

Wisconsin Heights School District COVID-19 Data Dashboard

| School/Building | Active Positive Cases (Students & Staff) | Total Year to Date Cases (9/1/21 to present) |
|------------------------|---|---|
| Black Earth Elementary | 10 | 27 |
| Mazomanie Elementary | 8 | 24 |
| MS/HS/District Office | 18 | 53 |
| Total | 36 | 104 |

These numbers represent in person instruction only.

Updated daily by district office staff in consultation with WHSD School Nurse, Katy Howe

Legal Update

From Boardman & Clark LLP:

We understand the District desires to be transparent and assure the public that the District is operating in a safe manner. However, privacy rights of students and staff should be taken into account and in our view should take precedence.

Our major concern is that if you have one case (either staff or students), that one case could lead to identifying that person publicly. For example, in the case where a teacher is out for 2 weeks and the District sends some sort of communication identifying the building or even a general release that one staff member in the District has tested positive, it could immediately lead to that teacher being identified as the person with COVID. The same thing for a student. If that kid is out for 2 weeks, everyone else could immediately identify that student and the diagnosis.

Employees have specific rights under the Americans with Disabilities Act (ADA) to have medical information protected. This would include any information about a disability, diagnosis, etc., or any medical documentation concerning such issues. As you know, the ADA requires such information to be kept in a separate personnel file with restricted access.

For students, they have rights under FERPA and the State student's records statute (Wis. Stat., Sec. 118.125), to have personal information protected. This includes "Pupil physical health records" which are defined broadly in Wisconsin law. Direct communications to individual students are also a part of that student's record.

Obviously, if the number of positive cases increases it becomes more difficult to identify specific individuals, but not that much more difficult. It might be different if the District closes completely to in person instruction or if a particular school building closes because

then everyone is at home and people will not be able to tell if a "specific" person is missing. Even then, if you close a building, it would be more prudent to only state you had X number of cases in a building rather than say something like three 4th graders tested positive.

For those families who need to know, they should be communicated with directly, which we know you are doing. FERPA rights for students and ADA rights for staff should prevail in all communications. The District should avoid creating communications that result in others then trying to speculate "who" might be positive. By putting too much information on your Dashboard you increase the risk of individuals being identified.

We believe this position is also consistent with the District's obligations under the Public Records law. The Public Records law has long recognized that "records" do not need to be released if a specific individual might be able to be identified and that individual has a privacy right that, on balance, outweighs the public right to know the identity of the individual.