



Addressing individual student needs and face covers

Public health officials agree that face covers are an important and effective protection against the spread of COVID-19. BVSD also understands that face coverings may be challenging for some students to wear, including some students with disabilities. The federal guidance regarding the pandemic, FAPE and health protocols says,

School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students.

Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elem., and Secondary Schs. While Serving Children with Disabilities, (OSERS/OCR 2020).

For students with disability-related challenges to complying with BVSD's face covers protocol, the Office for Civil Rights directs,

School districts should therefore make reasonable modifications in their policies, practices, or procedures—including any addressing the use of face coverings—when those modifications can be made consistent with the health, safety, and well-being of all students and staff, and are necessary to avoid discrimination on the basis of disability.

Question #3, [US DOE, OCR Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment](#) (September 28, 2020)

OCR explains the legal authority for this guidance as follows:

OCR notes that Title II of the Americans with Disabilities Act ... does not require school districts to permit an individual with a disability to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. 28 C.F.R. § 35.139(a). Whether or not an individual poses such threat—including in cases where students, teachers, or staff may be unable to wear a face covering—will depend on an individualized assessment of the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices or procedures or the provision of auxiliary aids or services will mitigate the risk. Id. § 35.139(b). All such assessments must be based, moreover, on reasonable judgment that relies on current medical knowledge or on the best available objective evidence.

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In order to afford equitable access and to deliver FAPE to students with disabilities, BVSD is committed to creating opportunities that do not require face covers and considering individual requests for reasonable modifications to BVSD's face cover protocol.

FAPE: Opportunities and Modifications

Learning has looked very different during the COVID-19 pandemic. As the Reintroduction Plan is followed, schools may move in and out of phases over the course of the year. During different phases, it may be reasonable to create different conditions in the learning environment, by increasing other safety protocols, to permit students who cannot wear a face cover to participate in in-person learning activities in schools. A process for making these decisions is below.

Modifications as used here is different than the modifications to curriculum typically considered by an IEP team under IDEA and Section 504. Here, the modifications are to be made to BVSD's policies and practices regarding students and the use of face covers. Only those modifications that can be made consistent with the health, safety, and well-being of all students and staff are required. If there are not reasonable modifications to the BVSD face cover protocol that can be made without endangering the health, safety, and well-being of all students and staff, then the student may continue receiving general and specialized instruction and related services through a remote learning platform. Of course, if the student can tolerate a face cover for a period of time (with or without adult supports), then the student's planning team (IDEA or Section 504) should capitalize on those opportunities to implement the student's programming in the least restrictive environment.

Also, schools are encouraged to build and offer opportunities for students without the concern about face covers. Current protocols do not require students to wear face coverings while they are outdoors or in specific settings, such as when seated for snack or meals. Where appropriate, BVSD encourages specialized instruction and supportive instructional materials to increase the student's ability to wear a face covering.

Students who are not able to access instruction due to pandemic related disruptions or barriers may be entitled to compensatory education for missed educational opportunities.

Documentation

Currently, BVSD's procedure calls for IEP or Section 504 teams to meet and discuss concerns that are impacting the ability of a student with disabilities to access education. Discussions and a contingency plan for delivering FAPE to the student during the various Phases of BVSD's Reintroduction Plan can be included as an alternate plan in the service delivery statement in the student's IEP or written in a Section 504 plan.

With a student who cannot tolerate a face cover, the IEP or Section 504 team would note medical and disability related issues for the student. In an IEP, the team can include the information in the present levels of performance and identify in the contingency plan those modifications the family and team recommend to facilitate the student's participation in the school program during the

Phases of the Reintroduction Plan. A BVSD committee with detailed knowledge of relevant public health and safety requirements may need to review plans to determine whether the modifications can be made consistent with the health, safety, and well-being of all students and staff. In all cases, BVSD will issue written documentation, either in the form of Section 504 documents or for IDEA eligible students in prior written notice, regarding the student's offer of FAPE and the modifications to be made consistent with BVSD's current health and safety protocols.

Procedure

1. Parents request individualized review for reasonable modification of BVSD's face cover protocol. BVSD is not requesting the use of a specific exemption request form, a phone call or email is enough.
2. For students already identified, the student's existing case manager will contact the parents by phone (or email) to discuss the student's needs with respect to face covers. For students not already identified under IDEA or Section 504, the School's 504 Coordinator or other appropriate person designated by the principal will contact the parents by phone (or email) to discuss the student's needs with respect to face covers. Encourage parents to share relevant medical information, including about their concerns for their student and possible alternatives to a cloth face cover such as a face shield, increased physical distancing from staff and other students, etc. Though all documentation is helpful and will be considered by the team, no specific documentation is required unless requested by the IEP or 504 team.
3. For students with disabilities, identify a time for an IEP or 504 meeting. For students not currently eligible under IDEA or Section 504, confer with leadership about a possible referral. Confirm that Health Services Coordinator, Carrie Lee or another designated Health Services Representative can attend the meeting.
4. In an IEP or 504 meeting with the parents, consider the family's concerns regarding their child's ability to tolerate a face covering and their desires regarding in-person learning and activities. Discuss whether there are modifications to the face cover protocols that would enable the student to participate in the manner desired by the family to the extent such manner is consistent with the student's IEP or 504 plan. The team should discuss and document the type of face cover, if any, or other protective gear/procedures the student may be able to use or may require. The IEP team documents recommendations for modifications in the Contingency Plan. Some recommendations currently in place for BVSD students who are not able to wear face covers include:
 - a. A separate space with additional ventilation measures for the student's instruction
 - b. Providers to wear additional protective gear while working with the student.
 - c. When moving throughout the building, encourage student to use any appropriate face cover alternative, such as a face shield, if it is possible for them to do so. While a face shield does not replace a face cover, it may be better than no face cover.
5. The school determines whether those modifications can be made consistent with the health,

safety, and well-being of all students and staff. When necessary, the modifications requested may be considered by BVSD's Health and Safety Committee, including health services, operations, and other relevant district leadership. The committee shall conduct an individualized assessment of the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether modifications of policies, practices or procedures or the provision of auxiliary aids or services as proposed by the family and team will mitigate the risk. All such assessments must be based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence.

6. BVSD issues prior written notice regarding the student's offer of FAPE and the modifications to be made consistent with BVSD's current health and safety protocols. If BVSD determines the requested modifications cannot be made consistent with the health, safety, and well-being of all students and staff, the school and family shall confer about next steps, including whether alternate modifications could be implemented or another meeting is appropriate.

Resources

[Boulder County Public Health Public Health Order 2020-71 Requiring Facial Coverings Indoors for All Individuals Age 2+ in Childcare, Camps, and PK-12 School Settings](#) (August 9, 2021)

[US DOE, OCR Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment](#) (September 28, 2020)

[IDEA PART B SERVICE PROVISION during COVID-19 Pandemic](#) (September 28, 2020)

[COVID-19 and Special Education: Compensatory](#)

[Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak \(March 2020\)](#)