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## **School Immunization Requirements for New York Students**

In response to the widespread measles outbreak in 2019, New York legislators amended the New York Public Health Law (PHL) governing immunization requirements for children attending schools and certain day care programs in New York.<sup>1</sup> Now, all children attending schools in New York who are medically able to receive vaccinations must be vaccinated against certain infectious diseases, regardless of any religious belief held by their parents or guardians, and must have appropriate immunization records.

The list of required vaccinations for students under the law does *not* include COVID-19. However, New York City students participating in high risk extracurriculars as well as New York City school staff (and other non-students in school buildings) may be subject to separate COVID-19 vaccination requirements.

### What is the school immunization requirement?

PHL Section 2164<sup>2</sup> requires all children (aged two months through eighteen years) to receive certain immunizations before being allowed to attend any level of school, from day care through high school in New York State. The law requires schools to verify that all required immunizations have been obtained by each student and, if not, to not permit the student to be admitted. In addition, the school must notify the local health authority of children being excluded from school for failure to get vaccinated or provide proof of vaccination.

### Which “schools” are covered?

For purposes of the law, “school” includes “any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.”<sup>3</sup>

### Which vaccinations are required?

Students must be vaccinated against (or provide other appropriate evidence of immunity against) poliomyelitis (polio), measles, mumps, rubella, diphtheria, tetanus, pertussis, varicella (chickenpox), hepatitis B and, where applicable, meningococcal, *Haemophilus influenzae* type b (Hib) and pneumococcal disease.<sup>4</sup>

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<sup>1</sup> Bill No. S.2994A/A.2371, see <https://www.nysenate.gov/legislation/bills/2019/A2371>.

<sup>2</sup> <https://www.nysenate.gov/legislation/laws/PBH/2164>; <https://regs.health.ny.gov/volume-1a-title-10/content/subpart-66-1-school-immunization-requirements>.

<sup>3</sup> PHL Section 2164(1)(a).

<sup>4</sup> PHL Section 2164(2).

Vaccination against COVID-19 is *not* required for students under PHL Section 2164.

Are there any exemptions from the school immunization requirements?

The only available exemption from the school immunization requirements is the so-called “medical exemption” under PHL Section 2164(8), which provides an exemption if a New York State-licensed physician certifies that an immunization may be detrimental to the child’s health. The medical certification must indicate the specific immunization(s) at issue, identify a medical contraindication to the immunization(s), and specify the length of time that immunization is medically contraindicated.<sup>5</sup> In addition, the exemption must be reissued each year.<sup>6</sup>

Unlike in the employment context where an individual may be entitled to a reasonable accommodation from their employer on the basis of a “sincerely held religious belief” under Title VII of the Civil Rights Act of 1964, there is no exemption from the school immunization requirements on the basis of religion or for any other non-medical reason.

What about COVID-19?

COVID-19 is not currently on the list of required immunizations for students under PHL Section 2164. This means that schools are not required under the law to verify students’ COVID-19 vaccination status nor exclude students who are not vaccinated against COVID-19.

In addition, this means that if a school or day care elects to independently enforce a COVID-19 vaccination requirement for students, it may allow for both medical and religious exemptions. However, schools considering implementing such a requirement should consult with legal counsel before doing so.

While not required under PHL Section 2164, pursuant to a separate order from the New York City Commissioner of Health and Mental Hygiene, New York City students participating in high risk extracurricular sports and other high risk extracurricular activities (including band, orchestra, chorus, musical theatre, dance/dance team, marching band, cheerleading, step teams, and flag teams) must be fully vaccinated to participate in such activities.<sup>7</sup>

In addition, teachers and other non-student individuals in school buildings may be subject to separate COVID-19 vaccination requirements. For example, in New York City, a series of orders from the Commissioner of Health and Mental Hygiene has imposed vaccine requirements on Department of Education (DOE) employees, workers of DOE-contracted organizations (including full-time and part-time staff, interns, and volunteers), and others working in certain child care and nonpublic school settings.<sup>8</sup>

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<sup>5</sup> 10 NYCRR 66-1.3(c).

<sup>6</sup> *Id.*

<sup>7</sup> See Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination for Participation in High Risk Extracurricular Activities (Sept. 15, 2021), available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-high-risk-extracurricular.pdf>.

<sup>8</sup> See Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination for Department of Education Employees, Contractors, and Others (Aug. 24, 2021), available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe.pdf>; Order of the Commissioner of Health and Mental Hygiene Requiring COVID-19 Vaccination for Individuals Working in Certain Child Care Programs (Sept. 12, 2021), available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-child-care.pdf>.

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[19-vaccination-requirement-child-care.pdf](#); and Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination for Nonpublic School Staff (Dec. 2, 2021), available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-nonpublic-school-vaccination-requirement.pdf>.