

REQUIRING (OR URGING) COVID-19 VACCINATIONS AT COLLEGES AND UNIVERSITIES FOR FALL 2021

At his [first press conference](#) on March 25, President Biden doubled his administration's original COVID-19 vaccination goal from 100 to 200 million shots in arms by April 30, his hundredth day in office. That same day, amidst the biggest seven-day average increase in U.S. COVID-19 cases since before Inauguration Day, Rutgers University President Jonathan Holloway [announced](#) his institution's plan for a full return to "pre-pandemic normal as a vibrant institution in Fall 2021." At the root of Rutgers' confidence is the increasing availability of vaccines. President Holloway said that "with limited exceptions, all students planning to attend in the Fall 2021 semester must be fully vaccinated."

The Pfizer, Moderna, and Johnson & Johnson COVID-19 vaccines, all authorized for emergency use by the U.S. Food and Drug Administration (FDA), are providing an emerging sense of impending stability for many Americans. While eligibility criteria, supply, distribution, and hesitancy among some individuals about the new vaccines continue to pose a challenge to immunizing enough people to keep the virus in check, broad societal hope for returning to some sense of normalcy after more than a year of this unprecedented global pandemic is tied to a successful vaccine rollout.

Rutgers answered for its own community the significant question of how colleges and universities see the increasingly available vaccines shaping the fall 2021 semester, and what institutions may require or encourage their students to do to make the prospect of returning to a more "normal" on-campus atmosphere a reality.¹ In the coming weeks and months, as institutions construct plans for the fall, the "vaccine question" surely will be visited and revisited by colleges and universities across the United States.

This issue brief suggests a framework for thinking about some of the questions that may inform what, if anything, to require or encourage regarding student COVID-19 vaccinations. It is offered as government officials, the medical and research communities, and the media provide still-evolving information and perspectives about the state of the pandemic and the vaccines developed to defeat this virus. Its intent is not to suggest or provide answers, particularly in light of the progressing context.

¹ As for faculty and staff, Rutgers said it will "strongly urge" them to get immunized against COVID-19 "at the earliest opportunity." <https://www.rutgers.edu/president/our-path-forward>.

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How confident should colleges and universities be about their ability to require students to be immunized?

Even though these vaccines are currently being offered only under the FDA's **Emergency Use Authorization**, the legal right of institutions to require COVID-19 vaccination for students seems likely to be upheld as vaccine availability increases. In this regard, mandated COVID-19 vaccinations may align with existing flu vaccine requirements for students on a number of campuses from coast to coast. Last December, 105 years after the U.S. Supreme Court **struck down a constitutional challenge** to a Cambridge, Massachusetts regulation ordering its residents to be vaccinated against smallpox, a California court ruled that a flu vaccine mandate for public college students is legally permissible.²

The federal Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) **encourage and expect** workplaces and schools **to be safe**, and all 50 states and the District of Columbia have some degree of K–12 student vaccination requirements. Most existing vaccine requirements have exemptions for objections for religious reasons or underlying medical conditions. **It would be prudent for a college or university's COVID-19 vaccine mandate to be drafted to align with existing state statutes and regulations, and legally required or prevailing exemptions in the locale.**

Even if they can do so, should colleges and universities require students to be vaccinated?

What may tilt an institution toward requiring vaccinations for students physically returning to campus? These factors could include:

- Mandatory vaccination could offer an immunization-driven sense of security for students that their on-campus college experience in the fall, and beyond, can be safe.
- Vaccinations can allow for loosening social distancing guidelines, and perhaps, in time, eliminating them, with optimism for a college experience that is more akin to the expectations many have of a community-oriented, socially vibrant postsecondary education.
- A campus that returns to a more “normal” atmosphere thanks to a vaccine requirement will allow students to feel more connected to the campus community and experience many positive mental health benefits from having more opportunities to build authentic in-person relationships with peers and faculty.
- The surrounding community may feel and be safer, with less likelihood of contracting the virus from a student. This is especially relevant considering the majority of U.S. college students belong to an age group that is often asymptomatic when carrying COVID-19.

Why might an institution choose not to require student vaccinations?

Arguments against requiring vaccination merit careful consideration. These factors could include:

- Despite accelerating supply and delivery of vaccines, accessibility may continue to vary based on a student's geography and financial status.
- Legally and respectfully managing the assessment of exemption requests based upon religious beliefs, disability, or other criteria will require administrative attention, and risk vocal challenges to an institution's refusal to provide an exemption, likely amplified on social media.
- Marginalized groups and individuals may be distrustful of the vaccine due to a **history of medical racism and discrimination**.

² *Kiel, et al. v. The Regents of the Univ. of Cal., et al.*, No. HG20072843 (Cal. Super. Ct. Dec. 4, 2020). <https://rickjaffeesq.com/wp-content/uploads/2020/12/Kiel-v.-UC-Regents-HG20-072843-Order-Denying-Preliminary-Injunction1.pdf>
See also <https://www.crowell.com/files/20201222-Kiel-et-al-v-Regents.pdf>.

- Vaccination requirements could create an additional burden on nontraditional students. For example, a low-income student who only attends night classes and works a full-time job during the day may face barriers in scheduling a vaccination, or in taking time off from work due to any side effects that may occur.
- Many international students will not have access to vaccines in their home countries ahead of arrival on campus. The global rollout of vaccines has been uneven, a gap that is likely to continue or even grow larger over time. Many African, Asian, and Latin American countries **have vaccinated less than 2 percent** of their population to date (some less than 0.1 percent).
- Recipients of Deferred Action for Childhood Arrivals (DACA) status and undocumented students **may be reluctant** to get immunized because they are uninsured, face transportation challenges to get to vaccination sites, or are concerned that doing so will expose them to having their immigration status reviewed.

Is there a generally accepted and reasonably available means of vaccination documentation and proof (yet)?

In a word, no. A **March 29 article** in *The Washington Post* chronicled the varied efforts by the Biden administration and private companies “working to develop a standard way of handling credentials—often referred to as ‘vaccine passports’—that would allow Americans to prove they have been vaccinated against the novel coronavirus as businesses try to reopen.” However, currently there is no coordinated **means of proving** someone has received a COVID-19 vaccination in the United States or elsewhere. Some factors to consider might include:

- At the moment, “vaccination cards” given when someone receives a vaccine shot are primarily intended to be a reminder of when the shot was given, rather than to serve as proof of vaccination. The form of these cards can vary widely from one vaccination site to another, ranging from a hard cardboard card featuring the CDC logo to a piece of flimsy paper more akin to a cash register receipt. Furthermore, there have been reports of vaccination sites running out of cards and encouraging individuals to print their own vaccination cards at home. Thus, reasonable concerns currently exist about inconsistent and potentially fraudulent “proof” of vaccination.
- Some states maintain a vaccine registry, but many do not. Moreover, not all states with a vaccine registry are currently requiring providers to submit records on COVID-19 vaccines into the system. No federal registry of individual vaccination exists in the United States.
- The Biden administration **has cautioned** against the federal government issuing a vaccine credential or storing such data in a manner that might discriminate against disadvantaged groups and lead to privacy concerns.
- Although President Biden **issued an executive order** in January directing federal agencies to assess the feasibility of creating digital COVID-19 vaccination certificates, and this has been a particular focus of attention at the Department of Health and Human Services, a chaotic and confusing array of potential proof options under development by private companies and organizations is creating challenges in its own right. The European Union **has pledged** to release **digital vaccination certificates** by the summer, and the International Air Transport Association and airlines have begun developing **smartphone-based Travel Passes** to verify that a traveler has received a COVID-19 vaccination. IBM is working to establish its own smartphone-based **Digital Health Pass**. The fact that various governmental organizations, airlines, and companies are racing to develop their own separate systems rather than one unified worldwide system underscores the desirability of a global solution.
- Ethical, societal, and practical considerations and debates regarding the pros and cons of “proof” requirements vs. attestations will ebb and flow. They are unlikely to let up anytime soon. Indeed, as of early February, the World Health Organization was **opposed to the introduction** of proof of COVID-19 vaccination as a condition for international travel.
- Some colleges and universities, particularly those with honor codes, may “require” student vaccinations, but decide that attestations rather than documented “proof” better aligns with their educational mission and

expectations of students, while also simplifying the collection of vaccination information. Many institutions have adopted a “daily check” website or app to monitor potential COVID-19 symptoms of students and employees, which could be adapted to this purpose. [Cornell University](#) is among the first to incorporate a feature within its daily monitoring system for uploading an image of students’ vaccination cards.

Short of mandating that students be vaccinated, what vaccination expectations might a college or university embrace and promote?

Alternatives to requiring that students be vaccinated may include:

- Colleges and universities could “highly recommend” vaccinations and remove as many potential barriers to becoming vaccinated as possible.
- To encourage greater comfort with and accessibility to the COVID-19 vaccine, institutions could carefully review their messaging to ensure there is no uncertainty or confusion among prospective and returning students regarding whether and how long they would need to be in quarantine if receiving the vaccine upon arrival at campus, as well as the cost, if any, to them for vaccination, with specific information about coverage under the institutions’ health insurance plans available to students.
- Incentives could be offered to encourage getting vaccinated. For example, an institution could provide discounted or free tickets for those interested in attending athletic competitions.
- Instead of requiring vaccinations to matriculate for the fall 2021 semester, institutions could be clear about what particular experiences, activities, locations, or services will be unavailable to unvaccinated students. Examples might include freshman orientation trips, study abroad, charter buses between the airport and campus, community shuttle buses, athletics events, and performing arts venues.
- Institutions that plan to continue to provide classes operating with a hybrid model for fall 2021 might consider strongly encouraging, or in some circumstances mandating, that students who opt out of receiving the vaccine enroll in available online course offerings instead of attending in-person classes.