



## Department of Health

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### 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](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,

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](mailto:Covid19rapidtest@health.ny.gov). If you cannot determine if the laboratory is approved, contact [Covid19rapidtest@health.ny.gov](mailto:Covid19rapidtest@health.ny.gov).