



ADOPTED: January 10, 2022

## **913: VACCINATION, TESTING, AND FACE COVERING POLICY**

### **I. PURPOSE**

The school district has adopted this policy on mandatory vaccination to safeguard the health of its employees from the hazard of COVID-19. This policy complies with the Occupational Safety and Health Administration’s (“OSHA”) Emergency Temporary Standard on Vaccination and Testing (29 CFR Part 1910, Subpart U) (“ETS”).

### **II. DEFINITIONS**

For purposes of this policy, the following definition applies:

#### **A. “Fully vaccinated” means:**

- i. A person’s status 2 weeks after completing primary vaccination with a COVID–19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the approval, authorization, or listing that is:
  - a. Approved or authorized for emergency use by the U.S. Food and Drug Administration (“FDA”);
  - b. Listed for emergency use by the World Health Organization (“WHO”); or
  - c. Administered as part of a clinical trial at a U.S. site, if the recipient is documented to have primary vaccination with the active (not placebo) COVID–19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety

monitoring board) or if the clinical trial participant at U.S. sites had received a COVID-19 vaccine that is neither approved nor authorized for use by FDA but is listed for emergency use by WHO; or

- ii. A person's status 2 weeks after receiving the second dose of any combination of two doses of a COVID-19 vaccine that is approved or authorized by the FDA, or listed as a two-dose series by the WHO (i.e., a heterologous primary series of such vaccines, receiving doses of different COVID-19 vaccines as part of one primary series). The second dose of the series must not be received earlier than 17 days (21 days with a 4-day grace period) after the first dose

B. **“COVID-19 test”** means a test for SARS-CoV-2 that is:

- i. Cleared, approved, or authorized, including in an Emergency Use Authorization (“EUA”), by the FDA to detect current infection with the SARSCoV-2 virus (e.g., a viral test);
- ii. Administered in accordance with the authorized instructions; and
- iii. Not both self-administered and self-read unless observed by the school district or an authorized telehealth proctor. Examples of tests that satisfy this requirement include tests with specimens that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by the school district.

C. **“Face covering”** means a covering that:

- i. Completely covers the nose and mouth;
- ii. Is made with two or more layers of a breathable fabric that is tightly woven (i.e., fabrics that do not let light pass through when held up to a light source);
- iii. Is secured to the head with ties, ear loops, or elastic bands that go behind the head. If gaiters are worn, they should have two layers of fabric or be folded to make two layers;
- iv. Fits snugly over the nose, mouth, and chin with no large gaps on the outside of the face; and

- v. is a solid piece of material without slits, exhalation valves, visible holes, punctures, or other openings.

This definition includes clear face coverings or cloth face coverings with a clear plastic panel that, despite the non-cloth material allowing light to pass through, otherwise meet this definition and which may be used to facilitate communication with people who are deaf or hard-of-hearing or others who need to see a speaker's mouth or facial expressions to understand speech or sign language respectively.

### III. SCOPE

- A. **Only in Effect if Legally Required.** This policy will only be in effect if OSHA or Minnesota OSHA are enforcing the ETS and the school district or its employees could be subject to sanctions for noncompliance with the ETS. This school district will not enforce the provisions of this policy if the ETS is expired, subject to a court order staying its implementation, or otherwise not legally binding on the school district.
- B. **Application to All Employees.** This policy applies to all employees of the school district, except for employees who do not report to a workplace where other individuals (such as students, coworkers, or visitors) are present; employees while working from home; and employees who work exclusively outdoors.
- C. **Application to Independent Contractors and Volunteers.** Independent contractors and volunteers are not considered school district employees for purposes of this policy. Independent contractors and volunteers will be required to comply with COVID-19 mitigation protocols established for building visitors.
- D. **Intersection with Other Policies and Procedures.** If this policy or any subsection of this policy conflicts with any other school district policy or procedure, this policy will be followed.

#### IV. VACCINATION

- A. **Employee Choice.** The school district is not imposing a vaccine mandate for its employees in order to comply with the requirements of the ETS. Employees may choose to be vaccinated against COVID-19. Any employee not fully vaccinated by February 9, 2022 will be subject to the weekly testing and face covering requirements of this policy until they become fully vaccinated. The face covering requirements set forth in this policy will begin on January 10, 2022 or when the face covering requirement in the ETS is legally enforceable against the school district, whichever occurs later. Weekly testing requirements set forth in this policy will begin on February 9, 2022 or when the testing requirements set forth in the ETS become legally enforceable against the school district, whichever occurs later.
- B. **Deadlines.** To be considered fully vaccinated by February 9, 2022, an employee must receive the final dose of a primary COVID-19 vaccination by no later than January 26, 2022.
- C. **Vaccine Availability.** Employees are responsible for scheduling their own vaccination appointments. Employees may schedule a vaccination appointment through their own medical provider, local pharmacies, mass-vaccination clinics, community vaccination sites, or any other place where COVID-19 vaccines are offered. Information about vaccination locations is available through Minnesota's COVID-19 Response webpage at: <https://mn.gov/covid19/vaccine/find-vaccine/locations/index.jsp>.
- D. **Time to Receive Vaccination.** The school district will provide a reasonable amount of time to each employee to receive their primary vaccination dose or doses. An employee may take up to four hours of paid duty time, at the employee's regular rate of pay, per primary vaccination dose to travel to a vaccination site, receive a vaccination, and return to work. This means a maximum of eight hours of paid duty time for employees receiving two primary vaccine doses.
- i. If an employee spends less time getting the vaccine, only the amount of paid duty time needed for a primary vaccination appointment will be granted. Given the widespread availability of the COVID-19 vaccine in Minnesota, the school district expects that employees will schedule vaccination appointments in a way that minimizes the need to be absent from work.
  - ii. Employees who take longer than four hours to get the vaccine must contact their supervisor immediately and must explain the reason for the additional

time (e.g., they may need to travel long distances to get the vaccine). Any additional time requested will be granted, if reasonable, but will not be paid. In that situation, the employee can elect to use accrued paid leave to cover the additional time needed to obtain a primary vaccination dose.

- iii. If an employee is vaccinated outside of their approved duty time, the employee will not be compensated.
- iv. The school district will not reimburse employees for transportation costs (e.g., gas money, train/bus fare, etc.) incurred to receive the vaccination.

E. **Time for Recovery.** The school district will provide reasonable time and paid sick leave to employees who are unable to work due to side effects experienced following any primary vaccination doses.

- i. The school district will provide no more than two days of paid leave per primary vaccination dose for employees who are unable to work due to vaccination side effects. Any request for additional leave will be governed by the school district's established procedures for requesting a medical leave.
- ii. Employees who have available accrued sick leave or paid time off (PTO) will be required to use their available accrued leave for recovery time. Employees who have no sick leave will be granted up to two days of paid sick leave immediately following each dose, if necessary for the employee to recover from side effects.
- iii. The following procedures apply for requesting and granting duty time to obtain the COVID-19 vaccine or sick leave to recover from side effects:
  - a. If an employee has available accrued leave, the employee must report the use of leave for vaccine side effects in the same manner as the employee would ordinarily report leave due to personal illness.
  - b. If an employee does not have sufficient accrued sick leave to cover the time period needed to recover from side effects of the vaccination, the employee must notify their supervisor upon learning of the need for leave. The school district will provide up to two days of paid leave if the employee is unable to work due to side effects from a primary vaccination dose.

## V. REPORTING VACCINATION STATUS

- A. **Obligation to Report.** All employees are required to report their vaccination status and, if vaccinated, provide proof of vaccination as set forth in this section. Employees must provide truthful and accurate information about their COVID-19 vaccination status. Employees who do not comply with this policy may be subject to discipline. Vaccination status information must be reported to the school district by the deadline set forth by school district administration. This deadline will be based on the date the ETS will be legally enforceable against the school district. In order to comply with this reporting requirement, employees must provide proof of their vaccination status, including whether they are fully or partially vaccinated. Acceptable forms of proof are outlined below. Employees who are not vaccinated must also report their vaccination status.
- B. **Reporting.** The superintendent will be responsible for developing a system through which employees will report their vaccination status.
- C. **Proof of Vaccination.** All vaccinated employees are required to provide proof of vaccination status, regardless of where they received their vaccination.
- i. Acceptable “proof of vaccination status” includes:
    - a. The record of immunization from a health care provider or pharmacy;
    - b. A copy of a COVID-19 Vaccination Record Card;
    - c. A copy of medical records documenting the vaccination;
    - d. A copy of immunization records from a public health, state, or tribal immunization information system; or
    - e. A copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the healthcare professional(s) or clinic site(s) administering the vaccine(s).
  - ii. Proof of vaccination generally should include the employee’s name, the type of vaccine administered, the date(s) of administration, and the name of the healthcare professional(s) or clinic site(s) that administered the vaccine. In some cases, state immunization records may not include one or more of these data fields, such as clinic site. In those circumstances, the school

district will still accept the state immunization record as acceptable proof of vaccination

- iii. Employees may submit a physical copy of a vaccination record or employees may provide a digital copy, including, for example, a digital photograph, scanned image, or PDF of such a record that clearly and legibly displays the necessary vaccination information.
- iv. An employee who does not possess their COVID-19 vaccination record card (e.g. because it was lost or stolen) should contact their vaccination provider to obtain a new copy or other acceptable documentation of their vaccination status. If the employee is unable to produce acceptable proof of vaccination after contacting the vaccine provider, then they may attest to their vaccination as described below.
- v. In instances where an employee is unable to produce acceptable proof of vaccination status, the employee may submit a signed and dated statement by the employee:
  - a. Attesting to the employee's vaccination status (fully vaccinated or partially vaccinated);
  - b. Attesting that the employee has lost or are otherwise unable to produce proof of vaccination; and
  - c. Including the following language in the attestation: "I declare that this statement about my vaccination status is true and accurate. I understand that knowingly providing false information regarding my vaccination status on this form may subject me to criminal penalties."

An employee who attests to their vaccination status should, to the best of their recollection, include the following information in their attestation: the type of vaccine administered; date(s) of administration; and the name of the healthcare professional(s) or clinic site(s) administering the vaccine(s).

- D. **Treated as Unvaccinated if No Proof or Attestation.** An employee who does not provide acceptable proof of vaccination status, or an attestation, is treated as not fully vaccinated for purposes of this policy.
- E. **Penalty for Providing False Information.** Employees are prohibited from knowingly supplying false statements or documentation regarding their

vaccination status under 18 U.S.C. § 1001 and section 17(g) of the Occupational Safety and Health Act (“OSH Act”). Employees who violate those laws may be subject to criminal penalties.

- F. **Recordkeeping.** The school district will maintain a roster of each employee’s vaccination status and maintain records of acceptable proof of vaccination for each employee who is fully vaccinated or partially vaccinated. These records are considered to be employee medical records, and will be maintained in a confidential manner as required by law.

## VI. FACE COVERINGS

- A. **Mandatory if Not Fully Vaccinated.** Beginning January 10, 2022 or when the ETS is legally enforceable against the school district, whichever occurs later, any employee who is not fully vaccinated must wear a face covering over their nose and mouth while indoors at school or while in a school vehicle while occupied by any other passengers. Employees must replace their face covering if it becomes wet, soiled, or damaged (e.g., ripped, has holes, or has broken ear loops).
- B. **Exceptions to Face Covering Requirement.** Any employee who is not fully vaccinated does not have to wear a face covering:
  - i. When the employee is alone in a room with floor to ceiling walls and a closed door;
  - ii. For a limited time while the employee is eating or drinking at the workplace or for identification purposes in compliance with safety and security requirements;
  - iii. When the employee is wearing a “respirator” or “facemask”, as defined by the ETS;
  - iv. Where the school district has advised the employee a face covering is not required because it has determined that the use of face coverings is infeasible or creates a greater hazard (e.g., when it is important to see the employee’s mouth for reasons related to their job duties, when the work requires the use of the employee’s uncovered mouth, or when the use of a face covering presents a risk of serious injury or death to the employee.)
- C. **Cost for Face Coverings.** Employees are generally responsible for acquiring their own face coverings. The school district will not pay or reimburse employees for any costs associated with acquiring their own face coverings.



## VII. COVID-19 TESTING

A. **Test Requirement.** Beginning February 9, 2022 or the date on which the mandatory testing requirement in the ETS becomes legally enforceable against the school district, whichever occurs later, any employee who is not fully vaccinated must participate in weekly COVID-19 testing. Any employee who is not fully vaccinated and who reports to the workplace at least once every seven days:

- i. Must be tested for COVID-19 at least once every seven days; and
- ii. Must provide documentation of the most recent COVID-19 test result to the school district no later than the seventh day following the date on which the employee last provided a test result.

The superintendent is responsible for developing a protocol for employees to report COVID-19 test results and will communicate the protocol to all employees.

B. **Testing Following Longer Absences.** Any employee who is not fully vaccinated and who does not report to the workplace during a period of seven or more days:

- i. Must be tested for COVID-19 within seven days prior to returning to the workplace; and
- ii. Must provide documentation of that COVID-19 test result to the school district in the manner to be determined by the superintendent upon return to the workplace.

C. **Failure to Provide Test Result.** If an employee who is not fully vaccinated does not provide documentation of a COVID-19 test result as required by this policy, they will be removed from the workplace until they provide a test result.

D. **Exemption for Recent Infection.** Employees who are not fully vaccinated and who have received a positive COVID-19 test, or have been diagnosed with COVID-19 by a licensed healthcare provider, are not required to undergo COVID-19 testing for 90 days following the date of their positive test or diagnosis.

E. **Record of Testing.** The school district will maintain a record of each test result provided by each employee under this policy. These records are considered to be employee medical records and will be maintained in a confidential manner as required by law.

- F. **Cost of Testing.** The school district will not pay or reimburse employees for any costs associated with COVID-19 testing.
- G. **Availability of Testing.** Employees may schedule their own testing appointments. Information about testing locations is available online at: <https://mn.gov/covid19/get-tested/testing-locations/index.jsp>.

## VIII. MANDATORY REPORTING OF COVID-19 DIAGNOSIS OR POSITIVE TEST

- A. **Reporting and Removal from Workplace Following Positive Test.** Regardless of an employee's vaccination status:
  - i. The school district requires all employees to promptly notify [covidreporting@davincicharterschool.org](mailto:covidreporting@davincicharterschool.org) as well as their direct supervisor when they have tested positive for COVID-19 or have been diagnosed with COVID-19 by a licensed healthcare provider; and
  - ii. The school district will immediately remove from the workplace any employee who receives a positive COVID-19 test or is diagnosed with COVID-19 by a licensed healthcare provider and keep the employee removed until the employee:
    - a. Receives a negative result on a COVID-19 nucleic acid amplification test (NAAT) following a positive result on a COVID-19 antigen test if the employee chooses to use a NAAT test for confirmatory testing;
    - b. Meets the return to work criteria in CDC's "Isolation Guidance"; or
    - c. Receives a recommendation to return to work from a licensed healthcare provider.
- B. **Return to Work after Positive Test.** The school will follow current MDH (Minnesota Department of Health) guidance. If the MDH's Isolation Guidance changes following the adoption of this policy, the school district will follow the then-current version of the guidance for purposes of this policy.
- C. **Status of Leave After Positive Test.** The school district will not provide any paid time off to any employee for removal from the workplace as a result of a

positive COVID-19 test or diagnosis of COVID-19. Employees may use accrued paid leave to receive pay for their absences.

- D. **Exposure to COVID-19.** Employees who are exposed to an individual with a confirmed case of COVID-19 will be subject to the quarantine protocols set forth in the school district's overall COVID-19 mitigation strategy.

## IX. NEW HIRES

- A. All new employees are required to comply with the vaccination, testing, and face covering requirements outlined in this policy as of the start date of their employment. Candidates for employment will be notified of the requirements of this policy following a job offer and prior to the start of employment.
- B. New employees must provide acceptable proof of vaccination prior to their first day of work. A new employee who cannot provide acceptable proof of vaccination must submit results from a COVID-19 test taken within the previous seven days prior to the employee's first day of work.

## X. EXEMPTIONS

- A. **Accommodations.** An Employee may be entitled to a reasonable accommodation from the school district if the employee is unable to comply with the requirements of this policy because of a medical condition, disability, or a sincerely held religious belief, practice or observance.
- B. **Requests for Reasonable Accommodation.** Requests for reasonable accommodations must be initiated by the individual employee and submitted in writing to Human Resources at [hr@davincicharterschool.org](mailto:hr@davincicharterschool.org).
- C. **Determination of Reasonable Accommodation.** Requests for reasonable accommodations will be addressed on a case-by-case basis by school administration.

## XI. DISSEMINATION OF THIS POLICY AND INFORMATION TO EMPLOYEES

- A. **Dissemination of Policy.** The superintendent will distribute a copy of this policy to all employees via the school district's e-mail system following its adoption.

- B. **Other Required Disclosures to Employees.** The ETS requires the school district to provide the following information to employees:

The full text of OSHA's ETS is available online at:

<https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard>.

The CDC has published information about COVID-19 vaccine efficacy, safety, and the benefits of being vaccinated. This information can be accessed by visiting: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>.

Federal regulation, specifically 29 CFR § 1904.35(b)(1)(iv), prohibits the school district from discharging or in any manner discriminating against an employee for reporting a work-related injury or illness.

Section 11(c) of the OSH Act prohibits the school district from discriminating against an employee for exercising rights under, or as a result of actions that are required by, the ETS. Section 11(c) also protects the employee from retaliation for filing an occupational safety or health complaint, reporting a work-related injury or illness, or otherwise exercising any rights afforded by the OSH Act.

Federal law, specifically 18 U.S.C. § 1001 and of section 17(g) of the OSH Act, prohibits employees from knowingly supplying false statements or documentation in accordance with this Policy. Anyone who violates those provisions may be subject to criminal penalties.

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