

Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908-5097

TTY:711
www.health.ri.gov

April 9, 2021

Jon Anderson
Brennan, Recupero, Cascione, Scungio & McAllister, LLP
362 Broadway
Providence, RI 02909

RE: Rulemaking Petition Regarding BinaxNOW Rapid Testing of Students in Schools

Dear Jon Anderson,

The Rhode Island Department of Health (“RIDOH”) received your petition for emergency rulemaking to permit schools to require students to provide proof of COVID-19 vaccination, COVID-19 infection within the last ninety (90) days, or consent to participate in BinaxNOW rapid testing, as a condition of participating in in-school attendance. At this time, RIDOH does not accept this petition for rulemaking.

To promulgate an emergency rule, there must be a finding, and published reasons for such finding, that an imminent peril to the public health, safety, or welfare, or the loss of federal funding for an agency program, requires immediate promulgation of the rule¹. RIDOH agrees that COVID-19 represents a threat to the public health, safety, or welfare, but COVID-19 is not, itself, “imminent peril.” Rather, COVID-19 is the cause of imminent peril. Here, to promulgate the proposed emergency rule, RIDOH would have to find that failure to permit schools to require proof of vaccination, COVID-19 infection within the last ninety (90) days, or consent to BinaxNOW testing as a condition of participating in in-school attendance would result in imminent peril to the public health, safety, or welfare, when the state’s position has long been just the opposite.

In-person schooling has been allowed in Rhode Island since fall 2020 because our data has shown low-risk of children contracting COVID-19, accounting for just 3.6% of all COVID-19 cases in Rhode Island². Additionally, the risk of contracting COVID-19 in a school setting is reduced when other precautions are met, such as social/physical distancing, periodic hand washing or use of hand sanitizer, wearing a cloth face covering, and staying home if one does not feel well. Accordingly, the state’s position has clearly been—and remains—that children may safely participate in in-school attendance without having to prove vaccination, COVID-19 infection within the last ninety (90) days, or consent to BinaxNOW testing. A finding of imminent peril, here, would completely contradict the state’s position.

¹ R.I. Gen. Laws § 42-35-2.10

² <https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com/>

In summary, RIDOH cannot and does not find that an imminent peril to the public health, safety, or welfare or the loss of federal funding for an agency program requires immediate promulgation of the proposed emergency rule. RIDOH cannot accept this petition for rulemaking at this time.

Very truly yours,

A handwritten signature in cursive script that reads "Carol Hall-Walker".

Carol Hall-Walker, MPA
Associate Director of Health
Division of Community Health Equity