



Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs

Interim Final Rule with comment (IFC)
November 29, 2021



CONTEXT

- ❑ Head Start has nearly 280,000 staff and contractors
- ❑ Office of Head Start (OHS) has the responsibility to establish program requirements for Head Start programs
- ❑ IFC is implementation of Biden Administration's COVID-19 action plan announcement on September 9, *Path Out of the Pandemic*



NEW HEAD START PROGRAM PERFORMANCE STANDARDS (HSPPS)

- ❑ OHS is releasing new HSPPS for masking and COVID-19 vaccination for grant recipient staff
- ❑ The Standards will be published 11/30/2021 through an interim final rule with comment in the Federal Register
 - *You can view the unpublished rule here:*
<https://www.federalregister.gov/public-inspection/2021-25869/vaccine-and-mask-requirements-to-mitigate-the-spread-of-covid-19-in-head-start-programs>



IFC CONTENT – MASK REQUIREMENT

□ Mask requirement – in the context of the HSPPS

§ 1302.47. Safety practices.

b. ****

- 5) *Safety practices. All staff and consultants follow appropriate practices to keep children safe during all activities, including, at a minimum:*
- i. *Reporting of suspected or known child abuse and neglect, including that staff comply with applicable federal, state, local, and tribal laws;*
 - ii. *Safe sleep practices, including ensuring that all sleeping arrangements for children under 18 months of age use firm mattresses or cots, as appropriate, and for children under 12 months, soft bedding materials or toys must not be used;*
 - iii. *Appropriate indoor and outdoor supervision of children at all times;*
 - iv. *Only releasing children to an authorized adult, and;*
 - v. *All standards of conduct described in §1302.90(c); and*
 - vi. **Masking, using masks recommended by CDC, for all individuals 2 years of age or older when there are two or more individuals on a vehicle owned, leased, or arranged by the Head Start program; indoors in a setting when Head Start services are provided; and for those not fully vaccinated, outdoors in crowded settings or during activities that involve sustained close contact with other people, except:**
 - A. **Children or adults when they are either eating or drinking;**
 - B. **Children when they are napping;**
 - C. **When a person cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act; or**
 - D. **When a child's health care provider advises an alternative face covering to accommodate the child's special health care needs.**



IFC CONTENT – MASK REQUIREMENT

- ❑ **Mask requirement** – Universal masking for all individuals two years of age and older, with some exceptions. It applies to all individuals in Head Start programs two years of age and older when:
 - There are two or more individuals on a vehicle owned, leased, or arranged by the Head Start program;
 - They are indoors in a setting when Head Start services are provided;
 - And for those not fully vaccinated, they are outdoors in a crowded setting or during activities that involve sustained close contact with other people.



IFC CONTENT – MASK REQUIREMENT

- ❑ **Mask requirement exceptions** – There are exceptions for individuals who cannot wear a mask, or cannot safely wear a mask, because of:
- A disability as defined by the Americans with Disabilities Act;
 - Children when they are napping;
 - Children and adults when they are eating or drinking; and
 - Children with special health care needs, for whom the program should follow the advice of the child's health care provider regarding the best type of face covering

TIMELINE — MASK REQUIREMENT

- ❑ Mask requirement: Effective immediately upon publication of the IFC (11/30/2021).

IFC CONTENT – VACCINE REQUIREMENT

□ Vaccine requirement – in the context of the HSPPS

§ 1302.93. Staff Health and Wellness.

- a) *A program must ensure each staff member has an initial health examination and a periodic re-examination as recommended by their health care provider in accordance with state, tribal, or local requirements, that include screeners or tests for communicable diseases, as appropriate. The program must ensure staff do not, because of communicable diseases, pose a significant risk to the health or safety of others in the program that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.*
1. All staff, and those contractors whose activities involve contact with or providing direct services to children and families, must be fully vaccinated from COVID-19, other than those employees:
 - i. For whom a vaccine is medically contraindicated;
 - ii. For whom medical necessity requires a delay in vaccination; or
 - iii. Who are legally entitled to an accommodation with regard to the COVID-19 vaccination requirements based on an applicable Federal law.
 2. Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS-COV-2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or working directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

IFC CONTENT – VACCINE REQUIREMENT

❑ Vaccine requirement – *in the context of the HSPPS*

§ 1302.94. Volunteers.

- a. A program must ensure volunteers have been screened for appropriate communicable diseases in accordance with state, tribal or local laws. In the absence of state, tribal, or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings.
 1. All volunteers in classrooms or working directly with children other than their own must be fully vaccinated for COVID-19, other than those volunteers:
 - i. For whom a vaccine is medically contraindicated;
 - ii. For whom medical necessity requires a delay in vaccination; or
 - iii. Who are legally entitled to an accommodation with regard to the COVID-19 vaccination requirements based on an applicable Federal law.
 - iv. for whom a vaccine is medically contraindicated;
 2. Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS-CoV-2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or work directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

IFC CONTENT – VACCINE REQUIREMENT

- ❑ **Vaccine requirement** – Vaccination by **January 31** for:
- All staff
 - Certain contractors whose activities involve contact with or providing direct services to children and families
 - Volunteers in classrooms or working directly with children

IFC CONTENT – VACCINE REQUIREMENT

□ Defining “all staff”:

- The definition of *staff* in §1305.2 is “**paid adults who have responsibilities related to children and their families who are enrolled in programs.**”
- Consistent with that definition, “all staff” as noted in this IFC, refers **to all staff who work with enrolled Head Start children and families in any capacity regardless of funding source.**
- The term “Head Start” is inclusive of Head Start, Early Head Start, and Early Head Start-Child Care Partnerships.

IFC CONTENT – VACCINE REQUIREMENT

- ❑ **Vaccine requirement exemptions** may be granted for those with–
 - Medical conditions, documented by a medical provider
 - Sincerely held religious belief

- ❑ Those who are granted an exemption for one of the reasons listed above are required to undergo regular testing

- ❑ Aside from those who are granted exemptions for one of the reasons above, there is no testing option as an alternative to the vaccine requirement

IFC CONTENT – VACCINE REQUIREMENT

- ❑ It is the responsibility of Head Start programs to establish a process for reviewing and granting the exemptions
- ❑ Additionally, **programs should develop and implement a written COVID-19 testing protocol for those granted vaccine exemptions.**
 - Program should consult with their Health Services Advisory Committee (HSAC) and local public health officials, along with recommendations from their agency's legal counsel and Human Resources department in the development of a COVID-19 testing protocol.

DEFINING “FULLY VACCINATED”

- ❑ Consistent with CDC’s definition, people are considered **fully vaccinated**: ±
 - 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or
 - 2 weeks after a single-dose vaccine, such as Johnson & Johnson’s Janssen vaccine
- ❑ The compliance date for the vaccine requirement is January 31, 2022. This means staff, certain contractors and volunteers must have their second dose in a two-dose series, or first dose in a single-dose by January 31, 2022.
- ❑ Full vaccination requires 14 days after a two-dose series such as Pfizer or Moderna or 14 days after a single-dose series like Johnson & Johnson, but for purposes of this regulation, staff, certain contractors and volunteers will meet the requirement even if they have not yet completed the 14-day waiting period required for full vaccination.
- ❑ This timing flexibility applies only to the initial implementation of this IFC and has no bearing on ongoing compliance.

*For more detailed information on the definition of **fully vaccinated**, please visit the CDC:*

https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html?s_cid=11350:cdc%20guidance%20of%20fully%20vaccinated:sem.ga:p:RG:GM:gen:PTN:FY21

TIMELINE — VACCINE REQUIREMENT

- ❑ Consistent with OHS-issued guidance ([ACF-PI-HS-21-04](#)) that programs should work toward full enrollment and in-person services, contingent upon local health conditions, by January 2022.

❑ Vaccine requirement: January 31, 2022

It takes time to get vaccinated:

- **January 3:** First-dose deadline (Moderna COVID-19 vaccine).
- **January 10:** First-dose deadline (Pfizer-BioNTech COVID-19 vaccine).
- **January 31:** Second-dose deadline (Moderna and Pfizer-BioNTech).
- **January 31:** First (only)-dose deadline (Johnson & Johnson).

IFC JUSTIFICATION

- ❑ Ensuring all staff in Head Start settings receive COVID-19 vaccinations will reduce the transmission of COVID-19 from staff to children and families.
 - Reduced transmission protects the health and safety of children,
 - Results in fewer closures of Head Start programs,
 - Program closures also create instability and stress for children and families. They disrupt children's opportunities for learning, socialization, nutrition, and continuity and routine,
 - And supports ACF's priority of sustained in-person early care and education which is safe for children—with all of its known benefits to children and families.

CURRENT RESOURCES

- ❑ [*Vaccinating Head Start Staff: Voices from the Field*](#)
- ❑ Strategies to talk with staff and increase vaccine confidence
 - [**Tips for Talking to Head Start Families and Staff About the COVID-19 Vaccines**](#)
 - [**COVID-19 Vaccine FAQs**](#)
 - [**Changing the COVID Conversation**](#)
 - [**COVID-19 Vaccine Education Initiative**](#)
 - [**Get Vaccine Answers**](#)
- ❑ MyPeers
- ❑ More to come!



OTHER RESOURCES TO CONSIDER

- ❑ CDC Strategies to Implement a Workplace Vaccination Program
 - [Consider COVID-19 Vaccination Options for Your Employees](#)
 - [Build Confidence in COVID-19 Vaccines](#)
 - [Best Practices](#)
 - [Vaccination On Site at the Workplace](#)
 - [Vaccination Off Site in the Community](#)
 - [Other Considerations](#)
 - [Vaccine Mandates & Exemptions](#)
 - [Vaccinated Workers](#)
 - [Other Resources](#)
- ❑ [OSHA Emergency Temporary Standard](#)
 - <https://www.osha.gov/coronavirus/ets>
- ❑ [EEOC What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

QUESTIONS



COVID-19 has changed. Have you?

Here's what we know now:

- It is easier to catch the Delta variant than earlier strains of the virus.
- More children are getting sick.
- COVID-19 vaccines prevent severe illness, hospitalization, and death.

The most important thing you can do is:

 **Get Vaccinated**



 **National Center on Health, Behavioral Health, and Safety**

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FAQs

Q: How will this new requirement be monitored?

A: OHS will monitor this requirement in the same way it monitors other health and safety requirements included in the Head Start Program Performance Standards. Programs need to have a way to document vaccination status and those records need to be available for purposes of monitoring.

FAQs

Q: When does this take effect?

A: The emergency regulation is effective as of November 30, 2021.

FAQs

Q: When do Head Start programs need to comply with the mask requirement? The vaccine requirement?

A: The mask requirement is effective upon the publication of the rule.

The compliance date for the vaccine requirement is January 31, 2022. This means staff, certain contractors and volunteers must have their second dose in a two-dose series, or first dose in a single-dose by January 31, 2022. Full vaccination requires 14 days after a two dose series such as Pfizer or Moderna or 14 days after a single-dose series like Johnson & Johnson, but for purposes of this regulation, staff, certain contracts and volunteers will meet the requirement even if they have not yet completed the 14-day waiting period required for full vaccination. This timing flexibility applies only to the initial implementation of this IFC and has no bearing on ongoing compliance.

FAQs

Q: Who is included in the vaccine requirement mandate?

A: The definition of staff in §1305.2 is “paid adults who have responsibilities related to children and their families who are enrolled in programs.” Consistent with that definition, “all staff” as noted in this IFC, refers to **all staff who work with enrolled Head Start children and families in any capacity regardless of funding source**. The term “Head Start” is inclusive of Head Start, Early Head Start, and Early Head Start-Child Care Partnerships.

This IFC also adds paragraph (1) to §1302.94, *Volunteers*, that requires **all volunteers who are in classrooms or working directly with children other than their own** must be fully vaccinated from COVID-19, except for those (1) for whom a vaccine is medically contraindicated, (2) for whom medical necessity requires a delay in vaccination, or (3) who are legally entitled to a reasonable accommodation under federal civil rights laws because they have a disability or sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement.

This means all outside service providers, transportation staff and contractors who are in classrooms or working directly with children and families are included in the requirement.

FAQs

Q: What if staff are still working virtually or remotely due to a high incidence of COVID-19?

A: Program staff need to comply with the vaccine requirement by January 31 2022 regardless of whether services are presently delivered in-person, virtually, or remotely. While there is flexibility to deliver virtual or remote services during the ramp-up period in calendar year 2021, OHS will not approve virtual or remote learning as a locally designed option.

FAQs

Q: Why is this rule being issued as an Interim Final Rule with comment period without going through notice and comment rulemaking?

A: Ensuring safety and protection from COVID-19 for staff, children and families is the utmost priority. Given the rapidly evolving public health emergency, the increasing presence of the COVID-19 Delta variant, and the unpredictability of the pandemic, OHS finds good cause to issue an emergency regulation as an Interim Final Rule with comment allowing the agency to take immediate action to protect the health and safety of staff, children and families. Grant recipients and other stakeholders will still have an opportunity to comment on the regulation.

FAQs

Q: Will my feedback be considered?

A: Yes, grant recipients and other stakeholders have 30 days to submit formal comment on the emergency regulation. It is important to note that since this is an emergency regulation, the requirements will go into effect immediately and before any additional response is provided on the comments by ACF. The comment period officially closes on December 30, 2021. At that point, ACF will consider and respond to comments as a part of potential future rulemaking, if needed.

FAQs

Q: What is the process for staff to seek a religious exemption?

A: Programs have the flexibility to establish their own processes that permit staff to request a religious exemption from the COVID-19 vaccination requirements. OHS requires programs to ensure that requests for religious exemptions are documented and evaluated in accordance with applicable federal law and as a part of a program's policies and procedures.

FAQs

Q: How will programs determine if an individual's request for a religious exemption is valid?

A: OHS encourages programs to review the Equal Employment Opportunity Commission's Compliance Manual on Religious Discrimination for more information on religious exemptions:

<https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

FAQs

Q: What is the process for staff to seek a medical exemption?

A: Similar to religious exemptions, programs have the flexibility to establish their own processes that permit staff, certain contractors, and volunteers to request a medical exemption from the COVID-19 vaccination requirements. Programs must ensure that all documentation confirming recognized clinical contraindications to COVID-19 vaccinations or medical need for delay for staff, certain contractors, and volunteers seeking a medical exemption are signed and dated by a licensed practitioner, who is not the individual requesting the exemption and is acting within their respective scope of practice based on applicable state and local laws.

FAQs

Q: What happens if State law prohibits vaccine mandates? How can OHS expect a program to follow its requirements if its State prevents them from implementing this rule?

A: Under the Supremacy Clause of the U.S. Constitution, this regulation pre-empts any state law to the contrary. U.S. Const. art. VI § 2.

FAQs

Q: What about the OSHA injunction? What does it mean for this rule?

A: It is playing out in the court system and we will see how it evolves but it does not affect the Head Start rule.

FAQs

Q: Have you considered the impact of a vaccination requirement on the Head Start workforce?

A: Staff vaccination requirements may result in the loss of some staff because they will not get the COVID-19 vaccine. That said, vaccination is an important requirement which prioritizes the health and safety of staff, children and families.

Programs are encouraged to assess staff vaccination levels and to plan for vacancies as soon as possible to allow recruitment for needed staff. Program funds, including American Rescue Plan (ARP) supplemental funding, may be used as needed to recruit and retain staff, including for paid leave to obtain vaccine and recover from any side effects.



Sleeve up and mask up, Head Start family, as it's the best way we can care for and protect each other.

