



IMMUNIZATIONS AND HOME SCHOOLING

PRESENTED BY: Patricia A. Unz, Esq.
Guercio & Guercio LLP



IMMUNIZATIONS



Immunization of Children



- Every student entering or attending public, private, or parochial schools in New York State must be immunized. Pub. Health Law § 2164; 10 NYCRR § 66-1; Education Law § 914.
 - *The law applies to children between the ages of two (2) months and eighteen (18) years old.*
 - *The law also applies to students attending child day care centers, head start, nursery school, or prekindergarten programs.*
- Parents or persons in parental relation must have their children immunized against certain diseases unless an exemption applies. Pub. Health Law § 2164.
- If parents choose not to vaccinate their children of compulsory school age and no exemption applies, the parents must home-school their children.



- Immunization requirements **apply** to:
 - Students attending public, private and charter schools
 - Students attending summer school
 - Students receiving homebound instruction
 - Student enrolled and receiving educational services from a public, private, or parochial school off school grounds
 - Students who travel on school transportation
 - Home-schooled students wishing to take exams at school or participate in clubs or classes at school
 - Home-schooled special education students who are receiving some part of their program/services at a public, private or parochial school

- Immunization requirements **do not** apply to:
 - Activities on school property that are open to the general public (*e.g.*, spectating sporting events, student plays, etc.) in which the student participates in his/her capacity as a private citizen
 - Home-schooled students (other than as mentioned above)

Specific Vaccinations

- Students must be immunized against a variety of illnesses including polio, mumps, measles, diphtheria, rubella, varicella, haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease and hepatitis B. Pub. Health Law § 2164(2)(a); 10 NYCRR §§ 66-1.1, 66-1.3; 8 NYCRR § 136.3(c)(2).
- Children born on or after January 1, 1994 and entering sixth grade or a comparable age level special education program on or after September 1, 2007, must receive a booster immunization containing a vaccine for diphtheria, tetanus, and acellular pertussis. Pub. Health Law § 2164(2)(b).
- Children entering seventh and twelfth grades or a comparable age level special education program on or after September 1, 2016 must be administered vaccines against meningococcal disease. Pub. Health Law § 2164(2)(c).



Immunization Time Limits



- Students who had a prior religious exemption and is attending year-round school (summer school or ESY) must have received the first age-appropriate vaccine by June 28, 2019 to attend or remain in school.
- By July 14, 2019, parents/guardians must show that they have made appointments for all required follow-up doses.
- For a child who began attendance in September, the child must have the required age-appropriate vaccination by 14 days from the first day of school, and within 30 days of the first day, parent/guardian must show appointments have been made for follow-up doses.
- The 14 days may be extended to up to 30 days if the student is transferring from out-of-state or another country and shows a good faith effort to get the necessary evidence of vaccination or where the child has received the first age-appropriate doses in each immunization series within the 14 days and the parent/guardian shows evidence of scheduled appointments for appropriate follow-up doses.

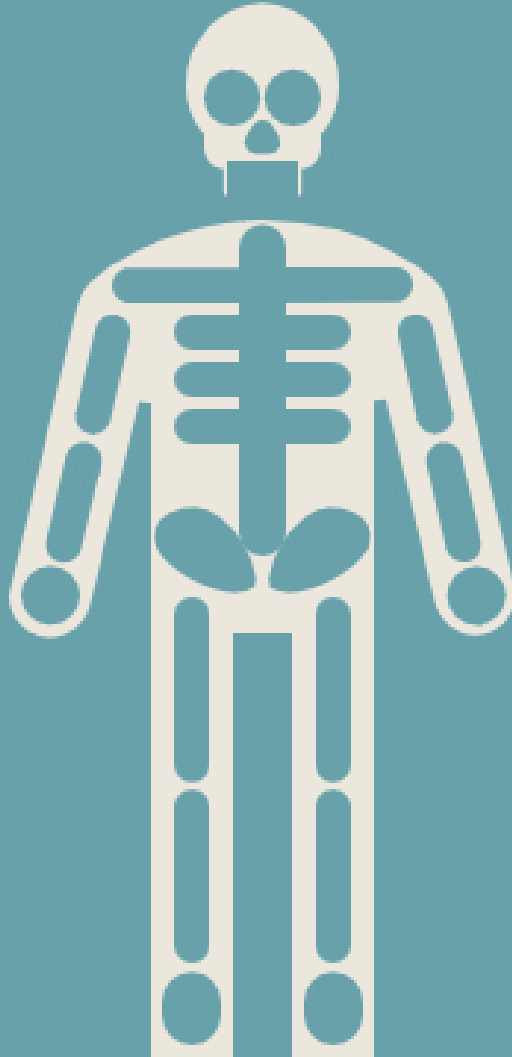
Immunization Requirements

On August 16, 2019, DOH issued emergency regulations and SED/DOH/OCFS issued a joint guidance.

Students must meet one of three immunization requirements to attend school:

- show proof that the student is “fully immunized” from 8 communicable diseases;
- show proof that the student is in process of receiving immunizations against each of those diseases; or
- provide proof that an exemption applies.

Fully Immunized



- A student is “fully immunized” when there is age-appropriate compliance with the immunization schedule published by the CDC’s Advisory Committee on Immunization Practices (ACIP).
 - <https://www.cdc.gov/vaccines/schedules/hcp/index.html>
- Certificate of Immunization
 - The health practitioner who administered the immunization provides the parent with a certificate of immunization prepared and signed by the health practitioner.
 - The certificate should specify the immunizations administered and indicate the date upon which each immunization was administered.
 - HIPAA does not prevent a health care provider from disclosing proof of a child’s immunization to the school without a formal authorization as long as the parent consents orally or in writing.

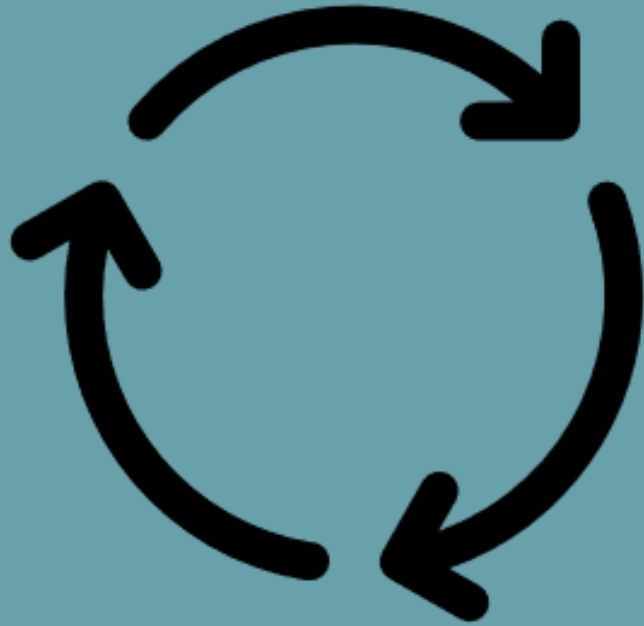
See 10 NYCRR § 66-1.6.

Other Forms of Proof of Immunization



- Immunization record issued by the New York State Immunization Information System or the New York Citywide Immunization Registry;
- Documentation that the child is in the process of being immunized;
- Official immunization registry from another state;
- A copy of an electronic health record;
- An official record from a foreign nation;
- A copy of immunization records from the child's previous school. (must include the person who administered the immunization, the date of administration, and the immunizations administered);
- An original lab report of a positive blood test for certain diseases; or
- In the case of chicken pox, a statement from a doctor, nurse practitioner or physician assistant confirming that the child has already had the chicken pox.

In Process



- A child who has not completed all the necessary vaccinations may be admitted to school if there is proof the child is “**in process**” to complete the vaccinations. See 10 NYCRR § 66-1.3(b).
 - “in process” means:
 - a child has received at least the first dose in each immunization series and has age appropriate appointments to complete the immunization series according to the Advisory Committee on Immunization Practices Recommended Immunization Schedules;
 - a child is obtaining serologic tests for proof of immunity within 30 days of notification to the parent/guardian that such testing is requested; OR
 - a child’s serologic tests are negative, and the child has appointments to be immunized within 30 days of notification of the parent/guardian to complete, or begin completion, of the immunization series based on the Advisory Committee on Immunization Practices Recommended Immunization Schedules.
- 10 NYCRR § 66-1.1(j).

Exemptions to Immunization Requirement



DEMONSTRATE IMMUNITY



MEDICAL EXEMPTION

Demonstrate Immunity



- Child may demonstrate immunity to measles, mumps, rubella, varicella (chickenpox), hepatitis B and all three serotypes of poliomyelitis in the polio vaccines through serological tests.
- A serological test (titer test) determines whether a person's blood contains antibodies against various diseases.
- An equivocal serological result means the antibody test did not produce a clear positive or negative and is not acceptable proof of immunity.

Medical Exemption



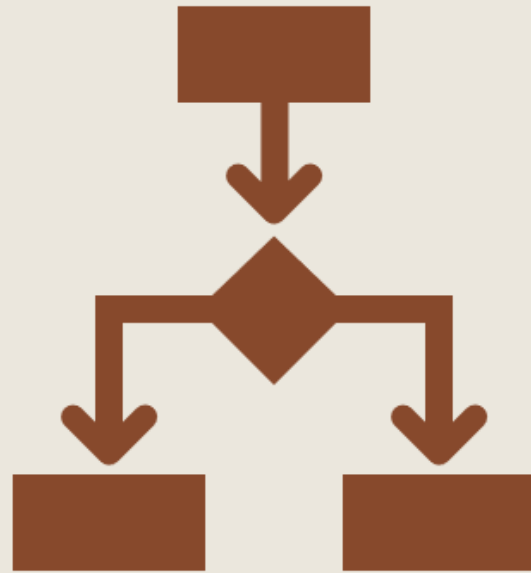
- A student whose physician (licensed to practice medicine in New York State) has determined that the immunizations may be detrimental to the child's health may obtain a medical exemption.
- Previous regulations allowed for a physician to submit a signed statement to schools.
- On August 16, 2019, the DOH emergency regulations strengthened and clarified the process by which physicians can grant medical exemptions (effective immediately).

Medical Exemption (continued)



- Defined “may be detrimental to the child’s health” - a physician has determined that a child has a medical contraindication or precaution to a specific immunization consistent with ACIP guidance or other nationally recognized evidence-based standard of care.
- Physicians are now required to:
 - Complete the applicable medical exemption form approved by the New York State Department of Health or New York City Department of Education
 - Outline sufficient information to identify medical contraindications to specific immunizations and the length of time the immunization is medically contraindicated.
- Medical exemptions are still required to be reissued annually.

Determination of Medical Exemption



- The principal or other person in charge of the school is responsible for making the final determination.
- In accordance with guidance from the NYDOH, a District should institute a procedure for reviewing requests for medical exemptions which includes:
 - *(1) additional documents from the parents;*
 - *(2) consultation with the District's physician; and*
 - *(3) if needed forwarding the request and redacted immunization record to the Department of Health for further review and written recommendation;*
- The student may remain in school while the request is being reviewed.

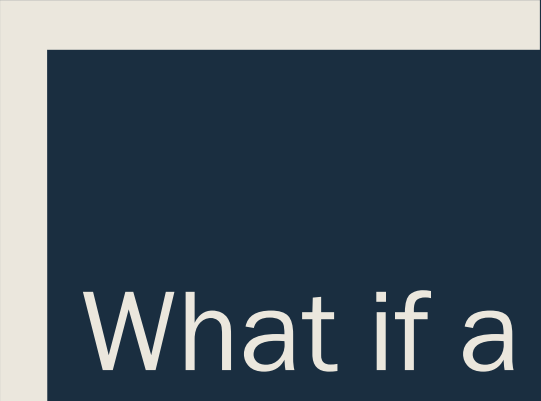
Repeal of Religious Exemption

- Previously, the law provided for a **religious exemption that allowed students to be exempted from the vaccination requirement if their parents or guardians held genuine and sincere religious beliefs contrary to the immunization requirements.**
- However, on June 13, 2019, the Governor signed legislation which removed the religious exemption from school vaccination requirements for children.

Repeal of Religious Exemption (continued)

- Children who previously had a religious exemption were required to receive the first age appropriate dose in each immunization series **by June 28, 2019** to attend or remain in school or day care.
- **By July 14, 2019**, parents and guardians of such children were required to show that they had scheduled appointments for all required follow-up doses.
 - *Children must receive the required doses consistent with the Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices immunization schedule.*
 - *The schedule is available at:*

<https://www.cdc.gov/vaccines/schedules/downloads/child/0-18yrs-child-combined-schedule.pdf>



What if a student is not immunized?

- If a parent does not have a certificate of immunization or other acceptable evidence, the principal or other person in charge of the school must inform the parent that:
 - A. The child must be immunized in order to attend public schools;
 - B. The immunization can be performed by any health practitioner;
AND
 - C. If the parent consents, the immunization may be administered free of charge by the county health department.
- If the parent still refuses to have the child immunized, the school must provide the parent with a written notice stating the child will *not* be admitted to school unless he/she is immunized, or the school grants a medical exemption.
- A parent of a child denied school entrance or attendance may appeal within thirty (30) days of the decision by petition to the Commissioner of Education in accordance with the provision of Education Law § 310.
 - *Such an appeal may include a request for a “stay” while the appeal is pending before the Commissioner.*

When excluding an unvaccinated child, a school must:



Notify the county health department when a child is excluded from school due to the lack of immunizations (include name and address of child and missing immunizations).



Send to the child's parent an immunization consent form and a report that explains the parent's responsibility to have the child immunized. If the parent consents, the school, in coordination with the county department of health, should provide a time and place where the child can be immunized.



When a child has been excluded from school for more than two weeks, and the parent still refuses to have the child immunized, and has not pursued other education options (e.g., home-schooling), SED Guidance provides that school districts should notify Child Protective Services ("CPS").

Penalties

- All public, private and parochial schools are required to comply with the law. The New York State Department of Health will determine the cause of a school's violation or noncompliance and, where appropriate, seek civil penalties from noncompliant schools (Fines up to \$2,000.00 per violation).
- The New York State Office of Children and Family Services regulates child day care programs and may sanction programs that do not comply with the law.



Homebound Instruction

- If the student is receiving homebound instruction, the student is being tutored in the home because for some reason (medical, psychological, physical) the child cannot attend school.
- To be eligible for home tutoring, the child would need to be enrolled and, therefore, need the required immunizations (unless they have a valid medical exemption).



PARTICIPATION
IN PUBLIC
SCHOOL
ACTIVITIES



Vaccinated Student



- Children educated other than at the public school (e.g., home-schooled) may
 - *participate in school-sponsored club activities, extra-curricular activities, pursuant to school policy*
 - *use school facilities, such as the library, provided there is a mutual agreement of all involved parties.*
- Home-schooled students may not participate in interscholastic or intramural sports. Commissioner's Regulations 135.4(c)(7) & 135.1 require participants in interscholastic and intramural sports to be enrolled in the public school.



Non-Vaccinated Student



- A student who does not meet immunization requirements may not take part in any school events in his or her capacity as a student.
 - *This includes attending State tests (state assessments, regent examinations) held at the school.*
- But may still take part in public events on school property in his or her capacity as a private citizen (i.e., attending concerts or spectating at sporting events).
- A student who does not meet immunization requirements may not be transported on a school bus or vehicle with other students.



EXAMINATIONS

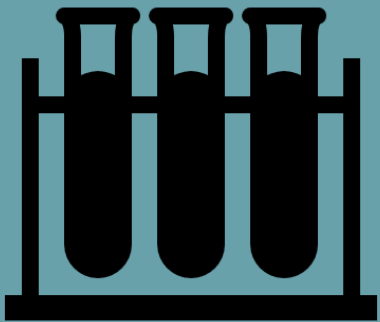
Regents Exams

- Not required.
- May take regent examinations, at the parents' request, if they meet the requirements to sit for the exam.
- Regents exams may only be administered at the public school or registered nonpublic school.
- Testing modification or accommodations, if any, should be listed on the student's IESP. The school should accommodate the student in the same way it would accommodate an enrolled student.
- **Non-vaccinated:** May not take part in regents exams.



Standardized Tests

- Not required
 - *their scores should not be included in the scores of public-school students.*
- If a parent chooses to use a test listed in the regulations but not used by the school district, the school district upon request of the parent must order the test and the parent must pay the cost for procuring it.
- A parent may administer a standardized test with the consent of the superintendent.



College Entrance

- Home-schooled students cannot be awarded local or regents high school diplomas.
- Seeking and successfully gaining admission to college is entirely the responsibility of the student and their parents.
- Student can request the superintendent of schools of the district of residence attest, in writing, on school letterhead that student has completed a program of home-schooling.
 - *Superintendent is under no legal obligation to attest.*
- Student can request district produce, on school letterhead, a list of regents exams taken, the date and score earned. This list can be shared with college admissions personnel.





QUESTIONS?