

## **Final Rule on Mitigating the Spread of COVID-19 in Head Start Programs**

Glenna Davis: Hello, everyone, and welcome to the Final Rule on Mitigating the Spread of COVID-19 in Head Start Programs webcast. It is now my pleasure to turn the floor over to Tala Hooban. Tala, the floor is yours.

Tala Hooban: Hi, Glenna. Happy New Year. I see people trickling in, so I will try to talk slow. Welcome to the webinar, as Glenna said, about the Mitigating the Spread of COVID-19 in Head Start Programs. This is a Final Rule update. I just wanted to start off by saying thank you all for being on the front lines in serving children and families most in need for the last three years of this pandemic. It's hard to believe that we're going to hit the three-year mark in a couple of months, and I'm pretty sure we've all aged 40 years in those three years.

We know how hard it's been, and we appreciate you all. I am very glad to be sharing information with respect to the Final Rule on COVID mitigation today. This Final Rule addresses the universal masking requirement, but it does not address vaccination and testing requirements. All right. Next slide.

As Glenna mentioned, I am Tala Hooban. I am the acting director of Head Start. Today, you will be hearing from Shawna Pinckney, the acting deputy director of Head Start, and Kate Troy, the acting director for policy and planning. Throughout this presentation, folks should please feel free to submit your questions or comments in the Q&A. It is easier to track that way, and we will answer them as we go along. I will now turn it over to Ms. Kate Troy.

Kate Troy: Hello, everybody. It's great to be with you today. My name is Kate, and I'm acting director for policy and planning. I hope everybody can hear me. I will try to keep my eyes on the chat in case I should be speaking up. It's a pleasure to be here with you today. I wanted to ground us a little bit first in where we have been with the IFC.

The Interim Final Rule with Comment Period was an implementation of the Biden Administration's COVID-19 action plan, which was announced on September 9th, and that was referred to as the Path Out Of The Pandemic. The IFC was issued on November 30th, 2021, and as a result, it added requirements to the Head Start program Performance Standards, specifically related to universal masking for individuals ages 2 and older and COVID-19 vaccination for Head Start staff, certain contractors, and volunteers, and the "at least weekly" testing requirement for those granted an exemption from the vaccination requirement.

Now, the Final Rule was issued on January 6<sup>th</sup> – just this past Friday – and this regulatory action finalizes one of the two provisions in the IFC with some changes. This Final Rule specifically takes into consideration the more than 1,700 comments on the masking requirement from the public. As you recall, there was a 30-day comment period directly following the publication of the IFC, and we appreciated those of you who are able to – who wrote in to us and provided your comments. We definitely took those into consideration and took them seriously and appreciate you giving us that feedback. In addition to the public comments that we took into consideration, we also took into consideration the most up-to-date data available on COVID-19.

In brief, this Final Rule removes the requirement of universal masking for all individuals 2 years of age and older when there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program, when they are indoors in a setting where Head Start services are provided, and for those not fully vaccinated, outdoors in crowded settings or during activities that involve close contact with other people. The rule also requires Head Start programs to have an evidence-based COVID-19 mitigation policy developed in consultation with their Health Services Advisory Committee, or their HSAC.

And as Tala mentioned in her opening remarks, the Final Rule does not address the vaccination and testing requirements as these are both still under review. The vaccine requirement, in other words, in place at 1302.93 and 1302.94 remain in effect, except for those states with a preliminary or permanent court injunction. I want to see just a few more contextual comments about how we got to this place. After consideration and review of the most up-to-date CDC guidance, HHS concluded that the universal masking requirement published on November 30th with the Interim Final Rule with Comment Period really no longer reflects the current landscape of the pandemic.

Specifically, at this stage, the science and data points more took a local response – a more locally responsive approach to mitigation strategies that really takes into account the impact of COVID-19 on the community as demonstrated by the CDC's COVID-19 community levels. As a result, currently, Head Start programs may be operating with a more stringent masking requirement than the CDC indicates is warranted. Let's take a look at what this looks like in the Performance Standards. I want to just be able to ground folks a little bit in where this is. In 1302.47, under Safety Practices, you'll see that the language for universal masking, which is in the red, is now stricken, and what is there instead is a new number 9.

If you think of that section – this section has a lot in it – and number 8, for example, is that programs have a disaster preparedness plan. Below that in the standard now is a new number 9 that speaks to this COVID-19 mitigation policy. And what it says here is – the regulatory text itself reads, "The program has an evidence-based COVID-19 mitigation policy developed in consultation with their Health Services Advisory Committee that can be scaled up or down based on the impact of COVID-19 in the community to protect staff, children, and families from COVID-19 infection."

Just recapping briefly, this is removing the mask requirement and replacing it with an evidence-based COVID-19 mitigation policy developed in consultation with the program's HSAC. And we really think this gives Head Start programs the flexibility to consider the unique challenges and needs faced by individual programs. It also creates a more enduring policy that really has the ability to evolve with the pandemic, and it still supports the safest environments for the workforce and the children and families Head Start serves.

As you can see, we really are leaning on the existing framework of our HSAC, which is an advisory group usually composed of local health providers. It may include pediatricians, nurses, nurse practitioners, dentists, nutritionists, mental health providers. Head Start staff and parents also serve on the HSAC. And as we know, all Head Start and Early Head Start programs are required to establish and maintain a HSAC.

I also want to call out specifically – when we read the regulatory language from the prior side – I want to call out a key phrase from that that says that the mitigation policy is intended to be dynamic. The standard requires that it can be scaled up or down as needed based on the impact of COVID-19 in the community. It's this language that really makes it an enduring policy because it allows the program to adapt based on what's happening around them. If, for example, there is an increase in COVID-19 impact or risk, a program, for example, could really lean into the use of outdoor activities if possible, weather permitting, to really be – as one of their mitigation strategies to manage and increase the COVID-19 impact.

I want to say a couple of words about the timeline, which I know are sort of natural questions that you may all have pretty immediately. I want to clarify that the COVID-19 mitigation policy requirement is effective on March 7th. If you look at the rule, which is available now in ECLKC, you will see that date in there under the implementation date, and there's another section that talks about the implementation timeline. This essentially gives programs 60 days to develop their evidence-based COVID-19 mitigation policy in consultation with their HSAC. It's 60 days from Friday, which was the publication date of the rule. 60 days from Friday brings us to March 7th.

To be clear about the previous universal masking requirement, this requirement was rescinded upon the publication of the Final Rule this past Friday. As of January 6th, programs are no longer required to comply with the universal masking requirement.

I want to shift now to a program instruction that was also released on Friday that provides supplementary information to provide additional details for programs in developing their evidence-based policy. It really includes guidance on how to establish plans that would be responsive to changing circumstances. It focuses on how to ensure the policy is evidence-based, recommendations for the latest research and science on layered mitigation strategies, including information from the CDC guidance for early childhood education settings and state and local guidance. And it also has specific examples or questions that programs can take into consideration when they're developing strategies for communicating the COVID-19 policy, the mitigating policy to staff and families.

Also, you'll note in here that the PI incorporates information about the COVID-19 community levels, which is really one way that programs can look to guide them in understanding how conditions are changing in their community. There are other ways, but the COVID-19 community levels are one way that programs can be tracking what's happening around them.

I want to focus specifically on a couple of examples, two key definitions, which are both in the rule and in the PI to guide this work. Evidence-based is really an umbrella term that refers to using the best research evidence, found in health sciences literature and clinical expertise, so what health care providers know in developing content. It's really about integrating the best available science with the knowledge and considered judgments from stakeholders and experts to really benefit Head Start children, families, and staff.

The other keyword that we want to call out again, which is in the PI, is mitigation. In the context of COVID-19, mitigation refers to measures taken to reduce or lower SARS-CoV-2 transmission, infection, or disease severity. Other terms you'll see used for the same concept are risk-

reduction strategies or prevention strategies. And I want to be clear, one last word about the previous slide, I want to be clear briefly that I know some folks might naturally be asking if there is a template they can use or if there's something that OHS is providing, and I want to be clear that we are not providing templates for this COVID-19 mitigation policy. This is really about a collaborative process that respects the fact that local communities look different and will have different needs.

The expectation that it's a collaborative process where programs are consulting their HSAC, and they are arriving at a policy that can be scaled up or down based on the conditions around them. And I also want to call out a couple of evidence-based resources that programs can be considering. Specifically, public health authorities such as the U.S. Centers for Disease Control and Prevention, the CDC, also state, Tribal, local, and territorial health departments are other examples that we point programs to in the program instruction.

I want to just focus again on the rationale for this. The justification, really, is to be responsive to the latest data, and it really reflects the nuances of varying local health conditions in communities across the country. Specifically, again, the Final Rule is responsive to and really better aligned with the latest CDC guidance. As I noted, it provides programs additional flexibility to account for local public health conditions, and it better reflects the changing landscape during the pandemic, including the availability now of the pediatric vaccine for young children. It also supports more in-person services and still prioritizes the safety of staff, children, and families.

With that background, I am going to welcome my colleague Shawna, and we are going to answer some questions that we anticipate. Hi, Shawna.

Shawna Pinckney: Hi, Kate, nice to see you this afternoon.

Kate: Great to see you.

Shawna: I just have a couple of questions. Some of these, I know that you already touched on, but it takes me a couple of times of hearing something to have it sink in. You talked quite a bit about COVID mitigation policies. My first question, just for clarification, what does it mean that programs are required to have evidence-based COVID-19 mitigation policies?

Kate: Yes. Thank you for asking that, Shawna. I'm just going to point folks back to the program instruction. The Office of Head Start released the program instruction on Friday, January 6th, and this really offers supplementary information to support programs in operationalizing this new requirement. It includes a lot of resources and considerations. It points people to, for example, the Centers for Disease Control and Prevention have a great resource, Operational Guidance for Early Childhood Programs, and really thinking about considerations that are specific to the population we serve, young children. It just incorporates a range of resources programs can consider and things that they should be keeping in mind as they develop this evidence-based policy in consultation with their HSAC. I really urge programs to lean on that PI.

Shawna: Thank you for that. My next question is, what does this new requirement mean for the universal masking requirement?

Kate: Yes. I just want to reiterate that because it's really important, and I know it's a natural question folks have. This regulation, which includes the removal of the universal masking requirement, is effective January 6<sup>th</sup>. This last Friday, when it was published, as of that day, Head Start programs no longer need to comply with the universal masking requirement.

Shawna: Just going back a minute to the COVID-19 mitigation policies, is that requirement a permanent standard moving forward?

Kate: Yes. Next slide please. Yes, it is. It's a permanent standard. I know that there are questions that folks have. The regulatory process is long, and it can be confusing, and I think it's just important to clarify that when this Final Rule is published, the requirements do become a permanent part of our Performance Standards. We struck the language for the universal masking requirement before, as I noted in 1302.47, and now, that green language that represented a new number 9 is a permanent part of our Performance Standards. And any change to that would have to happen again through our regulatory process.

Shawna: It's a really helpful clarification. My next question – I think Tala mentioned this at the top of our webinar – is there an end date for the vaccination and testing requirements?

Kate: No. There is not an end date at this current time. As of January 6<sup>th</sup>, 2023, vaccination for COVID-19 for staff, certain contractors, and volunteers as well as "at least weekly" testing for those with approved exemptions will remain a requirement in the Head Start Performance Standards, of course, always subject to the court injunctions. There is still a preliminary injunction at play as well as a permanent injunction. Those are important notes to consider, but the vaccination testing and requirements, as we noted, remain under review.

Shawna: I may have another question on that, but let me go back to the COVID-19 mitigation policies. How will the Office of Head Start be monitoring this requirement?

Kate: Yes. It's a great question, and I'm sure folks are wondering. I want to be clear – the requirement for the COVID-19 mitigation policy, which must be placed by March 7<sup>th</sup>, 2023, will be monitored in the same way as other program Performance Standards. Now, I want to note, the formal monitoring will begin in the 2023-2024 program year. I'm going to repeat that. Formal monitoring will begin the next program year, in 2023, 2024.

In the interim, I do want to note that OHS will collect data related to the development of a mitigation policy from a random sample of grant recipients in the spring, and that's a useful tool for us to understand how programs are doing with development of a mitigation policy and to make sure that we can tailor TA, should programs need additional support. This is a useful tool for us to have that interim data. And support programs, in meeting this requirement, OHS will offer training and technical assistance, and I do ... We'll be touching on this at the end, but I'm really happy to share with you another webinar opportunity on January 11<sup>th</sup> that we'll speak to HSACs, generally, but also to these requirements specifically.

I see a note in the chat really quick to repeat this last part. I'm just going to say that we will support programs in developing this mitigation policy, and we will provide training and technical assistance to do that. And one thing I wanted to mention quickly is that there will be a webinar, I'm pleased to announce, on January 11<sup>th</sup> that focuses generally on the role of the

HSAC, but it will also focus specifically on how to engage the HSAC in the development of this evidence-based COVID-19 mitigation policy.

Shawna: Really helpful, Kate, that gave me time to lock in January 11th on my calendar so I make sure I am present for that really important conversation. I want to go back. You mentioned the court injunction a few moments ago. Just to help me be more clear about this question. If I'm a program in, let's say, the state of Indiana, will my state and the other states that are included in the injunction be required to develop a COVID-19 mitigation policy?

Kate: Thanks for that question. This is important, and I'm sure folks are trying to understand the intersections, which is really important. Yes, for the grantees in Indiana as well as other programs in states that are in a preliminary or permanent court injunction, yes. All Head Start programs need to comply with this new requirement to develop an evidence-based COVID-19 mitigation policy. That applies to all programs across the country.

OHS still cannot enforce the vaccination and testing requirements that were part of the Interim Final Rule issued in November. Those requirements, we still cannot enforce due to the injunction. That remains in effect for the Interim Final Rule with Comment for those programs in states subject to the court injunctions, but to be clear, that was part of the IFC. This Final Rule now has a new requirement that all programs must comply with.

Shawna: OK. Let me ask you a slight nuance on that question but still about states that are enjoined. At the department level, the U.S. Department of Health and Human Services, they are enjoined. If your state is enjoined with HHS, in either the preliminary or permanent court injunction, can my program, say, my program in Indiana, can my program still enforce the vaccine and mask requirement? And the part two is, what if my state has also banned masks and/or vaccination mandates? Can you clarify that point?

Kate: Yes. And this is a great question, again, and this has come up for us where some programs say, "My state is part of the injunction, but I still want to have a policy. I still want to encourage this." It's a really important clarification. The court order enjoins HHS, so Head Start programs in states where there is an injunction can still choose to enforce masking and vaccination. However, the caveat to that is if you are located in a state that has a ban on mask use, or they prohibit vaccine status as a condition of employment, those programs, it's just important to consult your legal counsel, to understand the limitations and exceptions that may exist in each state's laws and policies.

To be clear, I think the high-level answer is, yes, you can choose on your own to enforce masking and vaccination, but if you are in a state that has a ban on mask use, or it has some prohibitions on vaccine status as a condition of employment, in those moments, you really should check with your counsel. It's just good to make sure that you have your bases covered.

Shawna: Really helpful, Kate. Thank you for walking us through those questions. I really appreciate it.

Kate: Absolutely.

Now, we are going to shift. We have a number of resources that are available to folks on our ECLKC page. As of last Friday, we released quite a bit of additional information with the

publication of the rule. There is a chapter in ECLKC that has information on mitigating the spread of COVID-19 in Head Start programs. It has the rule itself. We encourage programs to read through the preamble to the rule because it really gives programs a lot of information about what we were thinking, why we arrived in this place, and I think that's just helpful background information for folks to have. That is there as well as the program instruction as well as ... You can actually see how the Head Start program Performance Standards are revised, so that slide that we walked through. We can see how that looks now in the standards.

I also really want to encourage folks, this is the guidance from CDC that I mentioned that the formal name is the Operational Guidance for K-12 Schools and Early Care and Education Programs to Support Safe In-Person Learning. Has a lot of really good information again that's really targeted to young children, and it's a lot of really useful considerations that programs can take into account when developing their policy. We also have our COVID-19 Updates page. Any time there's an update on a litigation or anything else, you will see that information on our COVID-19 Updates, which is that general landing page on ECLKC.

And this is the webinar that I mentioned, and we're really excited about it because I think the timing is just really going to support grant recipients at a time that's really needed. This webinar is called Creating an Effective Health Services Advisory committee. As noted, it's on January 11th, 2023, and this really is an opportunity to understand more about how your HSAC can assist you in navigating the ever changing health concerns faced by children, families, and staff. It's really going to explore ways to create and sustain a vibrant HSAC as well as provide resources to help make that happen.

And of course, we'll be incorporating information into that webinar about the COVID-19 mitigation policy and how to be really in consultation with your HSAC to develop it. It will also include strategies for identifying, recruiting, and retaining members, running and engaging in meaningful meetings, and partnering with the HSAC to develop and review health policies and procedures. And please note that the webinar will be offered with simultaneous interpretation in Spanish.

That brings us to the end of this information sharing, this webinar about the Final Rule, and I just ... I know that I've seen a lot of activity in the chat, and I just want to reassure you that we will be taking these back and looking at them and making sure that we circle back and provide you information that is specific and responsive to your questions. I'm just going to pause and see if, Shawna, Tala, if you have anything else to add before we close out.

Tala: Thank you so much for the very thorough Q&A questions in the chat. It's been great trying to catch up and read them. As Glenna said at the top, we will have the PowerPoint and the recording on ECLKC, and then the resources, some of them are already on there. Hopefully, that answers some of your questions. I know there's a lot of HSAC questions about the webinar, and I think that that is also in the chat, if you can find it. Otherwise, please let us know if you have questions, and I'm really grateful for this partnership. And that is all we have.

Kate: Thank you so much.