



Community Forum-

10.21. 2021





SSFUSD Potential Vaccination Requirement



Timeline

Early September - LA Unified becomes the largest school district to mandate COVID vaccine

September 9, 2021 - The Board wanted to discuss the potential requirement of mandating vaccinations for eligible students and staff.

October 1, 2021- Governor Newsom made an announcement that he will mandate vaccines for children ages 12-17, as well as ages 5-11, once the vaccine is fully authorized by the FDA.

October 21, 2021 - The Board is interested in exploring whether SSFUSD should impose a similar requirement.



Background Information – Gov. Newsom

- All eligible California students and school staff will be required to get vaccinated against COVID-19 as soon as January 2022
- The purpose is to try to end the pandemic, maximize health and safety, and ensure students and staff can remain in class for in-person teaching and learning.
- Mandate will apply to all students in K-12 public/private schools and all employees.
- Will go into effect either January 1st or July 1st of 2022, after the FDA fully approves the COVID vaccine for each age group
- Currently, only Pfizer is fully approved for individuals 16 and above.
- Pfizer has emergency authorization for use in children ages 12-15, and has applied for emergency use authorization for ages 5-11
- Other districts have established vaccine mandates – LAUSD, SDUSD, OUSD



Background Information – Gov. Newsom

- Districts can enact their own vaccine mandates ahead of California’s timeline if they choose
- COVID-19 will be among the roster of 10 other vaccinations, like polio, mumps, and tetanus, for example.
- Families can still opt out for religious or medical reasons
- Students who opt out of the vaccine will be unable to participate in-person and will need to participate in an alternative educational program



Vaccination Rates - US

As of the last 30 days:

- 186.1m vaccines administered
- 65% of population has been vaccinated
- 43,773,573 total cases
- 702,360 deaths (last 30 days)



Vaccination Rates - California

As of October 5, 2021:

- 49,970,814 vaccines administered
- 78.9% of population has been vaccinated
- 4,519,467 total cases; 13.8 new cases (per 100k)
- 69,027 deaths; .2 new deaths (per 100k)



Vaccination Rates – San Mateo County

As of October 6, 2021:

- 1,172,969 vaccine doses administered
- 637,009 vaccinated
- 90.6% of population has been vaccinated
- 51,810 total cases
- 616 deaths



Current Vaccination Information - Staff

Effective October 11, 2021 SSFUSD has 88.4% of staff vaccinated

We have 113 staff members not fully vaccinated

Contracted with Worksite Labs party to facilitate staff COVID-19 testing beginning week of October 18, 2021



Legal Implications

- Currently, the CDPH's August 11, 2021 Health Order requires all teachers and school staff to either show proof of full vaccination or be tested at least once per week. This Order went into effect on August 12, and school districts were required to be in full compliance by October 15, 2021.
- A vaccine mandate, on the other hand, requires vaccination as a condition of employment or enrollment. Increasingly, as access to COVID-19 vaccines has become widespread, numerous educational institutions, employers, and other entities have announced that they will require vaccines. On July 6, 2021, the U.S. Department of Justice found that such mandates did not run afoul of the Food, Drug, and Cosmetic Act.



Legal Implications

- With respect to **employees**: the Equal Employment Opportunity Commission (EEOC) has provided guidance stating that federal anti-discrimination laws don't prohibit employers from requiring all employees who physically enter the workplace to be vaccinated for COVID-19.
- However, employers that require vaccinations must comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964, and other workplace laws. The employer may also need to bargain and reach an agreement with the union before mandating vaccines.
- An employee with a religious objection or a disability may need to be excused from the mandate, or otherwise accommodated.



Legal Implications

- **Disability accommodations:** If a vaccine mandate screens out a worker with a disability, the District must consider whether a reasonable accommodation can be made, such as allowing the employee to work remotely or take a leave of absence.
- **Religious accommodations:** Title VII requires an employer to accommodate an employee's sincerely held religious belief, practice or observance, unless it would cause an undue hardship on the organization.
- The District must engage in the interactive process in responding to requests for accommodations.



Legal Implications

- The District would need to consider what the outcome of the interactive process might be if reasonable accommodations cannot be made.
- The process of releasing a certificated, permanent teacher is a lengthy and often expensive process. Similarly, releasing classified staff can be procedurally complex. Both provide employees with the right to a hearing.
- If the District plans to implement a vaccine mandate, it should develop a written policy. Consistency is key.



Legal Implications

- With respect to **students**: Currently, the Pfizer vaccine is fully authorized for individuals 16 years and older, and is available under emergency use authorization for the 12-15 year old group. Pfizer's application for emergency use authorization for 5-11 year olds is currently under review by the FDA.
- The Governor's vaccine mandate for students will go into effect for grades 7-12 and grades K-6 at the start of the term following full FDA approval of that grade span: January 1st or July 1st, whichever comes first. Currently, the requirement is expected to apply to grades 7-12 starting on July 1, 2022.



Legal Implications

- The Governor’s Office has encouraged local health jurisdictions and local education agencies to implement vaccine requirements ahead of the State’s requirement, based on their local circumstances.
- **Can a vaccine be mandated when it is approved only for emergency use?** This issue is currently being litigated; at least one federal judge has rejected the argument that the vaccine must be fully approved, although the issue is on appeal.
- According to the FDA, the authorized vaccines have met its “rigorous, scientific standards for safety, effectiveness, and manufacturing quality”. However, until the vaccines obtained full FDA approval for 16+, there was significant pushback to vaccine mandates due to EUA status.



Legal Implications

- As with staff, the District would need to respond to student requests for medical exemptions or personal belief exemptions. The District may require documentation for such requests.
- For those students excluded from attending in-person due to their unvaccinated status, the District would need to provide an alternative educational program, such as independent study.
- Of particular concern would be providing a free and appropriate public education to students receiving Special Education services, as guaranteed by the Individuals with Disabilities Education Act (“IDEA”).

