. 189- 198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223, No. 225, Nos. 228-235, Nos. 237-244, No. 246, and No. 249 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, on June 4, 2021, I signed Assembly Bill No. 5820 into law as P.L.2021, c.103 and issued Executive Order No. 244, which terminated the Public Health Emergency declared in Executive Order No. 103 (2020) but maintained the State of Emergency declared in that same Order; and

WHEREAS, P.L.2021, c.103 provided that following the termination of the Public Health Emergency declared in Executive Order No. 103 (2020), the Governor may continue to issue orders related to implementation of recommendations of the Centers for Disease Control and Prevention ("CDC") to prevent or limit the transmission of COVID-19, including in specific settings; and

WHEREAS, the American Academy of Pediatrics ("AAP") has emphasized that in-person learning is critical for educational and social development of children, as evidence demonstrates that remote learning has been detrimental to the educational attainment of students of all ages and has exacerbated the mental health crisis among children and adolescents; and

WHEREAS, the CDC has also cited evidence that suggests virtual learning can lead to learning loss for children and worsening mental health problems for the younger population; and

WHEREAS, the CDC has reported that new variants of COVID-19 have been identified in the United States, and that certain variants, particularly the B.1.617.2 ("Delta") variant, are more transmissible; and

WHEREAS, given new evidence regarding transmission of the Delta variant, the CDC now recommends universal indoor masking for all teachers, staff, students, and visitors in K-12 schools, regardless of vaccination status; and

WHEREAS, the CDC continues to emphasize that children should return to full-time in-person learning in the fall with layered prevention strategies in place, such as masking in indoor settings; and

WHEREAS, AAP similarly recommends universal masking in schools because a significant portion of the student population, specifically individuals under the age of 12, is not yet eligible to receive a vaccine; and

WHEREAS, there is no concrete timeline for authorization for use of currently available COVID-19 vaccinations for children under the age of 12, so it would be impossible for that group to be fully vaccinated before the start of the 2021 – 2022 school year; and

WHEREAS, only the Pfizer vaccination is currently available to youth in the 12 – 17 age group; and

WHEREAS, according to data estimates, only 40 percent of 12 - 15 year-olds and 57 percent of 16 – 17 year-olds in New Jersey have received at least one dose of a COVID-19 vaccine; and

WHEREAS, both the CDC and AAP recognize that masking is a critical tool to reduce transmission of the virus and protect unvaccinated individuals; and

WHEREAS, the State has experienced significant upticks in critical COVID-19 metrics over the past few weeks, including COVID-19 positive cases, the rate of transmission, spot positivity, and new hospitalizations, that warrant additional

precautions in certain settings with a substantial number of unvaccinated individuals; and

WHEREAS, after consultation with the New Jersey Department of Health, I have determined that it is necessary to enforce a uniform masking policy in schools for students, staff, and visitors while vaccination is not available to a significant portion of the student population; and

WHEREAS, this Order is consistent with the terms of P.L.2021, c.103;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All public, private, and parochial preschool programs and elementary and secondary schools, including charter and renaissance schools (collectively "school districts"), must maintain a policy regarding mandatory use of face masks by staff, students, and visitors in the indoor portion of the school district premises, except in the following circumstances:

a. When doing so would inhibit the individual's health, such as when the individual is exposed to extreme heat indoors;

b. When the individual has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove a face masks without assistance;

c. When a student's documented medical condition or disability, as reflected in an Individualized Education Program (IEP) or Educational Plan pursuant to Section 504 of the Rehabilitation Act of 1973, precludes use of a face mask;

d. When the individual is under two (2) years of age;

e. When the individual is engaged in activity that cannot physically be performed while wearing a mask, such as eating or drinking, or playing a musical instrument that would be obstructed by a face mask;

f. When the individual is engaged in high-intensity aerobic or anaerobic activity;

g. When a student is participating in high-intensity physical activities during a physical education class in a well-ventilated location and able to maintain a physical distance of six feet from all other individuals; or

h. When wearing a face mask creates an unsafe condition in which to operate equipment or execute a task.

2. This Order shall not impact the obligation of any school district to comply with requirements issued by the CDC on masking on public transportation conveyances, including school district transportation.

3. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

4. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning

this Order, and to cooperate fully with any Administrative Orders issued pursuant to this Order.

5. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

6. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

7. This Order shall take effect on Monday, August 9, 2021 and shall remain in effect until revoked or modified by the Governor.

GIVEN, under my hand and seal this 6th day of August, Two Thousand and Twenty-one, and of the Independence of the United States, the Two Hundred and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor