

**ORDER OF THE COMMISSIONER  
OF HEALTH AND MENTAL HYGIENE  
TO REQUIRE COVID-19 VACCINATION FOR  
NONPUBLIC SCHOOL STAFF**

**WHEREAS**, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

**WHEREAS**, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

**WHEREAS**, on November 26, 2021, New York State Governor Kathy Hochul, pursuant to Section 28 of Article 2-B of the Executive Law, found that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day due to the Delta variant, and therefore declared a State disaster emergency for the entire State of New York through January 15, 2022; and

**WHEREAS**, on November 26, 2021, the World Health Organization (“WHO”) declared the new COVID B.1.1.529 variant, named Omicron, a variant of concern because it has a large number of mutations and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

**WHEREAS**, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (“the Department”) extends; and

**WHEREAS**, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

**WHEREAS**, the WHO and the U.S. Centers for Disease Control and Prevention (“CDC”) have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

**WHEREAS**, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

**WHEREAS**, on November 30, 2021, the federal Administration for Children and Families issued an interim final rule requiring that all Head Start staff and volunteers working in classrooms or directly with children be vaccinated for COVID-19 by January 31, 2022; and

**WHEREAS**, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

**WHEREAS**, the City is committed to safe, in-person learning in all preschool to grade 12 schools, following public health science; and

**WHEREAS**, more than 240,000 students across the City attend nonpublic schools, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

**WHEREAS**, a system of vaccination for individuals working in nonpublic schools will potentially save lives, protect public health, and promote public safety; and

**WHEREAS**, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

**WHEREAS**, on September 12, 2021, I issued an Order requiring COVID-19 vaccinations for individuals working in certain covered child care programs, as defined therein; and

**WHEREAS**, on September 15, 2021, I issued and on September 28, 2021, I amended, an Order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in New York City Department of Education (“DOE”) school settings or DOE buildings and for staff of NYC charter schools; and

**WHEREAS**, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs; and

**NOW THEREFORE I**, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, do hereby order that:

1. No later than December 20, 2021, every nonpublic school must exclude any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.
2. All staff members at any nonpublic school hired on or after the effective date of this Order must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.

3. Nonpublic schools to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must make such records immediately available to the Department, or its designee, upon request. These records must include the following:
  - (a) Each staff member's name and start date.
  - (b) The type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
  - (c) For any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted.
  - (d) For any staff member who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the employer must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.
4. No later than December 28, 2021, nonpublic schools must electronically submit an initial affirmation of compliance with the requirements of paragraph 3 of this Order in the form prescribed by the Department, and such nonpublic schools must also submit follow up affirmations in the form prescribed by the Department by February 17, 2022, to demonstrate that all staff are fully vaccinated.
5. For the purposes of this Order:

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.

“Nonpublic school” means any location other than a DOE or charter school setting, as defined in my Order of September 15, 2021, where instruction and related services are provided to students from preschool through grade 12, or any portion thereof, such as only elementary or only secondary school, and includes:

- (a) locations providing such instruction and related services:
  - (i) to students between the ages typically served from preschool through grade 12, including schools that do not separate students into “grades” or similar groupings; and
  - (ii) pursuant to New York State Education Law section 3204; and
- (b) residences of students receiving home instruction from a school other than a DOE or charter school.

“Nonpublic school” does not include “covered child care programs,” “child care programs,” or “early intervention provider” as defined in my Orders of September 12, 2021, and November 17, 2021.


“Nonpublic school staff” means staff serving students in nonpublic schools and includes (i) full or part-time employees and (ii) all unpaid adults serving in nonpublic school settings including, but not limited to, student teachers and volunteers supporting school functions.

“Proof of vaccination” means proof that an individual:

- (a) Has been fully vaccinated;
- (b) Has received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
- (c) Has received the first dose of a two-dose vaccine, in which case they must additionally provide proof that they have received the second dose of that vaccine within 45 days after providing proof of the first dose.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.
7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: December 2, 2021



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Dave A. Chokshi, M.D., MSc  
Commissioner