

Huge Victory: Under Pressure, New York Ends Mandatory COVID Testing in Schools

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The new guidance follows in the wake of a lawsuit by CHD and eight parents of New York schoolchildren challenging mandatory COVID testing and closing of New York City Schools.

by [Children's Health Defense](#), [The Defender](#)

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The New York State Education Department [issued a letter](#) Feb. 16 informing all public schools in the state that parental consent to [COVID-19](#) tests for their children is not required for in-person instruction, or for participation in any school activities, including extracurricular activities.

The letter, which applies only to public and charter schools, follows in the wake of a [lawsuit](#) challenging the closing of New York City Schools and the [mandatory testing](#) for students.

The lawsuit was filed Dec. 16, 2020, by eight New York City parents and [Children's Health Defense](#) (CHD) against the New York City Department of Education and Mayor Bill de Blasio. The parents are represented by Attorneys James Mermigis, Ray L. Flores II, Robert F. Kennedy, Jr., CHD chairman and chief legal counsel, and Mary Holland, CHD president and general counsel.

The [Feb. 16 letter](#) from Kathleen R. Cataldo, assistant

commissioner, Office of Student Support Services said:

“The Department has received reports from the field that some school districts are requiring parents’ consent on behalf of their children, to COVID-19 testing as a condition of activities including in-person learning and extracurricular activities. The Department hereby clarifies that parent/guardian consent for COVID 19 testing of students may not be a condition of in-person learning or other school activities.” (Underlining from the original.)

Since Nov. 19, 2020, children in grades 6-12 have been completely excluded from all in-school education. NYC has provided no specific date by which these students will be back in school.

Since early December, K-5 and special needs students have been able to attend “blended learning,” usually just 1-2 days per week, but only if they submit to in-school [polymerase chain reaction](#) (PCR) genetic testing for COVID-19. If parents refused, the education department relegated their kids to remote learning for at least the next 10 months.

NYC schools were open to all students for blended learning September through mid-November, even though all families had the option of remote learning. Mayor de Blasio shut schools down again because of a rise in the city-wide PCR positivity rate.

As plaintiffs’ experts declared in their [lawsuit](#), PCR testing does not diagnose COVID infection, even though NYC has represented to parents that it does. PCR testing generates many false positive results, leading to disruptive and expensive isolation and quarantine, the plaintiffs allege.

The U.S. Centers for Disease Control and Prevention [states](#) that in-school testing without voluntary consent is “unethical and illegal.” Coercing parents to sign consent forms on threat of exclusion is not voluntary, the

plaintiffs allege, and the education department is acting in flagrant disregard of federal public health guidance.

As the lawsuit outlined, remote learning disproportionately harms those who can't afford access to modern technology, including high-speed internet, computers, tablets, printers, scanners and more. Further, most students in NYC are Black and Hispanic, and many parents are wary to submit their kids to medical procedures without their oversight. They wonder what really happens with their children's test results and DNA samples

The [United Federations of Teachers](#) (UFT), the [New York City Teachers Union](#) issued a statement that the state's letter contradicts a plan agreed to by the schools and the union. "We will fight to make sure these protocols stay in place" according to a statement on the [UFT Facebook page](#).

[NY Teachers for Choice](#) responded to UFT with an [open letter](#) to UFT President Michael Mulgrew outlining why NY Teachers for Choice supports the new guidance. The letter ended with:

"Virtually every other school district in New York, and across the country, does not force COVID testing on staff or students because doing so is illegal. I understand and respect that you are trying to do what you believe is best and safest for your membership. However, the UFT should not stand on the side of forcing an illegal practice to take place under its watch. Please accept the new guidance from NYSED and expand upon it to ensure teachers and staff rights are respected as well."

The lawsuit by CHD and New York parents will continue until the school closure issue is resolved.