

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
REQUIRING COVID-19 VACCINATION FOR
INDIVIDUALS WORKING IN CERTAIN CHILD CARE PROGRAMS**

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 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 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, the CDC has stated that vaccination 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 September 9, 2021, President Joseph Biden announced that staff who work in Head Start programs and in schools run by the Bureau of Indian Affairs and Department of Defense will be required to be vaccinated in order to implement the CDC’s recommendations; and

WHEREAS, on August 26, 2021, New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a vaccine by October 7, 2021; 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 schools, following strong public health science; and

WHEREAS, the CDC notes that early childhood programs such as child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, serve children under the age of 12 who are not eligible for vaccination at this time, making implementation of layered prevention strategies in such programs critical to protecting children; and

WHEREAS, child care programs serve hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

WHEREAS, the City Department of Education (“DOE”) and Department of Youth and Community Development (“DYCD”) contract with community-based providers for early care and education programs, Universal Pre-Kindergarten, Early Learn, Head Start, family and group family day care, pre-school special education services, and afterschool, Beacon, and Cornerstone programs; and

WHEREAS, a system of vaccination for individuals working in child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, 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 August 24, 2021 I issued, and on September 11, 2021 I updated, an Order requiring COVID-19 vaccination for DOE employees, contractors, visitors, and others who work in-person at or visit a DOE school setting or DOE building;

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. No later than September 27, 2021, every covered child care program must exclude from the premises any staff person who has not provided proof of vaccination against COVID-19, as defined in this Order.

2. All staff persons newly hired on or after the effective date of this order by a covered child care program must provide proof of vaccination against COVID-19 to their employer on or before their start date.
3. Each covered child care program must securely maintain records of staff persons' proof of vaccination against COVID-19. Records may be kept electronically or on paper and must be made available to the Department immediately upon request. Records must include the following information:
 - a. Each staff person's name and start date at the covered child care program.
 - b. The type of proof of vaccination submitted; the date such proof was collected by the covered child care program; the brand of vaccine administered; and whether the person is fully vaccinated, as defined in this Order.
 - c. For any staff person 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 first dose.
4. For the purposes of this Order:

“Covered child care program” means early childhood programs or services provided under contract with DOE for Birth-to-5 and Head Start services for infants, toddlers, and preschoolers including 3-k and pre-k services as well as early education programs serving young children with disabilities, Early Learn, pre-school special education pursuant to section 4410 of the Education Law, or by family home-based family child care providers contracted through family child care networks, or programs under contract with DYCD for after school, Beacon, and Cornerstone.

“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 or approved for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization.

“Premises” means locations where children are regularly present at covered child care programs.

“Proof of vaccination against COVID-19” means one of the following documents demonstrating that an individual has either (a) been fully vaccinated against COVID-19; (b) received one dose of a single-dose COVID-19 vaccine; or (c) received the first dose of a two-dose COVID-19 vaccine, provided that a staff person providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:

- i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered that provides the person's name, vaccine brand, and date

administered. Such card or record may be shown in original paper copy or by digital or physical photo of such a card or record, including a photo shown on the New York City COVID Safe Pass; or

- ii. A New York State Excelsior Pass populated as required with valid identification and vaccination proof.

“Staff person of a child care program” means an employee, contractor, volunteer or intern of the covered child care program who works in-person on the premises; a graduate, undergraduate or high school student placed by their educational institution at the covered child care program as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at the covered child care program to an individual child pursuant to a mandate for the child and who works in-person on the premises; or a person employed by a contractor of the covered child care program, including independent contractors, who works in-person on the premises. “Staff person” does not include a person who is onsite briefly for a limited purpose, such as to make a delivery or pick-up or perform a repair.

- 5. 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: September 12, 2021



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