

CLIENT ALERT

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**New ISBE Emergency Rules Address Vaccinations
and A New Executive Order Addresses School Exclusions
without an Isolation or Quarantine Order**

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On Friday, September 17, 2021, the Illinois State Board of Education (ISBE) and Governor Pritzker each took emergency action to address several pandemic-related topics facing Illinois school districts. Late in the day, ISBE filed proposed Emergency Rules regarding Mandatory Vaccinations for School Personnel, https://www.isbe.net/Documents/18389_23-6RG-E.pdf. Later in the day, Governor Pritzker issued Executive Order 2021-24, <https://coronavirus.illinois.gov/resources/executive-orders/display.executive-order-number-24.2021.html>, requiring schools to conduct contact tracing and exclude students and school personnel who are confirmed cases, probable cases, or close contacts regardless of an official isolation or quarantine order from the local public health department. Each of these actions is summarized below.

ISBE Proposed Emergency Rules: Mandatory Vaccinations for School Personnel

Governor Pritzker's September 3, 2021, Executive Order 2021-22 required all school personnel to receive the COVID-19 vaccine or undergo weekly testing beginning this week. The Emergency Rules filed by ISBE last Friday, are intended to support schools in implementing that Executive Order.

How is "school personnel" defined?

The vaccination requirement applies to all "school personnel," defined as any person who is employed by, volunteers for, or is contracted to provide services for a school serving grades pre K -12 who is in close contact (fewer than 6 feet) with students or other school personnel for more than 15 minutes at least once a week on a regular basis. The school determines what constitutes a "regular basis." The term "school personnel" does not include any person who is present at the school for only a

short period of time and whose moments of close physical proximity to others on-site are fleeting (e.g., contractors making deliveries or picking up a shipment).

When must school personnel be vaccinated?

School personnel who were acting in their school-based role on or before September 3, 2021, must receive, at a minimum, the first dose of a two-dose series or a single-dose vaccine by September 19, 2021. If a second dose is required, it should be administered within 30 days of the first dose.

School personnel who first start(ed) in their school-based role on or after September 4, 2021, must receive, at a minimum, the first dose of a two-dose series or a single-dose vaccine within 10 days of their start date. If a second dose is required, it should be administered within 30 days of the first dose.

How do schools identify who is vaccinated?

Schools shall require school personnel who are fully vaccinated to provide proof of vaccination against COVID-19 to the school by September 19, 2021, or immediately upon becoming fully vaccinated. Schools can accept the following as proof of vaccination: (1) a Centers for Disease Control and Prevention (CDC) COVID-19 vaccination record card or photograph of that card; (2) documentation of vaccination from a health care provider or an electronic health record; or (3) state immunization records.

Are there exemptions to being vaccinated?

Two exemptions exist: 1) the vaccination is medically contraindicated, which includes any individual who is entitled to an accommodation under the federal Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation; or 2) the vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance.

Consistent with Executive Order 2021-22, the Emergency Rules require school personnel who demonstrate an exemption from the vaccination requirement to be tested on a weekly basis (at a minimum) to be allowed on the school premises in their school-based role. This suggests that a school personnel who is also a parent could still be allowed on the school premises in their role as a parent even if they are not vaccinated and not undergoing the weekly testing.

What are the testing requirements?

Beginning this week, school personnel who are not fully vaccinated, regardless of the reason, must undergo weekly testing. An individual is considered “fully vaccinated” two weeks after receiving the second dose in a two-dose vaccine series or two weeks after receiving a single-dose vaccine. The Emergency Rules do not recognize any exemptions from being tests.

If an outbreak occurs, any unvaccinated school personnel who may be part of the outbreak shall be required to undergo testing twice a week for the duration of the outbreak.

What type of testing is permitted?

Testing must be done using a test that either has Emergency Use Authorization by the FDA or be implemented per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

Where must the testing occur?

Testing must be conducted on-site within the school district, or the school personnel must submit proof or confirmation of a negative test result obtained elsewhere. In its September 3, 2021 FAQ <https://www2.illinois.gov/dceo/Documents/Mask%20FAQ.pdf>, the Illinois Department of Commerce & Economic Opportunity states that proof of a negative test received elsewhere should include a paper or electronic copy of the negative test result that includes the following information:

1. Type of test (indicating it is a NAAT or antigen test)
2. Entity issuing the result (e.g., laboratory, healthcare entity, or telehealth service)
3. Specimen collection date
4. Information that identifies the person
5. Test result

What happens to school personnel who do not get tested as required?

School personnel who have been tested but have not yet received the results of their weekly test are permitted to enter or work at the school while they are awaiting the results of their weekly test.

Neither Executive Order 2021-22 nor these Emergency Rule recognizes a valid exemption from getting tested. Both require schools to exclude school personnel who do not get required testing from entering the school premises in their school-based role. Neither document addresses the individual's status during such exclusion: Are they on a suspension? Paid? Unpaid? Can they work remotely? At what point can they be replaced and/or terminated? Consult your attorney before making these decisions.

What records does the school district have to keep?

All schools must maintain the following records regarding its school personnel employed by the school or school district:

1. A record identifying the individual as one of the following: fully vaccinated; unvaccinated and compliant with the testing requirements; or excluded from school premises; and
2. Either Proof of vaccination against COVID-19 or the results of COVID-19 tests.

Schools should be mindful of maintaining the confidentiality of where to store the medical records of school personnel.

What about contracted service providers?

Beginning September 19, 2021, individuals providing services for the school through another entity are deemed compliant with the Emergency Rules by the entity a) collecting proof of vaccination against COVID-19 from the school personnel or proof of compliance with the testing requirements; and b) submitting an attestation to the school that they will collect this proof for any school personnel they provide to the school.

What about personnel who are symptomatic or are close contacts?

Schools must refuse to admit school personnel (vaccinated or not) to the school while acute symptoms of an infectious disease are present. The Emergency Rules direct schools to follow Section 690.30(c) of the control of Communicable Diseases Code ("Code"). That section states that schools shall handle contacts of infectious disease cases as prescribed by that Code "or as recommended by the local health authority."

Who issues/enforces isolation and quarantine orders?

Under the Code, the IDPH and local public health departments have the authority to issue a verbal isolation/quarantine order that is valid for 24 hours. Within the first 24 hours, the health department is supposed to issue a written isolation/quarantine order. The written order is valid for 48 hours after which time, if the subject of the order won't voluntarily isolate or quarantine, the public health department shall petition a court to enforce the isolation/quarantine order.

The Code requires school districts to comply with isolation and quarantine orders issued by local public health departments. Yet, some local departments of public health have been unable or unwilling to issue such orders or petition a court when the subject of an issued order refuses to comply voluntarily. At the same time, those local health department still expect school districts to keep students and staff subject to such orders out of school buildings. Recently, parents have begun to push back, arguing that schools have no authority to keep children out of school due to the need to isolate/quarantine without a valid

local health department order. On Friday, September 17, 2021, Governor Pritzker issued Executive Order 2021-24 to combat this argument, as discussed below.

Governor Mandates Schools “Exclude” Confirmed, Probable and Close Contacts of COVID-19 Cases in Schools

In his September 17, 2021, Executive Order 2021-24, Governor Pritzker mandated Illinois schools exclude school personnel and students for varying lengths of time regardless of whether an isolation or quarantine order issued by a public health department has expired or was never issued. This exclusion, which means refusing admittance to the school premises, extracurricular events or any other events organized by the school, is not to be considered isolation or quarantine. This eliminates the obligation to rely on the local health department to issue an order. Make sure that your communication to families and staff now refers to an “exclusion” rather than to isolation or quarantine (unless you are, in fact, relying on a public health department order).

How is “school personnel” defined?

The Executive Order uses the same definition of “school personnel” as is used in the proposed new Emergency Rules discussed above. The term includes any person who is employed by, volunteers for, or is contracted to provide services for a school serving grades preK-12 who is in close contact (fewer than 6 feet) with students or other school personnel for more than 15 minutes at least once a week on a regular basis. The school determines what constitutes a “regular basis.” The term “school personnel” does not include any person who is present at the school for only a short period of time and whose moments of close physical proximity to others on-site are fleeting (e.g., contractors making deliveries or picking up a shipment).

How long must “confirmed cases” or “probable cases” be excluded?

Confirmed cases and probably cases must be excluded for a minimum of 10 days following onset date if symptomatic or date of test if asymptomatic, or as otherwise directed by the school’s local health authority.

Who is considered a “close contact”?

A “close contact” means an individual who was within 6 feet for at least 15 minutes with a confirmed or probable case in a 24-hour period. The term does not include:

- a student who was within 3-6 feet of a confirmed or probable case in a classroom setting if both the close contact and the confirmed/probable case were consistently masked for the entire exposure period;
- individuals who are fully vaccinated; or
- individuals who tested positive for COVID-19 within prior 90 days and are currently asymptomatic

How long must “close contacts” be excluded?

Close contacts must be excluded for a minimum of 14 days or as otherwise directed by the school’s local health authority. The local health authority may recommend options such as exclusion for 10 days or 7 days with a negative test result on day 6.

Can “close contacts” test-to-stay in lieu of exclusion?

Yes. If the close contact and the confirmed case or probably case were masked for the entire exposure period, a school could allow a close contact who is asymptomatic to remain in school if the close contact tests negative on days 1, 3, 5 and 7 following the exposure.

Who else must the school exclude?

Schools must also exclude any school personnel or student for a minimum of 10 days who exhibit symptoms of COVID-19 until they are fever free for 24 hours and until 48 hours after diarrhea or vomiting have ceased.

What instruction must be provided to “excluded” students?

On August 31, 2021, ISBE issued an updated Remote Learning Guidance Chart, found at <https://www.isbe.net/Documents/Remote-Learning-Guidance-Chart.pdf>. According to that chart, schools must provide remote instruction to:

- any student who is under quarantine or excluded from school per the guidance/requirements of a local health department or the IDPH;
- any student subject to an adaptive pause; and
- any student who is vaccinated but has a breakthrough infection

Executive Order 2021-24 expands upon this list by requiring schools to provide remote instruction to students who are excluded pursuant to the Executive Order. The remote instruction for all of such impacted students must be consistent with the requirements contained in Section 10-30 of the Illinois School Code, 105 ILCS 5/10-30.

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Despite the direction and guidance provided by the proposed Emergency Rules and Executive Order 2021-24, Illinois school districts remain likely targets of lawsuits filed by school personnel and parents who oppose these mandates. Last week, two 4th Circuit judges issued temporary restraining order on behalf of downstate parents who challenged the mask mandate included in Executive Order 2021-18. While those rulings do not apply universally throughout the State, they may incentivize other parents to file similar lawsuits. Likewise, we know that certain school personnel claim a religious exemption against weekly testing and have begun to sue school districts that excludes them for refusing to be tested. Continue to consult with your attorney as you navigate these difficult issues.

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