

Letter of Agreement
Between
The K-12 Presidents' Council and Support Staff Unions ("Council")
and
The British Columbia Public School Employers' Association ("BCPSEA")
Re: Operations Procedure - Proof of Vaccination Regarding COVID-19
("Procedure")

If a K-12 School District ("District") determines that it should implement a proof of vaccination requirement for its employees, the parties are supportive of a common sector-wide approach regarding such implementation and application of a Procedure.

If a District determines that it should implement a Procedure, the parties support implementation of the template Procedure attached to this Letter of Agreement as Appendix A.

Whereas if a District approves the Procedure, the parties additionally agree to the following.

BCPSEA and the Council agree to strongly recommend adoption of the Letter of Understanding below for immediate inclusion in the collective agreements between local Support Staff Unions who are members of the K-12 Presidents' Council and the K-12 sector Boards of Education.

The Council also agrees to strongly support and work collaboratively with other support staff unions i.e. non-members of the K-12 Presidents' Council to encourage them to agree to the same Letter of Understanding with their applicable Boards of Education.

BCPSEA and Council representatives have engaged in extensive discussions on these matters since October 15, 2021.

The following is the template Letter of Understanding recommended for approval and implementation between the K-12 education sector local CUPE and Support Staff unions and their respective Boards of Education to adopt:

Letter of Understanding
Between
[Local Union Name]
(the "Union")
and
Board of Education - School District #XX
(the "District")
(collectively, the "Parties")
Re: Procedure – Proof of Vaccination Regarding COVID-19
("Procedure")

The following definitions from the Procedure apply to this Letter of Understanding: Fully Vaccinated, Rapid Testing, Remote Work, and Modified Work.

The Parties agree to add to the Collective Agreement a new leave of absence called **Extraordinary Leave Without Pay for Employees Who Have Not Provided Proof of Vaccination against COVID-19** ("Extraordinary Leave") as follows:

1. An employee who does not qualify for an accommodation and who does not comply with the employer's requirement to provide proof of vaccination against COVID-19, or agree to undergo Rapid Testing (and where Rapid Testing will be provided by the District), shall be offered, for the duration of the Procedure, one of the following options:

- i. an Extraordinary Leave.
- ii. Remote work, or
- iii. Modified work.

If one of the above 1.ii. or 1.iii. options are provided, the District and the Union will work together to facilitate its successful implementation. Notwithstanding the above, if a District determines it is not possible to provide Remote Work or Modified Work, the Employee will be placed on Extraordinary Leave.

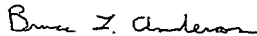
2. During the Extraordinary Leave, the employee will accrue seniority and the employee's benefits will continue only if the employee pays the full cost of benefit premiums. An employee on this Extraordinary Leave will not be entitled to any other entitlements or benefits except as may be legally required (e.g., Maternity Leave). However, an employee on this Extraordinary Leave will not be eligible for any other types of collective agreement paid leaves (e.g., personal leave, bereavement leave).
3. Notwithstanding paragraph 2, an employee may elect to draw down their vacation banks while on an Extraordinary Leave. If an employee chooses to draw down their vacation bank, they shall notify the District in writing the number of days to be drawn.
4. The Extraordinary Leave will come to an end when the employee:
 - i. complies with the District's requirement that they provide proof of vaccination, or
 - ii. complies with requirements for Rapid Testing, or
 - iii. begins a statutory leave of absence, or
 - iv. the requirement is no longer in effect.
5. Upon return from Extraordinary Leave, the employee shall be assigned to the same position, or when the position is no longer available, a similar position.
6. Extraordinary Leave, Rapid Testing, Remote Work, and Modified Work under this Letter of Understanding is not disciplinary, and no employee's employment shall be terminated for choosing not to provide proof of vaccination.

The parties agree, on a without prejudice or precedent basis, to waive applicable obligations under s. 54 of the Labour Relations Code respecting the adoption or implementation of the Procedure.

This Letter of Understanding expires June 30, 2022, unless mutually terminated or extended by the parties.

The Parties agree that if the Provincial Health Officer ("PHO") issues a mandatory vaccination order for the K-12 Sector, the parties will review this Letter of Agreement; if the parties cannot or choose not to reach agreement on an amendment to this Letter of Agreement, it will expire the effective date of the PHO order.

Dated: December 13, 2021



CEO, BCPSEA



President, K-12 Presidents' Council

Operations Procedure: Proof of Vaccination Regarding COVID-19

Background

K-12 School Districts in British Columbia are committed to ensuring the health, welfare and safety of all employees and students through providing safe working and learning environments. Despite intensive vaccination efforts, COVID-19 continues to circulate in BC communities.

Public health officials have been clear that vaccines are the most effective way to reduce the risk of COVID-19 transmission in schools and communities. The vaccines used in BC are highly effective against COVID-19, including among variants of concern. Most COVID-19 cases, hospitalizations, and deaths are now among unvaccinated adults. Unvaccinated individuals are nine times more likely to become a COVID-19 case and 40 times more likely to be hospitalized or die. The most effective means to protect students from COVID-19 is for adults in their community, including their school community, to be vaccinated.

Purpose

The purpose of this Operations Procedure (“Procedure”) is:

- to safeguard the health and safety of our employees and students from COVID-19, taking into account the particular risks of transmission in schools, which will be reduced by vaccination;
- to reduce the impacts to in-person learning by minimizing school closures and disruptions;
- to reduce absenteeism;
- to improve safety plan implementation in the event of an outbreak of COVID-19;
- to enhance employee, student and parent confidence in the safety of schools; and
- to increase vaccination rates at schools in a manner that balances the Districts’ needs to evaluate risk and plan, while ensuring compliance with applicable laws, including the British Columbia *Human Rights Code*, the British Columbia *Freedom of Information and Protection of Privacy Act* and the *Canadian Charter of Rights and Freedoms*.

This Procedure supplements, and does not replace, the public health measures set out in Provincial Health Officer orders, public health guidance, the Provincial COVID-19 Communicable Disease Guidelines for K-12 Settings, or the BCCDC Public Health Communicable Disease Guidance for K-12 Schools.

This Procedure supplements the District’s Communicable Disease Prevention Plan, which has been amended to cross reference this Procedure.

Scope

This Procedure applies to all Employees of the District and Individual Contractors (as defined below).

Effective Date

This Procedure is in effect commencing XXXXXXXX XX, 2021, until June 30, 2022, subject to review and extension.

Consultation

This Procedure addresses the recent guidelines issued by the Advisory Committee on K-12 Sector Guidelines for Vaccination Policies established by the Ministry of Education.

The District has consulted with public health officials, employee group representatives, local First Nations, Metis and Inuit communities, Indigenous employee organizations, parent advisory committees, and joint health and safety committees.

Definitions

Approved “Extraordinary Leave” Without Pay: Means an Employee is not eligible to work but may remain employed on unpaid leave. Health and welfare benefits may continue subject to the terms of the plans if the Employee pays the full cost of benefit premiums.

Approved Vaccine: COVID-19 vaccines that have been approved for use by Health Canada.

District Site: Any building or property at which District operations are carried out, including school, administrative or operational buildings and property.

Employees: Means all employees of the District (i.e. teachers, support staff, management and exempt staff)

Fully Vaccinated: An individual is considered Fully Vaccinated under this Procedure fourteen (14) days after they have received the full series of an Approved Vaccine or a combination of Approved Vaccines as determined by public health officials in British Columbia.

Individual Contractors: Means all individuals contracted directly by the District to provide services at District Sites.

Modified Work: Means modified job duties.

Proof of Vaccination: The following constitute “Proof of Vaccination” for the purposes of this Procedure:

- BC vaccination card;
- BC Health Gateway's electronic Vaccination Card;
- BC's digital vaccination card QR code that properly displays the employee's correct legal name / identity and vaccination status;
- proof in writing issued by the government for the purpose of showing proof of vaccination in accordance with orders made under the Public Health Act;
- a type of proof, whether electronic or in writing, that is issued by the Government of Canada or of a province or territory of Canada for the purpose of showing proof of vaccination for public health or travel purposes; or
- a type of proof, whether electronic or in writing, where the employee obtained their vaccination while resident in another country, that is issued by a governmental authority of that country that provides confirmable and reliable proof of vaccination for public health purposes, and is deemed an Approved Vaccine and proof by Health Canada.

Rapid Testing: A protocol for regular asymptomatic COVID-19 testing (rapid antigen test), with a reasonable testing and reporting schedule, established by the District. The Rapid Testing kit and cost of administration of the tests is as at no cost to the employee; however, the employee takes the test(s) on their own time and is not remunerated for taking the test(s).

Remote Work: An Employee's existing duties performed at a location other than a District Site.

Procedure

A. Requirement to Provide Proof of Vaccination – Employees represented by the BCTF

1. The following requirements are subject to the Accommodation provisions set out below.
2. Employees must provide Proof of Vaccination showing they are Fully Vaccinated by [date], or, if they are on leave of absence at the time this Procedure comes into effect, by the date their leave ends. Those employees who fail to do so will be considered not Fully Vaccinated will be offered Rapid Testing as a condition of work. Employees who are not Fully Vaccinated and have not agreed to Rapid Testing by [date] will be placed on Extraordinary Leave.
3. After the date this Procedure comes into force, only individuals who provide Proof of Vaccination showing they are Fully Vaccinated are eligible to be hired or if they agree to Rapid Testing.
4. An Employee who is subject to Rapid Testing, may also be required to follow additional health and safety protocols, including enhanced safety measures.

5. In all circumstances, Extraordinary Leave or Rapid Testing are not disciplinary measures and no Employee shall be terminated because they choose not to provide Proof of Vaccination showing they are Fully Vaccinated.
6. An Employee subject to Rapid Testing who tests positive on a rapid antigen test, is considered a preliminary positive; therefore, they must:
 - a. notify the District's designated rapid test administrator;
 - b. self-isolate immediately and follow public health guidance;
 - c. take a laboratory-based PCR test within 48 hours; and
 - d. not come to work until the Employee is authorized to do so by public health officials.

B. Requirement to Provide Proof of Vaccination – Employees represented by Support Staff Unions, Exempt Staff and Independent Contractors

7. The following requirements are subject to the Accommodation provisions set out below.
8. Employees must provide Proof of Vaccination showing they are Fully Vaccinated by [date], or, if they are on leave of absence at the time this Procedure comes into effect, by the date their leave ends; those employees who fail to do so will be considered not Fully Vaccinated and will be offered Rapid Testing as a condition of work. Employees who are not Fully Vaccinated and have not agreed to Rapid Testing by [date], may be offered one of the alternative options below, if feasible and available, on a temporary basis:
 - a. Remote Work; or
 - b. Modified Work.
9. Should none of the above alternative options prove feasible, the Employee will be placed on Extraordinary Leave.
10. After the date this Procedure comes into force, only individuals who provide Proof of Vaccination showing they are Fully Vaccinated are eligible to be hired or engaged as Employees or Individual Contractors, except the District, in its sole discretion, may decide that they may be hired or engaged if they agree to Rapid Testing.
11. An Employee who is subject to Rapid Testing or one of the alternative options in paragraph 8 above, may also be required to follow additional health and safety protocols including enhanced safety measures.
12. In all circumstances, Rapid Testing, Remote Work, Modified Work, and Extraordinary Leave are not disciplinary measures and no Employee shall be terminated because they choose not to provide Proof of Vaccination showing they are Fully Vaccinated.
13. Where the District determines that an alternative option in paragraph 8 above is feasible in a particular circumstance but implementation of that option requires the modification of a collective

agreement provision, the District will engage the applicable union to determine if the Union will agree to the modification prior to implementation.

14. Where the District determines one of the alternative options in paragraph 8 is feasible in a particular circumstance but implementation of that option requires the modification or amendment to an exempt employee's employment contract, the employee will provide written acceptance of such amendment prior to any implementation. Should no agreement be reached, that alternative option will not be available.
15. Individual Contractors who do not provide Proof of Vaccination showing they are Fully Vaccinated by XXXXXXXX XX, 202X, are no longer eligible to and may not provide services to the District as of that date.
16. An Employee subject to Rapid Testing who tests positive on a rapid antigen test, is considered a preliminary positive; therefore, they must:
 - a. notify the District's designated rapid test administrator;
 - b. self-isolate immediately and follow public health guidance;
 - c. take a laboratory-based PCR test within 48 hours; and
 - d. not come to work until the Employee is authorized to do so by public health officials.

Accommodations

17. Individuals seeking medical accommodation from the requirement to provide Proof of Vaccination showing they are Fully Vaccinated under this Procedure on the basis that they are entitled to protection under the *Human Rights Code* of British Columbia must apply to Human Resources expeditiously.
18. Accommodation requests will be considered in accordance with applicable legal requirements, collective agreement provisions, and District policies and procedures.
19. Approved accommodations will be confirmed in writing and will be subject to periodic review.
20. Individuals with an approved accommodation may be required to follow other health and safety protocols, including enhanced safety measures, Remote Work, Modified work, and Rapid Testing.

Support for Vaccination

21. Employees requiring a vaccine appointment time during regular work hours will be granted leave without loss of pay for up to three hours to attend their appointment. To facilitate attending a vaccine appointment with minimal disruption, Employees must notify their manager in advance to arrange time away from work during working hours.

False Disclosures and Failure to Comply

22. Employees who falsify their Proof of Vaccination or otherwise fail to comply with this Procedure may be subject to disciplinary action, up to and including termination.
23. Individual Contractors who falsify their Proof of Vaccination or otherwise fail to comply with this Procedure will be ineligible to continue in their capacity with the District.

Privacy Statement

24. The attached Vaccination Data Collection applies to this Procedure.
25. The District will collect, use, disclose and store personal health information including Proof of Vaccination (“Personal Health Information”), in accordance with the District’s Privacy Policy and any applicable privacy legislation, including the B.C. *Freedom of Information and Protection of Privacy Act* and the B.C. *Public Health Act*.
26. Personal information collected under or in connection with this policy is collected under the authority of sections 26(c) and (e) of the *Freedom of Information and Protection of Privacy Act*.
27. The District is collecting Personal Health Information under this Procedure for the Purposes set out above.
28. The District will limit access to Personal Health Information on a strictly need-to-know basis and only for the purposes described above. This information will be shared externally only where permitted or required under applicable laws, such as where it is requested or required by public health officials or other government agencies.

References

Advisory Committee’s K-12 Sector Guidelines for Vaccination Policies
Provincial COVID-19 Communicable Disease Guidelines for K-12 Settings
Public Health Communicable Disease Guidance for K-12 Schools
Public Health Act
Human Rights Code
Workers Compensation Act
Freedom of Information and Protection of Privacy Act
District Communicable Disease Prevention Plan
District Accommodation Policy/Procedure [name]

NOTE:

Communicable Disease Prevention Plans must be updated to include a reference to this Procedure.

http://www.bccdc.ca/schools/Documents/Health_Safety_Checklist.pdf