

# STATE OF NEW YORK

8378

2021-2022 Regular Sessions

## IN ASSEMBLY

October 20, 2021

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requiring immunization against COVID-19

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2164 of the public health law, as amended by chapter  
2 401 of the laws of 2015, subdivisions 6 and 7 as amended by chapter  
3 35 of the laws of 2019, is amended to read as follows:

4 § 2164. Definitions; immunization against poliomyelitis, mumps,  
5 measles, diphtheria, rubella, varicella, Haemophilus influenzae type b  
6 (Hib), pertussis, tetanus, pneumococcal disease, meningococcal disease,  
7 [~~and~~] hepatitis B, and COVID-19. 1. As used in this section, unless the  
8 context requires otherwise:

9 a. The term "school" means and includes any public, private or parochial  
10 child caring center, day nursery, day care agency, nursery school,  
11 kindergarten, elementary, intermediate or secondary school.

12 b. The term "child" shall mean and include any person between the ages  
13 of two months and eighteen years.

14 c. The term "person in parental relation to a child" shall mean and  
15 include his father or mother, by birth or adoption, his legally  
16 appointed guardian, or his custodian. A person shall be regarded as the  
17 custodian of a child if he has assumed the charge and care of the child  
18 because the parents or legally appointed guardian of the minor have  
19 died, are imprisoned, are mentally ill, or have been committed to an  
20 institution, or because they have abandoned or deserted such child or  
21 are living outside the state or their whereabouts are unknown, or have  
22 designated the person pursuant to title fifteen-A of article five of the  
23 general obligations law as a person in parental relation to the child.

24 d. The term "health practitioner" shall mean any person authorized by  
25 law to administer an immunization.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 2. a. Every person in parental relation to a child in this state shall  
2 have administered to such child an adequate dose or doses of an immuniz-  
3 ing agent against poliomyelitis, mumps, measles, diphtheria, rubella,  
4 varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus,  
5 pneumococcal disease, [~~and~~] hepatitis B, and COVID-19, which meets the  
6 standards approved by the United States public health service for such  
7 biological products, and which is approved by the department under such  
8 conditions as may be specified by the public health and health planning  
9 council.

10 b. Every person in parental relation to a child in this state born on  
11 or after January first, nineteen hundred ninety-four and entering sixth  
12 grade or a comparable age level special education program with an unas-  
13 signed grade on or after September first, two thousand seven, shall have  
14 administered to such child a booster immunization containing diphtheria  
15 and tetanus toxoids, and an acellular pertussis vaccine, which meets the  
16 standards approved by the United States public health service for such  
17 biological products, and which is approved by the department under such  
18 conditions as may be specified by the public health and health planning  
19 council.

20 c. Every person in parental relation to a child in this state entering  
21 or having entered seventh grade and twelfth grade or a comparable age  
22 level special education program with an unassigned grade on or after  
23 September first, two thousand sixteen, shall have administered to such  
24 child an adequate dose or doses of immunizing agents against meningococ-  
25 cal disease as recommended by the advisory committee on immunization  
26 practices of the centers for disease control and prevention, which meets  
27 the standards approved by the United States public health service for  
28 such biological products, and which is approved by the department under  
29 such conditions as may be specified by the public health and health  
30 planning council.

31 3. The person in parental relation to any such child who has not  
32 previously received such immunization shall present the child to a  
33 health practitioner and request such health practitioner to administer  
34 the necessary immunization against poliomyelitis, mumps, measles,  
35 diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella,  
36 pertussis, tetanus, pneumococcal disease, meningococcal disease, [~~and~~]  
37 hepatitis B, and COVID-19, as provided in subdivision two of this  
38 section.

39 4. If any person in parental relation to such child is unable to pay  
40 for the services of a private health practitioner, such person shall  
41 present such child to the health officer of the county in which the  
42 child resides, who shall then administer the immunizing agent without  
43 charge.

44 5. The health practitioner who administers such immunizing agent  
45 against poliomyelitis, mumps, measles, diphtheria, Haemophilus influen-  
46 zae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal  
47 disease, meningococcal disease, [~~and~~] hepatitis B, and COVID-19 to any  
48 such child shall give a certificate of such immunization to the person  
49 in parental relation to such child.

50 6. In the event that a person in parental relation to a child makes  
51 application for admission of such child to a school or has a child  
52 attending school and there exists no certificate or other acceptable  
53 evidence of the child's immunization against poliomyelitis, mumps,  
54 measles, diphtheria, rubella, varicella, hepatitis B, pertussis, teta-  
55 nus, COVID-19, and, where applicable, Haemophilus influenzae type b  
56 (Hib), meningococcal disease, and pneumococcal disease, the principal,

1 teacher, owner or person in charge of the school shall inform such  
2 person of the necessity to have the child immunized, that such immuniza-  
3 tion may be administered by any health practitioner, or that the child  
4 may be immunized without charge by the health officer in the county  
5 where the child resides, if such person executes a consent therefor. In  
6 the event that such person does not wish to select a health practitioner  
7 to administer the immunization, he or she shall be provided with a form  
8 which shall give notice that as a prerequisite to processing the appli-  
9 cation for admission to, or for continued attendance at, the school such  
10 person shall state a valid reason for withholding consent or consent  
11 shall be given for immunization to be administered by a health officer  
12 in the public employ, or by a school physician or nurse. The form shall  
13 provide for the execution of a consent by such person and it shall also  
14 state that such person need not execute such consent if subdivision  
15 eight of this section applies to such child.

16 7. (a) No principal, teacher, owner or person in charge of a school  
17 shall permit any child to be admitted to such school, or to attend such  
18 school, in excess of fourteen days, without the certificate provided for  
19 in subdivision five of this section or some other acceptable evidence of  
20 the child's immunization against poliomyelitis, mumps, measles, diphthe-  
21 ria, rubella, varicella, hepatitis B, pertussis, tetanus, COVID-19, and,  
22 where applicable, Haemophilus influenzae type b (Hib), meningococcal  
23 disease, and pneumococcal disease; provided, however, such fourteen day  
24 period may be extended to not more than thirty days for an individual  
25 student by the appropriate principal, teacher, owner or other person in  
26 charge where such student is transferring from out-of-state or from  
27 another country and can show a good faith effort to get the necessary  
28 certification or other evidence of immunization or where the parent,  
29 guardian, or any other person in parental relationship to such child can  
30 demonstrate that a child has received at least the first dose in each  
31 immunization series required by this section and has age appropriate  
32 appointments scheduled to complete the immunization series according to  
33 the Advisory Committee on Immunization Practices Recommended Immuniza-  
34 tion Schedules for Persons Aged 0 through 18 Years.

35 (b) A parent, a guardian or any other person in parental relationship  
36 to a child denied school entrance or attendance may appeal by petition  
37 to the commissioner of education in accordance with the provisions of  
38 section three hundred ten of the education law.

39 8. If any physician licensed to practice medicine in this state certi-  
40 fies that such immunization may be detrimental to a child's health, the  
41 requirements of this section shall be inapplicable until such immuniza-  
42 tion is found no longer to be detrimental to the child's health.

43 8-a. Whenever a child has been refused admission to, or continued  
44 attendance at, a school as provided for in subdivision seven of this  
45 section because there exists no certificate provided for in subdivision  
46 five of this section or other acceptable evidence of the child's immuni-  
47 zation against poliomyelitis, mumps, measles, diphtheria, rubella, vari-  
48 cella, hepatitis B, pertussis, tetanus, COVID-19, and, where applicable,  
49 Haemophilus influenzae type b (Hib), meningococcal disease, and pneumo-  
50 coccal disease, the principal, teacher, owner or person in charge of the  
51 school shall:

52 a. forward a report of such exclusion and the name and address of such  
53 child to the local health authority and to the person in parental  
54 relation to the child together with a notification of the responsibility  
55 of such person under subdivision two of this section and a form of  
56 consent as prescribed by regulation of the commissioner, and

1 b. provide, with the cooperation of the appropriate local health  
2 authority, for a time and place at which an immunizing agent or agents  
3 shall be administered, as required by subdivision two of this section,  
4 to a child for whom a consent has been obtained. Upon failure of a local  
5 health authority to cooperate in arranging for a time and place at which  
6 an immunizing agent or agents shall be administered as required by  
7 subdivision two of this section, the commissioner shall arrange for such  
8 administration and may recover the cost thereof from the amount of state  
9 aid to which the local health authority would otherwise be entitled.

10 10. The commissioner may adopt and amend rules and regulations to  
11 effectuate the provisions and purposes of this section.

12 11. Every school shall annually provide the commissioner, on forms  
13 provided by the commissioner, a summary regarding compliance with the  
14 provisions of this section.

15 § 2. Subdivision 7 of section 2164 of the public health law, as  
16 amended by chapter 401 of the laws of 2015, is amended to read as  
17 follows:

18 7. (a) No principal, teacher, owner or person in charge of a school  
19 shall permit any child to be admitted to such school, or to attend such  
20 school, in excess of fourteen days, without the certificate provided for  
21 in subdivision five of this section or some other acceptable evidence of  
22 the child's immunization against poliomyelitis, mumps, measles, diphthe-  
23 ria, rubella, varicella, hepatitis B, pertussis, tetanus, COVID-19, and,  
24 where applicable, Haemophilus influenzae type b (Hib), meningococcal  
25 disease, and pneumococcal disease; provided, however, such fourteen day  
26 period may be extended to not more than thirty days for an individual  
27 student by the appropriate principal, teacher, owner or other person in  
28 charge where such student is transferring from out-of-state or from  
29 another country and can show a good faith effort to get the necessary  
30 certification or other evidence of immunization.

31 (b) A parent, a guardian or any other person in parental relationship  
32 to a child denied school entrance or attendance may appeal by petition  
33 to the commissioner of education in accordance with the provisions of  
34 section three hundred ten of the education law.

35 § 3. Paragraph (a) of subdivision 1 of section 613 of the public  
36 health law, as amended by section 24 of part E of chapter 56 of the laws  
37 of 2013, is amended to read as follows:

38 (a) The commissioner shall develop and supervise the execution of a  
39 program of immunization, surveillance and testing, to raise to the high-  
40 est reasonable level the immunity of the children of the state against  
41 communicable diseases including, but not limited to, influenza, poliomy-  
42 elitis, measles, mumps, rubella, haemophilus influenzae type b (Hib),  
43 diphtheria, pertussis, tetanus, COVID-19, varicella, hepatitis B, pneu-  
44 mococcal disease, and the immunity of adults of the state against  
45 diseases identified by the commissioner, including but not limited to  
46 influenza, smallpox, hepatitis and such other diseases as the commis-  
47 sioner may designate through regulation. Municipalities in the state  
48 shall maintain local programs of immunization to raise the immunity of  
49 the children and adults of each municipality to the highest reasonable  
50 level, in accordance with an application for state aid submitted by the  
51 municipality and approved by the commissioner. Such programs shall  
52 include assurance of provision of vaccine, serological testing of indi-  
53 viduals and educational efforts to inform health care providers and  
54 target populations or their parents, if they are minors, of the facts  
55 relative to these diseases and immunizations to prevent their occur-  
56 rence.

1 § 4. This act shall take effect on the thirtieth day after the date  
2 upon which an immunizing agent against COVID-19 for which the United  
3 States Food and Drug Administration has issued a biologics license is  
4 recommended by majority vote of the advisory committee on immunization  
5 practices of the Centers for Disease Control and Prevention; provided  
6 that:

7 (a) the commissioner of health shall notify the legislative bill  
8 drafting commission upon the occurrence of both such approval and such  
9 recommendation in order that the commission may maintain an accurate and  
10 timely effective data base of the official text of the laws of the state  
11 of New York in furtherance of effectuating the provisions of section 44  
12 of the legislative law and section 70-b of the public officers law; and

13 (b) the amendments to subdivision 7 of section 2164 of the public  
14 health law made by section one of this act shall be subject to the expi-  
15 ration and reversion of such subdivision pursuant to section 4 of chap-  
16 ter 35 of the laws of 2019 when upon such date the provisions of section  
17 two of this act shall take effect.

18 Effective immediately the addition, amendment and/or repeal of any  
19 rule or regulation necessary for the implementation of this act on its  
20 effective date are authorized to be made and completed on or before such  
21 date.