

# Guidance for Decision Making Concerning Student Use of Face Coverings and Face Shields



## Background and Context

The [Ready Schools, Safe Learners](#) guidance requires that all students be provided access to their education regardless of the instructional model selected by their school. Community health conditions provide context under which local education agencies (LEAs), typically school districts, make decisions around school operations, but do not abrogate the responsibility of those LEAs to provide a quality education for every child.

Planning a quality educational experience for every child raises multiple challenges and decision points. Some of these decision points are related to the district's instructional model; others are driven by the unique needs that arise from a student's medical condition and/or other disability.

There is a need for districts to have clarity around their obligations and the parameters under which appropriate decisions can be made. Both requirements in the guidance and additional factors contribute to this need for clarity, including:

- Every child experiencing disability must be provided a Free Appropriate Public Education (FAPE).
- Children who experience disability are afforded additional protections under Section 504 of the Rehabilitation Act (504) and under the Individuals with Disabilities Education Act (IDEA).
- Every student must wear a face covering or face shield while accessing in-person components of their education.
- Some students choose not to wear face coverings or face shields due to their own personal beliefs, or beliefs held by their family.
- Some students cannot wear face covering or face shield due to medical or other needs related to their disability.
- Regardless of why a student is not wearing a face covering or face shield, they must be provided access to instruction, including FAPE where eligible.

Districts should make provisions for how a general education student without medical concerns will be provided access to instruction when they choose not to wear a face covering. Those decisions set the general education context under which individualized determinations related to using a face covering or face shield can be made for students who experience disability. Where the general education context works as is for a student's unique needs, it should be used. Where it does not, it must be adapted. The adaptation of that general education context to meet the needs that arise from a child's disability is the heart of the 504 and IEP processes.

## Determining Relationship to Disability or Medical Circumstances

A mechanism for determining the relationship between a given behavior and a child's disability already exists under Section 504 and under IDEA. Manifestation Determinations are well established within the 504 and special education processes. As it is most commonly conceptualized, manifestation determinations exist as a process that governs disciplinary

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removals of more than 10 school days (whether through a pattern of shorter removals or one longer consecutive removal) for students who experience disability. The actual manifestation determination review process is governed by OAR [581-015-2420](#), which reads:

- (1) In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:
  - (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (b) If the conduct in question was the direct result of the school district's failure to implement the IEP.
- (2) If the school district, the parent, and relevant members of the IEP team determine that either subsection (1)(a) or (b) is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.
- (3) If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

ODE recommends that IEP teams use this same process to determine whether a child is unable to wear a face covering or face shield as a result of their disability. The decision made by the IEP team in this regard impacts the decision-making process for the child's education. If a student chooses not to wear a face covering or face shield and that choice is not related to a medical need or their disability, schools should consider using Comprehensive Distance Learning as a means to provide that student's access to their education.

Under this process, adapted for this determination, IEP, 504, and other appropriate teams, including parent(s)/guardian(s), should:

1. Convene an appropriate IEP, 504, or other student support team, ensuring that parents/guardians are afforded the opportunity to meaningfully participate. Parents should also be informed that they may invite additional meeting participants at their discretion. When there is an identified medical concern, the medical professional must provide evaluation/assessment and a written health plan to include any required nursing interventions and/or health services that may allow a face covering or face shield to be worn as well as what precautions must be taken to keep child and staff safe prior to deciding limited in-person (including in-home) services.
2. Review and consider all available data which could inform the team's determination. This data may include, but is not limited to, current IEP, 504, or other educational support plan; medical statements or input; parent input or information; teacher input or information; educational and/or discipline records; evaluation and diagnostic data and/or results; assessment data; observations of the student; and any other source(s) of information that can inform appropriate decision-making.

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3. Determine, based on the available data, whether inability to wear a face covering or face shield is caused by or a result of the child's disability and/or medical circumstances.
4. Update any appropriate plans for the child's education to ensure they are able to access FAPE.
5. Provide Prior Written Notice (PWN) to the parent/guardian if a proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to that child, is made. Note that changes to the general education context for all students do not require PWN to be provided.

## Educational Decision-Making Based on the Team's Determination

### *Lack of Face Covering or Face Shield **IS** Related to Disability or Medical Circumstances*

If the team determines that the child is not wearing a face covering or face shield because of their disability or medical circumstances, the appropriate team must:

- Ensure the child is not excluded because of their medical condition or disability. They may need additional accommodations (e.g., smaller cohorts with additional physical space) to ensure ongoing access to FAPE.
- Determine how FAPE can be provided safely, which may include the provision of limited in-home services, subject to the conditions under in-person instruction for specific groups of students. Though IEP teams are always free to revisit placement determinations, no child's placement can be made more restrictive due solely to their inability to wear a face covering or face shield.
- Review the student's educational program and ensure that any needed changes (e.g., updates to accommodations, present levels, annual goals, or student supports) are appropriately made.

### *Lack of Face Covering or Face Shield **IS NOT** Related to Disability or Medical Circumstances*

If the team determines that the child is able to wear a face covering or face shield but is choosing not to, and that choice is not related to their disability or medical circumstances, that child should be treated in the same manner as a similarly situated general education student without medical concerns who chooses not to wear a face covering or face shield. This may result in the child being excluded from On-Site or Hybrid instructional models, or in-person exceptions to Comprehensive Distance Learning. Even if the child is excluded from in-person instruction, they must be provided access to instruction.