

**ORDER OF THE COMMISSIONER OF HEALTH
AND MENTAL HYGIENE TO REQUIRE SCHOOLS
TO MEET COVID-19 HEALTH AND SAFETY REQUIREMENTS**

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo issued Executive Order No. 202, declaring a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors, and such order remains in effect; and

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 Emergency Executive Order directed the heads of all agencies, including the Department of Health and Mental Hygiene (the “Department”), to take all appropriate and necessary steps to preserve public safety and to render all required and available assistance to protect the security, well-being and health of the residents of the City, and such order remains in effect; and

WHEREAS, on March 25, 2020, pursuant to Section 3.01 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, on September 4, 2020, Governor Cuomo issued Executive Order No. 202.60, authorizing schools to be open for in-person instruction subject to adherence to New York State Department of Health guidance and directives;

WHEREAS, the State Department of Health promulgated Interim Guidance for In-person Instruction at Pre-K to Grade 12 Schools During the COVID-19 Public Health Emergency on August 26, 2020 (“State Guidance for Pre-K to Grade 12 Schools” or “State Guidance”),¹ setting forth health and safety requirements that public and private schools must adhere to in order to provide in-person instruction during the COVID-19 pandemic, and requiring all schools to develop, in consultation with local health departments, a plan for reopening and operating during the COVID-19 pandemic, including a plan for the closure of school facilities and commencement of in-person instruction, if necessitated by widespread virus transmission; and

WHEREAS, the State Guidance provides (at p. 21, part C) that Responsible Parties should identify clearly defined measures that will serve as warning signs that the level of COVID-19 transmission may be increasing in the school setting beyond an acceptable level and must have a process to respond to COVID-19 cases at the school, including closing classrooms or the school in consultation with the local health department; and

WHEREAS, the New York City Department of Education's State-approved reopening plan² includes comprehensive COVID-19 health and safety protocols developed in consultation with the Department and is applicable to all New York City Department of Education schools; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the

¹ Available at, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Pre-K_to_Grade_12_Schools_MasterGuidance.pdf.

² Available at, <https://www.schools.nyc.gov/school-year-20-21/district-school-reopening-plan-submission-to-nysed>.

Board may embrace in the Health Code all matters and subjects to which the power and authority of the Department extends, and pursuant to Section 556 of the Charter and Section 3.01 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, pursuant to Section 556 of the Charter, the Department is also authorized to promote or provide health services for school children in the City; and

WHEREAS, on September 28, 2020, I declared the continuance of a public health emergency and ordered certain schools in neighborhoods identified by certain ZIP codes where there is evidence of rapid growth of COVID-19 cases, and in other ZIP codes identified by the Department where incidence of COVID-19 is increasing, to meet additional requirements, including meeting the Department's protocols for closing a school if a student, teacher, or staff member is confirmed with a case of COVID-19; and

WHEREAS, in certain areas of the City COVID-19 incidence is increasing, despite efforts to combat the spread of COVID-19 such as physical distancing (also known as social distancing), face covering guidance, diagnostic testing, case investigation, contact tracing, isolation, and quarantine, and the incidence of disease in these areas is now persistently at or above 3% positivity, which is indicative of widespread community transmission that may risk increased incidence citywide; and

WHEREAS, outbreaks of COVID-19 have occurred in schools in the City, and I find that such outbreaks in schools create an unnecessary and avoidable risk of illness and endanger the health of those attending and associated with such schools, which could spread beyond the schools, and is therefore a nuisance, as defined in New York City Administrative Code §17-142; and

WHEREAS, pursuant to Health Code Section 3.07, 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 . . . shall fail to do any reasonable act or take any necessary precaution to protect human life and health;" and

WHEREAS, pursuant to Health Code Section 3.09, no person shall allow a nuisance to exist or to be created in respect to any matter, thing, chattel or premises which such person owns or controls; and

WHEREAS, pursuant to Section 2.6 of the New York State Sanitary Code and Section 11.03(e) of the Health Code, the Department is required to conduct an investigation to determine the sources of outbreaks of infectious diseases such as COVID-19, and takes steps necessary to prevent further infection and spread; and

WHEREAS, pursuant to Section 3.01 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;

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, consistent with State Guidance for Pre-K to Grade 12 Schools, hereby order that in addition to the

requirements described in the State Guidance, all non-public and charter schools in New York City shall comply with the following requirements:

- All individuals on non-public and charter school premises must remain at least 6 feet apart to the greatest extent possible, except in emergencies or when doing so would create a safety hazard, or when physical barriers are put in place between individuals in accordance with the State Guidance for Pre-K to Grade 12 Schools;
- All individuals must wear a face covering on non-public and charter school premises at all times, and during all off-site non-public and charter school activities, except: when individuals cannot wear a face covering because of developmental, medical, or age reasons; during snacks or meals when eating or drinking; during scheduled face covering breaks consistent with guidance issued by the Department; and during nap times;
- All non-public and charter schools must coordinate with the Department and the Test and Trace Corps to identify, isolate, and prevent the spread of COVID 19; and
- All non-public and charter schools must report every case of COVID-19 to the Department by calling 866-692-3641 and cooperate with the Department regarding closing and opening of classrooms or schools as the Department determines necessary to prevent the spread of COVID 19.

Students, teachers, staff members, volunteers, or any other individuals providing services in the non-public and charter school having close contact with confirmed cases of COVID-19 must quarantine for 14 days from such contact, in accordance with the State Department of Health's guidance for precautionary quarantine.

This Order amends and replaces the Order I issued on September 28, 2020, regarding additional requirements for certain schools in certain ZIP codes.

This Order shall be effective immediately and remain in effect through the end of the 2020-2021 school year, including any summer school sessions during 2021, or such earlier time as I may indicate, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01 of the Health Code.

Failure to comply with an Order of the Commissioner is a violation of the Health Code and a misdemeanor for which you may be subject to civil and criminal penalties, including fines, forfeitures, and imprisonment.

If you wish to object to this Order, please write, fax or email the Office of the General Counsel, New York City Department of Health and Mental Hygiene, 42-09 28th Street, Long Island City, NY 11101-4132; OGC@health.nyc.gov; fax 347-396-6087, providing a statement of the reasons for your objection to the Order.

Dated: November 5, 2020


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