

## **COVID-19 Vaccine Mandate for School Employees and Students**

The COVID vaccine mandate can be broken into four parts:

1. what's happened so far;
2. what is the process for mandating the vaccine for school employees and students?
3. where the mandate is going
4. roles and responsibilities of school employees and board members

### **What's happened so far**

To be clear, currently there is no COVID mandate for school employees nor children. School employees either have to be vaccinated or test weekly, which all of our employees are in full compliance. Governor Newsom has directed the California Department of Public Health to add the COVID-19 vaccine to other vaccinations required for in-person school attendance pursuant to the Health and Safety Code sections 120325-120380

<https://www.gov.ca.gov/wp-content/uploads/2021/10/California-Becomes-First-State-in-Nation-to-Announce-COVID-19-Vaccine-to-List-of-Required-School-Vaccinations.pdf>

### **What is the process for mandating the vaccine for school employees and students?**

A vaccine can be added to the list of vaccinations required for in-person instruction by either regulation or legislation. Health and Safety Code section 120335 (b) (11) authorizes vaccine requirements for “any other disease deemed appropriate” by the California Department of Public Health (CDPH). A vaccine requirement via regulations requires medical and personal beliefs exemptions. Governor Newsom has indicated he wants the COVID vaccine to be added to the list of required school vaccinations through legislation. Legislation has stricter exemptions.

The vaccine requirement would be phased in based on full FDA approval; first with students in grades 7-12 and then with students in grades K-6. The anticipated date is July 1, 2022 but it could be sooner or later. Once the vaccine is granted full FDA approval, the CDPH will review recommendations from the Advisory Committee on Immunization Practices at the U.S. Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians prior to implementation of the vaccine requirement. CDPH will also initiate the rule making process which includes public comment.

School employees will be required to be vaccinated before or when the first students are required to be vaccinated, July 1, 2022 or sooner.

### Where the mandate is going

The mandate will be approved either through the CDPH regulation process or through the legislative process. Voicing opinion through the CDPH regulation process would be via public comment. Voicing opinion through the legislative process would be through assembly members and senators, lobbying. Governor' Newsom wants the mandate to go through the legislative process because of the stricter exemptions. Dr. Richard Pan, Senator from the Sacramento area, is expected to lead the effort through the legislature. Dr. Pan is a practicing pediatrician and led California's stricter vaccine requirements some years back. There will be an avalanche of lobbying efforts starting this January, when the legislature returns, both by groups and individuals in favor or against the vaccine mandate. February is a key month because all bill must be submitted to the leadership by mid-February to be considered. The hard lobbying push begins in late February and gets heated in March and April. Many school organizations, CSBA, SSDA, ACSA, etc, host legislative action days in March and April.

### Roles and responsibilities of school employees and board members

Both school employees and school board members took an oath to uphold the Constitution of the United States and California and have a duty to uphold its laws. While the Board may debate and discuss the COVID-19 vaccine, the Board's ultimately uphold the law whether it's through regulation from the CDPH or the legislative process. In his August 23, 2021 letter to school leaders, Dr. Tomas Aragon California Public Health Director and Officer outlined the legal requirements for school leaders:

*"... school leaders have legal duties to protect the health and safety of students attending school. (See Cal. Const. art. I, § 28 [public school students and staff "have the inalienable right to attend campuses which are safe, secure and peaceful"].) Failure to follow the mandatory public health directive will expose schools and school leaders personally to substantial legal and financial risks, some of which are highlighted below.*

*"...school leaders have a heightened duty of care to protect the health and safety of students under their supervision. (C.A. v. William S. Hart Union High Sch. Dist. (2012) 53 Cal. 4th 861, 869 [noting heightened duty of care because "a school district and its employees have a special relationship with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel"].)*

*“...schools and school leaders involved in that decision could face significant financial liability if a student or staff member contracts COVID-19... The financial exposure would be substantial if a student or staff member were to die from COVID-19.*

*Second, schools and school officials involved in the decision not to follow the mandatory public health guidance may face civil lawsuits by concerned families and staff compelling them to comply with the guidance. As noted, the public health directive has the force of law, and a mandatory duty therefore exists for schools to implement the guidance.*

*Third, certificated individuals—including school administrators—may be subject to referral to the Commission on Teacher Credentialing for disciplinary action for violating a mandatory legal duty...and knowingly exposing students to preventable harm. (See Educ. Code § 44421 [authorizing discipline for "refusal to obey . . . laws regulating the duties of persons serving in the public school system"].)*

*Finally, schools and school officials may be subject to fines or civil enforcement actions by local health officers for refusal to adhere to the mandatory masking directive, pursuant to Health and Safety Code section 120175. In fact, Education Code section 49403 states clearly: "the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in school-age children."*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Requirement-for-Universal-Masking-Indoors-at-K-12-Schools.aspx>

The requirements for school boards and certificated employees is clear.

Please remember that a Board Member's authority comes from the Board and not as an individual member of the Board; an individual board member may disagree with a Board decision but is limited in their role as a Board Member in speaking about a decision that is contrary their opinion or view. Board Bylaw 9010 states:

*The Board of Trustees recognizes the responsibility of Board members in their **role as community leaders to participate in public discourse on matters of civic or community interest, including those involving the district, and their right to freely express their personal views.** However, to ensure communication of a consistent, unified message regarding district issues, **Board members are expected to respect the authority of the Board to choose its representatives to communicate its positions and to abide by established protocols.***

***All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.***

*When speaking for the district, the Board encourages its spokespersons to exercise restraint and tact and to communicate the message in a manner that promotes public confidence in the Board's leadership.*

*Board spokespersons shall not disclose confidential information or information received in closed session except when authorized by a majority of the Board. (Government Code 54963)*

*When speaking to community groups, members of the public, or the media, **individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.***

*In addition, the Board encourages members who participate on social networking sites, blogs, or other discussion or informational sites to conduct themselves in a respectful, courteous, and professional manner and to model good behavior for district students and the community.*

*Such electronic communications are subject to the same standards and protocols established for other forms of communication, and the disclosure requirements of the California Public Records Act may likewise apply to them.*

<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030680&revid=V6wQB51IJTnuFFhtgPC5ag==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=qo79RxbUbdO3GjATNVIJ7Q==&PG=6&IRP=0>