

Date: February 17, 2021

To: BOCES District Superintendents
Superintendents of Public Schools
Public School Administrators
Charter School Administrators
Nonpublic School Administrators

From: Kathleen R. DeCataldo



Subject: In-person learning, sports participation and COVID-19 testing (**Amended**)

The Department has received reports from the field that some school districts are requiring parental/guardian consent for schools to test students for COVID-19 as a condition for students to participate in school activities, including in-person learning and extracurricular activities.

To clarify, school districts may not require parent/guardian [consent](#) for COVID-19 testing of students in order for the students to participate in in-person learning or other school activities, unless local health authorities direct schools otherwise.

As required by the Governor's Cluster Action Initiative and New York State Department of Health (NYSDOH) guidance, schools in a designated micro cluster zone that provide in-person instruction must test specific percentages of in-person students, teachers, and staff for COVID-19. Thus, while a school district is required to test a percentage of the school population for COVID-19 if they are located in a designated zone, the district cannot require remote instruction for students whose parents/guardians do not consent to surveillance tests for COVID-19, absent a determination by local health authorities.

Education Law §906(1) provides that the only permissible ground for excluding students from in-person learning or participation in school activities based upon communicable disease concerns is if they are ill or symptomatic. In addition, students may be excluded if they are the subjects of a determination by a local health department, including orders to quarantine based upon actual or potential exposure to COVID-19.

Therefore, under Education Law §906 as it relates to communicable diseases, and unless otherwise provided by local health authorities, districts may not exclude students from in-person instruction who:

- Are healthy or asymptomatic unless directed otherwise by local health authorities;
- Are subject to an obligation to quarantine based on travel to/from a restricted State or exposure to a person who tested positive for COVID-19; or
- Whose parent/guardian does not give consent for COVID-19 testing unless directed otherwise by local health authorities.

Additionally, schools do not have the authority to exclude well or asymptomatic students and staff based on protected characteristics, including race or country of origin.

Arrangements to participate in interscholastic sports are determined by school districts in consultation with local health departments, per the State Department of Health Interim Guidance for Sports and Recreation, and remain unaffected by this guidance. However, as indicated above, if a student wishes to participate in interscholastic athletics, he or she may not be excluded from their chosen modality of learning, including in-person learning, as a pre-condition of participation.