

**ORDER OF THE COMMISSIONER OF HEALTH
AND MENTAL HYGIENE TO CEASE IN-PERSON
INSTRUCTION IN CERTAIN AREAS OF THE CITY**

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 all agencies, including the Department of Health and Mental Hygiene (“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 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 instruction subject to adherence to New York State Department of Health guidance and directives, and on August 26, 2020 the State Department of Health published guidance 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 in-person instruction, if necessitated by widespread virus transmission; 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, 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, indicative of widespread community transmission; and

WHEREAS, on September 28, 2020, the Commissioner of Health and Mental Hygiene (“Commissioner”) 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, on October 6, 2020, Governor Cuomo issued Executive Order No. 202.68, establishing the Cluster Action Initiative to address areas of the State where there are cluster-based cases of COVID-19 requiring enhanced public health restrictions, and ordering that in such areas where the State Department of Health determines the severity of cluster activity is the most severe ("Red Zones) or of moderate severity ("Orange Zones"), the Department shall direct closure of all schools for in-person instruction; and

WHEREAS, the State Department of Health has designated certain areas of the City as Red Zones and Orange Zones by publishing maps indicating such areas, available at <https://forward.ny.gov>; and

WHEREAS, the outbreaks of COVID-19 in areas designated as Red Zones or Orange Zones create an unnecessary and avoidable risk of illness and endanger the public health and group gatherings in enclosed areas where transmission can occur and are therefore a nuisance, as defined in New York City Administrative Code Section 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 he or she 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, there is an urgent public health need to slow the spread of COVID-19 in neighborhoods where incidence is increasing, and extraordinary measures are necessary to limit interactions among people who do not live in the same household;

IT IS HEREBY ORDERED that, in accordance with the Governor's Executive Order No. 202.68, all New York City public schools and all non-public schools serving any students between pre-kindergarten and grade 12 in any area designated as a "Red Zone" or "Orange Zone" pursuant to the State Cluster Action Initiative, cease all in-person instruction. Red Zones and Orange Zones are the areas of the City indicated on the maps provided by the State Department of Health, available at <https://forward.ny.gov>.

A school may arrange for students, teachers, and staff members to retrieve personal and other necessary items from the school premises during the first two regularly-scheduled school days after the effective date of the requirement for the school to cease in-person instruction, provided that the school minimizes the number of people in the school building at any one time and ensures appropriate physical distancing is maintained. All individuals able to medically tolerate a face covering must wear a face covering at all times while on the school premises for such purposes.

FURTHER, upon additional areas of the City being designated as a Red Zone or Orange Zone by the New York State Department of Health, the provisions of this Order shall apply to all public and non-public schools in such areas. The map of designated Red Zones or Orange Zones is available at <http://nyc.gov/COVIDZone>

Any school required to close pursuant to this Order must follow the directions of the Department and the Department of Education regarding such closure, including cooperating and assisting the Department's investigation of any suspected COVID-19 cases at or associated with the school.

This Order shall be effective immediately and replaces the Commissioner's Order of October 5, 2020 ordering schools in certain ZIP codes to cease in-person instruction, which is hereby **RESCINDED**. The provisions of this Order shall remain in effect for any school for as long as such school's location is in an area designated as a Red Zone or Orange Zone by the State Department of Health.

The provisions of this Order may be enforced by the Department, the Police Department, the New York City Sheriff, the Fire Department, the Department of Buildings, the Office Mayor acting through the Office of Special Enforcement including employees of any other agency detailed to such Office, or any other City agency having jurisdiction over the entities affected by this Order, or any other agency or entity so designated by me or the Mayor.

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: 10/12/2020



Dave A. Chokshi, MD, MSc
Commissioner