

200 Park Avenue, 17th Floor, New York, NY 10166  
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

September 20, 2022

**VIA EMAIL AND FEDEX**

David Banks  
Chancellor  
New York City Department of Education  
65 Court Street  
Brooklyn, NY 11202  
dbanks@schools.nyc.gov

**VIA EMAIL AND FEDEX**

Juan Rosales  
Chief of Staff to the Chancellor  
New York City Department of Education  
65 Court Street  
Brooklyn, NY 11201  
Jrosales@schools.nyc.gov

*Re: Cease and Desist Implementation and Enforcement of COVID-19 Vaccine Mandate for Participation in Public School Athletic League and Extracurricular Activities*

Dear Mr. Banks and Mr. Rosales:

On behalf of Informed Consent Action Network and its various members located in New York City, we write regarding the emergency declaration (the “**Declaration**”) issued by Chancellor Meisha Porter on August 20, 2021, requiring that all students participating in after-school sports and “high-risk” extracurricular activities be vaccinated against COVID-19.<sup>1</sup> Because the New York City Department of Education (“**NYC DOE**”) failed to comply with applicable administrative policies necessary to make the vaccine mandate permanent, the Declaration and attendant compulsory vaccination policy have lapsed and are no longer valid. Further, and perhaps more importantly, the Health Department Commissioner’s adoption of the same policy has been further invalidated because it is based on outdated Centers for Disease Control (“**CDC**”) guidance. Simply put, the Health Department no longer has the authority to make emergency mandates, and the NYC DOE’s reliance on the Health Department’s invalid emergency mandate is similarly void. Accordingly, in an effort to avoid litigation, we urge NYC DOE to immediately rescind the Declaration requiring COVID-19 vaccination for participation in certain extracurricular activities.

**I. BACKGROUND**

On March 7, 2020, Governor Andrew Cuomo declared a state of emergency in New York in response to the COVID-19 pandemic.<sup>2</sup> On August 20, 2021, NYC DOE implemented a vaccination policy requiring COVID-19 vaccination for all employees and students participating

---

<sup>1</sup> See Exhibit 1.

<sup>2</sup> See Exhibit 2.

in Public School Athletic League (PSAL) sports and certain other “high-risk” extracurricular activities, such as bowling, chess, and other assorted sports.<sup>3</sup>

On September 15, 2021, Dave Chokshi, Commissioner of the New York City Department of Health and Mental Hygiene (the “**Health Department**”) issued an emergency order adopting the NYC DOE’s COVID-19 vaccination policy for extracurricular activities. The order cites the same CDC guidance relied upon in NYC DOE’s original declaration and references the “state of emergency” in New York State as giving rise to its own emergency authority.<sup>4</sup>

On September 12, 2022, Governor Kathy Hochul allowed the state of emergency declaration in New York to lapse.

Critically, the Chancellor’s Declaration relied on what is now outdated CDC guidance. For example, the Declaration claims to be “in alignment with recent New York State and Centers for Disease Control and Prevention (CDC) guidance, which states that high-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated.” However, on August 11, 2022, this text was deleted from the CDC’s website and instead replaced with a recommendation to implement screening tests for high risk activities.<sup>5</sup> Furthermore, in direct contrast to the underlying Declaration, updated CDC guidance now states that distinctions between vaccinated and unvaccinated individuals are no longer recommended.<sup>6</sup> The updated CDC recommendations also:

- recognize that natural immunity considerably reduces severe outcomes
- state that, when implemented, screening testing strategies should include all persons “irrespective of vaccination status”
- states that receipt of primary series of vaccination alone (without up-to-date boosters) “provides minimal protection against infection and transmission”

This guidance implicitly recognizes the documented high number of breakthrough infections among the vaccinated, and the high levels of natural immunity amongst the unvaccinated population. Further, the CDC estimates that 83.6 percent of children in New York have COVID-19 antibodies.<sup>7</sup> Finally, the CDC no longer considers New York City to be an area of high transmission.<sup>8</sup>

NYC DOE’s anti-science vaccination policy is underscored by the fact that NYC DOE does not require COVID-19 vaccination for school attendance. This renders the existing mandate arbitrary and capricious. Unvaccinated students and vaccinated students share classes and interact

---

<sup>3</sup> See Exhibit 1.

<sup>4</sup> See Exhibit 3.

<sup>5</sup> [Operational Guidance for K-12 Schools and Early Care and Education Programs to Support Safe In-Person Learning | CDC](#)

<sup>6</sup> [Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems — United States, August 2022 | MMWR \(cdc.gov\)](#)

<sup>7</sup> [CDC COVID Data Tracker: Pediatric Seroprevalence](#)

<sup>8</sup> [CDC COVID Data Tracker: County View](#)

with each other throughout the day. Schoolchildren also participate in activities during the regular school day that are substantially equivalent to the purported “high-risk” activities that are banned during after-school hours, such as physical education class, music class, and band class.

## **II. THE DECLARATION IS INVALID BECAUSE NYC DOE FAILED TO TIMELY MAKE THE EMERGENCY DECLARATION PERMANENT**

The Chancellor’s declaration is no longer valid because the Department failed to follow the procedure required to make emergency declarations permanent. All proposed rules and regulations affecting New York City Department of Education students and employees must be voted on by the Panel for Educational Policy. Proposed rules must undergo a public review process which includes public notice at least forty-five (45) days in advance of the Panel’s vote.<sup>9</sup> In the event of an emergency adoption, a rule shall remain in effect for sixty (60) days, during which time the Panel must comply with the public review and formal voting process described earlier.<sup>10</sup>

Chancellor Porter seemingly issued the declaration requiring COVID-19 vaccination for students participating in after-school sports and high-risk activities on August 20, 2021, via an “Update for Families” letter.<sup>11</sup> The rule was not publicly noticed and was not voted on by the board prior to becoming effective. Following the issuance of the vaccine mandate, the Panel for Educational Policy allowed the sixty (60) days to lapse without noticing the rule publicly or conducting a formal vote by the board. Consequently, the New York City Department of Education’s mandate expired on or about October 20, 2021.

Shortly after the issuance of the Chancellor’s declaration, Dave Chokshi, then-Commissioner of the New York City Department of Health and Mental Hygiene, issued an emergency order on September 15, 2021, adopting the Department of Education’s COVID-19 vaccine policy for extracurricular activities.<sup>12</sup> The order derives its “emergency” authority from the “state of emergency” that had been declared by higher authorities, including the City of New York, and the State of New York. Additionally, the order states that it is based on guidance from the Centers for Disease Control (CDC), specifically its August 5, 2021, recommendation that “High-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated.”<sup>13</sup> As mentioned above, this language no longer exists on the CDC’s website.

On September 12, 2022, Governor Kathy Hochul allowed the State of Emergency order for the State of New York to lapse, thus ending the emergency status for the State of New York. As such, the Commissioner’s order now lacks emergency rule-making authority because the higher authority from which it derived its power has ended the state of emergency.

---

<sup>9</sup> See New York Education Law 2590-g(1), Panel for Educational Policy Bylaws, Section 10.1.1-10.1.2.

<sup>10</sup> *Id.*

<sup>11</sup> See Exhibit 1.

<sup>12</sup> See Exhibit 3.

<sup>13</sup> [Operational Guidance for K-12 Schools and Early Care and Education Programs to Support Safe In-Person Learning | CDC](#)

### III. THE DECLARATION RELIES ON OUTDATED CDC GUIDANCE AND IS THEREFORE VOID ON ADDITIONAL GROUNDS

Further, the CDC guidance on which the Declaration is based is outdated and, in fact, is now contradicted by current CDC guidance. On August 11, 2022, The CDC revised its guidance and ended differentiation between vaccinated and unvaccinated persons. The change in guidance was based in part on the high number of breakthrough infections among the vaccinated and the high natural immunity among the unvaccinated population. Additionally, the CDC has reported that New York City is no longer an area of high community transmission, and pediatric seroprevalence (natural immunity among children) is now at 83.6% in New York State. Given that the Commissioner's order lacks emergency authority and is based on outdated CDC guidance that is now directly contradicted by updated CDC guidance, the order lacks both a legal and factual foundation rendering it arbitrary and capricious.

For the reasons outlined above, we demand that this policy be rescinded, and we have been authorized to commence litigation absent prompt action by the city to rescind this illegal and arbitrary mandate.

Please feel free to contact me with any questions or concerns.

Sincerely,



Aaron Siri  
Elizabeth A. Brehm  
Walker Moller  
Dana Stone

Cc: Ray Haskins  
Executive Director  
Public Schools Athletic League  
44-36 Vernon Blvd. 4<sup>th</sup> Floor  
Long Island City, Queens, NY 11101  
Via Email: [RHaskins2@schools.nyc.gov](mailto:RHaskins2@schools.nyc.gov)

# EXHIBIT 1

August 20, 2021

Dear Families,

We are so excited to welcome New York City's students back to the classroom this fall! And back to the playing fields!

As part of our multilayered approach to health and safety in our schools, COVID-19 vaccination will be required this year for New York City Department of Education (DOE) students and staff participating in Public Schools Athletic League (PSAL) sports considered high-risk for potential COVID-19 transmission. This is in alignment with recent New York State and Centers for Disease Control and Prevention (CDC) guidance, which states that high-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated.

High-risk sports include football, volleyball, basketball, wrestling, lacrosse, stunt, and rugby. Vaccination will also be required for participation in bowling, because while not a high-risk sport, it takes place in spaces that require vaccination.

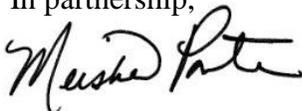
Participants in fall high-risk sports must get their first dose of the COVID-19 vaccine by the first day of competitive play, which varies by sport. Winter and spring PSAL participants have until the first day of competition to be fully vaccinated. For additional information about vaccine requirements for PSAL in the 2021-22 school year, please see the FAQ at the end of this letter.

Families will be able to upload proof of students' vaccination status at [vaccine.schools.nyc](https://vaccine.schools.nyc) beginning August 21. Proof of vaccination can be an image of a vaccination card, NYS Excelsior Pass, or other government record. Submitting this information will support New York City's pandemic response and recovery efforts, and help ensure that DOE schools and buildings remain safe places for all students and staff.

Getting the vaccine is safe, effective, and free—and the most important step that you can take to protect your family and community against COVID-19. If you have a child who is at least 12 years old, we strongly encourage you to make a vaccination appointment for them as soon as possible by visiting [vaccinefinder.nyc.gov](https://vaccinefinder.nyc.gov). You can also call 877-VAX-4-NYC (877-829-4692) for help making an appointment at a City-run vaccination site. Mobile vaccination sites will also be visiting schools and PSAL conditioning sites across the city this fall.

With the rapid spread of the delta variant of the virus, it has never been more important to get vaccinated. The delta variant is more contagious, infecting more young people than previous strains, and may be more likely to cause severe illness, and to reinfect someone who already had COVID-19. Keep New York City safe, keep New York City strong—get vaccinated!

In partnership,



Meisha Porter  
New York City Schools Chancellor

# EXHIBIT 2



# State of New York

## Executive Chamber

No. 202

### EXECUTIVE ORDER

#### Declaring a Disaster Emergency in the State of New York

**WHEREAS**, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

**WHEREAS**, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

**WHEREAS**, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

**WHEREAS**, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

**NOW, THEREFORE**, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

**IN ADDITION**, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(1)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

**FURTHER**, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

**IN ADDITION**, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 2510 and section 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;

Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

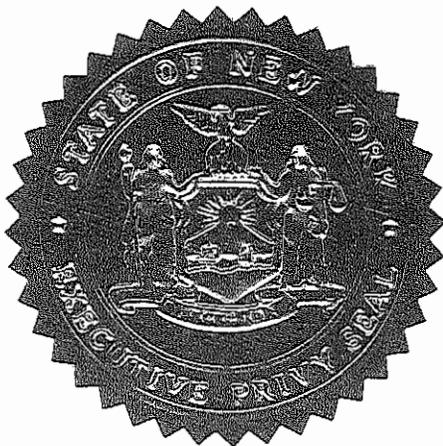
Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

**FURTHER**, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.



BY THE GOVERNOR

*M. C.*  
Secretary to the Governor

G I V E N under my hand and the Privy Seal of the  
State in the City of Albany this  
seventh day of March in the year two  
thousand twenty.

*Ad. Cuomo*

# EXHIBIT 3

**ORDER OF THE COMMISSIONER  
OF HEALTH AND MENTAL HYGIENE  
TO REQUIRE COVID-19 VACCINATION FOR  
PARTICIPATION IN HIGH RISK EXTRACURRICULAR ACTIVITIES**

**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**, pursuant to Section 3.01(d) of the New York City Health Code (“Health Code”), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; 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 U.S. Centers for Disease Control and Prevention (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

**WHEREAS**, on August 5, 2021, the CDC issued updated guidance stating that vaccination is the leading public health prevention strategy to end the COVID-19 pandemic and that promoting vaccination can help schools safely return to in-person learning as well as extracurricular activities and sports; and

**WHEREAS**, the updated CDC guidance further states, “High-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated”;<sup>1</sup> and

---

<sup>1</sup> CDC Guidance for COVID Prevention in K-12 Schools, update August 5, 2021, available online at: [https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html#anchor\\_1625662058182](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html#anchor_1625662058182).

**WHEREAS**, under the CDC criteria, New York City is an area of high community transmission;<sup>2</sup> and

**WHEREAS**, on August 12, 2021, the New York State Education Department (“NYSED”) issued guidance for the 2021–2022 school year that recognizes the importance of school-sponsored sports and extracurricular activities for providing students with enrichment opportunities that can help them learn and achieve and support their social, emotional, and mental health, provided however, that high-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated;<sup>3</sup> and

**WHEREAS**, on August 20, 2021, the New York City Schools Chancellor issued a declaration that all participants in Public Schools Athletic League (“PSAL”) sports designated as high risk, or PSAL sports otherwise requiring vaccination because they take place in spaces subject to New York City Mayor Emergency Executive Order No. 225 (including any extensions and revisions of such order), are required to be vaccinated against COVID-19 as a condition of participation, absent a duly granted exemption from such vaccination requirement; and

**WHEREAS**, on August 24, 2021 I issued, and on September 12, 2021 I updated, an Order requiring COVID-19 vaccination for New York City Department of Education (“DOE”) employees, contractors, visitors and others who work in-person in or visit a DOE school setting or DOE building; and

**WHEREAS**, on September 2, 2021, the New York State Department of Health (“NYSDOH”) issued guidance reiterating the CDC guidance that extracurricular activities that are high risk or elevated risk, such as activities that involve singing, shouting, band, and exercise that could lead to increased exhalation, should be conducted virtually or cancelled in areas of high community transmission unless all participants are fully vaccinated;<sup>4</sup> 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 infection diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures in order to most effectively prevent the spread of communicable diseases; and

**WHEREAS**, DOE serves approximately 1 million students across the City, 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

---

<sup>2</sup> CDC, COVID Data Tracker available online at <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

<sup>3</sup> New York State Department of Health, Health and Safety Guide for the 2021 – 2022 School Year, available online at <http://www.nysed.gov/common/nysed/files/programs/back-school/nysed-health-and-safety-guide-for-the-2021-2022-school-year.pdf>.

<sup>4</sup> New York State Department of Health, Interim NYSDOH Guidance for Classroom Instruction in P-12 Schools During the 2021-2022 Academic Year, available online at [https://coronavirus.health.ny.gov/system/files/documents/2021/09/school-guidance\\_0.pdf](https://coronavirus.health.ny.gov/system/files/documents/2021/09/school-guidance_0.pdf).

**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, and hereby order that:

1. All participants in high risk extracurricular sports and other high risk extracurricular activities who are eligible to be vaccinated must be fully vaccinated to participate.
2. Where participants in high risk extracurricular sports and other high risk extracurricular activities are not eligible to be vaccinated because of age, schools must implement mitigation measures to maximize the safety of all people, including players, coaches, and spectators.
3. For the purposes of this Order:
  - a. “High risk extracurricular sports” means sports, including PSAL sports, designated by DOE as high risk using criteria established by the CDC, NYSED, or NYSDOH.
  - b. “Other high risk extracurricular activities” means extracurricular activities that involve increased exhalation, such as singing, shouting, band, orchestra, chorus, musical theatre, dance/dance team, marching band, cheerleading, step teams and flag teams.
  - c. “Participants” means DOE students, and charter school students who participate in the PSAL.
  - d. “Fully vaccinated” means at least two weeks have passed after an individual received a single-dose of a vaccine that requires only one dose or the second dose in a two-dose series of a COVID-19 vaccine authorized for use by the U.S. Food and Drug Administration or the World Health Organization, *provided that*:
    - i. For extracurricular activities that are scheduled to start in September or October, a student will be deemed to have satisfied the requirement to be fully vaccinated if the student receives the first dose by September 27, 2021, with the second dose, if required, completed in accordance with the applicable schedule for the type of vaccine received (*e.g.*, currently 3 weeks after first dose for Pfizer and 4 weeks after first dose for Moderna). For extracurricular activities scheduled to start later in the school year, the student must be fully vaccinated by the start of the activity;
    - ii. For fall PSAL sports, a student will be deemed to have satisfied the requirement to be fully vaccinated if the student receives the first dose by the first day of competitive play of the applicable sport, with the second dose, if required, completed in accordance with the applicable schedule for the type of vaccine

received (*e.g.*, currently 3 weeks after first dose for Pfizer and 4 weeks after first dose for Moderna). For winter and spring PSAL sports, the student must be fully vaccinated by the start of practices for the applicable sport; and

- iii. For students who turn 12 during the school year, a student will be deemed to have satisfied the requirement to be fully vaccinated if the student receives the first dose within 2 weeks of their birthday and completes the second dose, if required, in accordance with the applicable schedule for the type of vaccine received (*e.g.*, currently 3 weeks after first dose for Pfizer and 4 weeks after first dose for Moderna or such other timeline if authorization is given for other vaccines).

Dated: September 15, 2021



---

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