

**ORDER OF THE COMMISSIONER  
OF HEALTH AND MENTAL HYGIENE  
REQUIRING COVID-19 VACCINATION AND FACE COVERINGS  
IN CHILD CARE AND EARLY INTERVENTION PROGRAMS**

**WHEREAS**, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in New York City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

**WHEREAS**, on March 25, 2020, the Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

**WHEREAS**, pursuant to Section 556 of the Charter, and Section 3.01(c) of the Health Code (“Health Code”), the Department of Health and Mental Hygiene (“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 and the protection of public health; and

**WHEREAS**, the US Centers for Disease Control and Prevention (“CDC”) reports that variants of COVID-19, identified as “variants of concern,” have emerged in the United States, and such variants currently account for the majority of COVID-19 cases sequenced in New York City and 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**, child care programs are essential services needed and utilized by hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

**WHEREAS**, pursuant to Article 25 of the State Public Health Law, the New York City Early Intervention Program (“Early Intervention”) annually provides essential services to over 30,000 eligible infants and toddlers under the age of 3 with, or at risk of experiencing, developmental delays or disabilities; said services being provided in the family home or at other locations; and

**WHEREAS**, on September 16, 2021, emergency regulations of the State Office of Children and Family Services requiring all persons age 2 and older who are able to medically tolerate a face covering to wear a face covering indoors at State-licensed child care programs went into effect (N.Y.S. Reg. Oct. 6, 2021, at 4-6); and

**WHEREAS**, emergency regulations of the State Department of Health require that, by September 27, 2021, staff at hospitals and nursing homes, and by October 7, 2021, staff at other facilities, such as adult care facilities, must be vaccinated against COVID-19 (10 N.Y.C.R.R §2.61); and

**WHEREAS**, requiring vaccination of staff in child care and Early Intervention programs, and use of face coverings by both staff and children in such programs, are among the most effective COVID-19 mitigation responses and will potentially save lives, protect public health, and promote public safety; and

**WHEREAS**, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

**WHEREAS**, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

**WHEREAS**, pursuant to Section 17-109(b) of the Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; 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 action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

**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 December 20, 2021, every child care program and Early Intervention provider agency must exclude from the premises any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.
2. All staff members hired on or after the effective date of this Order at any child care program or Early Intervention provider agency must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.
3. All staff members and individuals 2 years of age and older who can medically tolerate a face covering must wear a face covering while at a child care program, during provision of Early Intervention services, and during off-site trips and excursions, provided that a child care program or Early Intervention provider may modify this requirement where it determines it appropriate based on the developmental needs of the child. This face covering requirement applies to family members who participate in the provision of services or who are present with the child and the staff member while services are being provided. A face covering is not required when an individual is sleeping, or actively eating or drinking. A face covering is also not required for an individual who is not participating in Early Intervention services, such as a household member, when such services are provided in a private home.
4. Each child care program and Early Intervention provider must securely maintain staff member records of proof of vaccination against COVID-19. These records may be kept electronically or on paper. These records must include the following:
  - a) each staff member's name and start date.
  - b) the type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
  - c) for any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the first dose.

- d) for any staff member who did not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the child care program or Early Intervention provider agency must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.

5. For the purposes of this Order:

“Child care” or “Child care program” means any person or entity that is regulated under Article 43 or 47 of the Health Code, is required to be licensed or registered by the State Office of Children and Family Services, or is an enrolled legally exempt group child care program pursuant to the Social Services Law.

“Early Intervention provider” or “Early Intervention provider agency” means any person or entity holding a provider agreement for the provision of Early Intervention services in New York City, including service coordination, evaluation, therapeutic and educational services, pursuant to Article 25 of the Public Health Law.

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

“Premises” means locations where children are regularly present at child care programs, or any setting or location where Early Intervention services are provided as authorized by the New York City Early Intervention Official or such official’s designee.

“Proof of vaccination” against COVID-19 means one of the following demonstrating that an individual has either: (a) been fully vaccinated against COVID-19, or (b) received the first dose of a two-dose COVID-19 vaccine, provided that staff providing proof of only a first dose must also provide proof of receiving the second dose of that vaccine within 45 days after receiving the first dose. Such proof of vaccination includes, but may not be limited to, the following:

- 1) CDC Vaccination Card. A digital photo or photocopy of this card is also acceptable.
- 2) NYC Vaccination Record or other official immunization record, including from a health care provider. A digital photo or photocopy of this is also acceptable.
- 3) NYC COVID Safe App showing a vaccination record.
- 4) CLEAR Health Pass.
- 5) NYS Excelsior Pass/Excelsior Pass Plus.

“Staff member” means an employee, contractor, volunteer or intern of a child care program or Early Intervention provider, who works in-person on the premises or provides Early Intervention in-person therapeutic, developmental or education services, or conducts assessments for the purpose of determining children’s eligibility for such services; a graduate, undergraduate or high school student placed by their educational institution at a child care program or with an Early Intervention provider as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at a child care program or with an Early Intervention provider to an individual child and who works in-person on the premises; or a person employed by a contractor of a child care program or an Early Intervention provider, including an independent contractor, who works in-person on the premises. “Staff member” does not include a person who is onsite briefly for a limited purpose, such as for a delivery or pick-up or to perform a repair.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law, however a reasonable accommodation may not allow an unvaccinated staff member to work with children in person.
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: November 17, 2021

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