

Laws on Immunizations, Contagious Disease, Reportable Disease, and Significant Contagious Disease

Definitions

- *Age-appropriate immunizations* (North Dakota Administrative Code [NDAC] 33-06-05-01) refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.
- *Communicable disease* (North Dakota Century Code [NDCC] 23-07.6-01) means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
- *Reportable disease* (NDAC 33-06-01) means the diseases or conditions designated by the state department of health must be reported pursuant to NDCC 23-07-01. See ND Department of Health reportable disease chart at <http://www.ndhealth.gov/Disease/Documents/ReportableConditions.pdf>.
- *Significant contagious disease* (NDAC 33-06-05.1-02): The local board of health or the state health officer may determine what diseases are significant contagious diseases.

Confidentiality Requirements

- **Employee medical records** (NDCC 44-04-18.1 (1)): Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.
- **Student medical records:** At the elementary or secondary school level, students' immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are "education records" subject to *FERPA*, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district. Parents have a right under *FERPA* to inspect and review these health and medical records because they are "education records" under *FERPA*. See 34 *CFR* §§ 99.10 – 99.12. In addition, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to *FERPA*'s general consent requirement.

From Joint Guidance on Application of FERPA and HIPAA:
http://studentprivacy.ed.gov/sites/default/files/resource_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf

- **Significant contagious disease**

- Employees (NDAC 33-06-05.3-02): Unless disclosed by the affected person, or their personal physician, no disclosure of an affected individual's condition may be made. In order to eliminate discrimination, the local governing body should develop policies concerning the comprehensive application of universal precautions throughout the public school.
- Independent Contractors (NDAC 33-06-05.4-02): Unless disclosed by the affected person, or their personal physician, no individual may be informed of an affected individual's infection. In order to eliminate discrimination, the local governing body should develop policies concerning the comprehensive application of universal precautions throughout the public school.
- Students (NDAC 33-06-05.2-02): Unless disclosed by the affected person, their parent or guardian, or their personal physician, no individual may be informed of an affected individual's infection. In order to eliminate discrimination, the local governing body should develop policies concerning the comprehensive application of universal precautions throughout the public school.

Disease Reporting Requirements

- **Communicable Condition:** (NDAC 33-06-02-01 (4)): Whenever any school principal or teacher in any private, public, or parochial school has reason to suspect that any pupil is suffering from or has been exposed to any communicable condition, such principal or teacher shall send the child home with instructions to see the child's family physician. Any pupil so excluded shall not be permitted to attend school again until the pupil shall present a certificate from a physician licensed to practice medicine in North Dakota or from the local health department stating that the child is not suffering from a communicable condition and that it is safe for the child to return to school. Such principal or teacher shall also report any such suspected case to the local health officer, who, upon receipt of such report, shall use the officer's best judgment as to the necessity for further investigating the case.
- **Who to Report Reportable Diseases** (NDCC 23-07-02 (2)): Except as otherwise provided by section 23-07-02.1, the following persons or their designees shall report to the state department of health any reportable disease coming to their knowledge:

The director, principal manager, or chief executive officer of:

- a. Health care institutions, including hospitals, medical centers, clinics, long-term care facilities, assisted living facilities, or other institutional facilities;

- b. Medical or diagnostic laboratories;
- c. Blood bank collection or storage centers;
- d. Public and private elementary and secondary schools;
- e. Public and private universities and colleges;
- f. Health or correctional institutions operated or regulated by municipal, county or multicounty, state, or federal governments;
- g. Funeral establishments and mortuaries; and
- h. Child care facilities or camps.

Immunization Requirements

NDAC 33-06-05-01 (2b):

Minimum requirements for children attending kindergarten through grade twelve shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, varicella (chickenpox), meningococcal disease, and hepatitis B.

See ND Department of Health immunization chart:

<http://www.ndhealth.gov/immunize/schools-childcare/>

Immunization Exemptions

- **NDCC 23-07-17.1 (2-3)**

- a A child may enter a public school upon submitting written proof from a licensed physician or authorized representative of the state department of health stating that the child has started receiving the required immunization or has a written consent by the child's parent or guardian for a local health service or department to administer the needed immunization without charge or has complied with the requirements for certificate of exemption as provided for in paragraph b.
- b Any minor child, through the child's parent or guardian, may submit to the public school either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by the child's parent or guardian whose religious, philosophical, or moral beliefs are opposed to such immunization. The minor child is then exempt from the applicable immunization requirements set forth in NDCC 23-07-17.

- **NDAC 33-06-05-01 (4)**

A child with a medical or a beliefs exemption is exempt from any one or all of the immunization requirements. A physician must sign an exemption form indicating the vaccines that are included in the medical exemption. A parent or guardian must sign an exemption form stating that the child has a beliefs exemption and indicate which vaccines are exempt because of beliefs. A child with a reliable history of chickenpox, hepatitis A, hepatitis B, measles, mumps, or rubella is exempt from applicable immunization requirements. A physician must sign an exemption form stating that the child has had the

disease. Exemption forms must be kept on file with the immunization records at the child's school, early childhood facility, head start program, or preschool educational facility.

- **NDAC 33-06-05-01(7)**

Any child admitted to school or early childhood facility under the provision that such child is in the process of receiving the required immunizations shall be required to receive the immunizations according to the recommended schedule set forth by the state department of health. Any child admitted to school and not adhering to the recommended schedule shall provide proof of immunization or a certificate of immunization by October first or within thirty calendar days of enrollment if enrolling after October first or be excluded from school. Any child admitted to an early childhood facility and not adhering to the recommended schedule shall provide proof of immunization or a certificate of immunization within thirty calendar days of enrollment or be excluded from the early childhood facility.

Non-Discrimination Protections for Affected Individuals

- **Disabled students and employees:** See Nondiscrimination and Anti-harassment Policy (AAC) and Education of Special Education/Disabled Students (FDE).
- **Significant Contagious Disease**
 - Employees (NDAC 33-06-05.3-01): No employee or potential employee may be terminated or prevented from becoming employed at the public school solely because they have or they are perceived to have a significant contagious disease. If the employee is well enough to perform their job and does not constitute a public health threat to others, as determined by a personal physician, the employee must be permitted to perform the duties.
 - Independent Contractors (NDAC 33-06-05.4-01): No independent contractor may be terminated or prohibited from contracting with the public school solely because they have or they are perceived to have a significant contagious disease. If the independent contractor is capable of performing the work, or reasonable accommodations can be made to allow the independent contractor to perform the work, and the independent contractor does not constitute a public health threat to others, as determined by a personal physician, the independent contractor must be permitted to contract with the public school.
 - Students (NDAC 33-06-05.2-01): No student may be prohibited from attending the public school solely because they have, or they are perceived to have, a significant contagious disease. If the student is well enough to attend the public school, and does not constitute a public health threat, as determined by the decision-maker, the student must be permitted to attend the public school. If the student is unable

to attend regular class instruction or requires special consideration, then special provisions or individualized education programs must be provided for the student.

Recordkeeping Requirements and State Reports

- **NDAC 33-06-05-01 (5)**

Recordkeeping and reporting. Records and reports requested by the state department of health shall be completed and submitted to the state department of health.

- a. Certificates of immunization, a North Dakota immunization information system (NDIIS) record, or other official proof of immunization must be presented to the designated public school authority before any child is admitted to a public school.
- b. Upon request by the public school authority and approval by the department, the department shall provide access to the NDIIS by public school authority. The department of health shall disclose immunization records maintained by the NDIIS to a public school authority to fulfill the required proof of immunization.
- c. The parent or guardian of a child claiming a medical or beliefs exemption shall present an appropriately signed statement of exemption to the designated public school authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.
- d. The school or early childhood facility immunization summary report must be submitted to the state department of health by November first of each year or such other annual date as the department may designate.

- **NDAC 33-06-05-01 (6)**

Appointment of a public school authority.

- a. A public school authority shall be appointed for each public school by its governing board or authorized personnel. The authority must be an employee of such public school.

Student Exclusion from School Due to a Health Threat

- **Failure to provide, at the time of admission, either proof of all required immunizations or valid immunization exemption documentation (NDCC 23-07-17.1):** A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the public school authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received age-appropriate immunization(s).

- **The student is immunization-exempt, an epidemic has been identified in a district school or schools, and a public health officer has deemed such students' attendance a potential public health threat (NDCC 23-07-17.1 (6)):** When, in the opinion of the health officer, danger of an epidemic exists from any of the communicable diseases for which immunization is required under this section, the exemptions from immunization against such disease may not be recognized and children not immunized must be excluded from a public school listed in subsection 1 until, in the opinion of the health officer, the danger of the epidemic is over. The designated public school authority shall notify those parents or guardians taking legal exception to the immunization requirements that their children are excluded from school during an epidemic as determined by the state department of health.
- **The student has, or lives with someone who has, a significantly contagious or infectious disease and has not been cleared to attend school under regulations of the local board of health (NDCC 23-07-16):** Except as provided by section 23-07-16.1, no principal, superintendent, or teacher of any school, and no parent or guardian of any minor child, may permit any child having any significant contagious or infectious disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public or private school until permitted to do so under the regulations of the local board of health.
- **The student is suspected of suffering from or has been exposed to a communicable condition (NDAC 33-06-02-01 (4)):** Whenever any school principal or teacher in any private, public, or parochial school has reason to suspect that any pupil is suffering from or has been exposed to any communicable condition, such principal or teacher shall send the child home with instructions to see the child's family physician. Any pupil so excluded shall not be permitted to attend school again until the pupil shall present a certificate from a physician licensed to practice medicine in North Dakota or from the local health department stating that the child is not suffering from a communicable condition and that it is safe for the child to return to school. Such principal or teacher shall also report any such suspected case to the local health officer, who, upon receipt of such report, shall use the officer's best judgment as to the necessity for further investigating the case.