



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
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MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

MEMORANDUM

DATE: October 21, 2020

TO: Local and Intermediate School District Superintendents
Public School Academy Directors

FROM: Michael F. Rice, Ph.D., State Superintendent 

SUBJECT: Facial Covering Requirements for Students with Disabilities –
MEMO #COVID-19-128

Since the release of [Michigan's Safe Return to School Roadmap](#) on June 30, the Michigan Department of Education (MDE) has consistently supported a wide range of mitigation strategies, including the wearing of masks for students and staff in schools to the extent possible. The better we do with our mitigation strategies, including facial coverings, the longer we will be able to keep schools open and have children attend school in person.

On October 2, 2020, the Michigan Supreme Court ruled that the executive orders issued under the Emergency Powers of the Governor Act of 1945 were unconstitutional, including those that had addressed the use of facial coverings.

On Monday, October 5, 2020, the Michigan Department of Health and Human Services exercised its authority through Public Act 368 of 1978, and issued an epidemic order to require the wearing of masks at all indoor and outdoor gatherings, an order that was updated on October 9, 2020.

The October 9 [Order](#) requires individuals to wear masks when in gatherings, defined as any occurrence where persons from multiple households are present in a shared space in a group of two or more. The order also requires the wearing of masks at schools, except in Michigan Economic Recovery Council Region 6 (the Lower Northern region), which is currently in phase 5.

However, there are exceptions to the mask requirement, including for young children and students with disabilities or other ailments. For example, facial coverings are required in schools *except for those students who cannot medically tolerate them*. October 9 Order, Section 6(b).

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On September 28, 2020, the United States Department of Education's Office of Civil Rights (OCR) issued a [Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment](#) guidance document. Similar to the DHHS October 9 Order, the OCR's guidance reminds districts that situations may exist where a student with a disability is unable to tolerate a face covering in school or at all, and that forcing a face covering may impede a student's ability to receive a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act.

District policies or practices, therefore, including those that require a family to provide a physician statement or note to grant a reasonable accommodation of not wearing a facial covering, should be reviewed for compliance with the DHHS Oct. 9 Order, the OCR guidance, and the federal Individuals with Disabilities Education Act (IDEA) requirements for FAPE. See, e.g., United States Department of Education's Office of Special Education Programs' September 28, 2020 guidance titled [Implementation of IDEA Part B Provision of Services in the COVID-19 environment](#).

To ensure compliance with all applicable federal and state laws, rules, regulations, policies and guidance, districts are encouraged to consult with legal counsel to understand compliance requirements to meet the varying individual circumstances.

Please contact the MDE-OSE information line mde-ose@michigan.gov with questions.

cc: Michigan Education Alliance
Confederation of Michigan Tribal Education Directors