



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3402

Subject: COVID-19 Vaccine Mandate for Educators at Bureau of Indian Education-Operated Schools

Sec. 1 Purpose. This Order is intended to help prevent future COVID-19 outbreaks and to protect students and faculty at Bureau of Indian Education (BIE)-operated elementary schools, secondary schools, off-reservation boarding schools, and peripheral dormitories (collectively, BIE-operated schools). Vaccination is our leading public health strategy; therefore, this Order will require that educators, as defined in 25 U.S.C. § 2012(o)(2), shall receive a COVID-19 vaccine no later than October 15, 2021, so that BIE-operated schools can return to safe, in-person instruction as soon as practicable for the 2021–2022 school year.

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), and the authority provided in 25 U.S.C. § 2012, Indian Education Personnel, and its implementing regulations at 25 C.F.R. Subchapter E, Education (Subpart E). This Order is also in furtherance of the Federal trust responsibility to provide for and support Indian education. See 25 U.S.C. § 2000, Declaration of Policy.

Sec. 3 Background. The COVID-19 pandemic is a serious public health and economic crisis, which recently has been exacerbated by the advent of the highly transmissible Delta variant. At the same time, schools play critical roles in promoting equity in learning and health, particularly for groups such as Tribes that are disproportionately affected by COVID-19, and it is a national priority to ensure that education can be in a safe, in-person environment. To that end, the Centers for Disease Control and Prevention (CDC) has recommended that educational institutions take action to provide for the vaccination of all teachers and staff, in addition to other mitigation measures such as masks and social distancing.

As trustee, the United States has a direct interest in protecting American Indian and Alaska Native children, including their education. This vaccination mandate will help ensure that American Indian and Alaska Native students continue to safely receive the invaluable benefits afforded by the BIE-operated schools. This policy “reflects the best interests of the student, the Federal government, the Tribes and Alaska Native entities,” as required by 25 C.F.R. § 32.1.

As authorized by 25 U.S.C. § 2012, BIE uses employment contracts to employ educators in education positions at its schools. Under that statute, the Secretary shall issue regulations regarding the establishment of education positions, determining the qualifications, compensation, appointment, discharge, and conditions of employment, and similar matters, of educators at BIE-operated schools. The applicable regulations in subpart E provide that conditions of employment, including matters such as a vaccination mandate, may be established in local school or agency employee handbooks. The vaccination mandate established herein shall be carried out in this manner, unless altered or amended by subsequent Department of the Interior (Department) guidance.

Sec. 4 Mandate for COVID-19 Vaccination. Consistent with the best available science and appropriate prevention strategies to reduce transmission of COVID-19, all educators, as defined in 25 U.S.C. § 2012(o)(2), must receive either a single-dose Food and Drug Administration (FDA) authorized or approved COVID-19 vaccine (such as Johnson & Johnson or comparable future vaccines) or both doses of a two-dose FDA-authorized or approved COVID-19 vaccine (such as Pfizer, Moderna, or comparable future vaccines) no later than October 15, 2021. Educators shall be required to provide proof of such vaccination in accordance with procedures established by their school leader, consistent with guidance issued by their Education Program Administrator.

Educators who are unable to get vaccinated due to an Americans with Disabilities Act (ADA)-covered disability or a Title VII-covered sincerely held religious belief, practice, or observance may be entitled to a reasonable accommodation that does not pose an undue hardship on BIE-operated schools. Officials at BIE-operated schools will consider accommodation requests on an individualized basis and may rely on recommendations from CDC when deciding whether effective accommodations are available that would not pose an undue hardship on school operations. For example, an official at a BIE-operated school may grant a reasonable accommodation by requiring an unvaccinated educator to: (1) follow applicable CDC safety measures; (2) undergo regular COVID-19 testing; and (3) provide proof of negative COVID-19 status prior to reporting for in-person activities at the BIE-operated school.

All educators, other than those educators entitled to a reasonable accommodation, must comply with this vaccination mandate, or they will be subject to disciplinary action, up to and including non-renewal of an educator's contract or discharge.

Sec. 5 Responsibilities.

- a. Assistant Secretary - Indian Affairs (AS-IA). The AS-IA is responsible for:
 - (1) Ensuring the issuance of any necessary implementing guidance by September 15, 2021 and ensuring that such guidance is updated as needed to remain consistent with relevant public health issuances, Federal policies, or other applicable authorities.
 - (2) Providing any funding necessary to ensure the implementation of this vaccine mandate in compliance with applicable law, regulation, and policy.
 - (3) Notifying and communicating with Tribes and other stakeholders to enhance understanding of and further compliance with this Order.
- b. Director, Bureau of Indian Education. The Director, BIE, is responsible for:
 - (1) Ensuring that implementing guidance is promptly transmitted to the Education Program Administrators (EPAs), with instructions for the EPAs to take appropriate steps to implement this mandate for the BIE-operated schools within their respective areas of responsibility.

(2) Monitoring implementation of this Order and updating guidance, when appropriate, to reflect changes in the circumstances of the pandemic or updates to applicable public health issuances, Federal policies, or other applicable authorities.

c. Education Program Administrators. EPAs are responsible for:

(1) Working with their associated school leaders to take appropriate steps to establish the vaccination mandate for educators at their respective schools, including issuing or updating employee handbooks as necessary.

(2) Implementing this mandate in compliance with applicable legal requirements, including but not limited to privacy protections, due process rights regarding potential non-renewal of an educator's contract or a discharge of an educator during a contract, and relevant collective bargaining provisions, if applicable. Such implementation shall clearly indicate that all educators, other than those educators entitled to a reasonable accommodation, must comply with this vaccination mandate, or they will be subject to disciplinary action, up to and including nonrenewal or discharge.

Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provision of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.



Secretary of the Interior

Date: September 2, 2021