

MASK FAQs; authored by USBE 8/10/2020

Why is there a mandate for masks to be worn in schools?

A mask requirement is a temporary measure while we wait for a vaccine to be developed. Masks are our medicine for now. They have the best chance of stopping the spread of respiratory output from one person to another.

What if a student who does not qualify for an exemption refuses to wear a face covering?

It must be remembered that this order has the same authority/force as a law during the time it is enacted. Failure to comply with the order is a misdemeanor. The order requires all students, K-12 to wear masks. As face coverings are required, if a student does not qualify for one of the outlined exemptions, it is assumed the student would not be allowed on the bus or to be physically present in school. This exclusion will last until the public health order expires or the student decides to begin wearing a face covering at school.

When a student, by his own choice or at the direction of a parent, refuses to comply with the mask requirement, the school is legally able to exclude the student from school. Although this is a difficult stance for schools to take, the law clearly allows both the state to enact such requirements and the schools to enforce such requirement by excluding students who choose not to comply in times of emergency such as the current pandemic. While school staff should respectfully recognize a parent or student's opinion, the public health order is clear and the student who does not qualify for an exception may not remain in school. Assure the student and parents it is the desire of school officials that the time period for the exclusion will be as short as possible and inform them of alternative educational opportunities available.

Schools must be careful to equitably implement the order. For example: if all students seeking a medical exemption are required to provide a medical provider's note, then **all** students should be held to the same standard. Exceptions should not be made based on subjective factors such as trustworthiness of the student, a history of difficulty communicating with a parent, or familial relationships with the student. Another example might be if the school provides a disposable mask for a student the first time the student forgets to bring a mask. The school must treat all students the same. It cannot provide the disposable mask to the student who is a "good" student with no history of behavior problems, but simply send the "problem" student home for the day.

If a student is excluded from school, must the school provide alternative education?

If the student is excluded from school because the student refuses to wear a face covering and the student is not receiving special education services under an IEP or services under Section 504, it is up to the LEA as to whether alternative or distance education is provided. If the exclusion is only for the day because the student lost or forgot to bring a mask, simply allowing the student to make up missed work would be sufficient. If the exclusion will be ongoing, the LEA may consider alternative education to prevent the student from falling behind academically or the parent may seek an available online learning option.

Many LEAs are providing the option of online learning. However, the LEA is not required to create a new learning option just for the student who refuses to comply. If an LEA does not provide an online option

generally, they would not be required to provide one to a student who was excluded for choosing not to comply with the mask mandate.

What if the student who is excluded for not wearing a mask is entitled to special education services under an IEP or FAPE under Section 504, does the “10-day rule” apply?

If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act, or is receiving services under Section 504, is required to stay home by public health authorities or school officials for an extended period of time (longer than 10 days) because of their refusal to wear a mask, provision should be made to maintain education services. During such absences, if the school is open and serving other students, the school must ensure that the student continues to receive a free appropriate public education (FAPE), consistent with protecting the health and safety of the student and those providing that education to the student. If feasible, the student’s IEP Team, or the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, can be utilized to assist with the effort to determine if some, or all, of the identified services can be provided through alternate or additional methods. Accessible technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended absence, especially when continuing education must be provided through distance learning.

[Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#), United States Department of Education, Office for Civil Rights

[QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK](#), United State Department of Education

Is it legal to require a medical directive verifying a need for an exemption or does doing so violate IDEA or Section 504?

Neither federal IDEA nor Section 504 speak directly to temporary emergency health provisions enacted by a state in times of emergency and how SEAs and LEAs should apply them. Traditionally, courts have held that states and local school boards have broad discretion to legislate in the areas of education, health, and safety.¹ Generally applicable, system-wide changes in public schools that affect disabled and non-disabled children alike are not prohibited by federal laws where the federal laws do not specifically address the intended action of the state law.

For example, vaccination laws are not specifically addressed by, altered by, or prohibited by IDEA or Section 504. They are generally applied admission requirements for the health and safety of all students. Many states allow parents to provide an exemption from a medical provider. Absent the proof of vaccination or the medical exemption, a student will be excluded from school. IDEA/504 are not violated by the exclusion or by the requirement for proof of vaccination or exemption.

Face covering requirements have not been specifically addressed by courts. However, face coverings are much less intrusive upon a person than a vaccination. In light of the courts’ support of mandatory vaccination requirements (which once administered cannot be undone), it is highly likely that the courts will find a generally applicable temporary face mask requirement and the need for a medical exemption to be a valid exercise of the state and local school board powers.

¹Desiano v. Warner-Lambert & Co., 467 F.3d 85, 86 (2d Cir. 2006); Edwards v. Aguillard, 482 U.S. 578, 107 S. Ct. 2573, 2577, 96 L.Ed.2d 510 (1987); Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 863, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982).

Should a school create a 504 Plan for a student who obtains a medical exemption to the mask requirement?

No. The mask requirement and the medical directive for exemption are generally applicable admission requirements issued by public health authorities. This public health order is a state law and is similar to the current state vaccination requirement, although temporary.

A school is not required to implement all of the procedures of 504 such as evaluation, team meetings, 504 Plan, etc., in response to a student's medical mask exemption. It is merely an exemption to the temporary mask requirement.

However, if the parent indicates that the student's medical condition is causing problems beyond the masking requirement, school officials should clarify with the parent whether a formal 504 evaluation is being requested or is necessary.

What if a student already has an IEP or 504 Plan and the medical exemption relates to the disability identified in the existing plan, does the student still need a medical directive?

No. The public health order provides a different exemption for students who have an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act, 20 U.S.C. section 1414, or an accommodation under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, that would necessitate exempting the individual from wearing a face covering. These students do not fall within the medical directive provision and the determination should be made by the school nurse and parent based on the child's disability and medical diagnosis. The decision should be documented in the child's IEP or 504 Plan.