

USED/White House Vaccine Mandate Call

Last week, CCSESA had an opportunity to join a call with Noelle Ellerson Ng, our federal lobbyist, and featured Mary Wall (White House Domestic Policy Counsel) and Ian Rosenblum (US Education Department), focused on President Biden's recently announced vaccine and testing mandate. Below is a summary of the provisions, a summary of the Q&A, and other related information.

Overview of Mandates: When it comes for policies that impact schools, the Biden Administration plan does the following:

- Requires staff of Head Start programs, DOD schools, Bureau of Indian Education schools to be vaccinated
- Calls on all states to adopt vaccine mandates for all school employees
- Creates a new grant program, Project SAFE (Supporting America's Families and Educators), to restore funding withheld by state leaders who oppose efforts like mask requirements, virtual learning, etc. The funding can also be used to backfill salaries for district leaders who are implementing masking, etc.
- Providing new resources so students and school staff can be tested regularly and beefing up vaccine testing processes/systems.
- Providing every resource to the FDA to support review of applications for vaccines for <12

While the president's vaccine mandate does not apply broadly to all schools, the Biden administration will issue a rule through the Department of Labor that will apply to the 26 states with OSHA plans (including TN, SC, AZ, KY and VA). Teachers in these states will have to be vaccinated OR submit to weekly testing. To check on your state's OSHA plan, please refer to this map: <https://www.osha.gov/stateplans> There is no authority to mandate vaccines for children at the federal level, so the administration is strongly encouraging states/districts to adopt COVID vaccine mandates for students 12 and over.

Other Provisions

- From the Department of Labor: *"OSHA is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees. The agency is developing a rule that will require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated or to recover if they are under the weather post-vaccination. This requirement will be implemented through the ETS. The ETS will also apply to public sector state and local government workers, including educators and school staff, in the 26 states and two territories with a state OSHA plan."*

- Helpful Resources
 - OSHA Map (State Plans) <https://www.osha.gov/stateplans>
 - Congressional Research Service (CRS) Report [OSHA Jurisdiction Over Public Schools and Other State and Local Government Entities: COVID-19 Issues](#).
 - EdWeek <https://www.edweek.org/policy-politics/how-biden-will-mandate-teacher-vaccines-testing-in-some-states-that-dont-require-them/2021/09>
 - Chalkbeat <https://www.chalkbeat.org/2021/9/9/22665407/biden-vaccine-mandates-covid-testing-schools>

Q&A *Please note this information is current but subject to change. Additional information to support implementation will come from the Department of Labor and could be available as early as next week.*

- Department of Labor/OSHA
 - Do the OSHA state plans pre-empt federal OSHA enforcement?
 - Can states/will states have to modify their OSHA plans?
 - How does the paid leave provision work in the context of schools? For covered schools, it will apply to all staff (teachers, paraprofessionals, instructional coaches, contracted staff, full time and part time). Paid leave is only available for time related to vaccination, and will cover both the days of vaccination and any days needed to recover if they are under the weather post-vaccination.
 - What are the consequences for non-compliance in the OSHA mandate impacted states?
- Head Start **WAITING FOR ANSWER**
 - How does the Head Start mandate apply to locations housed in LEAs or ESAs?
- Contractors
 - Schools rely on outside contractors for services (custodial, school meals, transportation). A given LEA's contractor staff for a given department will often be under 100, but the contracting company is often over 100. Who is responsible for enforcing vaccine mandate for these contractors working on school sites? The responsibility of enforcing the vaccine mandate will fall with the contracting company, not the LEA who relies on their staff. School districts will not be responsible for verifying the vaccine or testing status for any contracted staff.
- Medicaid
 - How does the Medicaid mandate impact schools who provide Medicaid services? This will not impact schools. The Medicaid mandate will apply only to health care settings (not schools).
- Non Compliance
 - What is the consequence for non-compliance with these mandates? The pattern of engagement for non-complying employers/states will play out much like the current OSHA process. There will be dialogue back and forth between federal and state to understand why, to provide technical assistance, etc... Any open resistance will continue to be escalated up to the Secretary of Labor and/or the Governor. States have 30 days to get into compliance. Enforcement

will look slightly different in the 24 states with out state OSHA plans than in the 26 states with plans, but there will be enforcement.

- Non-Public Schools
 - How does this mandate apply to private/independent/religious schools? This mandate applies to every single non-public K12 school with a staff exceeding 100.
- Exemptions
 - Will there be medical or religious exemptions for the vaccine mandate? The availability of exemptions will be very, very narrow.
- State Tensions
 - What can be done if governors or state legislatures issue a contradicting edict? This is what federal OSHA is deigned to do. It is their job in these 26 states to make sure their plans are in line with what the law says and that they are implementing with fidelity.
- Mask Mandates
 - Can we expect any action related to a federal mask mandate? Not at this time.
- Testing
 - Will there be any support for expanding testing capacity? States had until today to submit their plans for the \$10 billion available to support screening and testing in schools. As for additional supports/resources that may be needed at the broader state or regional level, please direct those specific examples to Noelle so she can relay to the White House team.
- Collective Bargaining
 - Will the mandate supersede collective bargaining agreement? There is an expectation that states, in their 30 day period to come into to compliance, will include the appropriate adjustments/negotiations necessary for related collective bargaining agreements. Given the unique reality of local contracts (multi-year, not subject to annual review, difficult to open for update), please send those examples to Noelle ASAP so the context can be relayed to the Dept of Labor and the team at the White House.
- Project SAFE
 - Can schools that were denied their ESSER II and III dollars if they were remote in SY 2020-21 apply for SAFE dollars as a budget backfill? They will get back to us. The intent for these SAFE dollars is to get and keep schools whole for the 2021-22 school year; she will check into the use of funds for the previous year.