

# Emergency Reading of New Board Policy 403.7 Mandatory Employee Vaccination/Testing for COVID-19 in Compliance with the Federal Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard Requiring All Employees to be Vaccinated

## **Background**

The Occupational Safety and Health Administration (OSHA) published an emergency rule requiring certain employers to require vaccinations against COVID-19 for their employees. The rule, or emergency temporary standard (ETS) was issued through the agency's emergency rulemaking powers and is in 29 C.F.R. 1910.501.

This rule requires school districts with 100 or more employees (including full-time, part-time, and temporary employees like substitutes) to have in place a policy that requires full vaccination against COVID-19. For employees who do not wish to be vaccinated, the policy must provide for a requirement that employees be subject to weekly testing and use of face coverings. Medical and religious exemptions must also apply. This policy and accompanying exhibits and regulations will create additional record-keeping requirements for districts.

## **Court Interventions**

On November 12, 2021, the OSHA mandate was put on hold. The United States Court of Appeals for the Fifth Circuit affirmed its stay of the ETS. The Court concluded that “[t]he mandate threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their job(s),” and that the ETS likely exceeds OSHA's statutory rule-making authority.

On December 17, 2021, the U.S. Court of Appeals for the Sixth Circuit dissolved the Fifth Circuit's stay of the Vaccination and Testing ETS. In response, OSHA is once again implementing this workplace health standard.

To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard's testing requirements before February 9, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.

## **Timeline**

- ❖ Employers must comply with most provisions by January 10, 2022.
- ❖ Employers must comply with the testing requirement by February 9, 2022.

**Emergency Approval Recommended:**

This new policy now needs to be in place by January 10, 2022. Consequently, IASB is recommending school boards waive the standard two readings of the policy and move for emergency approval.

Our Belmont-Klemme policy 209.2, Adoption of Policy, states the following:

The board will give notice of proposed policy changes or adoption of new policies by placing the item on the agenda of two regular board meetings. The proposed policy changes will be distributed and public comment will be allowed at both meetings prior to final board action. This notice procedure will be required **except for emergency situations**. If the board adopts a policy in an emergency situation, a statement regarding the emergency and the need for immediate adoption of the policy will be included in the minutes. The board will have complete discretion to determine what constitutes an emergency situation.

The final action taken to adopt the proposed policy will be approved by a simple majority vote of the board at the next regular meeting after the meeting allowing public discussion. The policy will be effective on the later of the date of passage or the date stated in the motion.

In the case of an emergency, a new or changed policy may be adopted by a majority vote of a quorum of the board. The emergency policy will expire at the close of the third regular meeting following the emergency action, unless the policy adoption procedure stated above is followed and the policy is reaffirmed.

**Supreme Court to Decide**

On December 22, 2021, the Supreme Court of the United States issued an order granting review of legal challenges to OSHA's ETS. In a rare move, the Supreme Court set an accelerated timeline for the cases, scheduling oral arguments for Friday, January 7, 2022.

**Recommended Action:**

I recommend the board move to approve the resolution on the following page.

Resolution on the Emergency Reading of New Board Policy 403.7  
Mandatory Employee Vaccination/Testing for COVID-19 in Compliance  
with the Federal Occupational Safety and Health Administration (OSHA)  
Emergency Temporary Standard Requiring All Employees to be Vaccinated

Director \_\_\_\_\_ introduced and caused to be read the Resolution hereinafter set out and moved its adoption; seconded by Director \_\_\_\_\_ after due consideration thereof by the Board, the President put the question upon the adoption of said Resolution and, the roll having been called, the following Directors voted:

Aye: \_\_\_\_\_

Nay: \_\_\_\_\_

Whereupon the President declared said Resolution duly adopted as follows:

**RESOLUTION**

WHEREAS, the world is suffering a global pandemic as a result of COVID-19; and,

WHEREAS, the Belmond-Klemme Community School District wishes to provide students and staff with a safe and healthful environment; and,

WHEREAS, the federal Occupational Safety and Health Administration (OSHA) has imposed an Emergency Temporary Standard (ETS) requiring all employees to be vaccinated and/or tested; and,

WHEREAS, United States courts have intervened and changed the timeline for implementation of the ETS.

NOW, THEREFORE, be it resolved by the Board of Directors of the Belmond-Klemme Community School District on this date that Belmond-Klemme will adopt the emergency reading of new board policy 403.7 Mandatory Employee Vaccination/Testing for COVID-19 in compliance with the federal Occupational Safety and Health Administration Emergency Temporary Standard requiring all employees to be vaccinated, in accordance with the following:

1. That the Belmond-Klemme Community School District will comply with most provisions by January 10, 2022;
2. That the Belmond-Klemme Community School District will comply with the testing requirement by February 9, 2022;

3. That the expedited timeline for implementation of this policy as called for by OSHA constitutes an emergency situation demanding the immediate adoption of this policy; and
4. That the Board of Directors has the complete discretion to determine what constitutes an emergency situation; and
5. That the Board of Directors will provide a public reading of the policy at its next regular meeting; and
6. That if the Supreme Court of the United States strikes down the ETS of OSHA, then the implementation of this policy shall be suspended immediately without further action by the Board of Directors of the Belmont-Klemme Community School District.

Passed and approved this 6<sup>th</sup> day of January, 2022.

Board President

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Attest:

Board Secretary

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