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SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
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ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 39-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Vaccination Requirements to Control COVID-19 for Schools and School-based Programs

EFFECTIVE DATE: 08/25/2021 THROUGH 02/20/2022

AGENCY APPROVED DATE: 08/25/2021

CONTACT: COVID Response and Recovery Unit
503-945-5488
COVID.19@dhsosha.state.or.us
800 NE Oregon St.
Portland, OR 97232

Filed By:
Brittany Hall
Rules Coordinator

NEED FOR THE RULE(S):

It is vital to this state that teachers, school staff, volunteers, and school-based program staff and volunteers be vaccinated against COVID-19 in order to protect themselves, children and students, particularly those who are too young to get vaccinated, against COVID-19, hospitalization and death. COVID-19 infection is caused by a virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This virus undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease or have other features of public health concern such as decreased vaccine effectiveness. In August of 2021, the B.1.617.2 (Delta) variant accounted for more than 98% of the COVID-19 infections in Oregon.

The Delta variant is approximately 2-3-fold more transmissible than early wild-type COVID-19 variants. People infected with the Delta variant have higher viral loads and a shorter incubation period. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively. Being vaccinated, is therefore critical to prevent spread of Delta. The Delta variant is causing a surge in unvaccinated cases and vaccine breakthrough cases and Oregon's health care system is overwhelmed as a result. This rule is necessary to help control COVID-19, and to protect children, teachers, school staff, volunteers, and school-based program staff and volunteers.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and those working, attending and volunteering in schools and school-based programs. COVID-19 case numbers are higher than they have ever been, hospitalization of COVID-19 patients is on a steep rise, and Oregon's health care system is overwhelmed and at or over capacity. This rule needs to be adopted promptly so that the state can continue to prevent and slow the spread of COVID-19, for the reasons specified above. Requiring vaccination for those working and volunteering in schools and school-based programs is crucial to the effort in controlling COVID-19, and to ensure that students can stay in school and receive in-person instruction.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OHA Dashboard: Pediatric COVID-19 Cases (August 18, 2021). Available at <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19PediatricReport/Demographics>.

OHA Dashboard: Hospital Capacity and Usage in Oregon (reported by HOSCAP), August 20, 2021. Available at <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19Update/HospitalCapacity>.

OHA Dashboard: Oregon's Hospitalization Trend by Severity (August 20, 2021). Available at <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19HospitalCapacity/HospitalizationbySeverity>.

OHA Dashboard: Oregon's COVID-19 Disease Spread (August 22, 2021). Available at <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19PublicHealthIndicators/DiseaseSpread>.

Cavanaugh AM, Spicer KB, Thoroughman D, Glick C, Winter K. Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination — Kentucky, May–June 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1081-1083. DOI: <http://dx.doi.org/10.15585/mmwr.mm7032e1>

Christie A, Brooks JT, Hicks LA, et al. Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage. *MMWR Morb Mortal Wkly Rep* 2021;70:1044–1047. DOI: <http://dx.doi.org/10.15585/mmwr.mm7030e2>

Herlihy R, Bamberg W, Burakoff A, et al. Rapid Increase in Circulation of the SARS-CoV-2 B.1.617.2 (Delta) Variant — Mesa County, Colorado, April–June 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1084-1087. DOI: <http://dx.doi.org/10.15585/mmwr.mm7032e2>

Hershow RB, Wu K, Lewis NM, et al. Low SARS-CoV-2 Transmission in Elementary Schools — Salt Lake County, Utah, December 3, 2020–January 31, 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:442–448. DOI: <http://dx.doi.org/10.15585/mmwr.mm7012e3>

Li, B., Deng, A., Li, K., Hu, Y., Li, Z., Xiong, Q., Liu, Z., Guo, Q., Zou, L., Zhang, H. and Zhang, M., 2021. Viral infection and Transmission in a large well-traced outbreak caused by the Delta SARS-CoV-2 variant available at <https://www.medrxiv.org/content/10.1101/2021.07.07.21260122v1>.

Moline HL, Whitaker M, Deng L, et al. Effectiveness of COVID-19 Vaccines in Preventing Hospitalization Among Adults

Aged 65 Years — COVID-NET, 13 States, February–April 2021. MMWR Morb Mortal Wkly Rep 2021;70:1088-1093. DOI: <http://dx.doi.org/10.15585/mmwr.mm7032e3>

Nanduri S, Pilishvili T, Derado G, et al. Effectiveness of Pfizer-BioNTech and Moderna Vaccines in Preventing SARS-CoV-2 Infection Among Nursing Home Residents Before and During Widespread Circulation of the SARS-CoV-2 B.1.617.2 (Delta) Variant — National Healthcare Safety Network, March 1–August 1, 2021. MMWR Morb Mortal Wkly Rep. ePub: 18 August 2021. DOI: <http://dx.doi.org/10.15585/mmwr.mm7034e3>

Rosenberg ES, Holtgrave DR, Dorabawila V, et al. New COVID-19 Cases and Hospitalizations Among Adults, by Vaccination Status — New York, May 3–July 25, 2021. MMWR Morb Mortal Wkly Rep. ePub: 18 August 2021. DOI: <http://dx.doi.org/10.15585/mmwr.mm7034e1>

Rubin D, Eisen M, Collins S, Pennington JW, Wang X, Coffin S. SARS-CoV-2 Infection in Public School District Employees Following a District-Wide Vaccination Program — Philadelphia County, Pennsylvania, March 21–April 23, 2021. MMWR Morb Mortal Wkly Rep 2021;70:1040–1043. DOI: <http://dx.doi.org/10.15585/mmwr.mm7030e1>

Ryan S. McGee, Julian R. Homburger, Hannah E. Williams, Carl T. Bergstrom, Alicia Y. Zhou. Model-driven mitigation measures for reopening schools during the COVID-19 pandemic. DOI: <https://doi.org/10.1101/2021.01.22.21250282>

Volpp KG, Kraut BH, Ghosh S, Neatherlin J. Minimal SARS-CoV-2 Transmission After Implementation of a Comprehensive Mitigation Strategy at a School — New Jersey, August 20–November 27, 2020. MMWR Morb Mortal Wkly Rep 2021;70:377–381. DOI: <http://dx.doi.org/10.15585/mmwr.mm7011a2>

ADOPT: 333-019-1030

RULE TITLE: COVID-19 Vaccination Requirements for Teachers and School Staff

RULE SUMMARY: OAR 333-019-1030 helps to prevent and slow the spread of COVID-19 by requiring teachers, school staff, volunteers, and school-based program staff and volunteers who work in schools to be vaccinated against COVID-19 or request a medical or religious exception.

Teachers, school staff and volunteers:

(A) Means anyone age 16 and older:

(i) Who is employed at a school or anyone who is not employed but is otherwise engaged to provide goods or services to or at a school through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, cleaning staff, coaches, school bus drivers, family volunteers and substitute teachers; and

(ii) Providing goods or services at or for a school that includes direct or indirect contact with students.

(B) Does not mean short-term visitors, individuals making deliveries, or school board members unless they are also volunteering in a school.

School-based program staff and volunteers:

(A) Means anyone age 16 and older:

(i) Who is employed by a school-based program or who is not employed but is otherwise engaged to provide goods or services to a school-based program through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, child care staff, cleaning staff, coaches, school-based program drivers, family volunteers; and

(ii) Providing goods or services at or for a school-based program that includes direct or indirect contact with children or students.

(B) Does not mean short-term visitors or individuals making deliveries.

School means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof. School does not mean stand-alone preschool program that goes up through kindergarten.

School-based program means a program serving children or students that takes place at or in school facilities.

Medical exception means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

Religious exception means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

After October 18, 2021:

- School staff and volunteers and school-based program staff and volunteers may not teach, work, provide care, learn, study, assist, observe, or volunteer at or for a school or school-based program unless they are fully vaccinated or have provided documentation of a medical or religious exception.
- Schools and school-based programs may not employ, contract with, or accept the volunteer services of teachers, school staff and volunteers, or school-based program staff and volunteers unless they are fully vaccinated against COVID-19 or have a documented medical or religious exception.

On or before October 18, 2021, teachers, school staff and volunteers, and school-based program staff and volunteers must provide the school or school-based program with either:

- Proof of vaccination showing they are fully vaccinated; or
- Documentation of a medical or religious exception.

A medical exception must be corroborated by a document signed by a medical provider, who is not the individual seeking the exception, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.

A religious exception must be corroborated by a document, on a form prescribed by the Oregon Health Authority, signed by the individual stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and including a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.

Schools and school-based programs who grant an exception to the vaccination requirement must take reasonable steps to ensure that unvaccinated teachers, school staff and volunteers, and school-based program staff and volunteers are protected from contracting and spreading COVID-19.

On or before October 18, 2021, schools must have documentation that all teachers, school staff and volunteers are in compliance with this rule.

A school may request that a school-based program operating at that school, attest to whether it is, or is not, in compliance with this rule. If a school-based program receives such a request from a school, it must respond.

A school-based program may request that a school at which they intend to operate, attest to whether it is, or is not, in compliance with this rule. If a school receives such a request from a school-based program, it must respond.

The rule permits schools and school-based programs to:

- Have more restrictive or additional requirements, including but not limited to requiring teachers, school staff and volunteers, and school-based program staff and volunteers to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.
- Impose the vaccination requirements at an earlier date.

The vaccination documentation and documentation of medical and religious exceptions described in the rule must be:

- Maintained in accordance with applicable federal and state laws;
- Maintained for at least two years; and
- Provided to the Oregon Health Authority upon request.

Schools and school-based programs that violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

RULE TEXT:

(1) Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible or cause more severe disease. As of the time this rule was adopted, Delta was the variant making up more than 98 percent of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine

breakthrough cases may transmit this variant effectively. Being vaccinated, is therefore critical to prevent spread of Delta. COVID-19 variants are running through the state's unvaccinated population and causing an increase in breakthrough cases for those who are fully vaccinated. This rule is necessary to help control COVID-19, and to protect students, teachers, school staff, and volunteers.

(2) For purposes of this rule, the following definitions apply:

(a) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) "Fully vaccinated" means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine.

(c) "Medical exception" means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

(d) "Religious exception" means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

(e) "Proof of vaccination" means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, or a print-out from the Oregon Health Authority's immunization registry.

(f) "School":

(A) Means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof.

(B) Does not mean stand-alone preschool program that goes up through kindergarten.

(g) "School-based program" means a program serving children or students that takes place at or in school facilities.

(h) "School-based program staff and volunteers":

(A) Means anyone age 16 and older:

(i) Who is employed by a school-based program or who is not employed but is otherwise engaged to provide goods or services to a school-based program through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, child care staff, cleaning staff, coaches, school-based program drivers, family volunteers; and

(ii) Providing goods or services at or for a school-based program that includes direct or indirect contact with children or students.

(B) Does not mean short-term visitors or individuals making deliveries.

(i) "Teachers, school staff and volunteers":

(A) Means anyone age 16 and older:

(i) Who is employed at a school or anyone who is not employed but is otherwise engaged to provide goods or services to or at a school through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, cleaning staff, coaches, school bus drivers, family volunteers and substitute teachers; and

(ii) Providing goods or services at or for a school that includes direct or indirect contact with students.

(B) Does not mean short-term visitors, individuals making deliveries, or school board members unless they are also volunteering in a school.

(3) After October 18, 2021:

(a) Teachers, school staff and volunteers may not teach, work, learn, study, assist, observe, or volunteer at a school unless they are fully vaccinated or have provided documentation of a medical or religious exception.

(b) A school may not employ, contract with, or accept the volunteer services of teachers, school staff or volunteers who are teaching, working, learning, studying, assisting, observing, or volunteering at a school unless the teachers or school staff are fully vaccinated against COVID-19 or have a documented medical or religious exception.

- (4) On or before October 18, 2021, teachers, school staff and volunteers must provide their school, employer or contractor with either:
- (a) Proof of vaccination showing they are fully vaccinated; or
 - (b) Documentation of a medical or religious exception.
- (A) A medical exception must be corroborated by a document signed by a medical provider, who is not the individual seeking the exception, on a form prescribed by the Oregon Health Authority, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.
- (B) A religious exception must be corroborated by a document, on a form prescribed by the Oregon Health Authority, signed by the individual stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and including a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.
- (5) Schools that grant an exception to the vaccination requirement under section (4) of this rule must take reasonable steps to ensure that unvaccinated teachers, school staff and volunteers are protected from contracting and spreading COVID-19.
- (6) On or before October 18, 2021, schools must have documentation that all teachers, school staff and volunteers are in compliance with section (4) of this rule.
- (7) After October 18, 2021:
- (a) School-based program staff and volunteers may not teach, work, provide care, learn, study, assist, observe, or volunteer for a school-based program unless they are fully vaccinated or have provided documentation of a medical or religious exception.
 - (b) A school-based program may not employ, contract with, or accept the volunteer services of school-based program staff or volunteers who are teaching, working, providing care, learning, studying, assisting, observing, or volunteering at a school-based program unless the staff or volunteers are fully vaccinated against COVID-19 or have a documented medical or religious exception.
- (8) On or before October 18, 2021, school-based program staff and volunteers must provide their school-based program with either:
- (a) Proof of vaccination showing they are fully vaccinated; or
 - (b) Documentation of a medical or religious exception.
- (A) A medical exception must be corroborated by a document signed by a medical provider, who is not the individual seeking the exception, on a form prescribed by the Authority, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.
- (B) A religious exception must be corroborated by a document, on a form prescribed by the Oregon Health Authority, signed by the individual stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and including a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.
- (9) School-based programs that grant an exception to the vaccination requirement under section (8) of this rule must take reasonable steps to ensure that unvaccinated school-based program staff and volunteers are protected from contracting and spreading COVID-19.
- (10) On or before October 18, 2021, school-based programs must have documentation that all school-based program staff and volunteers are in compliance with section (8) of this rule.
- (11) A school may request that a school-based program operating at that school, attest to whether it is, or is not, in compliance with this rule. If a school-based program receives such a request from a school, it must respond.
- (12) A school-based program may request that a school at which they intend to operate, attest to whether it is, or is not, in compliance with this rule. If a school receives such a request from a school-based program, it must respond.
- (13) Nothing in this rule is intended to prohibit schools or school-based programs from:

(a) Complying with the Americans with Disabilities Act and Title VII of the Civil Rights Act, and state law equivalents, for individuals unable to be vaccinated due to a medical condition or a sincerely held religious belief.

(b) Having more restrictive or additional requirements, including but not limited to requiring teachers, school staff and volunteers, and school-based program staff and volunteers to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.

(c) Imposing these requirements at an earlier date.

(d) Allowing a school district or other governing body to collect the documentation required under sections (4), (6), (8) and (10) of this rule.

(14) The vaccination documentation and documentation of medical and religious exceptions must be:

(a) Maintained in accordance with applicable federal and state laws;

(b) Maintained for at least two years; and

(c) Provided to the Oregon Health Authority upon request.

(15) Schools and school-based programs that violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004

STATUTES/OTHER IMPLEMENTED: ORS 431A.010, ORS 431.110, ORS 433.004