



New York City's New Vaccine Mandate for Nonpublic School Employees

December 7, 2021

On December 2, 2021, the New York City Commissioner of Health and Mental Hygiene signed an **Order** that requires Covid-19 vaccination for nonpublic school staff (the "Order"). The Order defines nonpublic schools as "any location . . . where instruction and related services are provided to students from preschool through grade 12, or any portion thereof, such as only elementary or only secondary school." This definition includes:

- (a) locations providing such instruction and related services:
 - (i) to students between the ages typically served from preschool through grade 12, including schools that do not separate students into "grades" or similar groupings; and
 - (ii) pursuant to New York State Education Law section 3204; and
- (b) residences of students receiving home instruction from a school other than a DOE or charter school.

"Nonpublic schools" **do not** include a DOE or charter school setting, covered child care programs, child care programs, or early intervention provider as defined in previous orders.

The Order requires that **all nonpublic school staff** submit proof of Covid-19 vaccination to their employers **by December 20, 2021**. This mandate applies to both full and part-time employees as well as unpaid adults serving in the nonpublic school setting, such as student teachers and volunteers supporting school functions. After December 20, 2021, nonpublic schools "must exclude any staff member who has not provided proof of vaccination against COVID-19" unless that employee has been granted a reasonable accommodation required by law. Further, all staff members **hired on or after December 2, 2021** "must provide proof of vaccination against COVID-19 to their employer on or before their start date" unless they have been granted a reasonable accommodation required by law.

Under the Order, "proof of vaccination" means proof that someone:

- (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 providing proof of the first dose.

Once staff have submitted proof of their Covid-19 vaccination status to the nonpublic school, the school “must securely maintain a record of such submission, either electronically or on paper, and must make such records immediately available to the Department, or its designee, upon request.” The Order requires that this record include:

- (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 above;
- (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 proof of first dose was submitted; and
- (d) For any staff member who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the employer 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.

Nonpublic schools must electronically submit an initial affirmation of compliance with these record requirements no later than **December 28, 2021**. Nonpublic schools must also submit follow up affirmations by **February 17, 2022** to demonstrate that all staff are fully vaccinated, meaning that **at least two weeks have passed** since the staff member “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, or any other circumstance defined by the Department in its guidance associated with this Order.”

If you have questions about any implications the Order has for your school, feel free to contact James G. Ryan at (516) 357-3750 or jryan@cullenllp.com, Jennifer E. Seeba at (516) 296-9173 or jseeba@cullenllp.com, Dina L. Vespia at (516) 357-3726 or dvespia@cullenllp.com, or Thomas B. Wassel at (516) 357-3868 or twassel@cullenllp.com.

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