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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION**

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**COMMITTEE ON EDUCATION**

Hon. Mark Treyger, *Chair*

**October 6, 2021**

**OVERSIGHT: DOE’s Changes in COVID Protocols and**

**Implementation of the Vaccine Mandate**

**PRECONSIDERED INT. NO. \_\_:** By Council Member Treyger

**TITLE:** A Local Law in relation to requiring the department of education to report on school attendance, vaccination, testing consent, and quarantine data related to COVID-19, and providing for the repeal of such provision upon the expiration thereof

**PRECONSIDERED INT. NO. \_\_:** By Council Member Treyger

**TITLE:** A Local Law in relation to a report on COVID-19 within city schools and providing for the repeal of such provision upon the expiration thereof

**Introduction**

 On Wednesday, October 6, 2021, the Committee on Education, chaired by Council Member Mark Treyger, will hold an oversight hearing on **DOE’s Changes in COVID Protocols and Implementation of the Vaccine Mandate**. The Committee will also hear Preconsidered Introduction No.\_\_, sponsored by Council Member Treyger, a Local Law in relation to requiring the department of education to report on school attendance, vaccination, testing consent, and quarantine data related to COVID-19, and providing for the repeal of such provision upon the expiration thereof, and Preconsidered Introduction No.\_\_, sponsored by Council Member Treyger, a Local Law in relation to a report on COVID-19 within city schools and providing for the repeal of such provision upon the expiration thereof. Witnesses invited to testify include representatives of the Department of Education (DOE or the Department), Department of Health and Mental Hygiene (DOHMH), New York City Test and Trace Corp., students, parents, educators, unions, advocates, and other interested stakeholders.

**School Year 2021-2022: COVID Protocols**

*Testing and Positive Cases*

 As with the 2020-21 school year, regular testing of the DOE school community will continue into the 2021-2022 school year.[[1]](#footnote-1) In the same vein as last year’s protocols, DOE announced prior to reopening for the 2021-2022 school year that every school would test 10 percent of individuals who have provided consent for testing, on a biweekly basis.[[2]](#footnote-2)

 On September 20, 2021, Mayor de Blasio announced a policy change that testing of students and staff in DOE school would be done on a weekly basis.[[3]](#footnote-3) The policy was effective September 27.[[4]](#footnote-4)

*Positive Cases in Schools*

 For the 2019-2020 school year, the DOE created a matrix that involved scenario planning for classrooms and full school closures in the event of a positive COVID-19 case appearing in a classroom.[[5]](#footnote-5) To facilitate multi-agency cooperation and response, on September 14, 2020, Mayor de Blasio and then-Chancellor Carranza announced the creation of the DOE COVID-19 Response Situation Room—a multi-agency partnership between DOE, DOHMH and the Test & Trace Corps.[[6]](#footnote-6) “The Situation Room provides a single point-of-contact between schools and agency partners responsible for performing both testing, contact tracing, and ensuring the appropriate interventions are being taken by school communities.”[[7]](#footnote-7) For the 2021-2022 school year, the DOE stated that the Situation Room would continue to respond to a positive COVID-19 case in a NYC public school and outlined the following protocols:

* Elementary schools—In the event there is a positive case in a classroom, all students in the class will be instructed to quarantine for 10 calendar days. Students will continue to receive instruction while they quarantine;
* Middle and high schools—In the event of a positive case in a classroom, students who are:
	+ At least 12 years old, vaccinated, and not showing symptoms will continue to attend school in-person. These students will be encouraged to take a COVID-19 test 3 to 5 days after exposure.
	+ At least 12 years old, vaccinated, and showing symptoms will be directed to quarantine for 10 calendar days. These students will have access to remote learning while quarantining.
	+ Unvaccinated will be directed to quarantine for 10 calendar days. These students will continue their studies remotely. On day 5 of their quarantine, said students may take a COVID-19 test, and with a negative result may return to in-person learning after Day 7. [[8]](#footnote-8)

School-wide closures will be decided when DOHMH determines there is widespread transmission in the school.[[9]](#footnote-9)

On September 20, Mayor de Blasio also announced a change in quarantine protocols in an effort to keep more students learning in school and align to new Centers for Disease Control and Prevention (CDC) guidance.[[10]](#footnote-10) Pursuant to CDC guidance, when a positive COVID-19 case is found in a classroom, that classroom will no longer be quarantined.[[11]](#footnote-11) Instead, the student who tests positive will still be required to quarantine at home for 10 calendar days, but the remaining students in the classroom, known as close contacts,[[12]](#footnote-12) will not be required to quarantine.[[13]](#footnote-13) Said students, both vaccinated and unvaccinated, who are wearing face masks and have remained at least three feet distance from the student who tests positive will be permitted to continue in-person learning.[[14]](#footnote-14) Full closure of individual schools still remains a policy option if DOHMH determines there is widespread transmission in a particular school.[[15]](#footnote-15)

**School Year 2021-2022: Vaccine Mandate**

 In July 2021, Mayor Bill de Blasio announced that all City workers, including teachers, would be required to be vaccinated by the time school reopens on September 13, or be tested weekly.[[16]](#footnote-16) On Monday, August 23, 2021, the Mayor, Chancellor and DOHMH Commissioner announced a new mandate, that all New York City Department of Education employees would be required to provide proof of a first dose of COVID-19 vaccination by September 27.[[17]](#footnote-17) According to the Administration, the mandate will apply to all 148,000 DOE employees, including school-based and central staff, as well as DOE contractors who work in school-based settings.[[18]](#footnote-18) At the time of the announcement, DOE stated that at least 63 percent of DOE employees had at least one dose.[[19]](#footnote-19)

 On the same day that the Mayor announced the vaccination mandate for DOE employees, the Municipal Labor Committee[[20]](#footnote-20) announced their intent to file a lawsuit against the de Blasio Administration to stop the City from implementing its mandate without DOE employee participation, arguing that “the [C]ity is required to collectively bargain the steps to be taken for implementing this policy.”[[21]](#footnote-21) At his daily press briefing on August 24, the Mayor was asked if he has the legal authority to issue such a mandate and the Mayor was clear in responding that New York City as an employer has the right to subject its employees to such a mandate.[[22]](#footnote-22) Said mandate was issued pursuant to an Order of the Commissioner of Health and Mental Hygiene on March 12, 2020.[[23]](#footnote-23) Finally, the Mayor said that impact bargaining, which addresses the actual implementation details of the vaccine mandate, would begin immediately.[[24]](#footnote-24)

 Impact bargaining hit an impasse with the United Federation of Teachers (UFT) when it filed a labor grievance against the City with the New York State Labor Board on September 2, 2021.[[25]](#footnote-25) The issue centered around those teachers granted medical or religious exemptions to the vaccine mandate with the City arguing those employees should be placed on unpaid leave.[[26]](#footnote-26) An arbiter was assigned to adjudicate the grievance, and they ruled on Friday, September 10, 2021, that teachers who refuse to be vaccinated without a valid excuse should go on unpaid leave until September 2022, and those who refuse the mandate and receive no exemption have until November 30, 2021, to resign and have their remaining sick leave paid out. Teachers who refuse to get vaccinated will keep their health insurance until summer 2022.[[27]](#footnote-27)

Further complicating efforts were a number of lawsuits filed against the City seeking to prevent any vaccine mandate from going forward. After numerous litigation efforts by unions and individual teachers, ultimately the City teacher vaccine mandate has been allowed to move forward, with all New York City Department of Education employees required to provide proof of a first dose of COVID-19 vaccination by October 1, 2021 or be placed on unpaid leave.[[28]](#footnote-28) Finally, on Monday, October 4, 2021, DC 37 and the City reached an agreement for approximately 20,000 DOE employees (school aides, cafeteria workers, crossing guards among other titles[[29]](#footnote-29)) who refuse to get vaccinated.[[30]](#footnote-30) Similar to the deal reached with teachers, employees can take leave without pay but retain their health insurance benefits, resign and receive payout of their accumulated paid time off (including sick time) or apply for a medical or religious exemption.[[31]](#footnote-31)

 State lawsuit

 Filed in Manhattan Supreme Court on Friday, September 9, 2021, a coalition of New York City unions, through the Municipal Labor Committee and individual unions, sued the City over the vaccine mandate, arguing that it “violates employees’ individual bodily integrity and right to refuse medical treatment by forcing employees to undergo unwanted medical procedures or be precluded from engaging in their chosen professions.”[[32]](#footnote-32) On Tuesday, September 14, 2021, the Court issued a temporary restraining order barring the City from enforcing its vaccine mandate on DOE employees, pending a further hearing on the case.[[33]](#footnote-33) On Wednesday, September 22, 2021, the Court removed the temporary restraining order, allowing the City vaccine mandate to proceed, and in issuing his opinion, the judge doubted whether the unions would ultimately prevail, holding that “[t]he state and federal courts have consistently held that a mandatory vaccine requirement does not violate substantive due process rights and properly fall within the state’s police power.”[[34]](#footnote-34) DC 37, a union litigant in the case, issued a statement following the ruling that they would continue the legal fight to halt the vaccine program.[[35]](#footnote-35) As noted earlier, DC 37 reached an agreement with the City on October 3, 2021.[[36]](#footnote-36)

 A group of teachers opposed to the mandate went into state court on Tuesday to seek an emergency restraining order on the DOE vaccine mandate arguing that they are being discriminated against because of their religious beliefs, specifically arguing that the City will deny their religious exemption request “if they [do not] provide a clergy note or belong to an organized religion.”[[37]](#footnote-37) The judge held “they could not prove irreparable harm which an emergency order like this would require, and cited the fact that they’re still getting health insurance while on unpaid leave.”[[38]](#footnote-38)

 Federal lawsuit

 On Friday, September 10, 2021, four NYC public school teachers filed an action in US District Court for the Eastern District of New York to halt the DOE’s vaccine mandate.[[39]](#footnote-39) They argue that not only is the mandate an unconstitutional burden on them and all teachers, but it “threatens the education of thousands of children in the largest public-school system in the country and violates the substantive due process and equal protection rights afforded to all public-school employees.”[[40]](#footnote-40) On Thursday, September 23, 2021, judgment was entered by the District Court denying the teachers’ request for an injunction against DOE’s mandate.[[41]](#footnote-41)

On Friday, September 24, 2021, the teachers filed an emergency appeal with the United States Court of Appeals for the Second Circuit.[[42]](#footnote-42) The vaccine mandate was due to take effect on Monday, September 27.[[43]](#footnote-43) The evening of September 24, a judge for the Second Circuit issued a temporary restraining order on the City mandate which delayed the City from implementing its mandate.[[44]](#footnote-44) The case was then set to appear before a three judge panel for the Circuit, which agreed to expedite review of the case.[[45]](#footnote-45) A hearing was set for Wednesday, September 29, 2021.[[46]](#footnote-46)

On Monday, September 27, 2021, the three judge panel from the Second Circuit dissolved the September 24 temporary restraining order and offered no explanation.[[47]](#footnote-47) This action cleared the way for the City to implement its vaccine mandate with Mayor de Blasio setting a new requirement to provide proof of a first dose of COVID-19 vaccination by Friday, October 1, 2021 at 5:00 p.m..[[48]](#footnote-48),[[49]](#footnote-49)

 According to the Mayor, as of Monday, October 6, 2021, 99 percent of principals and 96 percent of teachers had received at least one dose of the COVID-19 vaccine.[[50]](#footnote-50) With 95 percent of school staff having received COVID shots, approximately 7,400 unvaccinated education department employees, including about 3,100 teachers were unvaccinated meaning they are not permitted to report to work and are not receiving their salary.[[51]](#footnote-51) Staffing shortages that were identified over the weekend before the vaccine deadline were handled in real time according to the Mayor and Chancellor, who also announced that the City “has a reserve of roughly 9,000 substitute teachers and another 5,000 substitute paraprofessionals who are vaccinated.”[[52]](#footnote-52)

**Issues and Concerns**

 Mayor de Blasio announced that the vaccine mandate for all DOE staff went into effect on Friday, October 1, 2021 with the expectation that by Monday, October 4, 100% of educators and staff in DOE buildings will be vaccinated.[[53]](#footnote-53) Although as of October 1, 2021, more than 90 percent of teachers and 98 percent of principals have received at least one dose of a vaccine,[[54]](#footnote-54) there are still about 4,000 teachers and 30 principals who are unvaccinated.[[55]](#footnote-55) This has raised concerns for a potential teacher shortage across City schools. In addition to a teacher shortage, as of October 1, 2021, about 15,000 non-education staff members were unvaccinated.[[56]](#footnote-56) While the City has said it will send vaccinated substitute teachers and central office staff into schools to cover shortages,[[57]](#footnote-57) some advocates believe that replacing so many certified teachers with substitute teachers could have a negative impact on the quality of educational instruction in schools.[[58]](#footnote-58) To date, the City has not revealed any plans regarding substitutes for non-teaching staff, such as school food workers, cleaners and SSAs, whose absence could also negatively impact students.

In addition to DOE staff, the initial vaccine mandate also applied to DOE contractors who work in school-based settings, such as non-profit providers of after school programs or other services inside school buildings.[[59]](#footnote-59) While the initial vaccine mandate did not apply to DOE contractors working off-site, such as pre-K and after-school providers in community-based centers, the Mayor expanded the mandate on September 9 to include those providers.[[60]](#footnote-60) The new vaccine mandate is creating huge problems for many early childhood centers which already operate on slim margins and struggle to find staff, because they can often make more money elsewhere.[[61]](#footnote-61) According to the head of the Day Care Council of New York, while it appears that the majority of center-based staff are vaccinated, when considering the cumulative impact across the 1,200 or so centers, “[t]he staffing implications could be dire.”[[62]](#footnote-62) Some center directors have said that, if forced to exclude all unvaccinated staff they would have to close, potentially leaving thousands of young children without childcare.[[63]](#footnote-63)

In addition to protecting students’ health and safety in the classroom, there are also concerns regarding students who rely on bussing services to commute to school. School bus drivers are in close contact with students, yet the vaccine mandate does not apply to bus drivers or attendants.[[64]](#footnote-64) However, school bus drivers are covered by a New York State Department of Health mandate. This mandate states that school bus drivers must submit for weekly COVID-19 testing or show proof of vaccination.[[65]](#footnote-65)

There are also concerns regarding changes to quarantine protocols, which United Federation of Teachers President Michael Mulgrew calls “ill-advised.”[[66]](#footnote-66) There are fears the change could lead to increased spreading of the virus since, as Mulgrew points out, in the “real world” of schools, not all children wear their masks correctly all day or maintain three feet distance, particularly in the many schools that are overcrowded.[[67]](#footnote-67) Additionally, while the new quarantine protocols are intended to keep more students learning in school, it could also make instruction more difficult for students who are sent home.[[68]](#footnote-68) The DOE’s policy calls for elementary school students to receive live remote instruction when an entire class is quarantined, but when fewer students are sent home, they are only supposed to receive support from teachers in the form of “office hours,” where they can log on to ask questions or for more intensive help.[[69]](#footnote-69) Consequently, fewer elementary school children may end up receiving synchronous instruction while they’re quarantined.[[70]](#footnote-70)

Further concerns include a lack of disaggregated data and transparency around student enrollment, attendance,[[71]](#footnote-71) COVID-19 testing and consent, vaccination,[[72]](#footnote-72) and confirmed cases of COVID-19 in schools.[[73]](#footnote-73) Without reports of weekly, raw numbers, it is difficult to ascertain an accurate picture of the health and safety of the school community as it relates to COVID-19.[[74]](#footnote-74)

The rise of the Delta variant, coupled with the fact that significant numbers of eligible New Yorkers are still unvaccinated, has led many parents to advocate for a full-time remote option to be made available for the current school year, as it was last year.[[75]](#footnote-75) According to an article by *amNewYork Metro*, there are a number of reasons families would like a remote option: i) the rise in COVID-19 cases, fueled by the Delta variant, which now accounts for 97 percent of new COVID-19 cases;[[76]](#footnote-76) ii) lack of trust in DOE’s handling of past multiple school shutdowns and blended learning; and iii) some students have preferred remote learning and have thrived with it.[[77]](#footnote-77) Throughout the summer the Mayor has made clear in multiple comments at press conferences and in interviews, that there will be no remote option available for students in September.[[78]](#footnote-78) Pressed again at his daily press briefing on August 19 that a growing number of parents were demanding a remote option, the mayor declared “we have one plan,” insisting that following CDC and NYSED guidance, students will be kept safe come September.”[[79]](#footnote-79)

**Conclusion**

Today’s hearing will provide an opportunity for students, parents, teachers, medical experts, unions and other educational stakeholders to raise their concerns about DOE’s COVID protocols and whether they adequately protect the health and safety of students and school staff.

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Preconsidered Int. No.

By Council Member Treyger

A LOCAL LAW

In relation to requiring the department of education to report on school attendance, vaccination, testing consent, and quarantine data related to COVID-19, and providing for the repeal of such provision upon the expiration thereof

Be it enacted by the Council as follows:

Section 1. Report on school attendance, vaccination, testing consent, and quarantine data related to COVID-19. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Chancellor. The term “chancellor” means the chancellor of the city school district of the city of New York.

COVID-19. The term “COVID-19” means the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Department. The term “department” means the New York city department of education.

School. The term “school” means a public school of the city school district of the city of New York that contains any combination of grades from and including pre-kindergarten through grade 12 or an early education center with which the department contracts to provide pre-kindergarten.

b. No later than 30 days after the effective date of this local law, and daily, weekly, and monthly thereafter, the chancellor shall conspicuously post on the department’s website a report of the number and percentage of students in attendance, disaggregated by school, for the previous day, week, and month.

c. No later than 30 days after the effective date of this local law, and weekly thereafter, the chancellor shall conspicuously post on the department’s website a report that includes the following information, disaggregated by school, for the previous week:

1. The number and percentage of students partially vaccinated for COVID-19;

2. The number and percentage of students fully vaccinated for COVID-19;

3. The number and percentage of COVID-19 student testing consent forms received by the department that are deemed valid and unexpired as of the reporting period;

4. The number of COVID-19 student testing consent forms withdrawn; and

5. The number and percentage of individuals required to quarantine due to exposure in school to an individual who tested positive for COVID-19, further disaggregated by students, teachers, administrators, and other school staff.

d. The report required pursuant to subdivision c of this section shall also include the cumulative totals for each category of information required pursuant to each paragraph of such subdivision. Such cumulative data shall, to the extent feasible, be disaggregated by grade level, gender, race or ethnicity, individualized education program status, English language learner status, status as a student residing in shelter, and status as a student in temporary housing other than students who are residing in shelter.

 e. The report required pursuant to subdivision c of this section shall include a data dictionary.

f. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information. If a category contains between 1 and 5 students, or contains an amount that would allow another category that contains between 1 and 5 students to be deduced, the number shall be replaced with a symbol. A category that contains 0 shall be reported as 0, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

§ 2. This local law takes effect immediately and expires and is deemed repealed on June 30, 2023.

MHL

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10/04/21

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Preconsidered Int. No.

By Council Member Treyger

A LOCAL LAW

In relation to a report on COVID-19 within city schools and providing for the repeal of such provision upon the expiration thereof

Be it enacted by the Council as follows:

Section 1. Report on COVID-19 within city schools. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Chancellor. The term “chancellor” means the chancellor of the city school district of the city of New York.

COVID-19. The term “COVID-19” means the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Department. The term “department” means the department of education.

School. The term “school” means a public school of the city school district of the city of New York that contains any combination of grades from and including pre-kindergarten through grade 12 or an early education center with which the department contracts to provide pre-kindergarten..

b. No later than 30 days after the effective date of this local law, and weekly thereafter, the chancellor shall conspicuously post on the department’s website a report that includes the following information, disaggregated by school, for the previous week:

1. The number of reported and confirmed positive COVID-19 cases for:

(a) Teachers;

(b) Administrators;

(c) Students; and

(d) Other school staff;

2. The total number of reported and confirmed positive COVID-19 cases;

3. Which schools closed due to COVID-19 and the period of time such schools were closed. If a school was closed more than once, then the number of closures shall be reported separately;

4. Which classrooms closed due to COVID-19 and the period of time such classrooms were closed. If a classroom was closed more than once, then the number of closures shall be reported separately;

5. The percent of teachers vaccinated for COVID-19;

6. The percent of administrators vaccinated for COVID-19;

7. The percent of other school staff vaccinated for COVID-19;

8. The percent of students vaccinated for COVID-19; and

9. The overall vacation rate for such school.

c. The report required by subdivision b of this section shall include a data dictionary.

d. No information that is otherwise required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of student information. If a category contains between 1 and 5 students, or contains an amount that would allow another category that contains between 1 and 5 students to be deduced, the number shall be replaced with a symbol. A category that contains 0 shall be reported as 0, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

§ 2. This local law takes effect immediately and expires and is deemed repealed on June 30, 2023.

AM/MMB

LS #14,843/15,205/18,182

10/4/21; 4:58 p.m.

1. New York City Department of Education*,* “Health and Safety in Our Schools,” accessed at: <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/health-and-safety-in-our-schools>. [↑](#footnote-ref-1)
2. New York City Department of Education*, Homecoming Health and Safety Guide*, p. 8, September 8, 2021, accessed at <https://www.schools.nyc.gov/docs/default-source/default-document-library/doe-homecoming-health-and-safety-guide---september-8-2021>. [↑](#footnote-ref-2)
3. Marsh, J. and Raskin, S., “De Blasio mandates weekly COVID testing of school staff and students,” *NY Post*, September 20, 2021, accessed at: <https://nypost.com/2021/09/20/de-blasio-mandates-weekly-covid-testing-of-school-staff-and-students/>. [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *See* Education Committee Report, October 16, 2020, page 20, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4622803&GUID=E8D357D8-FFFC-4918-8020-55F889886E5B&Options=&Search>=. [↑](#footnote-ref-5)
6. Office of Mayor Bill de Blasio, “City Launches Department of Education COVID-19 Situation Room,” September 14, 2020, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/647-20/city-launches-department-education-covid-19-situation-room>. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. New York City Department of Education*,* “Homecoming Health and Safety Guide,” p. 8, September 8, 2021 accessed at: <https://www.schools.nyc.gov/docs/default-source/default-document-library/doe-homecoming-health-and-safety-guide---september-8-2021>.*.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Zimmer, A., Veiga, C., and Zimmerman, A., “Unvaccinated and masked students no longer have to quarantine as COVID testing becomes weekly in NYC schools,” *Chalkbeat*, September 20, 2021, accessed at: <https://ny.chalkbeat.org/2021/9/20/22683906/covid-safety-rules-testing-quarantine-nyc-school>. [↑](#footnote-ref-10)
11. New York City Department of Education*,* “Health and Safety in Our Schools,” accessed at: <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/health-and-safety-in-our-schools>*.* [↑](#footnote-ref-11)
12. The CDC defines a close contact as “Someone who was less than 6 feet away from infected person (laboratory-confirmed or a clinical diagnosis) for a cumulative total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes). An infected person can spread SARS-CoV-2 starting from 2 days before they have any symptoms (or, for asymptomatic patients, 2 days before the positive specimen collection date), until they meet the criteria for ending isolation. The exception to this is in the K–12 indoor classroom setting or a structured outdoor setting where mask use can be observed (i.e., holding class outdoors with educator supervision), the close contact definition excludes students who were between 3 to 6 feet of an infected student (laboratory-confirmed or a clinical diagnosis) if both the infected student and the exposed student(s) correctly and consistently wore well-fitting masks the entire time.” *See:* <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact>. [↑](#footnote-ref-12)
13. New York City Department of Education*,* “Health and Safety in Our Schools,” accessed at: <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/health-and-safety-in-our-schools>*.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. Veiga, C., “NYC to mandate COVID vaccines or testing for teachers,” *Chalkbeat*, July 26, 2021, accessed at: <https://ny.chalkbeat.org/2021/7/26/22594169/nyc-mandate-covid-vaccine-teachers>. [↑](#footnote-ref-16)
17. Office of Mayor Bill de Blasio, “Mayor de Blasio, Chancellor Porter and Commissioner Chokshi Announce Department of Education Employee Vaccine Mandate,” August 23, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/578-21/mayor-de-blasio-chancellor-porter-commissioner-chokshi-department-education>. [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. The Municipal Labor Committee (MLC), whose stated mission is to facilitate the collective bargaining process with the City of New York, is an association of municipal labor organizations representing some 390,000 active City workers. The MLC was created pursuant to a Memorandum of Understanding dated March 31, 1966, signed by New York City and designated employee organizations and codified in Sections 12-303 and 12-313 of the Administrative Code of the City of New York. The workers represented by the MLC, comprise both uniformed and civilian employees, [↑](#footnote-ref-20)
21. Marsh, J. and Campanile, C., “Union leaders taking de Blasio’s vaccine mandate for DOE staffers to court,” *New York Post,* August 23, 2021, accessed at: <https://nypost.com/2021/08/23/union-leaders-taking-de-blasios-doe-vaccine-mandate-to-court/>. [↑](#footnote-ref-21)
22. Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Holds Media Availability,” August 24, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/585-21/transcript-mayor-de-blasio-holds-media-availability>. [↑](#footnote-ref-22)
23. Department of Health and Mental Hygiene Commissioner Chokshi issued an Order of the Commissioner of Health and Mental Hygiene pursuant to powers granted by the New York City Charter, Administrative Code and Health Code which grant the Commissioner power to declare a public health emergency and to supervise and adopt prompt and effective measures to prevent the communication of infection diseases. The Order can be accessed here: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe.pdf>. [↑](#footnote-ref-23)
24. Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Holds Media Availability,” August 24, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/585-21/transcript-mayor-de-blasio-holds-media-availability>. [↑](#footnote-ref-24)
25. Elsen-Rooney, M., “NYC teachers union files labor complaint over bargaining impasse on COVID vaccine mandate,” *New York Daily News*, September 2, 2021, accessed at: <https://www.nydailynews.com/new-york/education/ny-teachers-union-vaccine-mandate-bargaining-20210902-urojdv43pzcyrhnkyykrgszhty-story.html>. [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. Eyewitness News ABC 7, “Coronavirus Update NYC: Mayor de Blasio sets Friday vaccination deadline for city school staff,” September 27, 2021, accessed at: <https://abc7ny.com/vaccine-mandate-nyc-teachers-new-york-public-schools/11051781/>. [↑](#footnote-ref-28)
29. *See* <https://www.local372.org/members-2>. [↑](#footnote-ref-29)
30. Brosnan, E., “Unvaxxed staff can take leave of absence until getting COVID shot: DOE, union agreement,” *1010WINS*, accessed on October 5, 2021, at: <https://www.msn.com/en-us/news/us/unvaxxed-staff-can-take-leave-of-absence-until-getting-covid-shot-doe-union-agreement/ar-AAP8kHP>. [↑](#footnote-ref-30)
31. Local 372, *See* <https://www.local372.org/>. [↑](#footnote-ref-31)
32. Goldberg, N., and Elsen-Rooney, M., “Municipal unions sue NYC over vaccine mandate,” *New York Daily News*, September 10, 2021, accessed at: <https://www.nydailynews.com/new-york/education/ny-teachers-doe-vaccine-mandate-fire-lawsuit-brooklyn-20210910-pbvmmsu3rfcajok5zpqzzygqxq-story.html>. [↑](#footnote-ref-32)
33. Gould, J., “Temporary Restraining Order Issued Against NYC Vaccine Requirements For City Employees,” *Gothamist*, September 15, 2021, accessed at: <https://gothamist.com/news/temporary-restraining-order-issued-against-nyc-vaccine-or-test-requirement-city-employees>. [↑](#footnote-ref-33)
34. AP News, “NYC vaccine mandate for teachers, staff to go forward,” September 22, 2021, accessed at: <https://apnews.com/article/business-health-new-york-education-new-york-city-11d2d22f6104e0a371e3b621807fb36c>. [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. Supra note 30. [↑](#footnote-ref-36)
37. CBS New York, “Judge Denies Temporary Restraining Order Against COVID Vaccine Mandate At NYC Schools,” accessed on October 5, 2021, at: <https://www.msn.com/en-us/news/us/judge-denies-temporary-restraining-order-against-covid-vaccine-mandate-at-nyc-schools/ar-AAPax3S?ocid=msedgdhp&pc=U531>. [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. Supreme Court of the United States, Emergency Application for Writ of Injunction, September 30, 2021, accessed at: <https://www.supremecourt.gov/DocketPDF/21/21A50/194220/20210930135258574_Maniscalco%20v%20NYC%20Dept%20of%20Education%20-%20Emergency%20Application.pdf>. [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. Maniscalco, et al. v. New York City Dept. of Educ., et al., No. 1:21-CV-05055.

(E.D.N.Y.). [↑](#footnote-ref-41)
42. Maniscalco, et al. v. New York City Dept. of Educ., et al., No. 21-2343 (2d Cir.). [↑](#footnote-ref-42)
43. Office of Mayor Bill de Blasio, “Mayor de Blasio, Chancellor Porter and Commissioner Chokshi Announce Department of Education Employee Vaccine Mandate,” August 23, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/578-21/mayor-de-blasio-chancellor-porter-commissioner-chokshi-department-education>. [↑](#footnote-ref-43)
44. Supreme Court of the United States, Emergency Application for Writ of Injunction. September 30, 2021. Accessed at: <https://www.supremecourt.gov/DocketPDF/21/21A50/194220/20210930135258574_Maniscalco%20v%20NYC%20Dept%20of%20Education%20-%20Emergency%20Application.pdf>. [↑](#footnote-ref-44)
45. Eyewitness News ABC 7, “Coronavirus NYC: Judge temporarily blocks school vaccine mandate; Hearing set for Wednesday,” September 26, 2021, accessed at: <https://abc7ny.com/covid-vaccine-mandate-nyc-teachers-ny-healthcare-workers-delta-variant/11046746/>. [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. Supreme Court of the United States, Emergency Application for Writ of Injunction. September 30, 2021. Accessed at: <https://www.supremecourt.gov/DocketPDF/21/21A50/194220/20210930135258574_Maniscalco%20v%20NYC%20Dept%20of%20Education%20-%20Emergency%20Application.pdf>. [↑](#footnote-ref-47)
48. Eyewitness News ABC 7, “Coronavirus Update NYC: Mayor de Blasio sets Friday vaccination deadline for city school staff,” September 27, 2021, accessed at: <https://abc7ny.com/vaccine-mandate-nyc-teachers-new-york-public-schools/11051781/>. [↑](#footnote-ref-48)
49. Supreme Court Justice Sonia Sotomayor on Friday, October 1, 2021, denied an emergency appeal from the group of teachers effectively ending their case. *See* NPR, accessed on October 4, 2021, at: <https://www.npr.org/2021/10/01/1042600683/sotomayor-nyc-school-vaccine>. [↑](#footnote-ref-49)
50. Zimmernan, A., et. al., “As vaccine mandate kicks in, 95% of NYC schools staff have received COVID shots,” *Chalkbeat*, October 4, 2021, accessed at: <https://ny.chalkbeat.org/2021/10/4/22708807/nyc-schools-covid-vaccine-mandate-staff-shortage>. [↑](#footnote-ref-50)
51. *Id.* [↑](#footnote-ref-51)
52. Shapiro, E., “N.Y.C. Schools’ Vaccine Mandate Is in Place. 96% of Teachers Got a Shot,” *NY Times,* October 4, 2021, accessed at: <https://www.nytimes.com/2021/10/04/nyregion/vaccine-mandate-teachers-nyc.html>. [↑](#footnote-ref-52)
53. Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Appears on Inside City Hall,” September 28, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/654-21/transcript-mayor-de-blasio-appears-inside-city-hall>. [↑](#footnote-ref-53)
54. Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Appears on the Brian Lehrer Show,” October 1, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/664-21/transcript-mayor-de-blasio-appears-the-brian-lehrer-show> [↑](#footnote-ref-54)
55. Shapiro E., “18,000 Shots Given to N.Y.C. School Employees Ahead of Vaccine Deadline,” *The New York Times,* October 4, 2021, accessed at: <https://www.nytimes.com/2021/10/04/nyregion/vaccine-mandate-teachers-nyc.html>. [↑](#footnote-ref-55)
56. Shapiro E., “18,000 Shots Given to N.Y.C. School Employees Ahead of Vaccine Deadline,” *The New York Times,* October 4, 2021, accessed at: <https://www.nytimes.com/2021/10/04/nyregion/vaccine-mandate-teachers-nyc.html>. [↑](#footnote-ref-56)
57. Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Appears on Inside City Hall,” September 28, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/654-21/transcript-mayor-de-blasio-appears-inside-city-hall> [↑](#footnote-ref-57)
58. Eyewitness News, “Coronavirus Update NYC: Mayor de Blasio sets Friday vaccination deadline for city school staff,” *Eyewitness News* *ABC 7*, September 27, 2021, accessed at: <https://abc7ny.com/vaccine-mandate-nyc-teachers-new-york-public-schools/11051781/> [↑](#footnote-ref-58)
59. Office of Mayor de Blasio, “Mayor de Blasio, Chancellor Porter and Commissioner Chokshi Announce Department of Education Employee Vaccine Mandate,” August 23, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/578-21/mayor-de-blasio-chancellor-porter-commissioner-chokshi-department-education>. [↑](#footnote-ref-59)
60. Veiga, C., “NYC expands COVID vaccine mandate to pre-K teachers, after-school workers,” *Chalkbeat*, September 9, 2021, accessed at: <https://ny.chalkbeat.org/2021/9/9/22665078/covid-vaccine-mandate-prek-teachers-afterschool-nyc>. [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. *Id.* [↑](#footnote-ref-62)
63. *Id.* [↑](#footnote-ref-63)
64. Zimmerman, A, “NYC to require vaccines for all education department employees,” *Chalkbeat,* August 23, 2021, accessed at: <https://ny.chalkbeat.org/2021/8/23/22637774/nyc-teacher-vaccine-mandate>. [↑](#footnote-ref-64)
65. *See* New York State Department of Health *Commissioner’s Determination on COVID-19 Testing Pursuant to 10 NYCRR 2.62*, September 2, 2021, accessed at: <https://coronavirus.health.ny.gov/system/files/documents/2021/09/2.62-determination.pdf>. [↑](#footnote-ref-65)
66. Zimmer, A., et. al., “Unvaccinated and masked students no longer have to quarantine as COVID testing becomes weekly in NYC schools,” *Chalkbeat*, September 20, 2021, accessed at: <https://ny.chalkbeat.org/2021/9/20/22683906/covid-safety-rules-testing-quarantine-nyc-school>. [↑](#footnote-ref-66)
67. *Id.* [↑](#footnote-ref-67)
68. *Id.* [↑](#footnote-ref-68)
69. *Id.* [↑](#footnote-ref-69)
70. *Id.* [↑](#footnote-ref-70)
71. New York City Department of Education, DOE Data at a Glance. 2021, accessed at: <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>. [↑](#footnote-ref-71)
72. New York City Department of Education, Daily Covid Case Map. 2021, accessed at: <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/daily-covid-case-map>. [↑](#footnote-ref-72)
73. New York State Department of Health, COVID-19 Report Card.2021, accessed at: [*https*://schoolcovidreportcard.health.ny.gov/#/home](https://schoolcovidreportcard.health.ny.gov/#/home). [↑](#footnote-ref-73)
74. *Id.* [↑](#footnote-ref-74)
75. Jorgensen, J., “Some parents won't take 'no remote option' for an answer,” *NY1*, September 16, 2021, accessed at: <https://www.ny1.com/nyc/all-boroughs/news/2021/09/16/some-parents-won-t-take--no-remote-option--for-an-answer>. [↑](#footnote-ref-75)
76. Millman, J., “Latest NYC Wave Over? Delta Now 97% of COVID Cases But Hospitalizations, Infection Rates Drop,” *abcNewYork,* August 28, 2021, accessed at: <https://www.nbcnewyork.com/news/coronavirus/delta-now-97-of-nyc-covid-cases-but-hospitalizations-are-down-as-transmission-rates-drop-for-2nd-straight-week/3243859/>. [↑](#footnote-ref-76)
77. O’Connell-Domenech, A., “Some New York City parents still want a fully remote option this fall,” *amNewYork Metro,* July 21, 2021, accessed at: <https://www.amny.com/news/some-new-york-city-parents-want-fully-remote-option-this-fall/>. [↑](#footnote-ref-77)
78. Raskin, S., “‘Our kids are going to come back’: de Blasio says NYC public schools won’t be remote,” *New York Post,* August 19, 2021, accessed at: <https://nypost.com/2021/08/19/bill-de-blasio-says-public-schools-will-not-be-remote/>. *See also* Office of Mayor Bill de Blasio, “Transcript: Mayor de Blasio Holds Media Availability,” August 19, 2021, accessed at: <https://www1.nyc.gov/office-of-the-mayor/news/574-21/transcript-mayor-de-blasio-holds-media-availability>. [↑](#footnote-ref-78)
79. *Id.* [↑](#footnote-ref-79)