

August 30, 2021

Office of the Superintendent  
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Ladies and Gentlemen:

Hellgate Elementary wants to take the opportunity to provide a consistent response to a number of questions we have received regarding the precautions we are taking to protect students, staff, visitors, and their families from COVID-19.

### **1. Why has the District made the decision to require universal masking in schools?**

Many hours have been spent reviewing information from medical professionals regarding mitigation strategies and understanding how COVID-19 is impacting our community. The decision to mask was based on the information from these review opportunities and subsequent discussions, carefully looking at our community data, and the circumstances that come with the Delta variant. Pertinent data that was examined is as follows:

- The confirmed active cases in Missoula County are steadily rising.
  1. On August 10, 2021, in Missoula County, there were approximately 270 active confirmed Covid-19 cases and on August 27, 2021, there were approximately 627 active confirmed COVID-19 cases.
- As reported by the Missoula City/County Health Department Covid-19 Data Dashboard, the daily reports on ages of people indicated the following numbers of active positive Covid-19 cases in Missoula County on the following dates.

<b>Date</b>	<b>0 to 19</b>	<b>Over 20</b>	<b>Total</b>
August 10	33	207	240
August 13	43	250	293
August 17	33	242	275
August 20	47	297	344
August 24	77	441	518
August 27	100	527	627

- In the August 27, 2021 daily report, about 16% (one in six) of the active Covid-19 cases in Missoula County were young people between the ages of 0 to 19 - in other words, school-aged children;
- Both Providence St. Patrick Hospital and Community Medical Center have been hovering around maximum capacity due to the influx of patients with complications from COVID-19, meaning local hospitals are at the point where any emergency medical assistance, such as a car accident or heart attack, possibly could be diverted;

- The Delta variant has demonstrated to be far more transmissible than earlier variants, meaning each person infected is much more likely than with earlier variants to infect those around them;
- The Delta variant may cause more serious illness than previous strains, with potentially more people being hospitalized with COVID-19 with this variant than with earlier variants;
- Vaccinated individuals can pass along the virus to others, regardless of their vaccination status;
- The Delta variant also seems to be having a greater impact on children than earlier iterations of this; and
- Some survivors of the COVID-19 infection have been left dealing with long-term consequences of the viral infection, including children who have suffered as a result of their infection.

## **2. What should I do if I do not want my student to wear a mask at school?**

If you do not want your child to wear a mask in school, you have the option of enrolling your student in the distance learning platform that Hellgate Elementary is offering. Parents wishing to opt their child into the distance learning platform or learn more about that option, should contact Dr. Molly Blakely, Hellgate Elementary Assistant Superintendent, at [mblakely@hellgate.k12.mt.us](mailto:mblakely@hellgate.k12.mt.us). Parents wishing to exercise this option must do so by Friday, September 10, 2021.

## **3. Do students who are vaccinated against the novel coronavirus still have to wear masks in school?**

As a result of House Bill 702 (effective on July 1, 2021), the school district is prohibited by law from providing different treatment to students, staff, or visitors as a result of their vaccination status. One of the consequences of this is that Hellgate Elementary must treat all persons as if they have not been vaccinated against COVID-19 or risk violating Montana's Human Rights Act. This means that even if you are vaccinated against coronavirus, you are required (by school board directive that masks are mandatory) to wear a mask while indoors on school district property.

## **4. What about Senate Bill 400?**

Senate Bill 400, passed by the Legislature during the 2021 Legislative Session, states that a governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the governmental entity demonstrates that the interference (1) furthers a compelling governmental interest, (2) is narrowly tailored, and (3) is the least restrictive means available to further the compelling governmental interest.

SB 400 does not take effect until October 1, 2021. Regardless, while Hellgate Elementary does not believe requiring masking interferes with any fundamental rights of parents (or students or visitors), the school district believes that a universal masking requirement

further a compelling government interest, that interest being mitigating the spread of a global pandemic that has killed more than 630,000 of our fellow Americans and nearly four and a half million people worldwide. The school district also believes that universal masking is narrowly tailored and is the least restrictive means to further the compelling governmental interest. Hellgate Elementary is utilizing masking as a way to avoid more broad-based or restrictive options to mitigate the spread of the COVID -19, such as closing schools, or going to either a hybrid distance learning model or purely a distance learning model of education.

#### **5. What about a medical exemption to the masking requirement?**

Hellgate Elementary is aware of its obligations, under state and federal law, to provide reasonable accommodations and special education services to those who qualify for them. If you or your child has a medical reason for being unable to comply with the masking, the school district stands ready to have the conversation about what accommodations it can reasonably provide.

#### **6. What about a religious exemption to the masking requirement?**

At this time, Hellgate Elementary is not aware of any religious teaching that prohibits the faithful from wearing a mask. So, at this time, it is not recognizing any religious exemptions to this policy. Hellgate Elementary is prepared to reassess this position if presented with sufficient evidence to the contrary and will discuss potential accommodations with any affected individual at that time.

#### **7. What about Article X of the Montana Constitution?**

Article X of the Montana Constitution provides the guarantee that all children will be provided equality of educational opportunity. Hellgate Elementary is satisfying this requirement. All students enrolled in the School District are welcome to come to school and be educated, in person, so long as they abide by all school district policies, including school board policy #3050 (Student Discipline). Just like students are not denied their right to educational opportunity if they are sent home for a violation of a dress code, their constitutional rights are not violated by requiring them to wear a mask pursuant to a school policy adopted to protect themselves and others from a life-threatening pathogen or sending them home for their refusal to do so.

Should a parent not wish his/her child to avail himself/herself with the in-person educational opportunity, Hellgate Elementary, as explained previously in Section 2, is providing the opportunity for distance learning.

#### **8. What authority do you have to deny entrance to school property because someone is not masked?**

On Monday, August 23, 2021, the Hellgate Elementary Board of Trustees determined that masking is necessary and required - necessary and required for all staff, students, and

visitors. School district policy #4015 states that “the School District prohibits any person on school property from willfully violating the School District's policies”. Policy 4015 authorizes the school district's administration to "take appropriate action as circumstances warrant for any infraction” of school district policies. This action could include barring a person from entering school facilities and/or school property.

## **9. What about House Bill 501?**

House Bill 501, passed by the Legislature during the 2021 Legislative Session and effective on passage and approval, amended Montana's Criminal Trespass to Property statute, Mont. Code Ann. § 45-6-203. It dictated that it does not constitute criminal trespass to enter or remain in a public place paid for in whole or in part with taxpayer funds without a mask or other facial covering, even if such a mask or facial covering is generally required.

However, if necessary, Hellgate Elementary can involve law enforcement in the enforcement of a request that someone leave school facilities and/or school property after having been asked or if they are being combative or abusive. Mont. Code Ann § 45-6-201 provides that the privilege to enter property "may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person." So, a person may be able to avoid criminal liability for not wearing a mask in a setting where masks are required but if ordered to leave and the person remains, they could still be charged with trespass. The person would not face such a charge for simply not wearing a mask under HB 501.

The school district can also request law enforcement issue an individual, who refuses to leave after being asked, with a citation with the misdemeanor of “Disturbance of School”, Mont. Code Ann. § 20-1-206, which prohibits someone from willfully disturbing a school or any school meeting, or the misdemeanor “Abuse of Teachers”, Mont. Code Ann. § 20-4-303, which forbids the insult or abuse of a teacher anywhere on the school grounds or school premises.