



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

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Memorandum

Date: April 29, 2021

To: UNC System Chancellors

From: Peter Hans

RE: COVID-19 Vaccine

This memorandum addresses legal and policy considerations related to mandating the COVID-19 vaccination for students attending University of North Carolina constituent institutions. It also offers guidance for campus vaccination plans as we work toward the goal of largely normal operations in the coming fall semester. I am grateful for your advice and guidance on these important questions. Based on the best legal and public health guidance we have received and my discussions with you, the UNC System will not mandate the COVID-19 vaccine for faculty, staff, or students of UNC System constituent institutions.

Public health officials across the country are working toward full vaccination by lowering barriers to access, creating incentives, and persuading hesitant community members. In the absence of clear legal authority for a mandate, the UNC System will follow a similar approach.

The UNC System remains committed to using our full resources to bring the COVID-19 pandemic to an end, and I am proud of how our campuses have stepped up in this fight. To date, more than 80,000 vaccines have been administered at UNC campus clinics; another 365,000 have been administered by UNC Health.

Legal Considerations

North Carolina [law](#) lists the specific immunizations required for most college students. The long-standing requirements of [G.S. § 130A-155.1](#) are the reason that each year university registrars across North Carolina must obtain proof of vaccinations from incoming students.

Six of the legally-required immunizations – diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella – are explicitly listed in statute. [G.S. § 130A-152](#). The long-established [Commission for Public Health](#) (the Commission) is authorized to add immunizations to those required by law. [G.S. § 130A-152\(a\)](#). Over the years, the Commission has added six more immunizations by rule, including vaccinations for mumps, haemophilus influenzae type b (aka “Hib”), hepatitis B, varicella, pneumococcal conjugate and meningococcal conjugate. See [10A NCAC 41A .0401](#).

Outside an amendment to existing law, the Commission is the only entity clearly authorized by state law to mandate immunizations for college students in this state. The University respects the Commission’s historic and modern-day, expert role in determining which immunizations to require.

Because the University of North Carolina is an agency of the State, the University must comply with state law and cannot substitute its own judgment for that of the Commission. Nor is it clear that the University even has the legal authority to take the unprecedented step of mandating additional immunizations for all students. This lack of clear legal authority extends to all those authorized to act on behalf of the University whether under directly vested authority or delegated authority, including the Board of Governors, President, Boards of Trustees, and Chancellors.

In addition, a separate, unsettled question of federal law regarding the implications of the FDA's emergency use authorization has prompted at least one high-profile lawsuit nationally. The current EUA status of all three COVID-19 vaccines available in this country adds additional legal complexities to the question of a vaccine mandate.

Policy Considerations

Even if the University's legal authority to mandate the COVID-19 vaccine were clear, significant policy considerations remain.

First, throughout the COVID-19 pandemic, the University has followed the recommendations of state and federal public health officials. Currently, no state or federal public health official has mandated the COVID-19 vaccine or even recommended that it be mandated for any population groups, including university students. The University must continue to follow the recommendations of public health officials and not attempt to substitute its own judgment for that of these experts on a matter as significant as mandating the COVID-19 vaccine.

Second, we are concerned about vaccine hesitancy, especially among historically underserved communities. A recent survey by the [US Census Bureau](#) cited a number of reasons for vaccine hesitancy in North Carolina, including a lack of trust in the government. Past injustices in government-sponsored medical experimentation on minority communities has led to a sense of mistrust among some that could exacerbate current COVID-19 vaccine hesitancy if the vaccine were "forced" on students by a government agency (i.e., the University). Trust in the vaccine should be cultivated through education and outreach. Students should not be driven away from our campuses out of fear of a vaccine mandate at a time when they need access to the benefits of higher education more than ever.

Finally, a vaccine mandate for students logically leads to discussions about a similar mandate for faculty and staff. Indeed, the NC Department of Labor has [advised](#) that a public employer can require an employee to get the COVID-19 vaccination as a condition of employment subject only to medical or bona fide religious exceptions even though all vaccines currently available are in EUA status. Extending a vaccine mandate to faculty and staff raises additional legal consideration such as the rights of employees under EEOC laws and regulations including the Americans with Disabilities Act and Title VII. In addition, the concerns about vaccine hesitancy in students discussed above may be present among some of our faculty and staff and deserve equal consideration and sensitivity. Finally, as with students, no federal or state public health authorities have recommended a vaccine mandate for higher education employees.

In light of these legal and policy considerations, the Commission for Public Health is the state agency responsible for weighing the policy and legal implications of mandating a COVID-19 vaccination for our students as well as our faculty and staff. A different course of action could tie up in court the question of vaccine mandates for months and years, only creating a legal distraction from the mission of combatting COVID-19 that could chill everyday North Carolinians' confidence in the wisdom of the vaccines.

Fall Planning Considerations

Our first approach to returning to normal operations in the fall is to take action now. We have been doing this. The UNC System and its constituent campuses have been and will continue to deploy a robust 3-Point Plan to increase voluntary vaccine uptake across all our communities, including among our faculty, staff, and students:

1. Strong Encouragement of Vaccination. We have spoken early and often about the need for vaccination to protect the most vulnerable members of our community. Vaccination encouragement efforts continue everyday across multiple messaging platforms. I appreciate the leadership each of you has shown in setting your own personal examples by getting the vaccine and encouraging your faculty, staff, and students to join you. I ask you to continue this message to your faculty, staff, and students during the summer to encourage them to return safely to campus in the fall.
2. Widespread Vaccine Availability. The University of North Carolina has become a national leader in speedily getting vaccines to the people through operation of vaccination clinics across our campuses. Students, faculty, staff, and campus neighbors have lined up to avail themselves of this free service. At present more than 80,000 vaccinations have been administered on UNC System campuses alone. Another 365,000 vaccine have been administered by the UNC Health System. We will continue to offer vaccines at our campus clinics for as long as there is demand.
3. Stakeholder Incentives to Obtain Vaccines. I know you will continue to devise fair and safe ways to return to as close to normal operations in the fall semester as possible. Vaccine uptake may provide a path to ramp down on-campus testing and other restrictions that have become a part of the daily ritual in our communities. One of the strategies we have discussed is requiring surveillance testing only for unvaccinated students. I believe this is a promising option and encourage you to explore others. As conditions evolve and CDC and NC DHHS guidance is modified, additional incentive strategies might prove feasible and safe.

The System Office is here to assist and support your efforts to develop creative approaches for the fall semester that balance vaccine incentives with safe public health practices and best fit the unique circumstances of your campuses. We know that strategies to encourage students to get vaccinated require consultation with your General Counsel and other campus leaders, especially those that involve campus operations such as surveillance testing opt-out. Please contact Norma Houston and Andrew Tripp at the System Office to discuss your plans further.

As we near the end of what is undoubtedly one of the most challenging academic years in recent history, we see glimmers of the post-COVID-19 world ahead. I appreciate the outstanding leadership you have shown and your staunch commitment to fulfilling our mission of higher education. Just as it did last spring in the face of uncertainty and unprecedented challenges facing all of North Carolina, the people's University will continue to lead.

cc: Chiefs of Staff
Andrew Tripp
Norma Houston
Kim van Noort
Bart Goodson