



The balance of power: “Quarantining” versus “excluding” students under Senate Bill 22

August 30, 2021

On June 23, 2021, Senate Bill 22 went into effect in Ohio, and as schools resume instruction across the state, staff and families alike have been wrangling with its impact on quarantining and isolation procedures.

Health departments have the authority to quarantine and isolate students; School districts do not

Under Revised Code 3707.08, a health department is required to issue a quarantine order when a person is known to have been exposed to a communicable disease, and similarly they are also required to issue an isolation order when a person is known or suspected to have a communicable disease. New language from SB 22 limits these quarantine and isolation orders to individuals who have been “medically diagnosed” with a disease and their direct contacts. However, the new law does not affect the health department’s underlying power and duty to issue these orders.

School districts have the authority to “exclude” students from school

A board of education’s power to create rules for its own staff and students is well documented in Ohio law. Revised Code Sections 3313.20 and 3313.47 provide broad discretion for boards to govern and manage their own affairs, and more specifically, Revised Code 3313.67 permits boards to make and enforce rules that prevent the spread of communicable diseases among students. In other words, a board of education is permitted to exclude a student with a communicable disease or a student who has been exposed to a communicable disease from school if it determines that such exclusion is in the safety and interest of the whole student body and the public generally. Notably, this exclusion from school is not the same as a quarantine or isolation

order made by a local health department. A board of education's exclusion of a student or staff member would only apply to school buildings and activities, but a quarantine or isolation order is much broader and generally requires a person to remain at their residence.

Summary

Taken together, a board of education can exclude students from school buildings and activities but it does not have the power to issue a quarantine or isolation order. That power, slightly modified by SB 22, remains with the health departments. Coordination between public entities is imperative as districts manage the return to school amid the lingering pandemic, and each entity has a vital role to play. In fact, under Revised Code 3313.68, boards of education have a legal obligation to cooperate with boards of health in the prevention and control of epidemics. However, stakeholders must be mindful of what powers Ohio law grants—and doesn't grant—to these various public entities.

Decision-making: Excluding students prior to a quarantine/isolation order from a health department

If your board of education decides it wants to exclude students from school because of a positive COVID test and/or because of exposure to a person who has COVID prior to an order of quarantine or isolation from the health department, it is advisable to adopt a policy providing for such exclusions and then consistently implement the policy. Further, it is advisable that the criteria for the exclusion determination track the guidance previously issued by the Ohio Department of Health for quarantine and isolation, available [here](#).

Authors



Diana S. Brown

Partner

Columbus
614.227.8823
dbrown@bricker.com



Nicole M. Donovan

Partner

Columbus
614.227.4866
ndonovsky@bricker.com



David J. Lampe

Partner

Cincinnati
513.870.6561
dlampe@bricker.com



Beverly A. Meyer

Partner & Political Subdivisions Chair

Dayton
937.224.1849
bmeyer@bricker.com



Aaron D. Rothey

Staff Attorney

Columbus
614.227.4823
arothery@bricker.com

