FAQ regarding TSD September 2021 Mask Mandate

As of Tuesday, September 7, 2021, all students, staff, and visitors are required to wear face masks in all Thompson School District schools and all other district buildings.

Effective Tuesday, September 7, 2021, Thompson School District requires all students, staff, and visitors in all district buildings to wear a protective mask while indoors. This requirement will be subject to any exemptions required by law and open to modification by the superintendent as he may determine changes to be necessary or appropriate in response to ongoing information from applicable health officials or authorities.

The Thompson School District Board of Education took this action to decrease the number of COVID-19 infections in TSD schools and to help keep students in school and out of quarantine unless absolutely necessary.

This action is consistent with the Larimer County Department of Health and Environment public health order issued Wednesday, October 20, 2021 requiring that face coverings be worn in all public indoor spaces in Larimer County.

**Question:** May I attend TSD events and activities as a spectator if I require a medical exemption from the masking requirement?

**Answer:** Yes. However, greeters/receptionist/ticketing volunteers at events are not authorized to grant an exemption. To receive a TSD medical exemption from the masking requirement, spectators or visitors must submit a request at least 48 hours in advance of the event at the following email: kevin.clark@tsd.org

Spectators or visitors who have not received a TSD medical exemption from the masking requirement must adhere to the masking requirement during the event. Those denied admission should be provided with any available information about how to access the livestream feed or radio broadcast for the event (if available).

For information about current COVID-19 statistics and requirements in Larimer County, please contact the Joint Information Center at 970.498.5500.

**Question:** How will TSD implement the mask requirement for students during the school day?

**Answer:** TSD’s priority is the education of students. TSD school teams will implement the Board of Education’s masking requirement in a manner that will reinforce students’ positive behavior and sense of belonging.

All school sites will be stocked with masks available for children who forget a mask or soil the mask(s) they brought.
When students fail to adhere to the district’s requirement, staff will offer reminders and informal verbal corrections regarding the masking requirement.

When a student persistently fails to comply with the masking requirement, school staff will attempt to reach parents/guardians to discuss the masking requirement and engage in problem-solving strategies to achieve the student’s compliance with the requirement.

If the school’s interventions prove ineffective, parents will be contacted and the student may be temporarily assigned to an alternative supervised classroom until the student is picked up.

Ultimately, if a student persistently fails to comply with the masking requirement or if parents prefer for their student(s) not to wear masks, then TSD will offer such students an educational alternative, such as Thompson Connect Online.

**Question:** What if my child requires a medical exemption from the masking requirement?

**Answer:** If a student may require an exemption on the basis of a disability, a parent/guardian, school team member, or the child may contact the school office to refer the child for an evaluation under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) or the Individuals with Disabilities Education Act (“IDEA”). The school team will prepare a consent form for the parent/guardian to review. If the parent/guardian provides written consent to evaluate, then the school district will conduct an evaluation in all areas of suspected disability.

If the child is determined to be a child with a disability, eligible for special education and/or related services under either statute, then a properly convened Section 504 team or IEP team, as appropriate, will determine whether the child requires an accommodation from the District’s masking requirement in order to receive a free appropriate public education.

**Question:** Could my child receive a disciplinary consequence if my child refuses to wear a mask and does not have a disability requiring an accommodation from the masking requirement?

**Answer:** Yes. As noted above, TSD’s priority is the education of students. To that end, TSD is committed to providing a safe educational environment for students, which presently includes reducing the number of COVID-19 cases in our schools and limiting the amount disruptions to the educational experience caused by quarantining.

While TSD school teams will strive to promote positive behavior and students’ sense of belonging, the Board of Education’s masking requirement was implemented to promote, not inhibit, school officials’ authority to provide a safe educational environment for students.

Nothing about the Board of Education’s masking requirement limits school authorities’ ability to discipline a student who engages in deliberate refusal to obey a member of the district staff, behavior that is detrimental to the welfare or safety of other students or
school personnel, repeated interference with the school’s ability to provide educational opportunities to other students, or any other conduct violative of Board Policy JICDA or the Code of Conduct.

**Question:** What if my child refuses to wear a mask and does not have a disability requiring an accommodation from the masking requirement, and I support my child’s choice: would a note or directive from me prevent school officials from temporarily reassigning my student to another classroom or from disciplining my child for refusing to wear a mask?

**Answer:** No. The masking requirement has been adopted by the Board of Education, and school officials do not have authority to waive it except for the accommodations required for some students with disabilities.

**Question:** What if I want to influence the Board of Education’s position with regard to the masking requirement?

**Answer:** The Board of Education encourages you to exercise your rights to influence local government through civic participation. The School District regularly hosts board elections and welcomes participation in our public meetings. Board Policy BEDH, Public Participation at Board Meetings, states as follows:

> All regular and special meetings of the Board shall be open to the public. Because the Board wants to hear the viewpoints of the public and also needs to conduct its business in an orderly and efficient manner, it shall schedule time during its regular Board meetings for brief comments and questions from the public. The Board shall set an unlimited time for public participation prior to the business portion of the meeting, however, the time for each speaker shall be limited to three minutes and each individual will only be recognized once.

> Public comments and questions at a regular meeting may deal with any topic related to the Board's conduct of the schools. Speakers may offer such criticism of school operations and programs as concern them, but are encouraged to exercise their speech rights responsibly. The Board encourages the discussion of all personnel matters to be conducted in executive session. The Board president shall be responsible for recognizing all speakers who shall properly identify themselves, for maintaining proper order, and for adherence to any time limits set. Questions requiring investigation shall be referred to the superintendent for consideration and later response.

> The Board delegates authority to the Superintendent to adopt procedures from time to time as necessary to allow the public to participate in regular meetings by electronic means in accordance with this policy.
Members of the public who would like the Board to allow them to participate in the discussion of a particular agenda item at a work/study session shall make arrangements in advance with the superintendent and Board president so that such presentations, when appropriate, may be scheduled on the agenda.

Members of the public will not be recognized by the president during Board meetings except as noted in this policy.

In addition, the school district has various grievance procedures that are available to members of the public, as described in TSD’s Board Policies.

**Question:** Under Section 504, are schools required to make modifications for students regarding mask wearing?

**Answer:** The CDC recommends that masks be worn at all times by all people in school facilities, including students. CDC notes, however, that a narrow subset of students and others with disabilities might not be able to wear a mask or cannot safely wear a mask because of their disability. Students with disabilities who cannot wear a mask or cannot safely wear a mask because of their disability in accordance with CDC guidelines should not be required to wear one.

For example, a student with a disability who, for reasons related to the disability, would be physically unable to remove a mask without assistance if breathing became obstructed should not be required to wear a mask. Students with other types of disabilities could also be exempt from wearing a face mask based on factors specific to the student, and schools should rely on CDC guidance in making such determination.

For the narrow subset of students with disabilities who, because of their disability, cannot wear a mask or cannot safely wear a mask, the school must determine based on a student’s individual circumstances whether that student is able to attend school safely if other prevention strategies can be followed, in accordance with CDC guidance.

As indicated in the ED COVID-19 Handbook Volume I, prevention strategies might include correct and consistent masking and additional Personal Protective Equipment (PPE) for others who work or learn with the student, avoiding large gatherings in class areas, and maintaining sufficient physical distance. If a student with a disability cannot wear a mask, maintain physical distance, or adhere to other public health requirements, the student is still entitled to FAPE, which might need to be provided remotely.

Whether attending school in-person or remotely, students who cannot wear a mask due to their disability must not be denied services or disciplined for being unable to comply with mask requirements and must continue to receive instruction on a nondiscriminatory basis.

**Question:** What if I disagree with the outcomes of the Section 504 process or IDEA process as it relates to my student?

**Answer:** For disputes about a school’s compliance with the IDEA, please see the procedural safeguards provided to your family and available online at https://www.cde.state.co.us/spedlaw/2011proceduralsafeguards.
For disputes about a school’s eligibility determination or about decisions regarding accommodations, special education or related aids and services for a student with a disability under Section 504, parents and guardians may use the school’s Section 504 due process procedures at Board Regulation AC-R.

In addition to, or as an alternative to, filing a complaint pursuant to this local regulation, a person may file a discrimination complaint with the U.S. Department of Education, Office for Civil Rights (OCR); the Federal Office of Equal Employment Opportunity Commission (EEOC); or the Colorado Civil Rights Division (CCRD).

The addresses of these agencies are listed below.

Denver Office for Civil Rights (OCR)
U.S. Department of Education
1244 Speer Blvd., Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
Fax: 303-844-4303
TTY: 303-844-3417
Email: OCR.Denver@ed.gov

Federal Office of Equal Employment Opportunity Commission (EEOC)
303 E. 17th Avenue, Suite 410
Denver, CO 80203
Telephone: 800-669-4000
Fax: 303-866-1085
TTY: 800-669-6820
ASL Video Phone: 844-234-5122
Website: https://publicportal.eeoc.gov/portal/

Colorado Civil Rights Division (CCRD)
1560 Broadway, Suite 825
Denver, CO 80202
Telephone: 303-894-2997 or 800-886-7675
Fax: 303-894-7830
Email: DORA_CCRD@state.co.us (general inquiries), DORA_CCRDIntake@state.co.us (intake unit)

Question: Physical distancing might be difficult for students who have both visual and auditory impairments and require tactile interpreting or for students with disabilities whose education needs require close contact with school personnel. Must schools consider the student’s 504 plan when addressing the student’s disability-related needs that might be affected by physical distancing?

Answer: Yes, schools must take an individualized approach in determining how physical distancing might affect the services provided to students with disabilities. This includes decisions about in-person or remote learning, consistent with a student’s 504 plan, as appropriate. This individualized approach would be guided by information drawn from a variety of sources, including the student’s 504 plan, the student’s teacher, parents, medical personnel, and the results of any relevant tests administered to the student. Also, the use of positive behavioral interventions and
supports might be helpful for students with disabilities, and all students, to provide reminders about new safety procedures. These supports can include modeling and reinforcing desired school behaviors and might include using additional visual cues and reminders, based on the student's individual needs.

The National Center on Positive Behavior Intervention and Supports (funded by the Department of Education) has additional information and resources to assist teachers and providers with supporting the social, emotional, and behavioral needs of students adjusting to school. In addition, school psychologists, counselors, and behavioral specialists or local mental health or behavioral health agencies might be able to provide consultation about specific concerns.

Students should not be disciplined because, for example, they have a disability that impedes their ability to adhere to physical distancing requirements.

**Question:** How does FERPA generally protect the privacy of my student's education records?

**Answer:** FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of students’ “education records.” FERPA affords parents certain rights with respect to their children’s education records maintained by educational agencies and institutions and their agents to which FERPA applies. These include the right to access their children’s education records, the right to seek to have these records amended, and the right to provide consent for the disclosure of personally identifiable information (PII) from these records, unless an exception to consent applies. See 34 CFR Part 99, Subparts B, C, and D. These rights transfer to the student when the student reaches the age of 18 years or attends a postsecondary institution at any age, thereby becoming an “eligible student” under FERPA. 20 U.S.C. §1232g(d); 34 CFR §§ 99.3 (definition of “eligible student”) and 99.5(a)(1).

The term “education records” is defined to mean, with certain exceptions, those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 (definition of “education records”). For instance, a student’s health records, including immunization records, maintained by an educational agency or institution (such as by an elementary or secondary school nurse) would generally constitute education records subject to FERPA.

An educational agency or institution subject to FERPA may not disclose the education records, or PII from education records, of a student without the prior written consent of a parent or the student if the student is an “eligible student,” unless an exception applies. 20 U.S.C. §§ 1232g (b)(1) and (b)(2); 34 CFR §§ 99.30 and 99.31. FERPA contains several exceptions to the general consent requirement which are set forth in 20 U.S.C. §§ 1232g(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (h), (i), and (j), and 34 CFR § 99.31.

For example, educational agencies and institutions can disclose PII from a student’s education records, including health and medical information, to teachers and other school officials within the school, without prior written consent, if these school officials have been determined to have “legitimate educational interests” in the education records, pursuant to criteria set forth in the school’s annual notification of FERPA rights. 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). Educational agencies and institutions can also disclose PII from a student’s education records, without prior written consent, to appropriate parties in connection with an emergency, if these parties’ knowledge of the information is necessary to protect the health or
Question: How does the health or safety emergency exception to FERPA's consent requirement permit an educational agency or institution to disclose PII from the education records of affected students?

Answer: Although educational agencies and institutions can often address threats to the health or safety of students or other individuals in a manner that does not identify a particular student, FERPA permits educational agencies and institutions to disclose, without prior written consent, PII from student education records to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of a student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.

This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception.

For purposes of FERPA’s health or safety emergency exception, the determination by an educational agency or institution that there is a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities.

If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency or institution in that community may determine that an emergency exists as well. Under the FERPA health or safety emergency exception, an educational agency or institution is responsible for making a determination, on a case-by-case basis, whether to disclose PII from education records, and it may take into account the totality of the circumstances pertaining to the threat. See 34 C.F.R. § 99.36(c). If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of the student or another individual and that certain parties need the PII from education records, to protect the health or safety of the student or another individual, it may disclose that information to such parties without consent.

This is a flexible standard under which the Department will not substitute its judgment for that of the educational agency or institution so that the educational agency or institution may bring appropriate resources to bear on the situation, provided that, based on the information available at the time of the educational agency’s or institution’s determination, there is a rational basis for such determination. We note also that, within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student’s education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed. 34 C.F.R. § 99.32(a)(5).

Question: May student education records, such as health records, maintained by an educational agency or institution be disclosed, without consent, to public health departments if the educational agency or institution believes that the virus that causes safety of the student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.
COVID-19 poses a serious risk to the health or safety of an individual student in attendance at the educational agency or institution?

Answer: Yes. If an educational agency or institution, taking into account the totality of the circumstances, determines that an articulable and significant threat exists to the health or safety of a student in attendance at the agency or institution (or another individual at the agency or institution) as a result of the virus that causes COVID-19, it may disclose, without prior written consent, PII from student education records to appropriate officials at a public health department who need the information to protect the health or safety of the student (or another individual). Public health department officials may be considered “appropriate parties” by an educational agency or institution under FERPA’s health or safety emergency exception, even in the absence of a formally declared health emergency. Typically, public health officials and trained medical personnel are among the types of appropriate parties to whom PII from education records, may be non-consensually disclosed under FERPA’s health or safety emergency exception.

Question: Does HIPAA also protect my student’s education records?

Answer: No. Congress enacted HIPAA in 1996 to, among other things, improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Collectively, these are known as the HIPAA Administrative Simplification provisions, and the U.S. Department of Health and Human Services has issued a suite of rules, including the Privacy Rule, to implement these provisions.

Entities subject to the HIPAA Administrative Simplification Rules (known as the HIPAA Rules) (see 45 CFR Parts 160, 162, and 164), called “covered entities,” are health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions. See 45 CFR § 160.103.

“Health care providers” include institutional providers of health or medical services, such as hospitals, as well as noninstitutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See 45 CFR § 160.103 (definitions of “health care provider” and “transaction”) and 45 CFR Part 162, Subparts K–R. Once a health care provider becomes a covered entity, the HIPAA Privacy Rule applies to the individually identifiable health information held by, or on behalf of, the health care provider as a health care provider.

The HIPAA Privacy Rule requires covered entities to protect individuals’ health records and other personal health information the entities maintain or transmit, known as protected health information (PHI), by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The rule also gives patients certain rights with respect to their health information, including rights to examine and obtain a copy of their health records, and to request corrections (amendments).

In a few limited circumstances, an educational agency or institution subject to FERPA can also be subject to HIPAA. For instance, a school that provides health care to students in the normal course of business, such as through its health clinic, is also a “health care provider” under HIPAA.
If a school that is a “health care provider” transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, it is then a covered entity under HIPAA. As a covered entity, the school’s health care transactions must comply with the HIPAA Transactions and Code Sets Rule (or Transactions Rule).

However, many schools that meet the definition of a HIPAA covered entity do not have to comply with the requirements of the HIPAA Rules because the school’s only health records are considered “education records” or “treatment records” under FERPA. See 45 CFR § 160.103 (definition of “protected health information” ¶(2)(i), (ii)). The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of “protected health information.”

In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are “education records” under FERPA and, therefore, not PHI covered by the HIPAA Privacy Rule.

In some circumstances a private school would be required to comply with the HIPAA Privacy Rule when it is a HIPAA covered entity and not subject to FERPA because it does not receive funds from the U.S. Department of Education. Elementary or secondary schools would fall into one of the following categories:

• The school is not a HIPAA covered entity. The HIPAA Privacy Rule only applies to health plans, health care clearinghouses, and those health care providers that transmit health information electronically in connection with certain administrative and financial transactions (“covered transactions”). See 45 CFR § 160.102. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See the definition of “transaction” at 45 CFR § 160.103 and 45 CFR Part 162, Subparts K–R. Thus, even though a school employs school nurses, physicians, psychologists, or other health care providers, the school is not generally a HIPAA covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services. It is expected that most elementary and secondary schools fall into this category.

• The school is a HIPAA covered entity but does not have PHI. Even if a school is a covered entity and must comply with the HIPAA Transactions and Code Sets Rules, the school would not be required to comply with the HIPAA Privacy Rule if it only maintains health information in FERPA “education records.” For example, a public high school might employ a health care provider that bills Medicaid electronically for services provided to a student under the IDEA. The school is a HIPAA covered entity because it engages in one of the covered transactions electronically, and therefore, would be subject to the HIPAA transaction standard requirements. However, if the school provider maintains health information only in “education records” under FERPA, the school is not required to comply with the HIPAA Privacy Rule because the Privacy Rule explicitly excludes FERPA “education records.” See 45 CFR § 160.103 (definition of “protected health information,” ¶(2)(i), (ii)). Importantly, although the HIPAA Privacy Rule does not apply, FERPA’s and IDEA’s privacy requirements do apply, including the requirement to obtain prior written parent or eligible student consent (under 20 U.S.C. §§ 1232g(b)(1) and (b)(2) and 34 CFR §§ 99.30, 300.9 and 300.622) to disclose to Medicaid billing information about a service provided to a student.
• The school is a HIPAA covered entity and is not subject to FERPA. Schools that are covered entities and are not subject to FERPA must comply with both the HIPAA transaction requirements and the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules regarding any individually identifiable health information the school has about students and others to whom it provides health care. For example, if a private elementary or secondary school not subject to FERPA employs a physician who bills a health plan electronically for the care provided to students (making the school a HIPAA covered entity), the school must comply with the HIPAA Rules regarding the individually identifiable health information of its patients.

• Certain private school placements. Where a student is placed in a private school for the provision of Individualized Education Program (IEP) services on behalf of a school or school district subject to FERPA, the education records of the privately placed student maintained by the private school are subject both to FERPA and to the confidentiality requirements under the IDEA, which incorporate the provisions of FERPA, and not the HIPAA Privacy Rule. The U.S. Department of Education is in the process of preparing a Notice of Proposed Rulemaking to amend the FERPA regulations to add this provision and will provide an opportunity for the public to comment on this proposed amendment.

This Q&A relies on local policies and regulations as well as federal guidance issued to schools during the course of the COVID-19 Pandemic. For more information, please visit the following sites.

https://www2.ed.gov/about/offices/list/ocr/docs/qa-reopening-202105.pdf
https://www.ed.gov/coronavirus