

21-2343

**United States Court of Appeals
for the Second Circuit**

RACHEL MANISCALCO, EVELYN ARANCIO,
DIANA SALOMON, and CORINNE LYNCH,

Plaintiffs-Appellants,

against

NEW YORK CITY DEPARTMENT OF EDUCATION, MEISHA PORTER,
in her official capacity as Schools Chancellor of the New York
City Department of Education, CITY OF NEW YORK, BILL DE
BLASIO, DEPARTMENT OF HEALTH AND MENTAL HYGIENE, and
DAVID CHOKSHI, in his official capacity as the Commissioner of
the Department of Health and Mental Hygiene,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

**MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR AN INJUNCTION PENDING APPEAL**

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September 26, 2021

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PRELIMINARY STATEMENT

For over a year and a half, the COVID-19 pandemic disrupted the education of more than one million public school students in New York City, as public health concerns forced a retreat from the in-person instruction model that is the most effective means of education. Only now—with the availability of three safe and effective vaccines, including one that has received full regulatory approval for adults—are schoolchildren able to experience something that resembles normalcy, returning full time to their schools alongside their classmates.

To safeguard students, staff, and everyone around them, the City has required school employees—who are often in extended, close contact with children indoors, when many children remain ineligible for vaccination—to show proof of vaccination unless they qualify for a religious or medical exemption. But even employees who object to vaccination for other reasons can elect to stay home and retain their positions while being placed on unpaid leave with healthcare until early September 2022.

Plaintiffs are four public school teachers and paraprofessionals who evidently do not qualify for a religious or medical exemption and seek to enjoin the City's vaccination mandate, allowing them to have di-

rect and daily contact with children and risk infecting them. After the United States District Court for the Eastern District of New York (Cogan, J.) denied plaintiffs a preliminary injunction, plaintiffs noticed an appeal and moved this Court for an injunction pending appeal.

The motion is meritless and should be denied. There is no need for an injunction pending appeal because the appeal can be resolved before plaintiffs would experience the harm they allege. Plaintiffs claim that the mandate forces them to choose between getting vaccinated and losing their jobs, but they can remain unvaccinated and keep their jobs for nearly a year while being placed on extended unpaid leave with healthcare. And even if plaintiffs decline the extended leave option, the earliest any steps would be taken to terminate their employment would occur in December 2021. This appeal can be briefed and decided well before plaintiffs risk losing their jobs, and any economic harm arising in the interim can be remedied by money damages if plaintiffs prevail. At most, plaintiffs are entitled to an expedited briefing schedule.

In any event, plaintiffs have not come close to showing that they are entitled to the extraordinary remedy of an injunction. The balance of the equities tips decidedly in the City's favor. Plaintiffs' preference to

remain unvaccinated while teaching vulnerable schoolchildren is dwarfed by the public's interest in safely resuming full school operations for a million public school students and ensuring that caregivers citywide can send their children to school secure in the knowledge that sound safety protocols are in place.

On the merits, plaintiffs have no chance of success. Courts have long recognized that vaccination mandates do not offend substantive due process and have rejected such challenges to them for more than a century, often in cases involving public education. Put bluntly, plaintiffs do not have a substantive due process right to teach children without being vaccinated against a dangerous infectious disease. Nor have plaintiffs been denied equal protection of the laws just because firefighters and police officers may elect to be regularly tested in lieu of vaccination; unlike those other City employees, teachers and paraprofessionals spend long periods of time with children indoors, while many of those children remain ineligible for vaccination. The vaccination mandate is not just a rational public health measure, but a crucial one, and it easily survives plaintiffs' two constitutional challenges. This Court should deny the motion for an injunction pending appeal.

OVERVIEW OF THE CASE

A. The City of New York’s vaccination mandate for public school employees who do not qualify for a religious or medical exemption

COVID-19 is a highly infectious and potentially deadly disease that spreads easily from person to person.¹ While New York City has been ravaged by the pandemic, with more than one million reported cases and nearly 35,000 deaths,² the clouds are beginning to break, with the availability of three vaccines shown to be safely and highly effective—one with full regulatory approval for adults and two authorized for emergency use.³ But the need for greater vaccination coverage remains urgent, especially with the emergence of more transmissible variants, expectations of a surge in infections in the fall, and disturbing increases in pediatric cases in areas with lower vaccination rates.⁴

¹ World Health Org., *Listings of WHO’s Response to COVID-19*, <https://perma.cc/C53U-RBCT> (captured Sept. 26, 2021).

² N.Y. Times, *Tracking Coronavirus in New York: Latest Map and Case Count*, <https://perma.cc/AKJ2-FMTL> (captured Sept. 26, 2021).

³ U.S. Food & Drug Administration, *COVID-19 Vaccines*, <https://perma.cc/YE6C-DG5S> (captured Sept. 26, 2021).

⁴ Moline HL, Whitaker M, Deng L, et al. *Effectiveness of COVID-19 Vaccines in Preventing Hospitalization Among Adults Aged ≥65 Years — COVID-NET, 13 States, February–April 2021*. MMWR Morb Mortal Wkly Rep 2021;70:1088-1093. DOI:

(cont’d on next page)

At the same time, our experiences over the past year and a half have underscored the importance of getting children back into schools.⁵ In September, the City’s public schools fully reopened for the 2021-2022 school year, with close adherence to CDC guidance on masking, social distancing, and other measures, to ensure that in-person learning occurs as safely as possible and with minimal disruptions.

After a vaccine received full regulatory approval, the Commissioner of the New York City Department of Health and Mental Hygiene ordered employees of the public school system to show proof of at least one dose of vaccination by September 27, 2021 (Declaration of Susan Paulson (“Paulson Decl.”), Ex. A). As the order noted, the CDC recommends that schoolteachers 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” (Paulson Decl., Ex. A at 2). Those insights apply with particular force to New York City: the City’s

<http://dx.doi.org/10.15585/mmwr.mm7032e3>; Declaration of Susan Paulson (“Paulson Decl.”), Ex. F.

⁵ See Office of New York State Comptroller, *NYC DOE Faces Significant Challenges in Closing COVID Achievement Gap* (Sept. 16, 2021), <https://perma.cc/LA93-MFRS>.

public school system serves around one million students, many of whom are from communities disproportionately affected by the pandemic and hundreds of thousands of whom are too young to be eligible to be vaccinated (*id.*). In short, the City's vaccination requirement is a vital public health measure designed to potentially save lives, protect public health, and promote public safety, while enabling our City's schoolchildren to receive the education they deserve (*id.*).

Supplementing the Commissioner's order, an arbitration award establishes procedures for exemptions, accommodations, and appeals (Paulson Decl., Ex. C at 7-14). Employees may seek an exemption from the vaccination mandate for religious or medical reasons. Otherwise, the arbitration award provides that employees who fail to submit proof of having received one dose of vaccination by September 27, 2021, are to be placed on unpaid leave with health insurance the following day (*id.* at 14-15). But an employee who submits proof of vaccination before November 30, 2021, will be able to return to work within a week (*id.*). And an employee who submits proof of vaccination thereafter, but before September 5, 2022, will be able to return to work within two weeks (*id.* at 18). In other words, employees can refuse to satisfy the vaccination

requirement for almost a year and still retain their positions and remain eligible to return (*id.*).

Employees who have not complied with the vaccine mandate by October 29, 2021, can opt to be separated from employment and continue to be eligible for health insurance through September 5, 2022 (*id.* at 17). But employees who have not complied with the vaccine mandate and have not applied for either the extended leave described above or separation by December 1, 2021, may be separated from their employment in accordance with the provisions of the governing collective bargaining agreements (*id.* at 18). And an employee who chooses to remain on unpaid leave until September 5, 2022, and who has not complied with the mandate by that date, will be deemed to have resigned (*id.*).

B. This lawsuit and the district court's denial of plaintiffs' motion for a preliminary injunction

Plaintiffs are four public school teachers and paraprofessionals who evidently did not seek a religious or medical exemption from the City's vaccination mandate. One plaintiff harbors a personal belief that the vaccines are unsafe; three others claim that they have antibodies from contracting COVID-19 in the past, even though the CDC recom-

mends vaccination for such individuals because they may be more than twice as likely as fully vaccinated people to get COVID-19 again.⁶

After bringing this lawsuit, plaintiffs moved the district court for a preliminary injunction enjoining enforcement of the mandate, arguing that the mandate violates substantive due process and equal protection of the laws (E.D.N.Y. ECF No. 2).⁷ The district court denied the motion, holding that plaintiffs were unlikely to succeed on their claims and that the balance of the equities weighed against them (2d Cir. ECF No. 2).

In rejecting plaintiffs' constitutional claims, the court concluded that plaintiffs could not establish a substantive due process violation because they have no constitutional right to work for the City in particular, let alone to do so unvaccinated when mandatory vaccination laws are hardly conscience-shocking and, indeed, have been upheld by the Supreme Court (*id.* at 4-6). The court rejected plaintiffs' equal protec-

⁶ CDC, *Frequently Asked Questions about COVID-19 Vaccination* (Sept. 24, 2021), <https://perma.cc/F3VY-WNW9>.

⁷ Plaintiffs also claimed that the mandate should be struck down as arbitrary or capricious under a state administrative review apparatus commonly referred to by the shorthand of Article 78, based on its place in the New York Civil Practice Law and Rules. But because the district court declined to exercise supplemental jurisdiction over that claim and plaintiffs do not rely on it in connection with this motion, we make no further mention of the claim in this memorandum.

tion claim because plaintiffs are not similarly situated to City employees who are allowed to submit to weekly testing in lieu of vaccination, because plaintiffs are in close contact with children for long hours, in congregate settings indoors, at a time when many children cannot be vaccinated (*id.* at 9-10).

In addressing the equities, the court acknowledged that plaintiffs may face difficulty finding another job at a school that does not require vaccination (*id.* at 7). But the court found any such concern outweighed by the advantages of vaccination in school settings, as recommended by the CDC (*id.* at 9). The court recognized that social distancing, mask wearing, and testing may not adequately protect unvaccinated children, particularly where some children will have preexisting conditions that make them especially vulnerable (*id.* at 10). And it recognized that scientific evidence suggests that any protection that may be afforded to some of the plaintiffs by antibodies obtained through past infections may not be as strong as that of vaccination (*id.* at 10-11).

ARGUMENT

THIS COURT SHOULD DENY THE MOTION FOR AN INJUNCTION PENDING APPEAL

Plaintiffs cannot satisfy the requirements for the extraordinary relief they seek. A party seeking an injunction pending appeal must establish (1) a likelihood of success on the merits; (2) irreparable harm absent an injunction; (3) no substantial injury to the non-moving parties; and (4) furtherance of the public interest. *See, e.g., In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). The third and fourth factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiffs fail to demonstrate any harm—much less irreparable harm—that would result absent an injunction during the pendency of their appeal. And the public interest weighs strongly against an injunction, which would bar the City from employing the most effective tool available to support the return to full in-person instruction for the nearly one million public school students who deserve a safe and sound education. And on the merits, plaintiffs’ substantive due process and equal protection claims are so deeply flawed that they have no chance of prevailing on this appeal.

A. This appeal can be resolved before plaintiffs risk experiencing job loss, and they can be made whole for any lost wages through money damages.

A showing of irreparable harm is “the single most important pre-requisite for the issuance of a preliminary injunction.” *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999). It requires plaintiffs to demonstrate an injury that is “actual and imminent,” “not remote or speculative.” *Dexter 345, Inc. v. Cuomo*, 663 F.3d 59, 63 (2d Cir. 2011). And economic injury does not constitute irreparable harm sufficient to justify the granting of a preliminary injunction. *Sperry Int’l Trade, Inc. v. Government of Israel*, 670 F.2d 8, 12 (2d Cir. 1982).

The harm plaintiffs allege is neither imminent nor irreparable. The harm asserted by plaintiffs is the potential loss of employment with the City (Appellants’ Emergency Motion for an Expedited Injunction Pending Appeal and Expedited Appeal and Briefing Schedule (“App. Mot.”) 8-9). But this harm is, quite plainly, not imminent. Plaintiffs have the option of retaining their positions for nearly an entire year, until early September 2022, while being placed on unpaid leave with healthcare (*see supra* at 7). And even if they decline this option, the soonest any steps would be taken to terminate their employment would

be December 1, 2021 (*id.*). This appeal can be resolved well before plaintiffs risk losing their jobs. The most plaintiffs have shown is a basis for expedited briefing.

Nor is the harm plaintiffs allege irreparable. This Court has recognized that, where “reinstatement and money damages could make appellees whole for any loss suffered during this period, their injury is plainly reparable and appellees have not demonstrated the type of harm entitling them to injunctive relief.” *Savage v. Gorski*, 850 F.2d 64, 68 (2d Cir. 1988). Plaintiffs have not made any showing that they would suffer irreparable harm as a result of being placed on unpaid leave while their appeal proceeds.⁸ And if plaintiffs were to prevail in their challenge to the vaccination mandate, they could seek an order requiring the City to make them whole for any period that they were placed on unpaid leave.

⁸ Plaintiffs have not even attempted to make a concrete showing of financial hardship under such circumstances. In any case, the Supreme Court has held that “an insufficiency of savings or difficulties in immediately obtaining other employment—external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself—will not support a finding of irreparable injury, however severely they may affect a particular individual.” *Sampson v. Murray*, 415 U.S. 61, 92 (1974).

There is simply no need here for an injunction pending appeal to protect plaintiffs' employment rights.

B. The broader interest in providing one million public schoolchildren with a safe and sound education overwhelms plaintiffs' personal preferences.

While plaintiffs fail to show they would suffer any irreparable harm while this appeal is being litigated, the public interest would be seriously undermined. Returning to in-person public education is crucially important, yet at the same time brings an enormous number of unrelated individuals into extended daily contact in an indoor setting during this continuing pandemic. A safe and effective COVID-19 vaccine that has received full regulatory approval is readily available, at no cost to recipients, but only for persons ages 16 and older.

Vaccinating employees in schools that serve hundreds of thousands of unvaccinated children is of the utmost importance. Plaintiffs, as teachers and paraprofessionals, are necessarily in close contact with children for long hours in indoor classrooms. Social distancing, mask wearing, and testing provide some protection, but vaccination provides more (Paulson Decl., Ex. A). That is precisely why the CDC has recom-

mended that teachers be vaccinated as soon as possible to facilitate safe in-class learning (*id.* at 2).

The prevalence of the Delta variant, and predictions of a surge of infections in the fall, has made the need for the most effective protection even more urgent, especially as pediatric cases rise in areas with lower vaccination rates (Paulson Decl., Exs. D, E, F). Enjoining the vaccination mandate even for a short period would seriously undermine the City's efforts to keep the largest school district in the country open and safe for the one million students who deserve a good public education and for the tens of thousands of staff who work there.

An injunction would also disrupt the reliance interests of caregivers who have made decisions about in-person learning based on the promise that employees would be vaccinated. Understandably, the Delta variant has caused an increase in concern among caregivers about in-person learning.⁹ In these circumstances, it is critical that caregivers be able to rely upon the health and safety protocols announced before the school year commenced.

⁹ N.Y Times, *N.Y.C.'s Challenge: Keeping 1 Million Students Safe Amid Delta* (Aug. 26, 2021), <https://perma.cc/7AUU-QFSG>.

Enjoining the City’s vaccination requirement is plainly not in the public interest and the balance of equities tips decidedly in favor of the City. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

C. Plaintiffs’ substantive due process and equal protection claims have no merit.

Plaintiffs are also certain to lose on the merits of the claims alleging violations of substantive due process and equal protection, further counseling against an injunction pending appeal.¹⁰

1. Plaintiffs do not have a substantive due process right to teach children unvaccinated.

“The first step in substantive due process analysis is to identify the constitutional right at stake.” *Kaluczky v. City of White Plains*, 57 F.3d 202, 211 (2d Cir. 1995). Next, plaintiffs must demonstrate that the state action was “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Hurd v. Fredenburgh*, 984 F.3d

¹⁰ Technically, plaintiffs must show they are likely to succeed on this appeal challenging the denial of their preliminary injunction, not their claims per se. The district court’s ruling is reviewed holistically for an abuse of discretion, and plaintiffs have not even argued—must less shown—an abuse of discretion in that sense. *See generally Zervos v. Verizon NY, Inc.*, 252 F.3d 163, 171 (2d Cir. 2001). For simplicity’s sake, we focus here on the merits of plaintiffs’ underlying constitutional claims.

1075, 1087 (2d Cir. 2021) (internal quotation marks and citation omitted). The interference with plaintiffs’ protected right must be “so shocking, arbitrary, and egregious that the Due Process Clause would not countenance it even were it accompanied by full procedural protection.” *Id.* (internal quotation marks and citation omitted).

Plaintiffs’ substantive due process challenge goes nowhere. More than a century ago, the Supreme Court held that mandatory vaccination laws do not offend “any right given or secured by the Constitution,” and the police power allows imposition of “restraints to which every person is necessarily subject for the common good.” *Jacobson v. Massachusetts*, 197 U.S. 11, 25-27 (1905). *Jacobson* remains good law on this core point.¹¹ *See, e.g., Phillips v. City of New York*, 775 F.3d 538, 542-43 (2d Cir. 2015) (finding substantive due process challenge to mandatory vaccination requirement for students “foreclosed” by *Jacobson*); *Caviezel v. Great Neck Pub. Schs.*, 500 F. App’x 16, 19 (2d Cir. 2012) (substantially the same). The substantive due process question here is far nar-

¹¹ Because plaintiffs raise no challenge under the First Amendment or other independent protections of the Bill of Rights, this case presents no question about whether and how *Jacobson* bears on constitutional analysis under those separate provisions.

rower and more clear-cut, as the challenged vaccination rule is simply a condition of active engagement in particular public employment that presents especially compelling reasons for requiring vaccination. Plaintiffs may have a right to practice their professions, but that does not mean they have the right to work unvaccinated in the City's public school system in the midst of a pandemic and potentially expose schoolchildren, many ineligible to be vaccinated themselves, to infection.

Plaintiffs' claims ring particularly hollow when considered alongside the long history of vaccination requirements applicable in educational settings. Students have been required to obtain vaccinations for certain infectious diseases for well over a century. Today, enrollment in public schools generally requires proof of vaccination against an array of infectious diseases.¹² The vaccination requirement here falls well within this longstanding tradition. We are fighting an ongoing pandemic involving a novel and evolving respiratory virus. Full regulatory approval has been extended only to vaccination of adults. Particularly under these conditions, it does not offend substantive due process to re-

¹² N.Y. City Dep't of Educ., *Immunization Requirements*, <https://perma.cc/7XUZ-DZUT> (captured Sept. 26, 2021).

quire those working in City schools to be vaccinated, absent grounds for religious or medical exemption.

The Court could stop there, but plaintiffs' core argument that the mandate bars them from pursuing their professions fails on its own terms. Again, plaintiffs are not even barred from working for the City's public school system (App. Mot. 5-7); they are welcome to report to work, they just cannot do so while setting their own terms of employment. But even putting that to one side, "[t]he Supreme Court, this Circuit, and the other Circuits addressing the issue have all indicated that the right of occupational choice is afforded Due Process protection only when a plaintiff is *completely prohibited* from engaging in his or her chosen profession." *Hu v. City of New York*, 927 F.3d 81, 102 (2d Cir. 2019) (quotations and citations omitted; emphasis added). Plaintiffs are hardly completely prohibited from working as teachers or paraprofessionals. If they prefer to remain unvaccinated rather than continue in their positions with the City, they are free to take their certifications and seek employment in any other public school system or private school in the State.

2. Plaintiffs’ equal protection claim fails considering the special risk that school employees present to children through regular and direct contact in indoor settings.

Absent a fundamental right to teach in the City’s public schools unvaccinated, plaintiffs’ equal protection claim is subject only to rational basis review.¹³ *See Windsor v. United States*, 699 F.3d 169, 196 (2d Cir. 2012). And this standard is easily satisfied. Plaintiffs claim they are being treated differently from firefighters and police officers, who may elect to undergo weekly testing for COVID-19 in lieu of vaccination. That is true. But unlike those firefighters and police officers, teachers and paraprofessionals like plaintiffs work in indoor classrooms, day after day, for the entire school day with children, many of whom are not yet able or eligible to be vaccinated. That is why the CDC has recommended vaccination for all school teachers and staff “as soon

¹³ Plaintiffs are mistaken in relying on *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 94-95 (2d Cir. 2003), to support their claim to a fundamental right to teach in the City’s public schools (App. Mot. 7). That case simply recognizes that the Privileges and Immunities Clause bars state and local governments from discriminating against non-residents in pursuit of commerce, a trade, or business venture in the absence of a justification for the disparate treatment. *Id.* at 95, 97. It hardly stands for the proposition that state and local governments may not make rational judgments about the terms of employment for their own employees.

as possible” to help schools safely resume (Paulson Decl., Ex. A at 2). It is entirely rational for the City to meet this particular risk.

Because plaintiffs cannot establish a likelihood of success on the merits, they cannot prevail on their motion for an injunction pending appeal. *Agudath Isr. v. Cuomo*, 983 F.3d 620, 631 (2d Cir. 2020).

CONCLUSION

This Court should deny plaintiffs' motion for an injunction pending appeal.

Dated: New York, NY
September 26, 2021

Respectfully submitted,

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of the City of New York*
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21-2343

**United States Court of Appeals
for the Second Circuit**

RACHEL MANISCALCO, EVELYN ARANCIO,
DIANA SALOMON, and CORINNE LYNCH,

Plaintiffs-Appellants,

against

NEW YORK CITY DEPARTMENT OF EDUCATION, MEISHA PORTER,
in her official capacity as Schools Chancellor of the New York
City Department of Education, CITY OF NEW YORK, BILL DE
BLASIO, DEPARTMENT OF HEALTH AND MENTAL HYGIENE, and
DAVID CHOKSHI, in his official capacity as the Commissioner of
the Department of Health and Mental Hygiene,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

**DECLARATION IN SUPPORT OF APPELLEES' OPPOSITION TO
APPELLANTS' MOTION FOR AN INJUNCTION PENDING APPEAL**

SUSAN PAULSON, declares, pursuant to 28 U.S.C. § 1746 and
subject to the penalties of perjury, that the following is true and correct.

1. I am an Assistant Corporation Counsel in the Office of the
Corporation Counsel of the City of New York, attorney for defendants-

appellees. I am familiar with the facts set forth herein. I respectfully submit this declaration in support of appellees' opposition to appellants' motion for an injunction pending appeal.

2. Attached here is the Declaration of Laura Minicucci in Support Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction, with all the accompanying exhibits, which was filed in the district court on September 16, 2021.

Dated: New York, New York
September 26, 2021

SUSAN PAULSON
Assistant Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

RACHEL MANISCALCO, EVELYN ARANCIO,
DIANA SALOMON, and CORINNE LYNCH,
individually, and for all others similarly situated,

Plaintiff,

20 Civ. 8464 (ER)

- against -

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, MEISHA PORTER, Schools Chancellor
of the New York City Department of Education, in her
official capacity, THE CITY OF NEW YORK, BILL
DE BLASIO, Mayor of New York City, in his official
capacity, DEPARTMENT OF HEALTH AND
MENTAL HYGIENE, and DAVE CHOKSHI,
Commissioner of the Department of Health and Mental
Hygiene, in his official capacity,

Defendants.

----- X

**DECLARATION OF
LORA MINICUCCI
IN SUPPORT OF
DEFENDANTS'
OPPOSITION TO
PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

LORA MINICUCCI, declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties
of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of Georgia M. Pestana,
Corporation Counsel of the City of New York, attorney for defendants in the above-captioned
action. I am familiar with the facts set forth herein. I respectfully submit this declaration in
support of defendants' motion to dismiss the amended complaint. This declaration is based on
personal knowledge and a review of the files maintained by this office.

2. Attached hereto as Exhibit A is a copy of the the Order of the Commissioner of Health and Metal Hygiene to Require COVID-19 dated August 24, 2021.

3. Attached hereto as Exhibit B is a copy of the Order of the Commissioner of Health and Metal Hygiene to Require COVID-19 dated September 15, 2021.

4. Attached hereto as Exhibit C is a copy of the arbitration decision in *Board of Education of the City School District of the City of New York and the United Federation of Teachers, Local 2, AFT, AFL-CIO, Re: Impact Bargaining*, Decision Dated September 10, 2021.

5. Attached hereto as Exhibit D is a copy of *Child Covid-19 Cases Rise in States Where Schools Opened Earliest*, Yoree Koh, Wall Street Journal, Sept. 5, 2021, <https://www.wsj.com/articles/child-covid-19-cases-rise-in-states-where-schools-opened-earliest-11630834201>, last accessed on September 15, 2021.

6. Attached hereto as Exhibit E is a copy of Covid Cases Rise Sharply Among Kids as School Year Starts, Ernie Mundell and Robin Foster, US News and World Reports, <https://www.usnews.com/news/health-news/articles/2021-09-03/covid-cases-rise-sharply-among-kids-as-school-year-starts>, last viewed on September 14, 2021.

7. Attached hereto as Exhibit F is a copy of *Children and COVID-19: State-Level Data Report*, American Academy of Pediatrics, also available at : <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>, lasted viewed on September 14, 2021.

8. Attached hereto as Exhibit G is a copy of *CDC – Frequently Asked Questions About the Covid-19 Vaccine*, also available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html> (“you should be vaccinated regardless of whether you already had COVID-19”), last visited on September 15, 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
September 16, 2021

/s/ Lora Minicucci
LORA MINICUCCI
Assistant Corporation Counsel

Exhibit A

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, AND OTHERS**

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 (“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 New York State has announced that, as of September 27, 2021 all healthcare workers in New York State, including staff at hospitals and long-term care facilities, including nursing homes, adult care, and other congregate care settings, will be required to be vaccinated against COVID-19 by Monday, September 27; 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

WHEREAS, in accordance with section 17-109(b) of such Administrative Code, the Department may adopt vaccination measures in order to most effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.07 of the Health Code, no person “shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual” or “fail to do any reasonable act or take any necessary precaution to protect human life and health;” 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 the New York City Department of Education (“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

WHEREAS, a system of vaccination for individuals working in school settings or other DOE buildings 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 July 21, 2021, I issued an order requiring staff in public healthcare and clinical settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing; and

WHEREAS, on August 10, 2021, I issued an order requiring staff providing City operated or contracted services in residential and congregate settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing;

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 or prior to beginning employment, all DOE staff must provide proof to the DOE that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
2. All City employees who work in-person in a DOE school setting or DOE building must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or

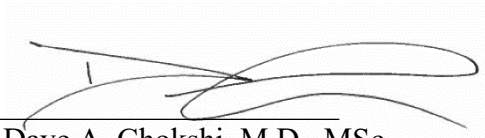
- c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
- 3. All staff of contractors of DOE and the City who work in-person in a DOE school setting or DOE building, including individuals who provide services to DOE students, must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

Self-employed independent contractors hired for such work must provide such proof to the DOE.

- 4. All employees of any school serving students up to grade 12 and any UPK-3 or UPK-4 program that is located in a DOE building who work in-person, and all contractors hired by such schools or programs to work in-person in a DOE building, must provide proof to their employer, or if self-employed to the contracting school or program, no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
- 5. For the purposes of this Order:
 - a. “DOE staff” means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.
 - b. “Fully vaccinated” means at least two weeks have passed after a person received a single dose of a one-dose series, or the second dose of a two-dose series, of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.
 - c. “DOE school setting” includes any indoor location, including but not limited to DOE buildings, where instruction is provided to DOE students in public school kindergarten through grade 12, including residences of pupils receiving home instruction and places where care for children is provided through DOE’s LYFE program.

- d. “Staff of contractors of DOE and the City” means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school setting or other DOE building, and includes individuals working as independent contractors.
 - e. “Works in-person” means an individual spends any portion of their work time physically present in a DOE school setting or other DOE building. It does not include individuals who enter a DOE school setting or other DOE location only to deliver or pickup items, unless the individual is otherwise subject to this Order. It also does not include individuals present in DOE school settings or DOE buildings to make repairs at times when students are not present in the building, unless the individual is otherwise subject to this Order.
6. 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: August 24th, 2021



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

Exhibit B

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, VISITORS, AND OTHERS**

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 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 pre-school to grade 12 schools, following public health science; and

WHEREAS the New York City Department of Education (“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

WHEREAS, a system of vaccination for individuals working in school settings, including DOE buildings and charter school buildings, 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 an order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in a DOE school setting or DOE building, which was amended on September 12, 2021; and

WHEREAS, unvaccinated visitors to public school settings could spread COVID-19 to students and such individuals are often present in public school settings and DOE buildings;

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, to

RESCIND and RESTATE my September 12, 2021 Order relating to COVID-19 vaccination for DOE employees, contractors, visitors, and others; and

I hereby order that:

1. No later than September 27, 2021, or prior to beginning employment, the following individuals must provide proof of vaccination as described below:
 - a. DOE staff must provide proof of vaccination to the DOE.
 - b. City employees who work in-person in a DOE school setting, DOE building, or charter school setting must provide proof of vaccination to their employer.
 - c. Staff of contractors of DOE or the City, as defined below, must provide proof of vaccination to their employer, or if self-employed, to the DOE.
 - d. Staff of any charter school serving students up to grade 12, and staff of contractors hired by charter schools co-located in a DOE school setting to work in person in a DOE school setting or DOE building, must provide proof of vaccination to their employer, or if self-employed, to the contracting charter school.

2. An employer to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must demonstrate proof of compliance with this Order, including making such records immediately available to the Department upon request.
3. Beginning September 13, 2021, all visitors to a DOE school building must show prior to entering the building that they have:
 - a. Been fully vaccinated; or
 - b. Received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
 - c. Received the first dose of a two-dose vaccine.
4. Public meetings and hearings held in a DOE school building must offer individuals the opportunity to participate remotely in accordance with Part E of Chapter 417 of the Laws of 2021.
5. For the purposes of this Order:

“Charter school setting” means a building or portion of building where a charter school provides instruction to students in pre-kindergarten through grade 12 that is not collocated in a DOE building.

“DOE school setting” includes any indoor location where instruction is provided to DOE students in public school pre-kindergarten through grade 12, including but not limited to locations in DOE buildings, and including residences of students receiving home instruction and places where care for children is provided through DOE’s LYFE program. DOE school settings include buildings where DOE and charter schools are co-located.

“DOE staff” means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Proof of vaccination” means proof that an individual:

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

“Staff of contractors of DOE or the City” means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school

setting, a DOE building, or a charter school, and includes individuals working as independent contractors.

“Visitor” means an individual, not otherwise covered by Paragraph 1 of this Order, who will be present in a DOE school building, except that “visitor” does not include:

- a. Students attending school or school-related activities in a DOE school setting;
- b. Parents or guardians of students who are conducting student registration or for other purposes identified by DOE as essential to student education and unable to be completed remotely;
- c. Individuals entering a DOE school building for the limited purpose to deliver or pick up items;
- d. Individuals present in a DOE school building to make repairs at times when students are not present in the building;
- e. Individuals responding to an emergency, including police, fire, emergency medical services personnel, and others who need to enter the building to respond to or pick up a student experiencing an emergency;
- f. Individuals entering for the purpose of COVID-19 vaccination;
- g. Individuals who are not eligible to receive a COVID-19 vaccine because of their age; or
- h. Individuals entering for the purposes of voting or, pursuant to law, assisting or accompanying a voter or observing the election.

“Works in-person” means an individual spends any portion of their work time physically present in a DOE school setting, DOE building, or charter school setting. It does not include individuals who enter such locations for the limited purpose to deliver or pick up items unless the individual is otherwise subject to this Order. It also does not include individuals present such locations to make repairs at times when students are not present in the building unless the individual is otherwise subject to this Order.

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

Dated: September 15, 2021



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

Exhibit C



SCHEINMAN
ARBITRATION & MEDIATION SERVICES

September 10, 2021

Via E-Mail Only

Renee Campion, Commissioner
Steven H. Banks, Esq.
New York City Office of Labor Relations
The Office of Labor Relations
22 Cortlandt Street, 14th Floor
New York, NY 10007

Alan M. Klinger, Esq.
Stroock & Stroock & Lavan, L.L.P.
180 Maiden Lane, 33rd Floor
New York, NY 10038

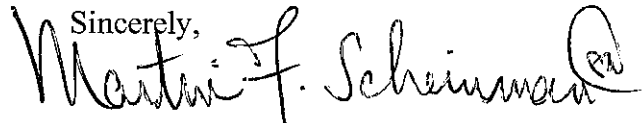
Beth Norton, Esq.
Michael Mulgrew, President
United Federation of Teachers
52 Broadway, 14th Floor
New York, NY 10004

**Re: Board of Education of the City School District of the City of New York
and
United Federation of Teachers, Local 2, AFT, AFL-CIO
(Impact Bargaining)**

Dear Counsel:

Enclosed please find my Award in the above referenced matter.

Thank you.

Sincerely,


MFS/sk
BOE.UFT.Impact Bargaining.awd

-----	X	
In the Matter of the Arbitration		
	X	
between		
	X	
BOARD OF EDUCATION OF THE CITY		Re: Impact Bargaining
SCHOOL DISTRICT OF THE CITY OF	X	
NEW YORK		
	X	
"Department"		
	X	
-and-		
	X	
UNITED FEDERATION OF TEACHERS,		
LOCAL 2, AFT, AFL-CIO	X	
"Union"	X	
-----	X	

APPEARANCES

For the Department

Renee Campion, Commissioner of Labor Relations
Steven H. Banks, Esq., First Deputy Commissioner
and General Counsel of Labor Relations

For the Union

STROOCK & STROOCK & LAVAN, L.L.P.
Alan M. Klinger, Esq.

Beth Norton, Esq., UFT General Counsel
Michael Mulgrew, UFT President

BEFORE: Martin F. Scheinman, Esq., Arbitrator

BACKGROUND

The Union ("Union" or "UFT") protests the Department of Education's ("Department" or "DOE") failure to reach agreement on the impact of its decision mandating all employees working in Department buildings show proof they started the Covid-19 vaccination protocols by September 27, 2021. The Union contends the Department failed to adequately provide, among other things, for those instances where employees have proof of a serious medical condition making the vaccine a danger to their health, as well as for employees who have a legitimate religious objection to vaccines.

Most of the basic facts are not in dispute.

For those in the New York City ("NYC" or "City") metropolitan area, we are now in the 18th month of the Covid-19 pandemic. During that time, we have seen substantial illness and loss of life. There have been periods of significant improvement and hope, but sadly, we have seen resurgence with the Delta variant. Throughout this period, NYC and its municipal unions have worked collaboratively to provide needed services for the City's 8.8 million residents in as safe an environment as possible. Yet, municipal employees have often borne great risk. The Department and the UFT are no exception. The DOE and the UFT immediately moved to remote instruction and then later a hybrid model of both in-person and remote learning for the 2020-2021 school year. Educators at all levels strove to deliver the best experience possible under strained circumstances. For this

coming school year, both the DOE and the UFT have endeavored to return, as much as possible, to in-person learning. They have developed protocols regarding masking and distancing to effectuate a safe environment for the City's students and educators.

To this end, the Delta resurgence has complicated matters. In recognition of increased risk, there have been various policies implemented at City agencies and other municipal entities. Mayor de Blasio in July 2021 announced a "Vaccine-or-Test" mandate which essentially requires the City workforce, including the UFT's educators, either to be vaccinated or undergo weekly testing for the Covid-19 virus effective September 13, 2021.

Most relevant to this matter, on August 23, 2021, the Mayor and the NYC Commissioner of Health and Mental Hygiene, David A. Chokshi, MD, announced a new policy for those workforces in NYC DOE buildings. Those employees would be subject to a "Vaccine Only" mandate. That is, such employees would need to show by September 27, 2021, they had at least started the vaccination protocol or would not be allowed onto DOE premises, would not be paid for work and would be at risk of loss of job and benefits. This mandate was reflected in an Order of Commissioner Chokshi, dated August 24, 2021. That Order, by its terms, did not expressly provide for exceptions or accommodations for those with medical contraindications to vaccination or sincerely-held religious objections to inoculation. Nor did it address matters of due process with regard to job and benefits protection.

The UFT promptly sought to bargain the impact and implementation of the Vaccine Only mandate. A number of discussions were had by the parties but important matters remained unresolved.

On September 1, 2021, the UFT filed a Declaration of Impasse with the Public Employment Relations Board ("PERB") as to material matters. The City/DOE did not challenge the statement of impasse and PERB appointed me to mediate the matters. Given the exigencies of the imminent start of the school year and the coming of the September 27, 2021, mandate, together with the importance of the issues involved to the workforce, mediations sessions were held immediately on September 2, 3, 4 and 5, 2021, with some days having multiple sessions. Progress was made, and certain tentative understandings were reached, but significant matters remained unresolved. By agreement of the parties, the process moved to arbitration. They asked I serve as arbitrator.¹

Arbitration sessions were held on September 6 and 7, 2021. During the course of the hearings, both sides were given full opportunity to introduce evidence and argument in support of their respective positions. They did so. Both parties made strenuous and impassioned arguments reflecting their viewpoints on this entire issue.

During the course of these hearings, I made various interim rulings concerning the impact of the "Vaccine Only" mandate. I then

¹ My jurisdiction is limited to the issues raised during impact bargaining and not with regard to the decision to issue the underlying "Vaccine Only" order.

directed the parties to draft language reflecting those rulings. Even though I am very familiar with the language of the current Collective Bargaining Agreement, as well as the parties' relationship since I am a member of their permanent arbitration panel and have served as a fact-finder and mediator during several rounds of bargaining, I concluded the parties are more familiar with Department policy and how leave and entitlements have been administered in accordance with prior agreements. As such, my rulings reflect both the understandings reached during the negotiations prior to mediation, those reached in the mediation process and the parties' agreed upon language in response to my rulings. All are included, herein.

I commend the parties for their seriousness of purpose and diligence in addressing these complicated matters. The UFT made clear it supports vaccination efforts and has encouraged its members to be vaccinated. Nonetheless, as a Union, it owes a duty to its members to ensure their rights are protected. The City/DOE demonstrated recognition of the importance of these issues, particularly with regard to employees' legitimate medical or religious claims. I appreciate both parties' efforts in meeting the tight timeline we have faced and the professionalism they demonstrated serving the citizens of the City and what the million plus students deserved. They have invested immense effort to insure such a serious issue was litigated in such a thoughtful way.

Yet, in the end, it falls to me, as Arbitrator, to arrive at a fair resolution of the matters at hand.

This matter is one of the most urgent events I have been involved with in my forty (40) plus years as a neutral. The parties recognized the complexity of the issues before me, as well as the magnitude of the work that lies ahead to bring this conflict to completion in a timely manner. For this reason, they understood and accepted the scope and complexity of this dispute could not be handled by me alone. They agreed my colleagues at Scheinman Arbitration and Mediation Services ("SAMS") would also be involved.

I want to thank my colleagues at SAMS, especially Barry J. Peek, for their efforts and commitment to implementing the processes to resolve this matter. This undertaking could not be accomplished by any single arbitrator.

Opinion

After having carefully considered the record evidence, and after having the parties respond to countless inquiries. I have requested to permit me to make a final determination, I make the rulings set forth below. While some of the language has been drafted, initially, by the parties in response to my rulings, in the end the language set forth, herein, is mine alone. I hereby issue the following Award:

I. Exemption and Accommodation Requests & Appeal Process

As an alternative to any statutory reasonable accommodation

process, the City, the Board of Education of the City School District for the City of New York (the "DOE"), and the United Federation of Teachers, Local 2, AFT, AFL-CIO (the "UFT"), (collectively the "Parties") shall be subject to the following Expedited Review Process to be implemented immediately for full-time staff, H Bank and non-pedagogical employees who work a regular schedule of twenty (20) hours per week or more inclusive of lunch, including but not limited to Occupational Therapists and Physical Therapists, and Adult Education teachers who work a regular schedule of twenty (20) or more hours per week. This process shall only apply to (a) religious and medical exemption requests to the mandatory vaccination policy, and (b) medical accommodation requests where an employee is unable to mount an immune response to COVID-19 due to preexisting immune conditions and the requested accommodation is that the employee not appear at school. This process shall be in place for the 2021-2022 school year and shall only be extended by mutual agreement of the Parties.

Any requests to be considered as part of this process must be submitted via the SOLAS system no later than Monday, September 20, 2021, by 5:00 p.m.

A. Full Medical Exemptions to the vaccine mandate shall only be considered where an employee has a documented contraindication such that an employee cannot receive any of the three (3) authorized vaccines (Pfizer, Moderna, J&J)—with contraindications delineated in CDC clinical

considerations for COVID-19 vaccination. Note that a prior immediate allergic reaction to one (1) type of vaccine will be a precaution for the other types of vaccines, and may require consultation with an allergist.

B. Temporary Medical Exemptions to the vaccine mandate shall only be based on the following valid reasons to defer or delay COVID-19 vaccination for some period:

- o Within the isolation period after a COVID-19 infection;
- o Within ninety (90) days of monoclonal antibody treatment of COVID-19;
- o Treatments for conditions as delineated in CDC clinical considerations, with understanding CDC guidance can be updated to include new considerations over time, and/or determined by a treating physician with a valid medical license responsible for the immunosuppressive therapy, including full and appropriate documentation that may warrant temporary medical exemption for some period of time because of active therapy or treatment (e.g., stem cell transplant, CAR T-cell therapy) that would temporarily interfere with the patient's ability to respond adequately to vaccination;
- o Pericarditis or myocarditis not associated with COVID-19 vaccination or pericarditis or myocarditis associated with COVID-19 vaccination.

Length of delay for these conditions may vary, and the employee must get vaccinated after that period unless satisfying the criteria for a Full Medical Exemption described, above.

- C. Religious exemptions for an employee to not adhere to the mandatory vaccination policy must be documented in writing by a religious official (e.g., clergy). Requests shall be denied where the leader of the religious organization has spoken publicly in favor of the vaccine, where the documentation is readily available (e.g., from an online source), or where the objection is personal, political, or philosophical in nature. Exemption requests shall be considered for recognized and established religious organizations (e.g., Christian Scientists).
- D. There are cases in which, despite an individual having sought and received the full course of the vaccination, he or she is unable to mount an immune response to COVID-19 due to preexisting immune conditions. In these circumstances, each individual case shall be reviewed for potential accommodation. Medical accommodation requests must be documented in writing by a medical doctor.
- E. The initial determination of eligibility for an exemption or accommodation shall be made by staff in the Division of Human Capital in the Office of Medical, Leaves and Benefits; the Office of Equal Opportunity; and Office of Employee

Relations. These determinations shall be made in writing no later than Thursday, September 23, 2021, and, if denied, shall include a reason for the denial.

F. If the employee wishes to appeal a determination under the identified criteria, such appeal shall be made in SOLAS to the DOE within one (1) school day of the DOE's issuance of the initial eligibility determination. The request for appeal shall include the reason for the appeal and any additional documentation. Following the filing of the appeal, any supplemental documentation may be submitted by the employee to the Scheinman Arbitration and Mediation Services ("SAMS") within forty eight (48) hours after the filing of the appeal. If the stated reason for denial of a medical exemption or accommodation request is insufficient documentation, the employee may request from the arbitrator and, upon good cause shown, the arbitrator may grant an extension beyond forty eight (48) hours and permit the use of CAR days after September 27, 2021, for the employee to gather the appropriate medical documentation before the appeal is deemed submitted for determination.

G. A panel of arbitrators identified by SAMS shall hear these appeals, and may request the employee or the DOE submit additional documentation. The assigned arbitrator may also request information from City and/or DOE Doctors as part of the review of the appeal documentation. The assigned

arbitrator, at his or her discretion, shall either issue a decision on the appeal based on the documents submitted or hold an expedited (virtual) factual hearing. If the arbitrator requests a factual hearing, the employee may elect to have a union representative present but neither party shall be required to be represented by an attorney at the hearing. The expedited hearing shall be held via Zoom telecommunication and shall consist of brief opening statements, questions from the arbitrator, and brief closing statements. Cross examination shall not be permitted. Any documentation submitted at the arbitrator's request shall be provided to the DOE at least one (1) business day before the hearing or the issuance of the written decision without hearing.

H. Appeal decisions shall be issued to the employee and the DOE no later than Saturday September 25, 2021. Appeal decisions shall be expedited without full Opinion, and final and binding.

I. While an appeal is pending, the exemption shall be assumed granted and the individual shall remain on payroll consistent with Section K below. However, if a larger number of employees than anticipated have a pending appeal as of September 27, 2021, as determined by SAMS, SAMS may award different interim relief consistent with the parties' intent. Those employees who are vaccinated and have applied for an

accommodation shall have the ability to use CAR days while their application and appeal are pending. Should the appeal be granted, these employees shall be reimbursed any CAR days used retroactive to the date of their initial application.

J. The DOE shall cover all arbitration costs from SAMS under this process. To the extent the arbitrator requests additional medical documentation or information from the DOE, or consultation with City and/or DOE Doctors, arranging and paying for such documentation and/or consultation shall be the responsibility of the DOE.

K. An employee who is granted a medical or religious exemption or a medical accommodation under this process and within the specific criteria identified above shall be permitted the opportunity to remain on payroll, but in no event required/permitted to enter a school building while unvaccinated, as long as the vaccine mandate is in effect. Such employees may be assigned to work outside of a school building (e.g., at DOE administrative offices) to perform academic or administrative functions as determined by the DOE while the exemption and/or accommodation is in place. For those with underlying medical issues granted an accommodation under Section I(D), the DOE will make best efforts to ensure the alternate work setting is appropriate for the employee's medical needs. The DOE shall make best efforts to make these assignments within the same borough as

the employee's current school, to the extent a sufficient number of assignments exist in the borough. Employees so assigned shall be required to submit to COVID testing twice per week for the duration of the assignment.

L. The process set forth, herein, shall constitute the exclusive and complete administrative process for the review and determination of requests for religious and medical exemptions to the mandatory vaccination policy and accommodation requests where the requested accommodation is the employee not appear at school. The process shall be deemed complete and final upon the issuance of an appeal decision. Should either party have reason to believe the process set forth, herein, is not being implemented in good faith, it may bring a claim directly to SAMS for expedited resolution.

II. Leave

A. Any unvaccinated employee who has not requested an exemption pursuant to Section 1, or who has requested an exemption which has been denied, may be placed by the DOE on leave without pay effective September 28, 2021, or upon denial of appeal, whichever is later, through November 30, 2021. Such leave may be unilaterally imposed by the DOE and may be extended at the request of the employee consistent with Section III(B), below. Placement on leave without pay for these reasons shall not be considered a disciplinary action for any purpose.

- B. Except as otherwise noted, herein, this leave shall be treated consistent with other unpaid leaves at the DOE for all purposes.
- C. During such leave without pay, employees shall continue to be eligible for health insurance. As with other DOE leaves without pay, employees are prohibited from engaging in gainful employment during the leave period.
- D. Employees who become vaccinated while on such leave without pay and provide appropriate documentation to the DOE prior to November 30, 2021, shall have a right of return to the same school as soon as is practicable but in no case more than one (1) week following notice and submission of documentation to the DOE.
- E. Pregnancy/Parental Leave
 - i. Any soon-to-be birth mother who starts the third trimester of pregnancy on or before September 27, 2021, (e.g. has a due date no later than December 27, 2021), may commence UFT Parental Leave prior to the child's birth date, but not before September 27, 2021.
 - ii. No documentation shall be necessary for the early use of Parental Leave, other than a doctor's written assertion the employee is in her third trimester as of September 27, 2021.
 - iii. Eligible employees who choose to start Parental Leave prior to the child's birth date, shall be required to first use CAR days until either: 1) they exhaust CAR/sick days,

at which point the Parental Leave shall begin, or 2) they give birth, at which point they shall be treated as an approved Parental Leave applicant for all purposes, including their prerogative to use additional CAR days prior to the commencement of Parental Leave.

- iv. Eligible employees who have a pregnancy disability or maternity disability outside of the regular maternity period may, in accordance with existing rules, borrow CAR/sick days and use a Grace Period. This eligibility to borrow CAR/sick days does not apply to employees during the regular maternity recovery period if they have opted to use Parental Leave.
- v. In the event an eligible employee exhausts CAR/sick days and parental leave prior to giving birth, the employee shall be placed on a leave without pay, but with medical benefits at least until the birth of the child. As applicable, unvaccinated employees may be placed in the leave as delineated in Section II(A).
- vi. If not otherwise covered by existing Family Medical Leave Act ("FMLA") or leave eligibility, an employee who takes Parental Leave before the birth of the child shall be eligible to be on an unpaid leave with medical benefits for the duration of the maternity recovery period (i.e., six weeks after birth or eight weeks after a birth via C-Section)

vii. All other eligibility and use rules regarding UFT Parental Leave as well as FMLA remain in place.

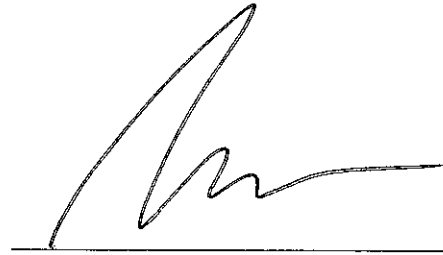
III. Separation

A. During the period of September, 28, 2021, through October 29, 2021, any employee who is on leave without pay due to vaccination status may opt to separate from the DOE. In order to separate under this Section and receive the commensurate benefits, an employee must file a form created by the DOE which includes a waiver of the employee's rights to challenge the employee's involuntary resignation, including, but not limited to, through a contractual or statutory disciplinary process. If an employee opts to separate consistent with this Section, the employee shall be eligible to be reimbursed for unused CAR days on a one (1) for one (1) basis at the rate of 1/200th of the employee's salary at departure per day, up to 100 days, to be paid following the employee's separation with documentation including the general waiver and release. Employees who elect this option shall be deemed to have resigned involuntarily effective on the date contained in the general waiver as determined by the DOE, for non-disciplinary reasons. An employee who separates under this Section shall continue to be eligible for health insurance through September 5, 2022, unless they are eligible for health insurance from another source (e.g., a spouse's coverage or another job).

- B. During the period of November 1, 2021, through November 30, 2021, any employee who is on leave without pay due to vaccination status may alternately opt to extend the leave through September 5, 2022. In order to extend this leave pursuant to this Section, and continue to receive the commensurate benefits, an employee must file a form created by the DOE which includes a waiver of the employee's rights to challenge the employee's voluntary resignation, including, but not limited to, through a contractual or statutory disciplinary process. Employees who select this option shall continue to be eligible for health insurance through September 5, 2022. Employees who comply with the health order and who seek to return from this leave, and so inform the DOE before September 5, 2022, shall have a right to return to the same school as soon as is practicable but in no case more than two (2) weeks following notice to the DOE. Existing rules regarding notice of leave intention and rights to apply for other leaves still apply. Employees who have not returned by September 5, 2022, shall be deemed to have voluntarily resigned.
- C. Beginning December 1, 2021, the DOE shall seek to unilaterally separate employees who have not opted into separation under Sections III(A) and III(B). Except for the express provisions

contained, herein, all parties retain all legal rights at all times relevant, herein.

September 10, 2021.

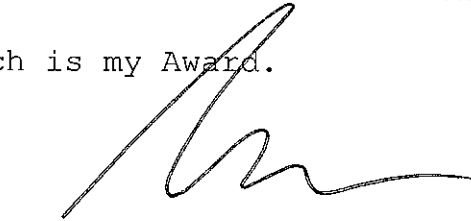


Martin F. Scheinman, Esq.
Arbitrator

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, MARTIN F. SCHEINMAN, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

September 10, 2021.



Martin F. Scheinman, Esq.
Arbitrator

Exhibit D

- [U.S. EDUCATION](#)

Child Covid-19 Cases Rise in States Where Schools Opened Earliest

Number of infections climbed in states where school has been in session for weeks; thousands of students see closures and quarantines



Most schools in Mississippi opened in early August, and since then nearly 14,000 students have tested positive for Covid-19. An elementary school in Summit, Miss.

PHOTO: MATT WILLIAMSON/THE ENTERPRISE-JOURNAL/ASSOCIATED PRESS

By Yoree Koh, Sept. 5, 2021 5:30 am ET

The recent spread of [the highly contagious Delta variant](#) has thrown back-to-school plans into disarray, temporarily driving tens of thousands of students back to virtual learning or pausing instruction altogether.

Since the school year kicked off in late July, at least 1,000 schools across 31 states have closed because of Covid-19, according to Burbio, a Pelham, N.Y., data service that is monitoring school closures at 1,200 districts nationwide, including the 200 largest.

The shutdowns are hitting classrooms especially hard in the Deep South, where most schools were among the first to open, a possible warning of what's to come as the rest of the nation's students start school this month.

In Mississippi, 13,715 [students have tested positive for Covid-19](#) since most schools inaugurated the new academic year in early August, sending more than 20,000 students into quarantine for each of the past three weeks, as of Aug. 31, according to the state health department. In New Mexico, nearly 10% of the state's 317,000 students have spent time in quarantine, state data show. And in Georgia, more than half of the state's outbreaks for the week ended Aug. 27 were linked to schools, according to the state health department.



The first day of school for Hillsborough County, Fla., students was Aug. 10. The county school board voted Aug. 18 to implement a 30-day mask mandate.

PHOTO: MARTHA ASECIO-RHINE/TAMPA BAY TIMES/ZUMA PRESS

Many school systems are reluctant to release contingency plans and [are instead forging ahead with solutions](#) that, when possible, keep classrooms open amid outbreaks, mass quarantines and acute staff shortages. School administrators are responding to the sporadic and unpredictable outbreaks with measures like new masking mandates, frequent testing and vaccine mandates for employees. Some say they hope a vaccine for children under 12 happens soon.

“We’re not scared of the future necessarily,” said Cristen Maddux, the spokeswoman for Indian River County School District in Florida, which has temporarily shut two elementary schools. “The closures have gone very smoothly, and we’re just going to take it one day at a time.”

It is difficult to assess precisely how badly schools have been hit by the virus, partly because of variations in data reporting.

But according to an analysis of the available data from state health departments, the [number of infections in school-age children](#) has climbed more rapidly in states where students have been back in school for weeks.

Average daily new cases among school-age children grew at faster rates last month in all 20 states where schools opened in late July and early August, as compared with the states where schools opened later. Half of those states, which include Georgia, Indiana, South Carolina and Louisiana, have seen record rates of new daily infections among children and teens since school started, according to [data from the COVKID Project](#), a program of the Women’s Institute for Independent Social Enquiry that has been tracking and compiling U.S. Covid-19 infection data in children and teens from state public health departments.

[A study released by the CDC last week](#) illustrates how easily the Delta variant can rip through a school when safety protocols like masking aren’t followed: At a California elementary school, an unvaccinated, unmasked and infected teacher spread the virus to more than half of the students in the teacher’s immediate classroom in late May. The teacher also infected six students in a separate grade, and another four parents and four

siblings of students. In all, contact with one infected teacher led to 26 more cases in the school community.



Students at Hollywood High School in Los Angeles in August.

PHOTO: BING GUAN/BLOOMBERG NEWS

The CDC recommends the use of masks indoors for all students and staff, regardless of vaccination status.

In Florida, which is experiencing its third surge since the pandemic began and where [some schools have been battling](#) Republican Gov. Ron DeSantis's ban on mask mandates, the average daily rate at which people age 19 and younger tested positive was the highest in the country for the week ended Aug. 27, according to the COVKID Project. Tennessee, where schools opened in early August and mask mandates are banned in schools, recorded the second-highest rate of average daily kid cases nationwide for the same week.

The increase in cases among younger people is keeping thousands of Florida students and staff at home. Hillsborough County Public Schools, which encompasses Tampa, has

logged over 7,300 positive cases since Aug. 2, forcing almost 4% of students and staff to either isolate or quarantine due to exposure as of Friday, [according to the district's dashboard](#). The county school board voted Aug. 18 to implement a 30-day mask mandate with more limited opt-out options for students in response to the growing number of cases.

Indian River County School District, located about two hours north of Boca Raton and which serves 15,500 public school students, suffered significant blows since reopening last month. Two teachers who had Covid-19 died within about a week of one another. Around the same time, a shortage of teachers due to [high staff-infection rates](#) temporarily closed two elementary schools, a district spokeswoman said. On Aug. 24, the board voted to require masks for a two-week trial period.

Rising infections have led at least two-dozen districts in Texas to temporarily close some or all schools, according to Burbio. The number of positive student cases reported on campuses statewide totaled 27,353 for the week ended Aug. 29, up 51% from the previous week, [according to the state department of health services](#).

Iowa, Tennessee, South Carolina and Utah have banned or curtailed school mask requirements. Five other states—Oklahoma, Florida, Texas, Arkansas and Arizona—had prohibited school-masking requirements as well but they have since been overturned by the courts or aren't being enforced.

Aaron Baker, who was fully vaccinated in March, felt a cough coming on behind his cloth mask as he was teaching his 12th grade government class in Oklahoma's Putnam City Schools on Aug. 20, the first time he had taught a full week of in-person classes since the pandemic began. He tested positive for Covid-19 that day.

"That's all it took—five days," Mr. Baker said. The 44-year-old teacher said a third of his students had been donning masks in his classroom. When Mr. Baker returned to school last Tuesday, the school was scrambling for staff and half of his students were out due to infection or exposure.

The Delta variant has inundated some schools even in states and districts that have had strict masking policies in place. In New Mexico, where masks are required in school

buildings, school transportation and school-sponsored events, 1,908 students tested positive in August—more than all the positive student cases combined in 2021 so far.

One way to minimize mass closures and quarantines is the “test and stay” protocol deployed in Massachusetts in which asymptomatic people exposed to a confirmed case take rapid tests daily to monitor for infection rather than be automatically confined to their homes, said Elizabeth Stuart, the associate dean for education at the Johns Hopkins Bloomberg School of Public Health.

“I think that’s the kind of creative and technological solution that we’re going to need,” said Dr. Stuart, “because that balances the Covid risk with the desire to keep kids in in-person learning.”

Corrections & Amplifications

A program of the Women’s Institute for Independent Social Enquiry has been tracking and compiling U.S. Covid-19 infection data. An earlier version of this article incorrectly said the name is the Women’s Institute for Independent Social inquiry. (Corrected on Sept. 5.)

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Exhibit E

Virtual Event: Healthcare of Tomorrow »

Home / News / Health News

COVID Cases Rise Sharply Among Kids as School Year Starts

Sept. 3, 2021



By Ernie Mundell and Robin Foster HealthDay Reporters



(HEALTHDAY)

FRIDAY, Sept. 3, 2021 (HealthDay News) -- As the school year gets underway across the United States, new data shows that coronavirus cases among children are climbing.

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Since the pandemic began, children have represented 14.8% of total cases, but for the week ending Aug. 26, that percentage jumped to 22.4%, according to the [American Academy of Pediatrics](#).

While child COVID-19 cases declined in early summer, they have "increased exponentially" recently, with more than a five-fold increase in the past month, according to the academy. Child cases went from about 38,000 the week ending July 22 to more than 200,000 in the last week.

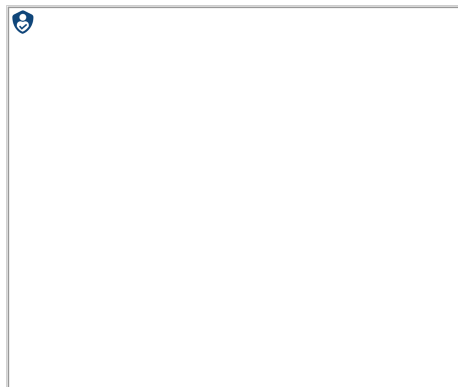
That rate was well above the average that has been seen throughout the pandemic, and the trend is concerning as the Delta variant may pose greater danger to children, most of whom are not yet eligible for the COVID-19 vaccines.

The academy collected COVID-19 data from 49 states, New York City, Puerto Rico and Guam. Overall, the rate of child COVID-19 cases as of Aug. 26 was 6,374 cases per 100,000 children in the population, according to the AAP.

Twenty states reported more than 8,000 cases per 100,000. Tennessee, South Carolina, Rhode Island, North Dakota, Arkansas and Mississippi had the highest rates of child cases per 100,000 kids, according to the AAP data.

There was one bit of good news in the statistics.

"At this time, it appears that severe illness due to COVID-19 is uncommon among children," the AAP report concluded. "However, there is an urgent need to collect more data on longer-term impacts of the pandemic on children, including ways the virus may harm the long-term physical health of infected children, as well as its emotional and mental health effects."



At this time, the U.S. Centers for Disease Control and Prevention recommends universal indoor masking by all students, staff, teachers and visitors to K-12 schools – regardless of vaccination status.

"I can tell you that most of the places where we're seeing surges and outbreaks are in places that are not implementing our current guidance," CDC Director Dr. Rochelle Walensky said recently, adding that it's not hospitalizations that are spiking, but number of cases, *CBS News* reported.



the adults around them to be vaccinated, *CBS News* reported.

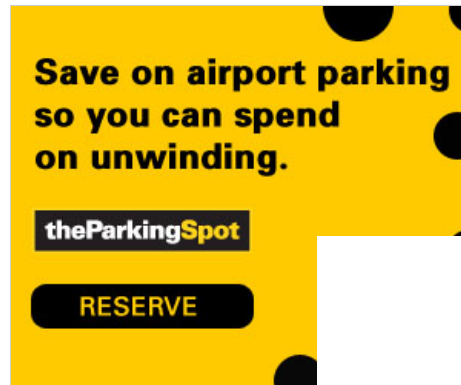
But the governors of Texas and Florida have threatened to punish districts that implement mask mandates in schools, though many districts are defying their orders.

On the other side, the [U.S. Department of Education](#) announced it is investigating five states – Iowa, Oklahoma, South Carolina, Tennessee and Utah – over concerns that their mask mandate bans could leave students with disabilities and underlying health conditions more vulnerable to COVID-19.

"Masks save lives and reduce the transmission of COVID-19," Dr. Leslie Diaz, an infectious disease specialist at Jupiter Medical Center in Florida, said Wednesday on *CBSN*.

"The science is there, masks work and we should utilize them," Diaz said. "Especially in the school district and in the schools that are inundated now with all of the kids coming back and not doing virtual learning."

The science proves masks work in preventing the spread of COVID-19, she said.



"We are in a crisis... the reality is there every day of my life. I can't dismiss it," Diaz said. "Wearing masks has become very relaxed behavior around here, and around the United States. It shouldn't be."

FDA Advisory Panel Set to Meet on Booster Shots

The U.S. Food and Drug Administration will hold a key advisory panel meeting on coronavirus booster shots on Sept. 17, a mere three days before the Biden administration plans to begin offering third shots for Americans.

While the public session could add clarity to what some feel has been a confusing decision-making process, it also could fuel more controversy over the administration's plan.

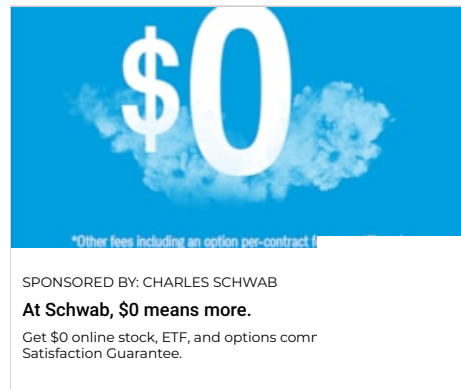
Panel member Paul Offit, a vaccine expert at Children's Hospital of Philadelphia, has questioned whether boosters are needed at this time because data indicates the vaccines still work well against severe COVID-19. But administration officials have stressed that protection is waning.

Though the stated purpose of the meeting is to review [booster data](#) on the Pfizer vaccine, it will likely deal with broader questions about booster shots, the *Washington Post* reported: Those include who should get booster shots and when, and what is this country's obligation to other countries who are scrambling for first and second doses of the vaccines.





If the committee concludes boosters *are* needed, it could strengthen the agency's hand in approving a third Pfizer shot and later doing the same for boosters by Moderna and Johnson & Johnson, the *Post* said. The two-shot Pfizer regimen received full FDA approval last week, while the Moderna and Johnson & Johnson vaccines are still given under an emergency use authorization.

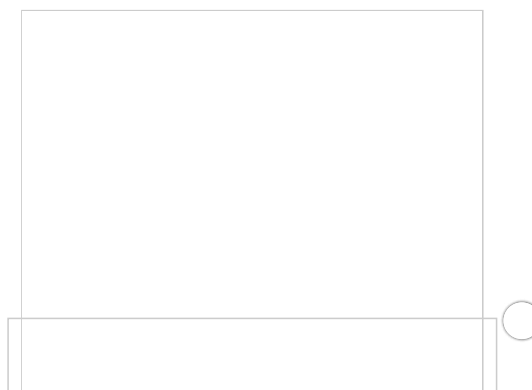


Peter Marks, director of the FDA's Center for Biologics Evaluation and Research, told the *Post* that "a transparent, thorough and objective review of the data by the FDA is critical so that the medical community and the public continue to have confidence in the safety and effectiveness of COVID-19 vaccines."

Outside experts praised the scheduling of the meeting, saying it shows the agency is trying to stick to the normal procedures on vaccines, despite the urgency caused by the highly transmissible Delta variant. The Biden administration announced Aug. 18 that boosters would be available the week of Sept. 20 to most people fully vaccinated eight months earlier, pending clearance from the FDA and the U.S. Centers for Disease Control and Prevention. But critics said that typically the FDA and the CDC, and their advisers, would review data before decisions were announced.

"It's a good sign that the FDA is trying to adhere to a regular process," said Jason Schwartz, an associate professor of health policy and the history of medicine at the Yale School of Public Health. But he told the *Post* that the meeting could be "awkward," with the administration receiving criticism for "a really messy sequence of events."

That argument was amplified Tuesday when [news](#) broke that two top vaccine officials would retire this fall. Marion Gruber, who leads the Office of Vaccines Research and Review, will step down at the end of October. Philip Krause, Gruber's deputy, is expected to leave the agency in November. The two have decades of experience in vaccines and have helped steer the agency's efforts through a demanding period with the pandemic.





Krause's decision was more of a surprise. They said both officials were frustrated by what they saw as an encroachment by the White House on the agency's ability to analyze data and make independent decisions. But they also said they did not know whether that was the reason for the retirements, the *Post* added.

More information

The U.S. Centers for Disease Control and Prevention has more on [COVID-19](#).

SOURCES: *CBS News*; *Washington Post*

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Tags: infections, children's health, vaccines

RECOMMENDED ARTICLES

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Coronavirus Bulletin

Stay informed daily on the latest news and advice on COVID-19 from the editors at U.S. News & World Report.

Exhibit F



Children and COVID-19: State-Level Data Report

State-level reports are the best publicly available and timely data on child COVID-19 cases in the United States. The American Academy of Pediatrics and the Children's Hospital Association are collaborating to collect and share all publicly available data from states on child COVID-19 cases (definition of "child" case is based on varying age ranges reported across states; see report Appendix for details and links to all data sources).

As of September 9, nearly 5.3 million children have tested positive for COVID-19 since the onset of the pandemic. Over 243,000 cases were added the past week, the second highest number of child cases in a week since the pandemic began. After declining in early summer, child cases have increased exponentially, with nearly 500,000 cases in the past 2 weeks.

The age distribution of reported COVID-19 cases was provided on the health department websites of 49 states, New York City, the District of Columbia, Puerto Rico, and Guam. Since the pandemic began, children represented 15.5% of total cumulated cases. For the week ending September 9, children were 28.9% of reported weekly COVID-19 cases (children, under age 18, make up 22.2% of the US population).

A smaller subset of states reported on hospitalizations and mortality by age; the available data indicate that COVID-19-associated hospitalization and death is uncommon in children.

At this time, it appears that severe illness due to COVID-19 is uncommon among children. However, there is an urgent need to collect more data on longer-term impacts of the pandemic on children, including ways the virus may harm the long-term physical health of infected children, as well as its emotional and mental health effects.

Summary of Findings (data available as of 9/9/21) :

Cumulative Number of Child COVID-19 Cases*

- 5,292,837 total child COVID-19 cases reported, and children represented 15.5% (5,292,837/34,198,122) of all cases
- Overall rate: 7,032 cases per 100,000 children in the population

Change in Child COVID-19 Cases*

- 243,373 child COVID-19 cases were reported the past week from 9/2/21-9/9/21 (5,049,465 to 5,292,837) and children represented 28.9% (243,373/840,838) of the weekly reported cases
- Over two weeks, 8/26/21-9/9/21, there was a 10% increase in the cumulated number of child COVID-19 cases since the beginning of the pandemic (495,154 cases added (4,797,683 to 5,292,837))

Testing (11 states reported)*^

- Among states reporting, children made up between 11.1%-21.6% of total cumulated state tests, and between 4.9%-17.8% of children tested were tested positive

Hospitalizations (24 states and NYC reported)*

- Among states reporting, children ranged from 1.6%-4.0% of their total cumulated hospitalizations, and 0.1%-1.9% of all their child COVID-19 cases resulted in hospitalization

Mortality (45 states, NYC, PR and GU reported)*

- Among states reporting, children were 0.00%-0.27% of all COVID-19 deaths, and 7 states reported zero child deaths
- In states reporting, 0.00%-0.03 of all child COVID-19 cases resulted in death

* Note: The numbers in this summary represent cumulative counts since states began reporting. In this summary and full report, the data are based on how public agencies collect, categorize and post information. All data reported by state/local health departments are preliminary and subject to change and reporting may change over time. Notably, in the summer of 2021, some states have revised cases counts previously reported, begun reporting less frequently, or dropped metrics previously reported. For example, due to several changes on their dashboards and the data currently available, AL, NE, and TX data in this report are not current (cumulative data through 7/29/21, 6/24/21, and 8/26/21 respectively). Readers should consider these factors. States may have additional information on their web sites.

For additional information on US child hospitalizations from the CDC, visit <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions>

For additional information on US child mortality from the CDC, visit <https://covid.cdc.gov/covid-data-tracker/#demographics>

^ On 7/15/21, IA stopped updating child testing data; IA cumulative tests through 7/8/21.

Download Full Report (9/9/2021)

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Download Full Report (8/26/2021)

Additional Information

- [Caring for Children with Acute Illness in the Ambulatory Care Setting During the Public Health Emergency](#)
- [COVID-19 Testing Guidance](#)
- [AAP News COVID-19 Collection](#)
- [Pediatrics](#) COVID-19 Collection

Last Updated 09/13/2021

Source American Academy of Pediatrics

Exhibit G



COVID-19

Frequently Asked Questions about COVID-19 Vaccination

Updated Sept. 9, 2021

[Print](#)

- Below are answers to commonly asked questions about COVID-19 vaccination.
- [Bust myths and learn the facts about COVID-19 vaccines](#)

How long do I need to wait after getting another vaccine before getting a COVID-19 vaccine?

You can get a COVID-19 vaccine and other vaccines at the same visit. You no longer need to wait 14 days between vaccinations. Experience with other vaccines has shown that the way our bodies develop protection, known as an immune response, after getting vaccinated and possible side effects of vaccines are generally the same when given alone or with other vaccines. Learn more about [the timing of other vaccines](#).

If I have already had COVID-19 and recovered, do I still need to get vaccinated with a COVID-19 vaccine?

Yes, you should be vaccinated regardless of whether you already had COVID-19 because:

- Research has not yet shown how long you are protected from getting COVID-19 again after you recover from COVID-19.
- Vaccination helps protect you even if you've already had COVID-19.

Evidence is emerging that people **get better protection by being fully vaccinated** compared with having had COVID-19. [One study](#) showed that unvaccinated people who already had COVID-19 are more than 2 times as likely than fully vaccinated people to get COVID-19 again.

If you were treated for COVID-19 with monoclonal antibodies or convalescent plasma, you should wait 90 days before getting a COVID-19 vaccine. Talk to your doctor if you are unsure what treatments you received or if you have more questions about getting a COVID-19 vaccine.

If you or your child has a history of multisystem inflammatory syndrome in adults or children ([MIS-A](#) or [MIS-C](#)), consider delaying vaccination until you or your child have recovered from being sick and for 90 days after the date of diagnosis of MIS-A or MIS-C. Learn more about the [clinical considerations](#) for people with a history of multisystem MIS-C or MIS-A.

Experts are still learning more about how long vaccines protect against COVID-19. CDC will keep the public informed as new evidence becomes available.

Related pages:

- [Benefits of Getting Vaccinated](#)
- [Preparing for Your COVID-19 Vaccination](#)

Can I get vaccinated against COVID-19 while I am currently sick with COVID-19?



No. People with COVID-19 who have symptoms should wait to be vaccinated until they have recovered from their illness and have met the [criteria](#) for discontinuing isolation; those without symptoms should also wait until they [meet the criteria](#) before getting vaccinated. This guidance also applies to people who get COVID-19 before getting their second dose of vaccine.

People who have had a known COVID-19 exposure should not seek vaccination until their quarantine period has ended to avoid potentially exposing healthcare personnel and others during the vaccination visit. This recommendation also applies to people with a known COVID-19 exposure who have received their first dose of an mRNA vaccine but not their second.

Related pages:

- [When to Quarantine](#)
- [Ending Home Isolation](#)

What are the ingredients in COVID-19 vaccines?



Vaccine ingredients vary by manufacturer. None of the vaccines contain eggs, gelatin, latex, or preservatives. All COVID-19 vaccines are **free from metals** such as iron, nickel, cobalt, lithium, and rare earth alloys. They are also free from manufactured products such as microelectronics, electrodes, carbon nanotubes, or nanowire semiconductors.

To learn more about the ingredients in authorized COVID-19 vaccines, see

- [Pfizer-BioNTech COVID-19 Vaccine Overview and Safety](#)
- [Moderna COVID-19 Vaccine Overview and Safety](#)
- [Johnson & Johnson's Janssen COVID-19 Vaccine Overview and Safety](#)
- [Ingredients Included in COVID-19 Vaccines](#)

How long does protection from a COVID-19 vaccine last?



We don't know how long protection lasts for those who are vaccinated. What we do know is that COVID-19 has caused very serious illness and death for a lot of people. If you get COVID-19, you also risk giving it to loved ones who may get very sick.

People with moderately to severely compromised immune systems should [receive an additional dose](#) of mRNA COVID-19 vaccine after the initial 2 doses.

Learn more about [population immunity](#).

Learn more about [Booster Shots](#).

Related pages:

- [Vaccines Work](#)
- [Booster Shots](#)
- [Moderately to Severely Immunocompromised People](#)

How can I get a new COVID-19 vaccination card?

If you need a new vaccination card, contact the vaccination provider site where you received your vaccine. Your provider should give you a new card with up-to-date information about the vaccinations you have received.

If the location where you received your COVID-19 vaccine is no longer operating, contact your state or local health department's [immunization information system \(IIS\)](#) for assistance.

CDC does **not** maintain vaccination records or determine how vaccination records are used, and CDC does **not** provide the CDC-labeled, white COVID-19 vaccination record card to people. These cards are distributed to vaccination providers by state and local health departments. Please [contact your state or local health department](#) if you have additional questions about vaccination cards or vaccination records.

Related page:

- [COVID-19 Vaccines that Require 2 Shots](#)

Can I choose which COVID-19 vaccine I get?

Yes. All currently authorized and recommended COVID-19 vaccines are [safe](#) and [effective](#), and CDC does not recommend one vaccine over another. The most important decision is to get a COVID-19 vaccination as soon as possible. Widespread vaccination is a critical tool to help stop the pandemic.

People should be aware that a risk of a rare condition called thrombosis with thrombocytopenia syndrome (TTS) has been reported following vaccination with the J&J/Janssen COVID-19 Vaccine. TTS is a serious condition that involves blood clots with low platelet counts. This problem is rare, and most reports were in women between 18 and 49 years old. For women 50 years and older and men of any age, this problem is even more rare. There are other COVID-19 vaccine options available for which this risk has not been seen (Pfizer-BioNTech, Moderna).

Learn more about [your COVID-19 vaccination](#), including how to find a vaccination location, what to expect at your appointment, and more.

Related page:

- [Your Vaccination](#)
- [Safety of COVID-19 Vaccines](#)
- [Ensuring COVID-19 Vaccines Work](#)

Do I need to wear a mask and avoid close contact with others if I am fully vaccinated?

After you are fully vaccinated for COVID-19, take these steps to protect yourself and others:

- In general, you do not need to wear a mask in outdoor settings.
- If you are in an area with [high numbers of COVID-19 cases](#), consider wearing a mask in crowded outdoor settings and when you are in [close contact](#) with others who are not fully vaccinated.
- If you have a condition or taking medications that weaken your immune system, you may not be fully protected even if you are fully vaccinated. You should continue to take all [precautions recommended for unvaccinated people, including wearing a well-fitted mask](#), until advised otherwise by their healthcare provider.

- If you are fully vaccinated, to maximize protection from the Delta variant and prevent possibly spreading it to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#)
-

If I have an underlying condition, can I get a COVID-19 vaccine?

People with underlying medical conditions can receive a COVID-19 vaccine as long as they have not had [an immediate or severe allergic reaction](#) to a COVID-19 vaccine or to any of the ingredients in the vaccine. Learn more about vaccination [considerations for people with underlying medical conditions](#). Vaccination is an important consideration for adults of any age with [certain underlying medical conditions](#) because they are at increased risk for severe illness from COVID-19.

Related pages:

- [Underlying Medical Conditions](#)
 - [People at High Risk](#)
 - [People with Allergies](#)
-

If I am pregnant or planning to become pregnant, can I get a COVID-19 vaccine?

Yes, COVID-19 vaccination is recommended for all people 12 years and older, including [people who are pregnant](#), breastfeeding, trying to get pregnant now, or [might become pregnant in the future](#). You might want to have a conversation with your healthcare provider about COVID-19 vaccination. While such a conversation might be helpful, it is not required before vaccination. Learn more about [vaccination considerations for people who are pregnant or breastfeeding](#).

If you are pregnant and have received a COVID-19 vaccine, we encourage you to enroll in [v-safe](#), CDC's smartphone-based tool that provides personalized health check-ins after vaccination. A [v-safe pregnancy registry](#) has been established to gather information on the health of pregnant people who have received a COVID-19 vaccine.

Related pages:

- [COVID-19 Vaccines for Pregnant or Breastfeeding People](#)
 - [Monitoring Systems for Pregnant People](#)
 - [V-safe Pregnancy Registry](#)
 - [Planning for Pregnancy](#)
-

How many doses of COVID-19 vaccine will I need to get?

The number of doses needed depends on which vaccine you receive. To get the most protection:

- Two [Pfizer-BioNTech](#) vaccine doses should be given 3 weeks (21 days) apart.
- Two [Moderna](#) vaccine doses should be given 1 month (28 days) apart.
- Johnson & Johnsons Jansen ([J&J/Janssen](#)) COVID-19 vaccine requires only one dose.

If you receive a vaccine that requires two doses, you should **get your second shot as close to the recommended interval as possible**. However, your second dose may be given up to [6 weeks \(42 days\) after the first dose, if necessary](#). You should **not** get the second dose earlier than the recommended interval.

People with moderately to severely compromised immune systems should [receive an additional dose](#) of mRNA COVID-19 vaccine after the initial 2 doses.

Learn more about [Booster Shots](#).

Related pages:

- [Pfizer-BioNTech](#)
- [Moderna](#)
- [Johnson & Johnson / Janssen](#)
- [Booster Shot](#)
- [Moderately to Severely Immunocompromised People](#)

Why should my child get vaccinated against COVID-19?



COVID-19 vaccination can help protect your child from getting COVID-19. Although fewer children have been sick with COVID-19 compared to adults, [children can be infected with the virus that causes COVID-19](#), can get sick from COVID-19, and can spread the virus that causes COVID-19 to others. Getting your child vaccinated helps to protect your child and your family. Vaccination is now [recommended for everyone 12 years and older](#). Currently, the [Pfizer-BioNTech COVID-19 Vaccine](#) is the only one available to children 12 years and older.

COVID-19 vaccines have been used under the most intensive safety monitoring in U.S. history, including studies in children 12 years and older. Your child cannot get COVID-19 from any COVID-19 vaccine. Like adults, children may have some [side effects](#) after COVID-19 vaccination. These side effects may affect their ability to do daily activities, but they should go away in a few days.

Related pages:

- [COVID-19 Vaccines for Children and Teens](#)
- [Pfizer-BioNTech](#)
- [Possible Side Effects](#)
- [Families and Children](#)

Answers to more questions about:

- [Healthcare Professionals and COVID-19 Vaccines](#)
- [Vaccines.gov](#)
- [Vaccine Administration Management System \(VAMS\)](#)
- [V-safe after Vaccination Health Checker](#)

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