

**RESOLUTION OF THE BOARD OF EDUCATION OF FORT SMITH PUBLIC
SCHOOLS ADOPTED AT THE BOARD'S CALLED MEETING OF**

AUGUST 9, 2021

**Regarding Masks and Litigation Concerning Act 1002 for the
2021-22 School Year**

Whereas, Arkansas is experiencing a public-health emergency due to COVID-19; and,

Whereas, the new Delta variant has caused an increase in the number of children in Arkansas who have been hospitalized, placed on ventilators, and have lost their lives due to COVID-19; and,

Whereas, COVID-19 vaccines are available for those ages 12 and over, but children younger than twelve years old are not yet eligible to be vaccinated; and,

Whereas, both the Centers for Disease Control and the American Academy of Pediatrics recommend that children return to in-person education where it is safe to do so, and the Board recognizes the importance of in-person learning; and,

Whereas, the Centers for Disease Control recommends that masks should be worn indoors by all individuals older than the age of two (2), regardless of vaccination status, in areas experiencing COVID-19 outbreaks, which currently includes the entire State of Arkansas, and the American Academy of Pediatrics recommends that everyone older than the age of two (2) should wear a mask in school regardless of vaccination status; and,

Whereas, masks are used as a precautionary measure to reduce the transmission of the COVID-19 virus and are a tool for protecting those not yet eligible for vaccination; and,

Whereas, Act 1002 of the 93rd General Assembly of the State of Arkansas was enacted for the purpose of prohibiting all Arkansas public school districts and many other public entities, including the Fort Smith Public Schools, from requiring that students and staff wear masks in school and other public buildings; and,

Whereas, on Friday, August 6, 2021, the Honorable Timothy Fox, Pulaski County Circuit Judge, entered an Order for Declaratory Relief and Preliminary Injunction finding that Act 1002 “facially violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in public schools and minors in private schools;” and,

Whereas, Judge Fox’s order declared Act 1002 “unconstitutional under both the separation of powers clause and the equal protection clause of the Arkansas Constitution;” and,

Whereas, the effect of Judge Fox's order is that Act 1002 is preliminarily enjoined and therefore not currently enforceable as to entities covered by the law, such as and including the Fort Smith Public Schools; and,

Whereas, notwithstanding the entry of Judge Fox's order, the Fort Smith School Board recognizes that the legal proceedings related to Act 1002 are continuing, that Judge Fox's order may be appealed or stayed, and that circumstances may change as to the constitutionality and enforceability of Act 1002; and,

Whereas, the Board chooses to take the following action deemed necessary to protect students and staff, including requiring masks;

Now therefore, be it resolved that we, the Fort Smith School Board,

1. authorize our Superintendent, Dr. Terry Morawski, to take all steps necessary to implement a face covering requirement to the maximum extent legally permissible for all persons, including staff, students, and visitors, in district buildings or in school vehicles or buses that contain two or more persons, with such requirement to last the shorter of further action by the Board, the passage of 60 days or the reversal of Judge Fox's Order; and
2. authorize our Superintendent to make exceptions to the these requirements, in his discretion and as informed by the CDC and Arkansas Department of Health; and
3. in any event, continue to strongly recommend that all of our students, their families, and our employees consider getting vaccinated and follow all CDC guidelines regarding wearing a mask in order to protect themselves and others, without regard to the final outcome of all litigation regarding Act 1002.

[CERTIFICATE FOLLOWS ON NEXT PAGE]

CERTIFICATE

I, the undersigned, Secretary of the Board of Directors of the above District, certify the foregoing to be a true copy of a Resolution duly adopted by the Board at a regular (regular or special) meeting of the Board held on the 9th day of August, 2021. The Resolution appears in the official minutes of the meeting which are in my custody. At the time of the meeting the duly elected (or appointed), qualified and serving members of the Board and their respective votes on the adoption of the Resolution were as follows:

<u>Director</u>	<u>Vote</u> <u>(Aye, Nay, Abstain or Absent)</u>
_____ Susan McFerran	_____ Aye
_____ Talicia Richardson	_____ Aye
_____ Dee Blackwell	_____ Aye
_____ Dalton Person	_____ Aye
_____ Yvonne Keaton-Martin	_____ Aye
_____ Troy Eckelhoff	_____ Nay
_____ Matt Blaylock	_____ Nay
_____	_____

I further certify that the meeting of the Board was duly convened and held in all respects according to law; that to the extent required by law due and proper notice of the meeting was given to the members of the Board and to the public; that the meeting was open to the public; that a legal quorum was present throughout the meeting; that all other requirements and proceedings under the law incident to the proper adoption and passage of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this Certificate.

CERTIFIED under my hand and seal of the District this 9th day of August, 2021.

(SEAL)

Secretary