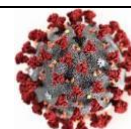


National COVID-19 Science Task Force (NCS-TF)



Type of document: Policy brief

Expert groups involved: Input from the entire TF, on the initiative of the Ethical, legal, social issues group, with input from Prof Mireille Betrancourt (Educational sciences, UNIGE)

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Comment on planned updates :

Preparing for the academic year 2021-22 in academic institutions

Summary of request/problem :

The Independent Science Task Force prepared a summary document based on previous Policy Briefs and the consolidated advice of the expert groups to assist Academic institutions in preparing the fall semester.

Populated by crowds of young, mobile people gathered in closed spaces for extended periods of time, academic institutions represent a potentially propitious setting for the spread of Sars-CoV-2 both during academic and extracurricular activities. Although the level of immunity against COVID19 in Switzerland at the beginning of the fall semester 2021-22 cannot be known at this time, it is very likely that it will be insufficient to prevent further problematic waves of the coronavirus pandemic of a sufficient magnitude to represent a risk to the health care system and thus to access to care. With broad access to vaccination for both staff and students, taking classes online again in case of another wave is no longer the only obvious solution. Without high uptake of vaccination among students and staff (including teachers and administrative personnel), academic institutions could however become hotspots in the coming months. Measures to limit transmission on campuses are therefore important, also as a means of maintaining campuses open for in-person teaching. The burden incurred during the pandemic by students and their age group, as well as by academic and administrative staff, justifies this being a high priority.

Academic institutions -Universities, EPF/ETH, Universities of applied sciences and private institutions of higher learning- thus face a challenge in preparing for the fall semester of 2021-22. In principle, such institutions should promote an understanding of science among staff and students, and take a clear stance in a context where anti-science positions, corona- and vaccine denialism and fake news have loud voices in society. This could take the form of campaigns against false beliefs and misinformation, and promotion of vaccination. As educational institutions, they are included in the "green zone" of COVID certificates, services which should be accessible to all without having to show proof of vaccination, cure, or a recent negative test. Although leading academic institutions in the US, for example, have implemented vaccination mandates for both staff and students, the

legal framework currently in place in Switzerland would not be compatible with vaccine mandates for students as a condition of access to higher education. This document aims to consolidate advice for academic institutions preparing for the fall semester of 2021-22. It draws from several previous Policy Briefs, most importantly “Assessment of measures in schools”. (1)

Reasons to limit COVID19 transmissions on campuses

1. Protecting students from infection: as a group, students have had access to vaccination for several months but waiting times have varied in different cantons. As a result, considering that they have now all had the opportunity to be vaccinated would be premature.
2. Protecting staff from infection: most academic staff have now had access to vaccination for a longer time than students. Special situations where barriers to access may nevertheless exist should be addressed by individual structures.
3. Protecting individuals with medical contraindications to vaccination, or immunosuppression, and providing individuals who could place family members in such situations at risk with the means of protecting them. These individuals should be protected in case of high viral circulation.
4. Limiting chains of transmission and the contribution of campuses to negative evolutions of the epidemic overall.

At some point in time, all students will truly have had the opportunity to access vaccination. Any remaining unvaccinated students will almost certainly catch COVID19 sooner or later. Reasons to slow the spread of the disease among them could thus no longer include a goal of protecting them, ultimately, from infection. There are also no strong reasons to protect vaccinated students from break-through infections, since these will mostly be mild and could contribute to maintaining immunity. At such a time, reason 1 will thus no longer hold. As long as the other reasons do still hold, they could however still provide justification for implementing measures to limit transmission on campuses.

Measures to limit transmission on campuses are also important as a means of maintaining campuses open for in-person teaching. The burden incurred during the pandemic by students and their age group, as well as by academic and administrative staff, justifies this being a high priority.

Legal considerations

1. **Competence to regulate:**

Previously, the Swiss Federal Council (FC) (via ordinances) has issued specific (and sometimes very concrete) “special provisions for educational and training institutions”. Such provisions have not been included in the federal Covid-19 Act or in the newest ordinances, especially not in the COVID-19 Special Situation Ordinance of 23 June 2021.

However, the FC has explicitly specified that educational institutions (such as universities) qualify as “publicly accessible establishments” for which the Ordinance contains a set of rules. Specifically, there is an obligation for operators of such establishments to draw up and implement a precautionary measures plan (Art. 10 COVID-19 Special Situation Ordinance of 23 June 2021). Furthermore, the same Ordinance contains in its annex 1 a set of requirements for precautionary measure plans. In addition to the specific provisions concerning publicly accessible institutions, there are some general provisions applicable to educational institutions as well. One such general rule is the obligation to wear a mask in publicly accessible indoor areas of businesses and establishments (Art. 6 COVID-19 Special Situation Ordinance; with certain exceptions). All these requirements are binding for educational institutions when elaborating their precautionary measures plan.

To summarize, while the FC has issued certain binding requirements concerning educational institutions, it is mostly up to the educational institutions themselves – according to the “usual” allocation of competences – to decide on the most appropriate precautionary measure plan. By doing so, they enjoy a considerable margin of discretion. If the educational institutions wish coordinated or general “guidelines” applicable to all (or at least some/many) educational institutions, the usual mechanisms of coordination apply (see e.g. Federal Act on Funding and Coordination of the Swiss Higher Education Sector and the Convention between the Confederation and the Cantons on the cooperation in the Higher Education Sector)

2. Covid Certificate:

Neither the Covid Act nor the current Covid ordinances prohibit, allow or demand the use of Covid Certificates in the context of educational institutions. The ordinances, in particular the COVID-19 Special Situation Ordinance of 23 June 2021, rather provide a set of rules and requirements for events not restricting entry to persons with a certificate and a set of less restricted rules and requirements for events restricting access to persons with a certificate. One could therefore argue that it is up to the publicly accessible institution (i.e. the educational institution) to decide whether or not it wants to restrict the access to its services to persons with a certificate.

However, the use of the COVID certificate within Switzerland has been divided into three zones. Educational institutions have been categorized by the Swiss government in the green zone where the use of COVID certificates is not foreseen.

Three aspects of this categorization as green zone are unclear and have to be addressed:

- Firstly, it is not clear whether the “three zone system” is legally binding, since it is not anchored in an ordinance nor based on the Covid Act.
- Secondly, the formulation according to which the use of COVID certificates is “not foreseen” or “not envisaged” is not fully clear. The zone system does not clearly provide that the use of COVID certificates is prohibited in the green zone. The FOPH specified that “the green zone covers everyday settings” in which “the general precautionary and hygiene measures continue to apply without exception”. One could conclude that, even in the green zones, the use of COVID certificates is not categorically prohibited – as long as the services to be provided in these everyday settings remain accessible (if need be in an alternative form) to people not in the possession of a COVID certificate. In the case of educational institutions, this condition could be fulfilled by making educational services accessible through streaming or recording. In contrast to the orange and red zone, the general precautionary and hygiene measures would, however, remain in place in the green zone. Under these restrictive conditions, the current ordonnances do not prevent publicly accessible institutions, such as universities, from including the (limited use of COVID certificates in their precautionary measure plan.
- Thirdly, even if educational institutions in general are categorized as included in the green zone, it might be argued that this categorization does not necessarily apply to all services provided by these educational institutions. It might be argued, for example, that only mandatory lectures are part of the “green zone”, while non-mandatory activities are included in the orange zone where establishments can decide themselves whether they want to limit access to people with a COVID certificate (see for extracurricular activities: point 3 below).

Even without considering the “three zone” system to be legally binding, higher education is a public service in Switzerland. It cannot be reserved for those with particular health characteristics. However, it also frequently happens that students must temporarily miss class for health reasons and this is not generally considered to be a breach of their right to this public service. Furthermore, it remains possible to place persons who test positive in isolation, and to place their unvaccinated contacts in quarantine, both of which imply that access to in-person teaching is not possible for them. Students with medical contraindications to vaccination, however, may be more durably impacted and denying them access to campus would thus be more clearly problematic. As long as the pandemic lasts, this would be a case analogous to disability and require accommodations accordingly.

The use of COVID certificates as a condition to access campuses could thus be acceptable, as long as no student was durably prevented from accessing education itself. Providing distance learning opportunities for those with medical

contraindications to vaccination could thus be sufficient to protect the right to access education. Students in isolation (including as a result of a positive test), or quarantine would only miss class transiently and if such cases were treated as medical leave this would constitute an interruption similar to those that are usually tolerated. If such hybrid solutions exist, then, access to higher education can be maintained for all regardless of COVID certificate status, thus fulfilling the requirements of the green zone, even if access to auditoriums was conditioned on the presentation of a certificate.

The legal basis for limiting access to buildings to prevent the spread of an epidemic is provided by the Epidemics Act, according to which this lies under the authority of the Confederation and the Cantons. As elaborated above (see point 1), it can however be argued that within the actual legal framework, it is in the area of competence of the educational institutions to implement limitations in access to buildings without a decision from cantonal or federal authorities.

If, however, the use of COVID certificates is implemented by an educational institution, the requirements concerning such certificates (e.g. the ones contained in the federal Covid Act) and the requirements concerning the use of such certificates (e.g. art. 15 COVID-19 Special Situation Ordinance of 23 June 2021) have to be met. Concerning the question of which kind of certificate is to be accepted: In principle, vaccination, test as well as recovery certificates are valid as stipulated in the federal Covid Act. It might therefore be difficult to justify restricting access to educational services to a certain kind of certificate.

To summarize, Academic institutions can decide on their own to use COVID certificates as a condition to access their buildings, based on their autonomy to “run” their schools and their duty to protect their students and staff. Given the number of such institutions, however, it seems desirable to coordinate the most fundamental questions regarding the scope of use of COVID certificates through interactional and/or federal regulation.

3. Extracurricular activities:

Unlike education itself, however, extracurricular activities are in the orange or sometimes (in case of large events) in the red zone for the implementation of COVID19 certificates. This means that, for these activities, the options of maintaining them for all, limiting them to those with a COVID certificate, or limiting them for all, all remain feasible based on the epidemiological situation.

4. Data collection:

Universities can collect data on vaccination status and test results from those students and staff who provide free and informed consent to providing such information. Information must respect the Federal Data Protection Act (or the applicable cantonal Data Protection Act) and include disclosure of possible uses of these data. In addition, organization of work and campus life sometimes requires

such information in order to fulfill their professional obligations and in such circumstances employers do have the right to collect it. They must, of course, treat it confidentially as all sensitive information must be. Academic institutions planning to collect such data should prepare for the data management required by such a measure. For the federal institutions (ETH and EPFL), the Federal Data Protection Act applies, for Universities, the different cantonal Data Protection Acts also apply. Any such collection must respect the principle of proportionality. This means that the implementation of COVID certificates for access to campuses in combination with the possibility of distant learning may remove any justification for data collection in case it would no longer serve a sufficiently important purpose to justify it. Academic institutions may also survey students to assess the rate of vaccination anonymously. Even knowing how many students are vaccinated could help to tailor measures such as room occupancy.

5. Employee protection:

As employers, academic institutions are bound by law to protect the health of their employees. Individuals with medical contraindications to vaccination or immunosuppression should be provided with the means to protect themselves in case of high case numbers.(2)

General measures to control spread of the virus on campus

There are three basic models for responses to the risk of SARS-CoV2 transmission on campuses once the semester starts. The best one will vary according to the epidemiological situation, and could also vary according to local institutional circumstances. CO2 sensors and ventilation systems (either technical ventilation systems or protocols to open windows at specific times and CO2 thresholds) should be in place in all models, since these are protective measures that do not affect student obligations or privacy, or interactions on campus.

- A) **COVID certificates:** in this model, COVID certificates are required to access buildings for all academic and extracurricular activities. In order to decrease financial barriers to education, free testing should be offered on site. If the testing facilities cannot generate a QR code for the certificate, a test result from the facility should be accepted for entry on campus. Distance learning possibilities is provided for students and for teachers with a medical certificate exempting them from physically attending classroom on a case-by-case basis. This model has the advantage of high epidemiological efficacy and thus potentially avoiding limitations for those who gain access to campus (mask mandates, distancing requirements, limitations on student numbers per room, etc.), but it requires the verification of COVID certificates. This could be done either systematically or -

more simply and still equitably- through random spot checks around campus in a manner similar to verification on public transport. Agreement on sanctions for non-compliers with student unions could increase compliance.

As a more moderate – and less effective- application of the “COVID certificate model”, educational institutions could require COVID certificates to access services such as cafeterias, extracurricular activities, as well as special lectures or seminars. COVID certificates would be required to access non-mandatory and/or elective smaller group seminars but not to access to university buildings as such or to access mandatory lectures. In such situations, it does not seem necessary to offer alternative (online) access to students without certificates.

- B) **Masking and distancing:** in this model, campuses are freely accessible, but masking and distancing are both required while on campus. Distance learning is provided for those with a medical certificate exempting them from physically attending classroom on a case-by-case basis, and for those whom limited room occupancy prevent from attending class in person. This model does not require COVID certificates verification but limits the space available for teaching and the quality of interactions.

Combining A and B further limits transmission on campus

- C) **Normality first:** in this model, students are warned that campuses are places where they risk transmission and asked to decide for themselves whether or not to vaccinate taking this into account as well. Vaccination is made easily accessible to them, but no other particular precautions are taken on campuses. Distance learning is provided for those with a medical certificate exempting them from physically attending classroom on a case-by-case basis. This model places students’ and staff’s individual responsibility first. It puts the normalization of campus life first. Its drawback is that this system will be much less effective than the other two at preventing transmissions and would thus contribute less to a positive influence on the epidemic as a whole.

Specific measures to control spread of the virus on campus

1. Ventilation and air filtration should be installed regardless of vaccination coverage.(3)
2. Hand sanitizer should be available at the entrance of each building and room

3. Vaccination should be as easily accessible as possible. On-site vaccination should be organized, or at least be easily accessible close-by, and provide students and staff with opportunities to ask questions on site as well. A strong recommendation to vaccinate, along with easily accessible options to do so, should form part of the arrival package for incoming staff and students.
4. Regular testing should be available for those who have not completed the full 2-shot course of vaccination at least two weeks earlier. Requiring COVID certificates automatically makes testing mandatory for staff and students who are neither vaccinated nor cured. Whether or not COVID certificates are required, testing should be accessible at no cost to students and staff. It should be mandatory for non-fully-vaccinated staff whose work places them in contact with others, and could also be made mandatory for students if hybrid teaching is accessible. Testing could take the form of twice-weekly antigen test on naso-pharyngeal swab or saliva-PCR, under professional supervision. Early information of students and staff is crucial to promote acceptance and allow advance planning of vaccination for those wishing to avoid regular testing.
5. Masking is required to prevent droplet and aerosol transmission in closed environments even when social distancing can be maintained. For all students, and staff, masks are particularly important for unimmunized individuals as a way to limit transmission. However, implementation of a mask mandate limited to unimmunized individuals is not feasible unless there is both the means and the will to verify vaccination status on site. For this reason, masking for both vaccinated and unvaccinated individuals is recommended as a general rule. This may decrease the incentive to vaccinate for those whose primary motivation is to drop the mask. Given that protection against transmission provided by vaccination is decreased in the case of the delta variant, this measure is prudent anyway. Staff sharing offices who are willing to share information on their vaccination status could be allowed to unmask in all-vaccinated groups if they agree to do so.
6. In closed environments, distancing is useful both to limit droplet transmission and to limit the concentration of expired breath and aerosols. This is particularly important for unimmunized individuals as a way to limit transmission. However, implementation of limits on class size limited to unimmunized individuals is not feasible unless there is both the means and the will to verify vaccination status on site. In institutions where the rates of immunization are known, occupation density could be modulated to some degree to the likely rate of unimmunized individuals per room.

7. Isolation and quarantine measures implemented by cantonal health authorities should apply to students as for anyone else. Academic institutions should give advance warning to staff and students arriving from abroad to plan for the possibility of quarantine requirements on arrival in Switzerland.
8. Testing and quarantine of close contacts of index cases can cut chains of transmission: students and staff who become ill should be encouraged to share their schedule with cantonal contact tracers to enable identification of contacts, and academic institutions should collaborate to inform those who may have been in contact with a contagious person. The use of the Swiss-COVID app should also be encouraged.

Specific measures for extra-curricular activities

1. Collaboration with student organizations should be sought to organize protection plans during events organized by the students themselves.
2. COVID certificates can be required for extracurricular activities and will in some cases be mandatory based on Federal decisions (for example events with >1000 persons).

Protecting those at particular risk

1. Individuals with medical contraindications to vaccination or immunosuppression should be provided with the means to protect themselves in case of higher case numbers. The availability of hybrid teaching provides students with this possibility. Flexible approaches to home office for staff who are at particular risk should be continued until case numbers drop in a durable manner.

References

1. <https://scienctaskforce.ch/en/policy-brief/assessment-of-measures-in-schools%e2%80%8b/>
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