

# DC Schools Extend Deadline of COVID Vaccine Mandate, as Judge Overturns DC Government Worker Mandate

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*In a significant about-face, government officials in Washington, D.C., on Aug. 26 postponed a policy that would have required proof of vaccination for COVID-19 for all students age 12 and over for the new school year.*

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In a significant about-face, government officials in Washington, D.C., on Aug. 26 [postponed](#) a policy that would have required proof of vaccination for COVID-19 for all students age 12 and over for the new school year – just days after announcing the policy.

This announcement comes on the face of a related development, just one day prior, when a D.C. Superior Court judge [struck down](#) the district's [COVID-19](#) vaccine mandate for government workers. The policy had been challenged by the D.C. Police Union earlier in the year.

## **DC school vaccine mandate postponed to January after concerns raised**

In an Aug. 26 [letter](#) to school officials in the district, Deputy Mayor for Education Paul Kihn introduced a “staggered”

approach for the implementation and enforcement of the district's school vaccine mandate.

Under the [new policy](#), students 12 and older now have a Jan. 3, 2023, deadline to receive the two-dose primary series of COVID-19 vaccines, after which they would face expulsion.

According to Kihn, the aim of this new approach is to provide school administrators "additional time to prepare and for students to get their COVID-19 vaccinations."

Remarking on the postponement of the district's policy, Mary Holland, president and general counsel of Children's Health Defense (CHD), told The Defender:

"The district imposed a back-to-school COVID shot mandate that no other public school district in the country has imposed – and just walked it back to January 2023 from its proposed deadline in early September.

"The district has enacted dangerous policies that deny people the informed consent to which they are entitled by law. I am pleased that the courts have played a constructive role in checking some of the district's worst abuses."

District of Columbia Public Schools [requires](#) students who are of an age where a COVID-19 vaccine has received "full FDA approval" to receive the vaccine in order to be permitted to enroll.

Under the previous policy, reiterated by Mayor Muriel Bowser in early August and again on Aug. 25 at a [press conference](#), students age 12 and over were mandated to provide proof of vaccination within the first 20 days of the new school year.

Responding to a question from the [Daily Signal](#) during the press conference, Bowser had strongly implied that students who did not furnish proof within the 20-day window would be expelled.

She said:

“[Students] can go to school on Monday, but they need to get their vaccinations ... and their families will be alerted as to the dates.

“We’re not offering remote learning for children, and families will need to comply with what is necessary to come to school.”

The press conference was followed up with a [press release](#) issued the same day by District of Columbia Public Schools, in which the mayor said she was “excited to welcome our students, families, and staff back to school” – but left out those students who were unvaccinated.

Previously, in announcing the mandate for the upcoming school year, Dr. Thomas Farley, D.C. Health’s senior deputy director for community health administration, said that “schools haven’t been diligent in enforcing this [mandate] for a while, so parents may think they can be lax about it this year.”

“But this year we’re really very serious,” he continued. “Your child needs to be brought up to date in order to continue to attend school.”

In an interview prior to the postponement of the mandate, Kihn [expressed concerns](#) that an insufficient vaccination rate, combined with a lack of enforcement of the mandate, would lead to “outbreaks.”

He said:

“What we’re concerned about, and what D.C. Health is concerned about, is the challenge if we don’t do the enforcement.

“If we have a 70 or 75 percent immunization rate, that’s low enough for us to be concerned about outbreaks.”

Even with the recently announced postponement, the district’s vaccine mandate for school children remains in place. It is

based on the [Coronavirus Immunization of School Students and Early Childhood Workers Amendment Act of 2021](#), which obliges students age 12 and over to be vaccinated against COVID-19.

According to the [Daily Signal](#), this makes the district an “outlier” in the U.S., “as many of the larger school districts recommend but do not require a COVID-19 vaccine in order to attend school in person.”

Indeed, Fox 5 Washington has characterized the mandate as the [strictest](#) in the country.

The impact of the mandate, if implemented with the start of the new school year, would have been significant. According to D.C. Health, [approximately 22,000 students](#) in the district’s public and charter schools are not “fully” vaccinated for COVID-19.

While district authorities claim that the postponement is to allow more time for school officials to process vaccination records, the mandate drew opposition from a variety of actors, ranging from the National Association for the Advancement of Colored People (NAACP) to Republican lawmakers.

For instance, the district’s [own data](#) shows the lowest rates of COVID-19 vaccination are among Black students, [approximately 40% of whom](#) are unvaccinated or not “fully” vaccinated.

Put differently, this would have meant that up to 40% of Black students would have been at risk of expulsion for non-compliance with the mandate.

This prompted the NAACP D.C. branch to [claim](#) that the district’s vaccine mandate will unfairly impact minority students.

Sen. Ted Cruz (R-Texas) referenced the lower rate of vaccination for African American students in

a [statement](#) regarding a motion he filed that would have shielded the district's students from the mandate. The motion was [blocked](#) by Senate Democrats.

"In D.C., the rate of vaccination for students 12 to 15 is 85 percent," said Cruz in his statement. "For African American students, the rate drops to 60 percent."

A separate [letter](#) sent by three Republican members of the U.S. House of Representatives to Bowser on Aug. 18, called upon the mayor to "immediately stop the enforcement of the district's unreasonable vaccine mandate for students ages 12 and older."

The letter also characterized the district as "far outside the educational mainstream in mandating a vaccine on school-aged children."

Oddly, Bowser, during the Aug. 25 press conference, [suggested](#) the number of unvaccinated students is lower than the district's own data indicates.

She said:

"The actual percentages are likely higher because not all vaccines administered outside of the district are known to D.C. Health.

"The race-specific coverage number is particularly likely to be an underestimate because the COVID-19 vaccination records D.C. Health does receive from outside of the district often do not include both age and race."

She did not provide an explanation as to why there would be such significant numbers of students, especially on a race-specific basis, who reside in the district and attend the district's schools, but were vaccinated outside the district.

According to Bowser though, expelling students from school "doesn't have to happen," [stating](#) that they can, for instance, visit "pop-ups" – referring to pop-up vaccination clinics that

were in operation during the summer months and which will remain open in the coming weeks.

Kihn, in his [statement](#), claimed that “we have heard from many of you about the challenges of tracking enforcement for COVID-19 vaccinations.”

Dr. Meryl Nass, an internist and epidemiologist who is a critic of COVID-19 mandates and restrictions, [suggested in her blog](#) that harsh headlines against the district’s mandate in the local media, Thursday’s court ruling striking down the mandate for D.C. government workers and the negative publicity that likely would result from the mass expulsion of students, particularly African-Americans, may have resulted in the about-face.

In the same blog post, Nass also noted that while the district’s schools require the COVID-19 vaccine for the age groups for which the vaccines are “fully licensed” by the U.S. Food and Drug Administration, in reality, “[none of the ‘licensed’ vaccine \[is\] available](#),” and as a result, “it is not possible to procure the licensed product.”

Instead, says Nass, schoolchildren “are being injected with the EUA [Emergency Use Authorization] product, which is shielded from virtually all liability.”

Nevertheless, major school districts walked back their mandates – except for the District of Columbia, according to Nass.

She wrote:

“Schools on the west coast that imposed these mandates either withdrew them in the face of legal challenge (LAUSD [challenged](#) by the Health Freedom Defense Fund) or announced a year’s postponement last spring.”

According to Holland, this may be, at least in part, due to

the unique nature of the district's local government.

She explained:

"The District of Columbia is unique in the country as it has only a city council to legislate. Most states have two legislative chambers, a Senate and an Assembly, creating a check on the policies of one chamber.

"The mayor and city council's irrational and draconian COVID policies underscore the wisdom of checks and balances in government."

Previously, Bowser had attempted to allow schoolchildren as young as 11 to be vaccinated without parental permission. CHD successfully [sued](#) to challenge this policy, which was struck down in March 2022.

Holland, in commenting on the district's policies and CHD's previous successful lawsuit against the district, told The Defender:

"The district has created more aggressive, harmful COVID measures than any other state. It attempted to allow 11-year-olds and older to receive COVID shots without parental knowledge or consent. CHD sued, and the federal court granted a preliminary injunction.

"The district mandated COVID shots for workers, and a court just ruled against it."

CHD has [threatened to sue](#) the district in an attempt to strike down the vaccine mandate for students in D.C. schools.

The D.C. mayor's office did not reply to a request from The Defender for comment by press time.

## **Government worker mandate struck down in court**

Just one day prior to the postponement of the district's COVID-19 vaccine mandate for schoolchildren, a D.C. Superior

Court judge [ruled](#) that the district's vaccination mandate for government employees is unlawful, striking it down.

The [ruling](#) was issued by Judge Maurice A. Ross, following a lawsuit filed by the D.C. Police Union earlier in the year.

The district's [vaccine mandate for government employees](#) was imposed in August 2021, requiring them to be "fully" vaccinated for COVID-19 by Feb. 15, 2022, or to apply for a medical or religious exemption by that date. Otherwise, they would face disciplinary actions, under a [tiered system](#), up to and potentially including termination.

An option for government workers to opt-out of the mandate by furnishing weekly COVID-19 tests was [removed](#) by the district in November 2021.

However, according to Ross' [ruling](#), the D.C. mayor "lacks legal authority to impose a vaccine mandate," which instead should have been passed into law by the D.C. council.

Specifically, Ross, in his decision, wrote that "the power to issue a vaccine mandate must come from a legislative body."

He added that the District of Columbia Police Officers Standards and Training Board had the ability to [set](#) its own health standards.

The ruling requires the district to no longer enforce the mandate and also to withdraw any disciplinary proceedings it took against workers who had not complied.

In a statement, Bowser said:

"We are reviewing the court's ruling, and believe that the judge misunderstood the strength and diversity of the authorities we relied upon in issuing the employee vaccination mandate.

"Over the past year and a half, we have seen that COVID-19



vaccines work – they keep people out of the hospital and save lives.

“Going forward, we will comply with the court’s orders as we continue encouraging our community to access life-saving vaccines.”

Gregg Pemberton, chairman of the D.C. Police Union, also issued a [statement](#) following the ruling.

He said:

“This is a significant victory for our union that protects the rights of our members and ensures that they will no longer be forced to receive the COVID-19 vaccine against their will and will no longer be subjected to discipline for deciding not to receive the vaccine.

“This has been a long and unnecessary fight. Had the mayor just engaged the union in good faith bargaining, we could have reached a reasonable compromise that protected everyone’s interests.

“Nonetheless, we are pleased that Judge Ross agreed with our arguments and issued this ruling. Now, all of our members can go back to doing the necessary work of trying to protect our communities from crime and violence without unlawful threats of discipline and termination.”

According to the [Washington Post](#), 90% of government employees in the district were “fully” or partially vaccinated as of March 28. More recent data is not available.

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