



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments to Article 49 of the New York City Health Code**

What are we proposing? The Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health (“Board”) amend Article 49 (Schools) of the New York City Health Code (“Health Code”). The proposal is to amend section 49.05 providing immunization requirements in conformity with applicable state law and to amend section 49.07 to require a medical room in each school. Additionally, section 49.01 is being amended to indicate that these proposed changes are also applicable to high schools.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments on November 15, 2019, from 9:30AM to 12PM. The hearing will be held at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, Room 3-32
Long Island City, NY 11101-4132
This location is wheelchair-accessible.

How do I comment on the proposed amendments to the Health Code? Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on November 15, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received by November 15, 2019, at 5:00 p.m.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by

telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by November 1, 2019.

Can I review the comments made on the proposed amendments? You may review the comments made online on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be available to the public within a reasonable period of time after the hearing at the Department's Office of the General Counsel.

What authorizes the Board to make these amendments? Sections 556, 558, and 1043 of the New York City Charter (the Charter) authorize the Board to make the proposed amendments. The provisions of the proposed rule were not included in the Department's regulatory agenda because they were not contemplated when the Department published the agenda.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Board must meet the requirements of Section 1043 of the Charter when creating or changing the Health Code. This notice is made according to the requirements of such section.

Statement of Basis and Purpose

Article 49 of the New York City Health Code governs health and safety requirements for schools. The Department of Health and Mental Hygiene (DOHMH) proposes that the Board of Health amend Article 49 Section 49.05 to establish child immunization requirements that conform with § 2164 of the New York State Public Health Law. DOHMH further proposes amending Article 49 Section 49.07 to require each school to have a medical room so that health professionals may properly perform their duties. Finally, the Department proposes that Article 49 Section 49.01 be amended to confirm that the proposed changes concerning child immunization also apply to public and private high schools.

Legal Authority

These amendments to the Health Code are proposed pursuant to §§ 558 and 1043 of the New York City Charter. Sections 558 (b) and (c) of the Charter empower the Board to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 1043 grants the Department rulemaking authority.

This proposal was not included in the Department's Fiscal Year 2020 regulatory agenda as its need was not required at the time of publication.

The proposal is as follows:

New material is underlined.

[Deleted material is in brackets.]

* * * * *

RESOLVED, that section 49.01 of Article 49 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, indicating that required child immunizations apply to high schools, to read as follows:

§49.01 Scope.

The provisions of this article apply to all schools, and the requirements of this article shall be in addition to the requirements to be met by schools pursuant to Article 45. A nursery school or kindergarten other than a kindergarten conducted as part of an elementary school by the Board of Education shall be maintained pursuant to Article 47. The provisions of [§] §§ 49.05(c) and 49.15(d) shall also apply to public and private high schools.

RESOLVED, that section 49.05 of Article 49 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended to add a new subdivision (c), concerning required child immunizations, to read as follows:

§ 49.05 Admissions.

(c) Immunizations. (1) All children must be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B, pneumococcal disease and haemophilus influenzae type b (Hib), in accordance with New York State Public Health Law §2164, or successor law. Exemption from specific immunizations may be permitted if the immunization may be detrimental to the child's health, in accordance with New York State Public Health Law §2164. Documentation of immunizations and exemptions must be kept on site.

(2) No principal, teacher, owner, or person in charge of a school shall permit any child to attend such school without appropriate documentation of the immunizations required pursuant to paragraph (1) of this subdivision, except as provided for in this subdivision or pursuant to New York State Public Health Law § 2164 or successor law.

(3) All children must have such additional immunizations as the Department may require.

(4) The principal, owner, or person in charge of a school must report to the Department all requests for exemption made pursuant to paragraph (1) of this subdivision in a manner and form prescribed by the Department. Upon submission of an exemption request and pending Department determination, the child may attend school. If upon review of the documents submitted and any additional documentation provided to the Department, the Department determines that the exemption request is not valid insofar as it is not in accordance with the Center for Disease Control's Advisory Committee on Immunization Practices guidelines or other nationally recognized evidence-based guidelines, the principal, owner, or person in charge of a school must not allow the child to attend the school unless appropriate documentation is provided that such child has received the immunizations required pursuant to paragraph (1) of this subdivision.

RESOLVED, that section 49.07 of Article 49 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended to add a new subdivision (d), requiring a medical room in each school, to read as follows:

§49.07 Physical facilities.

- (d) Every public or private school where a nurse, public health advisor or school health services aide provides health services to school children must have an appropriate medical room where the nurse, public health advisor or school health service aide, can carry out his or her duties. The medical room should be in a dedicated space with no through traffic, wheelchair-accessible, on a lower floor, and in a central building location; and should contain the following:
- (1) a workstation
 - (2) a medical cabinet, a filing cabinet, medication refrigerator, exam table and scale;
 - (3) an appropriate waiting area;
 - (4) a bathroom internal to or adjacent to the medical room;
 - (5) a holding area for a student awaiting transportation or pick-up (80 square feet) ; and
 - (6) a nursing/treatment area that meets the following requirements:
 - (i) minimum of 200 square feet in buildings for up to 800 students and 300 square feet in larger buildings to accommodate more staff;
 - (ii) sink with hot and cold running water;
 - (iii) floor-to-ceiling walls substantial enough to maintain privacy;
 - (iv) easy to clean surfaces (e.g., no carpeting);
 - (v) internet access and adequate electrical power (multiple outlets) for computers and medical equipment;
 - (vi) telephone line able to make direct calls out of building (e.g., 911 calls) and to send and receive faxes;
 - (vii) adequate heating and air conditioning, lighting and ventilation, including a window;
 - (viii) secure lock that cannot be opened by other school keys (excluding master key); and
 - (ix) safety button to enable nurse to have immediate access to security in the event of an emergency.

RESOLVED, that explanatory notes for Article 49 be printed to read as follows:

Notes: The Department proposes that the Board of Health amend Article 49 of the Health Code to conform child immunization requirements with applicable state law and to require that each school have a dedicated medical room.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Immunization Requirements for School Children

REFERENCE NUMBER: 2019 RG 084

RULEMAKING AGENCY: Board of Health

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN L. GOULDEN
Acting Corporation Counsel

Date: October 7, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Immunization Requirements for School Children

REFERENCE NUMBER: DOHMH 108

RULEMAKING AGENCY: Board of Health

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Mariana Alexander
Mayor's Office of Operations

October 8, 2019
Date