



BEAR RIVER HEALTH DEPARTMENT

In the matter of:

COVID-19 Delta Pandemic

**PUBLIC
HEALTH ORDER**

Order No.: 2021-01

Date: September 16, 2021

Legal Authority: Utah Code §26A-1-114

Utah Code § 26A-1-106(2) provides that “regulations or standards relating to public health or environmental health services adopted or established by a local health department may not be less restrictive than [State Department of Health orders].”

Utah Code § 26A-1-114 permits the local health department to declare a public emergency and, under that declaration or a State declaration of public emergency, to issue an order of constraint after notice to the chief executive officer of the relevant county before issuing the order of constraint.

COVID-19 is a contagion that spreads from person to person. The Health Officer for Bear River Health Department recognizes the need for the public to continue working cooperatively and proactively to slow the spread of COVID-19 and address the myriad challenges that may arise due to COVID-19. The Health Officer finds that this need is mainly present in elementary schools since they are currently a vaccine-ineligible group.

COVID-19 poses a continuing and immediate threat to the public health of Bear River Health District residents and visitors. The Delta variant of the COVID-19 virus is the dominant strain actively circulating in the District and is more contagious than the original virus and other variants. The incidence of COVID-19 is currently exceeding the thresholds set in March 2021 by the Utah Legislature in House Bill 294, which terminated all public health orders related to COVID-19 upon the occurrence of three events, only two of which remain relevant.

As of September 15, 2021, Rich, Cache, and Box Elder counties are seeing increasing transmission of COVID-19, as indicated in the table below.

Statewide, as of September 15, 2020, Utah hospitals have an 95.5% total intensive care unit (ICU) utilization rate, with 43.5% ICU COVID-19 utilization. Since July 2021, the Bear River Health District has seen a steady increase in COVID-19 associated hospitalizations. Recently the Bear River Health District’s largest hospital, Logan Regional Hospital, reported being at capacity in both its ICU and Non-ICU beds. The strain of COVID-19 hospitalizations is limiting access to critical healthcare for other, non-COVID-19 related health problems.

County	Date	14 Day Incidence Rate Per 100,000	14 Day Case Count	7 Day Rolling Average % Positivity
Rich	09/09/21	483	12	25.00%
Cache	09/09/21	685	879	10.39%
Box Elder	09/09/21	926	519	14.13%

In Bear River Health District, 37,527 children under 12 years of age account for 25% of the population. These children are not eligible to receive the approved vaccine or any of the emergency use vaccines. In the Bear River Health District of youth 12 to 17 only 35.4 % are fully vaccinated and 47.3 have received at least one dose. Only 55% of the population eligible for vaccination are fully vaccinated.

School districts around the United States, that have returned to in-person classes have reported significant increases in COVID-19 cases. Schools in the Bear River Health District have been open anywhere from 2 weeks to 1 month, and all Local Education Agencies (LEA) are seeing an increased incidence of COVID-19 compared to last year (2020) at this same time. The weekly incidence of COVID-19 has increased by 159% in individuals 0-9 years of age of the past 3 weeks.

Although the Bear River Health Department continues its efforts to vaccinate all eligible residents, no COVID-19 vaccine is yet approved for children under 12 years of age.

Utah Senate Bill 107 requires a school to implement a Test to Stay protocol when a school with 1,500 or more students has 2% of its student population test positive for COVID-19 tests within a 14 day period; or when a school with fewer than 1,500 students has 30 students test positive for COVID-19 within a 14 day period. When a school meets the Test to Stay threshold, the LEA, in consultation with the local health department offers to test all students. This bill inadvertently disadvantages our vaccine-ineligible population in elementary schools, by requiring a much higher transmission of COVID-19 (2-5 times higher) among the population before requiring any action to be taken compared to larger secondary schools with enrollment greater than 1,500 students.

The Health Officer has met the requirement of Utah Code § 26A-1-114(7) to provide 24-hour notice to the chief executive officer of each relevant county of the intent to issue this Public Health Order of Constraint.

THEREFORE, PURSUANT TO UTAH CODE § 26A-1-114, IT IS HEREBY ORDERED BY JORDAN D. MATHIS, HEALTH OFFICER OF THE BEAR RIVER HEALTH DEPARTMENT, AS FOLLOWS:

Section 1. **Purpose.** The intent of this Order of Constraint (the “Order”) is to establish a standing classroom threshold, which when met, an LEA, in conjunction with the Bear River Health Department (the Department) may institute a COVID-19 screening test requirement for students, faculty, and volunteers within an elementary school classroom within the Bear River Health District to continue in-person education or work at the school. All provisions of this Order shall be interpreted to effectuate this intent.

Section 2. **Definitions.**

- 2.1. “Classroom test to stay program” means a program through which an LEA, in partnership with the Department, offers testing for COVID-19 for students, faculty, and volunteers within an elementary school classroom to:
 - 2.1.1. identify cases of COVID-19 in a classroom; and
 - 2.1.2. allow individuals who test negative for COVID-19 to attend school in person.
- 2.2. Confirmed COVID-19 Infection means an infection of the SARS-CoV-2 virus reported to the Utah Public Health System as required by Utah Code § 26-6-6 and Utah Administrative Rule R386-702.
- 2.3. Standing Classroom Threshold means 3 or more confirmed COVID-19 cases in students, faculty, or volunteers within an elementary school classroom setting within a 7-day period.
- 2.4. Bear River Health District means anywhere within Rich, Cache, or Box Elder counties.

Section 3. **COVID-19 Classroom Screening Testing.**

- 3.1. An LEA and the Department may not test a student for COVID-19 who is younger than 18 years old without the consent of the student’s parent or legal guardian.
- 3.2. An LEA may seek advance consent from a student’s parent or guardian for future testing for COVID-19.
- 3.3. Testing under a classroom test to stay program will be offered at no cost to the affected students, faculty, or volunteers.
- 3.4. Unless otherwise arranged for by the LEA, the students’ parents or guardians, school faculty, and school volunteers will be responsible for arranging COVID-19 testing at existing K-12 COVID-19 testing sites.
- 3.5. Individuals unable to produce a negative test will be excluded from attending school in person for a period of 10 days.

Section 4. **Exemptions.** Notwithstanding any other provision of this Order, the following individuals are exempt from the classroom test to stay program.

- 4.1. Any individual who did not attend any in-person school in the identified classroom during the 7-day period referenced in section 2.3.

- 4.2. Any individual who has a confirmed COVID-19 infection within 180 days immediately preceding implementation of the particular classroom test to stay program.

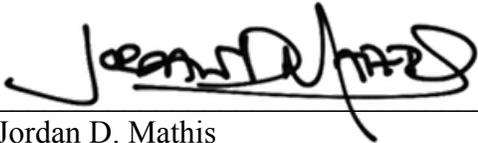
Section 5. Effective Date; Duration. This Public Health Order takes effect at 7:00 a.m. on September 20, 2021, and will remain in effect until 7:00 a.m. on October 20, 2021, unless extended, rescinded, superseded, or amended in writing, or otherwise as warranted, all in accordance with applicable law.. If extended, this order will automatically terminate 60 days after the Food and Drug Administration's Emergency Use Authorization of a COVID-19 vaccine for 5-11 year-olds.

Section 6. Publication. This Order shall be on file for public inspection with the Bear River Health Department.

Section 7. Enforcement. In consultation with each LEA, the Health Officer shall ensure compliance with and enforcement of this Order. This Order is intended to protect public health and not to hold individuals criminally liable.

Section 8. Appeal. This Order may be appealed in the appropriate District Court.

BY ORDER OF THE HEALTH OFFICER OF THE BEAR RIVER HEALTH DEPARTMENT.



Jordan D. Mathis
Health Officer
Bear River Health Department



Jeff Scott
Chairman
Bear River Board of Health

Date: September 16, 2021