

Virginia public universities drop vaccine mandates

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Virginia public universities, including the University of Virginia, Virginia Tech, Virginia Commonwealth University and George Mason University, have rescinded their COVID-19 vaccine mandates. The university system dropped its requirements last week after Virginia's Republican attorney general, Jason Miyares, issued a legal opinion in late January advising that the universities do not have the authority to require vaccination.

Miyares' opinion was not legally binding, but the Commonwealth's universities quickly adopted it as if it were law. The universities now strongly encourage, but do not require, vaccination against COVID-19.

The Miyares opinion supersedes one by his predecessor, Democrat Mark Herring, who had advised that public colleges and universities had the authority to impose vaccine requirements. In his statement, Miyares contended that only the state legislature can decide public universities' vaccination requirements.

He wrote that while Virginia law grants universities the authority to "make regulations and policies concerning their respective institutions," more specific aspects of the legal code list the vaccinations required of students. "While I encourage everyone to get the vaccine and believe it is a vital tool in our fight against COVID-19, Virginia public universities currently do not have the power to mandate the COVID-19 vaccine on students," he argued.

In an interview with WSET, Miyares said, "The code of Virginia 23.1-800 is very specific. You have six vaccines you have to take in order to graduate from a Virginia college or university and attend. The COVID-19 vaccine is not on that list."

The legislature currently requires public university students to be vaccinated against several diseases, including diphtheria, tetanus, polio, measles and

mumps.

According to the *Washington Post*, Miyares "issued the new opinion following a request by [Republican Governor Glenn] Youngkin for legal guidance on whether the state's public institutions of higher education could require vaccines for students."

University of Richmond law professor Carl Tobias said in comments to the *Post* that Miyares' judgment put schools in an "awkward" situation. "The schools don't have to obey the advisory opinions that the attorney general issues," he said. "At the same time, though, they could risk running afoul of the attorney general and governor, in terms of funding, or whatever their relationships with those statewide officials and members of the General Assembly."

Prior to issuing his opinion, Miyares fired several universities' COVID-19 legal advisors. According to the *Post*, the attorney general fired the legal counsels "because Miyares wanted someone who shared his 'philosophy and legal approach.'"

In public comments, several university leaders remarked that because current vaccination rates among students are high—above 90 percent at most Virginia public universities—the policy changes will have little effect. In a statement to the *Washington Post*, George Mason University President Gregory Washington said, "We have a very high vaccination rate, and that was one of the reasons why we didn't push back too hard on the attorney general's opinion."

While the vast majority of current students are vaccinated, future students, including next year's incoming freshmen and transfer students, will not be required to be vaccinated against COVID-19. "As for the need for any additional rounds of vaccines or boosters," Washington said, "our hope is that this will not be necessary for the foreseeable future as the virus

continues to evolve and more and more people develop immunity.”

Numerous other higher education systems have banned vaccination requirements throughout the United States. Tennessee, Arkansas and Florida have all removed the requirement, even as cases in the country have skyrocketed.

The policy changes come as daily new COVID-19 cases in Virginia remain high. Data from the *New York Times* show that on January 28, the day Miyares issued his opinion, Virginia reported 10,741 new COVID-19 cases. While new infections have fallen somewhat since mid-January, the number of daily new cases remains higher than in earlier periods of the pandemic. More critically, the number of daily new deaths, which the *Times* data also track, is climbing steeply.

The abrogation of university vaccine requirements is part of a bipartisan effort to drop COVID-19 mitigation policies. By May 2020, under the governorship of Democrat Ralph Northam, most Virginia businesses were permitted to reopen, albeit with some occupancy restrictions. In early 2021, Northam called for schools in the state to reopen and signed a bill mandating in-person instruction. In May 2021, Northam lifted mask mandates and occupancy restrictions, following the vaccine-only approach of the Biden administration.

The newly—and narrowly—elected Republican state leadership has continued efforts to end Virginia’s limited COVID-19 mitigation policies. Earlier in January, Governor Glenn Youngkin issued a directive prohibiting state agencies from requiring employees to be vaccinated against COVID-19. Another directive repealed mask mandates in primary and secondary schools.

The Virginia Department of Health is implementing a new “Test to Stay” program that allows students who are close contacts of a COVID-19 positive person to stay in school if the close contact has a negative rapid test.

On Monday, the Virginia Supreme Court issued a ruling striking down a legal petition filed by a dozen families against the governor’s mask ban. The petition stated that Youngkin’s executive order was in violation of a law passed by the previous administration requiring the Center for Disease Control’s guidelines on mask wearing be followed.

In contradiction to this claim, the Virginia court

stated the law, SB1303, “necessarily gives the boards a degree of discretion to modify or even forgo those strategies as they deem appropriate for their individual circumstances.”

In Miyares’ opinion and in public comments accompanying its release, he noted that the legislature has modified several laws in response to the pandemic, but the vaccine requirement for public universities was not one of these. In remarks to WSET, Miyares said, “I would point out, even last year when you had one-party rule, Democrats controlled the governor’s mansion, the State Senate, and the State House, not a single legislator so much as introduced a bill that would add COVID-19 under that section of the code,” referring to vaccine requirements at public universities.

The aim of these bipartisan policies is mass infection. In this respect, they have been largely successful. More than 1.5 million Virginians have tested positive for the virus that causes COVID-19, and more than 16,000 have died.



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