

# FAQ: Updated MDH/MDE guidance regarding school safety for the 2021-22 school year

*Revised: Aug. 19, 2021*

*Disclaimer: This publication is for informational purposes only and is not intended as a substitute for specific legal or other professional advice. If you have specific questions about your legal or contractual rights, contact your Education Minnesota field representative. This guidance will be updated periodically based on new information and guidance, so please refer back to this link for the most current information.*

Following the release of [revised masking and safety guidelines](#) by the CDC, MDH has recently released its own [guidance](#) regarding best practices for the 2021-22 school year that will align with the CDC's recommendation. These recommendations are particularly directed to implementing layered prevention strategies (using multiple prevention strategies together consistently) to protect people who are not fully vaccinated. Some of the main issues covered in the guidance:

- All people ages 12 and older should get vaccinated for COVID-19 before returning to in-person school, sports or other activities to protect themselves and people around them who cannot get vaccinated.
- Universal indoor masking for all teachers, staff, students and visitors to K-12 schools, regardless of their vaccination status and regardless of the level of community transmission.
- Schools should maintain at least 3 feet of physical distance between students within classrooms whenever possible.
- Students, teachers and staff should stay home if they have signs of any infectious illness, and should contact their health care provider for testing and care.
- Students, teachers and staff who have been fully vaccinated do not need to stay home even if they have had recent close contact with a confirmed case so long as they remain asymptomatic and do not test positive. Follow CDC testing guidance for anyone exposed to a confirmed case.
- People who are not fully vaccinated and returning to in-person school, sports or extracurricular activities (and their families) should get tested regularly for COVID-19, according to CDC guidance.

- Schools should continue to strengthen good ventilation, rapid and thorough contact tracing in combination with isolation and quarantine, handwashing, respiratory etiquette, cleaning and disinfection as important layers of prevention to keep schools safe.

### **1. What does this mean for members?**

At this point, all of this guidance is a recommendation, which means it is not binding or required. However, you have a right to a safe work environment, and whether your district is complying with this guidance will be one way of assessing whether you have one. You should reach out to your local leaders and field staff regarding school procedures on these issues.

### **2. Is this guidance required by the state?**

MDE is currently offering these as best practices. However, schools have a general duty to provide a safe workplace, and failing to follow these guidelines may violate OSHA.

### **3. Why can't the state require masks in schools as they did during last school year?**

The mask mandate and other required mitigation measures for schools came from Executive Orders that Gov. Tim Walz had authority to issue under emergency powers that expired on July 1. The governor would need to declare another peacetime emergency or gain legislative approval to reinstate a mask mandate or other COVID mitigation protocols in schools.

### **4. What if my school is not following the state's guidance?**

Please work with your local leaders and field staff to advocate for the implementation of this guidance. You can also [contact MNOSHA](#) at the Minnesota Department of Labor and Industry. To the extent possible, and where it would not impact student privacy, we recommend taking pictures showing the lack of a mitigation measure.

Members should contact their Education Minnesota field staff when concerns arise. Knowing the extent and number of districts and charter schools that are not following the guidance helps Education Minnesota to be able to advocate for workers in individual districts, as well as with relevant state agencies.

### **5. Can we demand to bargain over the recommendations?**

Yes, the new guidance implicates staff safety, which is a term and condition of employment. Education Minnesota has previously published [bargaining resources](#) for members who are considering MOUs for the upcoming school year, or even considering including similar language into the collective bargaining agreements that most locals are beginning to negotiate.

### **6. What if my district refuses to bargain?**

Contact your field staff as soon as possible if your district refuses to bargain. Filing an unfair labor practice charge against a district that refuses to bargain is one option, and we would like to help locals find the quickest and most efficient way to ensure that their employer is bargaining in good faith over workplace safety.

### **7. How do I file an OSHA complaint?**

MNOSHA does require affected employees to file their own reports, but Education Minnesota can provide support to the extent possible. You can [contact](#) MNOSHA by phone or email.

### **8. I think my students need to see my face and I don't want to wear a mask. Can my district require that I wear one?**

Yes. Individual districts are free to require that staff, students and other employees wear masks.

### **9. Can my district require me to be vaccinated?**

Yes, unless you have a disability that prevents you from getting vaccinated or sincerely held religious exemption. Creating a mandatory requirement of this nature is a term and condition of employment, and districts will therefore need to negotiate the imposition of such a requirement with employee unions. Education Minnesota has created a [sample MOU](#) for vaccine requirements that may help to speed up those discussions. You can access our [vaccine FAQ](#) for more information.

See our recently updated [vaccine FAQ](#) for more information about vaccines for educators and students.

### **10. I'm high risk and the delta variant makes me nervous. May I teach remotely this next school year?**

This will depend on the number of online learners, your role and how the district is implementing online learning. If you have a disability and are requesting accommodations, this may be one to consider. Other possible accommodations include requiring masking in your classroom and continuing to provide air filters or barriers. We recommend requesting a remote role as soon as possible and working with your local to try to secure a remote position. However, districts may not be required to provide remote work for staff; situations differ and you should contact your field staff if you need assistance in these discussions.

### **11. What resources are available from the state to implement COVID testing for students and staff?**

On Aug. 17, the Minnesota Department of Health and the Minnesota Department of Education announced a first-in-the-nation COVID-19 testing program for school districts, charter schools,

tribal schools, and non-public schools throughout the state. The program is voluntary, and each school district will have the option to implement “screening testing” of unvaccinated students and staff, as well as “symptomatic testing” for those who have COVID-19 symptoms. There are also five different types of tests that schools may order and administer, but MDE notes that the supply of each type of test may fluctuate.

More information about the testing program is available [here](#) and an FAQ is available [here](#), and questions can be emailed to [COVIDTesting.MDE@state.mn.us](mailto:COVIDTesting.MDE@state.mn.us).

## **12. Will districts, employees or families have to pay for the cost of these tests?**

Although MDE and MDH do not guarantee that costs will be fully reimbursed by the state, MDH’s website says the following:

“Every school district, charter school, tribal school, and nonpublic school is eligible for a grant through the Minnesota Department of Education to support COVID-19 testing. Grant money can be used to fund staff to support, administer, or execute testing, or to purchase tests through a vendor. Information and updates about the grant process will be regularly communicated to school districts, charter schools, tribal schools, and nonpublic schools.”

MDH’s FAQ also states, “If schools choose to implement a for-fee testing program, those tests will need to be paid for using local funds.”

## **13. If a school district or charter school chooses to participate in screening testing, are all *unvaccinated* staff and students required to participate?**

It is unlikely that school districts will be able to mandate that all unvaccinated students participate in regular testing, since students will need consent from a parent or legal guardian. Schools will need to seek their own counsel regarding the legality of mandating testing for students.

Districts may be able to require that unvaccinated staff participate in regular screening testing; however, we would consider required testing of staff a mandatory subject of bargaining, and suggest that locals work on an MOU that specifies:

- Who will administer the tests and how often;
- Whether or not the tests will occur on worktime (staff would need to be paid for time spent getting tested outside the workday); and
- How the school district or charter school will maintain the privacy of test results.

**14. How will school districts and charter schools determine who is and is not vaccinated?**

The Equal Employment Opportunity Commission, which enforces anti-discrimination laws, has issued [guidance](#) stating that employers may require proof of vaccination, provided that they keep this information confidential and stored separately from the employee's personnel files. Some employer vaccine mandates have been challenged in courts, but most if not all of the significant legal challenges have failed thus far.

**15. If a school district or charter school chooses to participate in screening testing, can they allow vaccinated staff and students to participate?**

It appears that funding for screening testing is only available for unvaccinated staff and students at this time, but that may change in the future, and there are other free testing sites located throughout the state. If a district opts to implement a symptomatic testing program, that should be available to vaccinated staff and students.

**16. Does administering testing require a nursing license or any specific degree?**

This is unclear, but we are seeking guidance from MDE. School nurses and health assistants should be consulted prior to establishing a testing program.

**17. Do school districts have the ability to reassign certain staff to oversee COVID testing? What if they do not want to assume these responsibilities?**

This will likely depend on two things: 1) whether the employee(s) administering tests has or will receive appropriate training to perform the tasks requested, and 2) whether the testing responsibilities are significant enough that they could be considered a transfer or change in assignment. An employer's ability to transfer an employee without their permission may be limited by the collective bargaining agreement.

If you have been asked to assist with testing and are unsure whether you have the appropriate training or do not believe this can be required under your contract, contact your local leadership or field staff. One alternative to assigning COVID-19 testing duties to existing staff with full workloads is to use grant funding from the state to hire additional staff to perform these duties.