



Vaccine carding — Higher education’s response to COVID-19 for fall 2021

By Sarah E. Swank

The country is being vaccinated from COVID-19. Higher vaccine rates and new public health guidance is shaping how higher education will approach learning, living and eating on campus for the Fall 2021 semester. The Centers for Disease Prevention (CDC) [guidance](#) for higher education sets out a risk assessment framework, guiding principles and some tips to promote “behaviors that reduce spread.” Listed among the high risk activities is students, faculty and staff engaged in regular in-person learning, activities and events. Now, with the increased distribution of vaccines, colleges and universities are deciding whether they should require proof of vaccination or impose no COVID-19 vaccine requirements at all.

The new CDC guidance explained

The CDC recently released guidance for [when you’ve been fully vaccinated](#), which promotes resuming activities from prior to the pandemic for those who are fully vaccinated. The CDC finds that the [COVID-19 vaccines](#) overall protect the individuals from getting sick. People are considered fully vaccinated:

- Two weeks after their second dose in a two-dose series, or
- Two weeks after a single-dose vaccine.

The CDC recommends taking all [precautions](#) until fully vaccinated regardless of age, such as wearing a mask, staying six feet apart from others who do not live together, avoiding crowds, and poorly ventilated indoor spaces.

Some states say no government-required vaccine passports

At the same time the CDC provided guidance on resuming activities for fully vaccinated individuals, states are saying no to government-required vaccine passports. Governor Abbott issued a [Texas Executive Order](#) on April 5, 2021, that prohibits a governmental entity from compelling disclosure of vaccine status or conditioning services on an individual’s vaccine status. The prohibition extends to any public or private entity that receives public funds in the form of grants, contracts, loans, or other disbursements of taxpayer dollars.

Montana's governor issued a similar [Montana Executive Order](#) prohibiting state-sponsored development and required use of a vaccine passport. The governor of South Carolina issued a [South Carolina Executive](#) order last week that prohibits counties and local governments from mask mandates and bans local governments, state agencies, and state employees from requiring South Carolina residents to provide proof of vaccinations as a condition for receiving government services or gaining access to any building or location.

Governor DeSantis signed a similar [Florida Executive Order](#) prohibiting COVID-19 vaccine passports. Under this Executive Order, no Florida government entity, or its subdivisions, agents, or assigns, is permitted to issue vaccine passports, vaccine passes, or other standardized documentation for the purpose of certifying an individual's COVID-19 vaccination status to a third party. In addition, businesses in Florida are prohibited from requiring patrons or customers to provide any documentation certifying COVID-19 vaccination or post-transmission recovery of COVID-19 to gain access to, entry upon, or service from the business.

What is the new “normal?”

Vaccine mandates or unmasked in-person learning?

Universities and colleges have spent most of this academic year planning, changing, and planning again. Hybrid learning models, disinfecting, masks, social distancing, and trying to live in close quarters all came into play. Some in higher education opted for in-person classes but stay-at-home orders in dorms, while others encouraged remote classes on campus or had periods when students learned from home. With increased vaccine rates, what does the landscape look like for returning students next year? Institutions will take approaches that differ from state to state.

No vaccine passports

So, what do state prohibitions on vaccine passports mean for higher education? It has meant no vaccine mandates in certain states. For the University of Florida, it means no vaccine requirements and no masks for students. Mask requirements are instead for hospitals and patient-facing clinical facilities. On May 17, 2021, the [University of Florida](#) announced that masks are optional for students, faculty, staff, and guests, although it recommends continued mask wearing for those who are not fully vaccinated.

Is it back to the new “normal?” For some institutions, it is business as usual for fall 2021. On March 3, 2021, the University System of Georgia [announced](#) that it would resume normal operations for the fall 2021 semester. It cited conversations with the Georgia Department of Public Health and the availability of the vaccine over the coming months for its reasons to go back to normal. It also issued this follow up on masks on May 17, 2021: “Fully vaccinated individuals can resume campus classes and other activities without wearing a mask. Unvaccinated individuals are strongly encouraged to continue wearing a face covering while inside campus facilities.”

Show me your card

On March 25, 2021, [Rutgers University](#) announced that the University was requiring with limited exceptions that all students planning to attend the semester in fall 2021 be fully vaccinated. Rutgers announced that they will require proof of the vaccination or an exemption. Online students will not need to provide proof of vaccinations.

Some higher education institutions have followed Rutgers approach. [Bowdoin](#) informed students that if they do not have a legitimate medical exemption with a documented and valid medical contraindication they cannot enroll for the fall semester and there will be no remote study option.

The college will provide guidance through its health center to help students become vaccinated prior to the deadline. International students who are unable to obtain the vaccine before coming to campus for the fall will need to work with the health center to ensure they obtain the vaccine. Those students may have to quarantine until they have been fully vaccinated. The campus, but not most campus buildings, will be open to the general public who are fully vaccinated. If a student needs to have a visitor in a campus building, they will need permission from a member of the dean of students or the Office of Residential Life.

Show up and we will help

[Cornell University](#) released its fall return plans to its faculty, staff, and students. Cornell stated that they should plan for this return to in-person teaching and learning in fall 2021. “Cornell intends to require vaccination for students returning to Ithaca, Geneva[,] and Cornell Tech campuses for the [f]all 2021 semester. At this time, Cornell is not requiring our employees to be vaccinated; however, we strongly encourage all members of our community to be vaccinated when eligible.” Students who are not able to obtain vaccination prior to arrival for the fall semester, or whose vaccination is not recognized by New York State, will be expected to be vaccinated as soon after their arrival as possible. If less than 50% of the student population has been vaccinated by the beginning of the semester, **Cornell University will have a hybrid approach rather than in-person learning until sufficient herd immunity is reached.** The University stated in its announcement that it was unlikely that vaccination rates would be that low.

What about showing “fakes” or vaccine card selfies?

Forged or fake vaccine documents could be a problem for institutions. The Department of Human Services, Office of the Inspector General (HHS-OIG) [warns](#) of fake vaccination documentation scams. The FBI issued a [public service announcement](#) about making or buying a fake COVID-19 vaccination record. The FBI is concerned that “by misrepresenting yourself as vaccinated when entering schools, mass transit, workplaces, gyms, or places of worship, you put yourself and others around you at risk of contracting COVID-19.” In addition, the use of an agency seal, such as HHS or the CDC, is a crime punishable under Title 18 of the United States Code, Section 1017 among other laws. The FBI [reports](#) that “scammers” are using vaccine cards placed on social media to forge vaccination cards to sell them. The Federal Trade Commission (FTC) [warned](#) people not to post their vaccination cards on social media to prevent someone from stealing their identity.

Does “full” FDA approval change anything?

On May 7, 2021, two vaccine manufacturers announced that they requested full approval for their COVID-19 vaccines from the FDA. The current COVID-19 vaccines were authorized by the FDA under an [emergency use authorization](#) (“EUA”) rather than through approval of a Biologics License Application (“BLA”). The EUA process is a way to make vaccines available during a public health emergency, such as the COVID-19 pandemic. If the FDA approves the BLA for the COVID-19 vaccine in the coming weeks prior to school beginning, this could change the analysis for some higher education institutions taking a wait and see approach to EUA designation and COVID-19 vaccine mandates. For example, the Texas Executive Order prohibiting vaccine passports relates to COVID-19 vaccines administered under EUA, not vaccines approved by the FDA. Many public universities may make their mandate conditional on full FDA approval of the COVID-19 vaccines.

What about other mandates?

Other educational mandates could inform higher education’s response to COVID-19 mandates. In a legal [issue brief](#), the American Council on Education indicated that mandated COVID-19

vaccinations may align with existing flu vaccine requirements for a students. In [Kiel et al. v. The Regents of the Univ. of Cal., et al., No. HG20072843](#) (Cal. Super. Ct. Dec. 4, 2020), a California Court ruled that mandating the flu shot for public college students was permissible. This is consistent with the New York City public school [vaccine mandate](#) upheld after an outbreak of measles closed down several schools. The U.S. Court of Appeals in the Second Circuit in *Phillips v. City of New York*, No. 14-2156 (2d Cir. 2015) upheld the ability to forgo religious exemptions, leaving medical exemptions as the only permitted exemption.

Health care might be different

Universities are often associated with hospitals, health care facilities, and students. What works for the rest of the University may not work for health care and medical education. Many states are recommending or requiring masks, infection control, and other public health measures for health care institutions, such as hospitals, medical offices, and skilled nursing homes. Students and faculty in health care settings may have a separate set of requirements even if vaccinated.

Effective March 10, 2021, Texas lifted the mask mandate through [Texas Executive Order](#) for all businesses, while other states are lifting or considering lifting mask mandates for fully vaccinated people. New York, New Jersey, and Connecticut mask changes for fully vaccinated individuals will go into effect this week. Still, many states say masks should still be worn in health care facilities. Even in the states lifting mask mandates, health care is often permitted to determine its own infectious disease protocols.

What's next? More change

Just like this academic year, next year academic institutions will need to make decisions and often pivot quickly related to changes in public health guidance, state law, and the status of the COVID-19 vaccine. The FDA may in the coming weeks provide full approval to certain vaccines. Full approval may provide more protections to colleges and universities for mandating vaccines in states without specific Governor Executive Orders. One vaccine manufacturer recently released its initial data for a booster shot against new variants of SARS-CoV-2, the virus that causes COVID-19. The boosters may create another round of reviewing vaccine documentation or discussion regarding risk. If and when the COVID-10 vaccine were to come in another form, such as a tablet or incorporated into flu vaccine, these issues may be considered again.

Stay informed

The number of colleges and universities doing some sort of mandate is growing quickly. Changes may come rapidly over the summer and into the fall semester. Stay informed to ensure compliance with local and state requirements, as well as CDC and other public health guidance. For more information regarding faculty and employment consideration see our alert, "[Mandatory vaccination programs: May employers stick it to their employees?](#)"

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