

FAQs: Guidelines for Wearing Masks in School

Introduction

On June 30, 2020, Governor Whitmer issued [Executive Order \(EO\) 2020-142](#) and the [Return-to-School Roadmap](#) for the 2020-21 school year. The EO directs school districts to create individualized Preparedness Plans that, among other things, require students and staff to wear masks during significant portions of the school day. This FAQ Guide is intended to provide answers to some of the practical, everyday challenges teachers and administrators will likely face when schools reopen.

Before implementing these recommendations, schools should ensure they are consistent with their school district's individual Preparedness Plan. We also note that while we believe the following recommendations accurately reflect current guidelines from the State of Michigan, the CDC, and similar state and federal agencies, schools should keep up-to-date with new guidance as it is released, and consult with legal counsel, as necessary.

1. May schools request a doctor's note from parents claiming their student cannot medically tolerate a mask?

Yes. We recommend the doctor's note/other medical documentation include: (1) the signature of a physician or other health professional; and (2) state either that the student cannot medically tolerate a mask, or the specific situations under which a student is exempted from wearing a mask. In addition, schools should consider offering reasonable accommodations, such as alternative facial coverings (e.g., face shields or cloth gaiters instead of masks), or, to the extent available, educating exempted students virtually.

2. How should schools respond to situations where wearing a mask is impractical (e.g., during speech therapy services, special education evaluations, or when educating hearing-impaired students)?

In situations where virtual learning or evaluation is either unavailable or inappropriate, educators may consider the following alternatives to a standard cotton or disposable mask:

- Clear masks or masks with clear panels, as well as providing similar masks to students;
- Clear face shields instead of masks;
- Physically distancing from students before removing masks;
- Using voice amplifiers or similar electronic devices; and/or
- Using images or videos for demonstration purposes in lieu or in tandem with in-person or remote services.

3. Can schools discipline students who refuse to wear masks?

Currently, there is no state or federal guidance on whether schools may (or should) discipline students who refuse to wear masks. Nationally, there is little consensus among school districts; some have instituted disciplinary procedures, while others declined such measures. Accordingly, the issue of discipline is left to the individual school districts to decide.

Before disciplining unmasked students, consider: (1) providing masks to students who agree to wear them; (2) the student may have an underlying medical condition; and (3) whether a student's refusal to wear a mask is intended

to be disobedience or is, instead, a symptom of a disability or only a matter of forgetfulness. In addition, schools should engage in open and frequent communication with parents, during which the procedures set forth in the school district's Preparedness Plan are reinforced. Schools may also require students who consistently refuse to wear masks (or whose parents are not insisting their student wear a mask) be educated virtually.

4. Will there be consequences for staff members who do not wear masks or follow social distancing guidelines?

Yes, and there should be. Ideally, school districts will let employees know of mask and social distancing expectations prior to school reopening and that a failure to comply may result in discipline or discharge (insubordination, unprofessional conduct, etc.). The union may be willing to help craft the message to school district employees, as a failure to comply with such requirements puts their members at risk.

5. Will school district employees be tested on a regular basis, as a requirement for working? May they opt-out of testing?

This is a term and condition of employment that would have to be negotiated. Assuming such a condition of employment was negotiated, staff would not be able to opt-out unless permitted by the applicable collective bargaining agreement.

6. Will staff members who have health concerns that make it difficult to wear a mask be required to wear one?

This question should be addressed on a case-by-case basis. If the employee has a disability that prevents him/her from wearing a mask, the school district should consider providing a reasonable accommodation that puts the staff member to productive work in a manner that does not put others at risk. A reasonable accommodation might be: a different type of facing covering (such as a clear shield or cloth gaiter); assignment to an online teaching position; designating one-way aisles in the workplace; moving offices; or using tables or other barriers to remind staff and students to remain physically distant. Remember: when considering a reasonable accommodation, the employee should be engaged pursuant to what the EEOC refers to as the "interactive process."

7. What should schools districts do if staff members refuse to appear at work because other staff members or students are not wearing masks? For staff members that have conditions on the CDC's list of higher risk factors, will the school district provide accommodations? Are those staff members guaranteed their jobs?

Ultimately, schools have the authority to require staff members to wear masks (unless medically exempt) and may discipline staff members who refuse to appear at work when there is no immediate or direct threat of contracting COVID-19. Schools should do their utmost to create an environment in which administrators are open to receiving complaints of staff or students refusing to wear masks, as well as responding swiftly (and reasonably) to such complaints. We also recommend regularly reiterating to parents and school personnel the importance of wearing masks and of the mask requirements outlined in the school district's Preparedness Plan.

School districts and employees should keep in mind that nobody's job is guaranteed. A reasonable accommodation is an accommodation that permits an employee to perform the essential functions of his/her job. An employee who cannot perform his/her job with a reasonable accommodation falls outside the protection of the ADA. There may be some level of protection under FMLA or the school district's collective bargaining agreement for an employee who cannot perform the essential functions of his/her job after a reasonable accommodation has been provided. But, in general, outside these parameters, an employee would be at-risk for losing his/her job.

8. Per state guidelines, staff is required to wear masks and some preschool students (4 years old and younger) should not wear masks in the classroom. Since cloth masks protect the other person, not the mask wearer, are schools required to provide staff with N95 masks, as they may deliver the safest protection for the mask wearer?

Presently, there is no requirement that school districts provide a certain type of mask for employees. Requiring employee to wear a particular type of mask would be a term and condition of employment that would be subject to collective bargaining.

9. Will families need to sign waivers of disclosure if they've been exposed to COVID-19 or tested for it? Do we violate privacy laws by asking for such waivers?

Absent a law (which, currently, does not exist), school districts cannot condition a student's attendance at school on a medical examination or a release of information that falls within the physician-patient privilege, such as whether a student has been diagnosed with COVID. Schools can: observe and ask about COVID symptoms (temperature, cough, etc.); encourage disclosure for everyone's sake; or even ask parents directly. However, it would be inappropriate to ask minors to waive the physician-patient privilege with respect to medical diagnoses.

10. If a school district offers both in-person and virtual learning options for its students, can students who cannot medically tolerate a mask be required to attend school virtually?

Likely, yes. However, no guidance has been released on this issue. We recommend turning to virtual learning only as a last resort and, at the same time, ensuring that schools are treating all students who cannot or will not wear masks equally, including students who refuse to wear a mask despite no underlying medical condition, and students who cannot medically tolerate masks. Schools may also want to utilize the following decision-tree:

- First, determine whether the parents would be amenable to moving the student to a virtual learning environment.
- If not, determine whether the parents would be amenable to reasonable accommodations.
- If not, determine whether the student's medical intolerance is due to behavior or an underlying physical health condition.
 - If the intolerance is due to behavior, consider whether there are any behavior services available to assist the student in learning to tolerate a mask, and if those services can be reasonably achieved in the school environment. Services may include: behavioral health services, parent organizations, or online tools.
 - If the medical intolerance is due to a physical health condition, consider the student's individual classroom, the frequency of his/her interactions with other students, and determine whether maintaining physical distancing alone might be sufficient to protect all students.
- If not, schools may move the student to a virtual learning environment.

11. Should schools allow students who cannot medically tolerate masks to interact with their peers to the same extent as masked students (e.g., sit at tables with other students or work on in-person group projects)?

Generally, schools should, to the extent feasible, not separate or single-out students who are unmasked due to underlying medical conditions. Even when all students are masked, educators are still required to enforce physical

distancing. This may include: spacing student desks or students at one table farther apart (removing excess furniture from the classroom, if necessary); rearranging students or desks so all students face the front of the classroom instead of each other; fitting plexiglass around student desks; ensuring students have their own instruments (pencils, pens, scissors, etc.); and reminding students to maintain physical distance.

12. What procedures should a school district follow for special education students who cannot medically tolerate masks?

See the above answer. We also recommend contacting your school's legal counsel.

13. How should schools handle preschool classrooms, where there may be a combination of 4-year-olds (who are advised not to wear masks) and 5-year-olds (who are advised to wear masks)?

Under the Roadmap, students aged 4 years and younger should wear facial coverings while in hallways or other common areas. However, it is not recommended such students wear facial coverings while in their classroom. To best protect all students, teachers should do their best to ensure social distancing is practiced in the classroom where masked and unmasked students are together.

14. What can school districts do now to help ease students into wearing masks at school?

Before the school year begins, schools may consider sending a letter to all student households explaining that students and staff will be required to wear masks while in school, consistent with the parameters set forth in the school district's Preparedness Plan. The letter should also state whether the school district will enact disciplinary measures for students who refuse to wear masks and whether noncompliance may result in students being moved to a virtual learning environment. In addition, the letter should remind parents claiming medical exemptions that they will have to provide a doctor's note or other medical documentation supporting their student's medical intolerance to facial coverings. For students at the elementary school level, or for students who may not be familiar with wearing masks for long periods of time, parents should be urged to begin training their students to wear face masks for progressively longer periods of time, while indoors, and any time they are in proximity with people who are not members of their own household.