



Commissioner's Determination on COVID-19 Testing Pursuant to 10 NYCRR 2.62

September 2, 2021

Pursuant to 10 NYCRR 2.62, I hereby issue the following determination, which includes findings of necessity, to support the testing requirements set forth below:

Findings of necessity:

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice as transmissible as the early SARS-CoV-2 strain. Since early July, cases have risen 10-fold, and 95 percent of sequenced recent positives in New York State were the Delta variant.

Certain settings and areas (i.e., healthcare, schools, and public places located in CDC-identified areas of substantial or high community transmission) pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable populations served, the disproportionate percentage of individuals (i.e., children) who are not yet eligible for the COVID-19 vaccination, and/or the substantial to high levels of community transmission. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

The CDC's recommendation for testing, including its associated scientific justification, is available at: https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html#in-person.

Based on the foregoing findings of necessity, I hereby issue the following testing requirements:

Testing Requirement:

After careful review and consideration of the above referenced CDC recommendations for COVID-19 testing, effective immediately and for as long as this determination remains in effect, all P-12 schools are hereby required to implement testing consistent with the following:

1. Definitions and Application:

- a. **Teachers and Staff.** This determination applies to all P-12 (public or non-public) school district faculty or staff, including all teachers, substitute teachers, student teachers, school administrators, paraprofessional staff, and support staff, including bus drivers. This determination also applies to contractors working in a P-12 school (public or non-public) or school district setting, including contracted bus drivers.
- b. **P-12 schools.** This determination applies to P-12 elementary and secondary, public, charter,

private, and state-operated schools, including residential schools and programs serving students with disabilities, as regulated by the NYS Education Department. It does not apply to institutions of higher education. It does not apply to “standalone” pre-kindergarten schools (that is, schools that only serve pre-kindergarten students and are not located in a building that also serves older students).

2. Screening

- a. **Testing Requirement for teachers and staff:** P-12 schools are required to ensure teachers and staff, as outlined above, have testing performed for COVID-19 at least once per week when a school is in a geographic area identified by the CDC as having low, moderate, substantial, or high transmission rates. Teachers and staff may be permitted to opt-out of mandatory weekly screening testing if they provide documentation of being fully vaccinated against COVID-19, as set forth in 10 NYCRR 2.62. Teachers and staff who work at multiple schools do not need to receive multiple tests; they may use one weekly test result to demonstrate to any number of schools where they work that they have fulfilled this requirement.
- b. **Offer screening testing for students (obtain parent or guardian consent for minors, and where otherwise required pursuant to school policy):** P-12 schools are required to offer screening testing to unvaccinated students on a weekly basis in geographic areas identified by the CDC as having moderate, substantial, or high transmission rates.

3. Diagnostic testing

- a. Schools must have the capacity (either directly on-site or via referral) to provide diagnostic testing, for any students, teachers or staff, who regardless of vaccination status and community level of transmission per the CDC, are:
 - i. Symptomatic; or
 - ii. Asymptomatic following exposure to someone with COVID-19.

4. Special Requirements for Return to School Testing

- a. All school students, teachers, and staff with new or worsening symptoms of COVID-19 **must** be excluded from school, regardless of vaccination status, and either (a) provide a negative COVID test result, or (b) remain excluded from school for a minimum of 10 calendar days from symptom onset, prior to returning to school. If student, teacher, or staff symptoms are improving **AND** they are fever-free for at least 24 hours without the use of fever reducing medicines, they **may return to school** with either a note from the healthcare provider indicating the test was negative **OR** a copy of the negative test result. Given the growing prevalence of breakthrough infections among vaccinated populations nationwide, there is no recommended exemption for symptomatic vaccinated people.
- b. *Nucleic acid amplification tests* (known as NAATs, such as polymerase chain reaction, or PCR tests) are the most sensitive type of test available and the best option for ensuring that symptomatic people with COVID-19 are excluded from school. **The Department expectation is that all schools require a negative NAAT result for people with new or worsening symptoms of COVID-19 to return to school.**
However, the Department recognizes that [antigen tests](#) are widely available and may produce results faster than NAATs; however, these tests are generally less sensitive than NAATs and can fail to detect cases of COVID-19 in symptomatic individuals. The Department further recognizes that in some circumstances the public health benefits of requiring a negative NAAT might be outweighed by the negative effects of lost educational opportunity while people are excluded from school pending the NAAT result. Therefore, when the following criteria apply, schools may require a negative antigen test result rather than a negative NAAT test result for

people with new or worsening symptoms to return to school (in all other cases, a NAAT, such as PCR, may be required to return to school, along with meeting other requirements based on school policies and the specific situation, such as quarantine):

- i. The rates of COVID-19 in the county are [low](#).
 - ii. The school is not experiencing an active, ongoing outbreak.
 - iii. The individual in question does not have known exposure to COVID-19, has not had a fever during the illness, and does not have symptoms that increase the likelihood that the illness is COVID-19 (i.e., loss of taste or smell).
 - iv. Symptomatic individuals allowed to return to school with a negative antigen test must:
 - Meet other school or district requirements to attend school after illness,
 - Not have rhinorrhea (runny nose) or cough severe enough to make mask wear difficult or unhygienic, and
 - v. The school or district has sought input from and discussed the risks and benefits of this option with parents, teachers, and the school community at large.
 - vi. The school/district has educated families about:
 - The possibility of missing a case of COVID-19 using antigen tests and the possible preference for NAAT testing for reasons other than school attendance.
 - The advantages of keeping children with non-COVID-19 illnesses at home to prevent transmission of these illnesses to other children, who then would need COVID-19 testing, and
 - The practice of accepting a negative antigen test result in a symptomatic person as a conclusive indication of the absence of COVID-19 infection **is inconsistent with [NYSDOH](#) and [CDC](#) guidance**.
- c. Exceptions to the testing requirement set forth above include:
- i. Individuals with symptoms that are attributable to pre-existing medical conditions (e.g., migraines, allergies) and are not new or worsening do not require school exclusion; or
 - ii. If the HCP provides a diagnosis of a known chronic condition with unchanged symptoms, or a confirmed acute illness (examples: laboratory-confirmed influenza, strep-throat) **AND** COVID-19 is not suspected, then a note signed by their **HCP explaining the alternate diagnosis is required** before a student, teacher or staff member may be allowed to return to school. Such individuals may return to school according to the usual guidelines for that diagnosis.
5. **Authorized tests:** Any testing—screening, diagnostic, and/or pooled testing—must be [FDA](#) or [DOH authorized](#) and be performed by a NYS approved laboratory to ensure all NYS regulatory and reporting requirements are met. Schools using a laboratory to perform screening or diagnostic testing need to ensure that the laboratory holds the appropriate NYS approvals to perform testing. Laboratories that perform high complexity NAAT are required to hold a clinical laboratory permit; to determine if a laboratory has a clinical laboratory permit, a search can be performed [here](#). Laboratories that perform waived, point of care testing are required to be registered as an LSL; to determine if a laboratory has an LSL, a search can be performed [here](#). Some laboratories that held temporary approval to perform COVID-19 testing will be allowed to continue testing; to determine if a temporarily approved laboratory can perform COVID-19 testing, contact Covid19rapidtest@health.ny.gov. If you cannot determine if the laboratory is approved, contact Covid19rapidtest@health.ny.gov.