



**Department
of Health**

**Office of Children
and Family Services**

**State Education
Department**

Effective June 13, 2019, Chapter 35 of the Laws of 2019 repealed non-medical exemptions from vaccination for children attending school.

This document is in follow-up to [FAQs issued on June 18, 2019](#) and on [June 22, 2019](#). The Department of Health filed emergency regulations on August 16, 2019 to implement the statutory amendments to the Public Health Law and adhere to the legislative intent of the statutory amendments, which is to protect the public health. This guidance is intended to assist schools in implementing the statutory and regulatory amendments.

The [2019-20 School Year New York State Immunization Requirements for School Entrance/Attendance](#) is available online.

The Centers for Disease Control and Prevention Advisory Committee on Immunization Practices (ACIP) [catch-up immunization schedule](#) is available online.

VACCINATION REQUIREMENTS APPLICABLE TO ALL STUDENTS

Public Health Law §2164, as amended by Chapter 35 of the Laws of 2019, applies to students attending all schools as defined in Public Health Law §2164 to include any public, private or parochial child-caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate, or secondary school.

Public Health Law §2164, as amended by Chapter 35 of the Laws of 2019, prohibits a school from permitting any child to be admitted to such school, or to attend such school, in excess of 14 days without sufficient evidence that the child has received all age-appropriate required vaccinations. The 14 days may be extended to not more than 30 days where the student is transferring from out of state or from another country and can show a good faith effort to get the necessary evidence **or** where the parent, guardian or any other person in parental relationship can demonstrate that a child has received the first age-appropriate dose in each immunization series and that they have age-appropriate scheduled appointments for follow-up doses to complete the immunization series in accordance with the CDC's Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18.

I. All Students

A. Application of Statute.

(1) Does this apply to students attending an independent preschool?

Yes.

(2) Does this apply to students attending approved State-operated and State-supported schools, approved private residential and non-residential schools for the education of students with disabilities, and Special Act School Districts?

Yes.

Students placed by a Committee on Special Education (CSE) on a day or residential basis in one of these settings must comply with the mandatory vaccination laws.

Students placed residentially by a State Agency, Court, or Local Social Services District in a childcare institution with an affiliated approved private residential school or Special Act School District must comply with mandatory vaccination laws.

(3) Does this apply to students who are receiving homebound instruction, commonly referred to as home/hospital-instruction (students who are receiving homebound instruction are not the same as students who are homeschooled under [8 NYCRR §100.10](#))?

Yes. Homebound instruction is a form of tutorial services, provided to public or nonpublic students, by the public school district of residence. These services are provided to students who are unable to attend their public or nonpublic school because of physical, mental, or emotional illness or injury.

(4) When are schools required to assess compliance with the immunization requirements for students participating in interscholastic athletics whose season commences in August 2019?

For students participating in interscholastic athletics in August 2019, schools can consider the beginning of the academic year to be the start of the 14-day time period. For students not attending year-round instruction, the 14-day time period commences on the first day of instruction for the school year (July for students attending summer school or September for students not attending summer school) or first enrollment during the school year. See FAQ issued on June 22, 2019.

(5) If a parent chooses not to vaccinate his/her child, what are the options for the child's education in New York?

Parents who choose not to vaccinate their children, and whose children do not have a valid medical exemption, still must ensure that children of compulsory school age are educated and, thus, would need to provide home instruction ("homeschooling") for those children.

Information regarding compulsory school age is available here:

<http://www.p12.nysed.gov/ss/lawsregs/>.

B. Homeschooled Students (8 NYCRR §100.10)

(1) If I provide homeschooling for my child, will he or she be allowed to attend State tests (e.g. 3-8 State assessments, Regents examinations) held at the school if he/she is not immunized?

No. Only those students who have been vaccinated consistent with Public Health Law §2164 or have a valid medical exemption will be allowed to take such examinations at the school.

(2) May groups of parents provide homeschooling collectively by engaging the services of a tutor to provide group instruction to their children?

Parents providing homeschooling to their child may arrange to have their child instructed in a group situation for particular subjects but not for a majority of the home instruction program. Where groups of parents organize to provide group instruction by a tutor for a majority of the instructional program, they are operating a nonpublic school and are no longer providing home instruction.

(3) Can a homeschooled student who is not immunized audit or intermittently attend some classes at a nonpublic school without the required immunizations?

No. Homeschooled students who are not immunized consistent with Public Health Law §2164 or who do not have a valid medical exemption cannot audit or intermittently attend some classes at a nonpublic school.

(4) Can students who are not immunized and do not have a valid medical exemption be transported using school transportation with other students?

No, students who have not been immunized consistent with the requirements of Public Health Law §2164 and do not have a valid medical exemption may not be transported on a school bus or vehicle with other students.

(5) If a school district provides bus transportation to students attending another school (i.e., a nonpublic school), is the school district that provides the bus transportation responsible for ensuring that the students from other schools have all their required immunizations?

No. Each school arranging for bus transportation through their school district of location is responsible for ensuring that the children enrolled in or attending such school receive the required immunizations or valid medical exemptions in accordance with the law.

II. STUDENTS WITH DISABILITIES

A. Are students with disabilities who have not been immunized entitled to special education services?

Parents who choose not to vaccinate a student with a disability must still ensure that children of compulsory school age are educated and, thus, would need to provide homeschooling for those children. Where students with disabilities are provided homeschool instruction under [8 NYCRR §100.10](#), such students are eligible to receive special education services from their school district. Under Education Law §3602-c(2-c), these students are entitled to receive special education services in accordance with an individualized education services program (IESP) from the public school district in which the home school is located. Where the student is educated at home, the school district of location is the same as the student's school district of residence.

B. Is it considered a change in placement when a student with a disability, who previously attended public school under a non-medical exemption from vaccination requirements, is now being homeschooled because the student does not meet vaccination requirements under State law?

No. It is not considered a change in placement when a student with a disability who previously attended public school under a non-medical exemption from vaccination requirements is now being homeschooled solely because the student does not meet the vaccination requirements under Public Health Law §2164.

C. What are the requirements for a homeschooled child to receive special education services?

To be eligible to receive special education services, a homeschooled student must:

- be entitled to attend the public schools without payment of tuition pursuant to Education Law §3202(1); and
- have an individualized home instruction plan that the superintendent of schools of the school district in which the homeschool is located has determined to be in compliance with §100.10 of the Regulations of the Commissioner of Education.

D. What is the difference between an IESP and an individualized education program (IEP)?

For homeschooled students who are students with disabilities, the committee on special education (CSE) would develop an individualized education services program (IESP) for the student. An IESP is developed in the same manner as an IEP, but an IESP is developed in consideration of the parents' decision to educate their child at home.

E. Where are special education services provided to homeschooled students with an IESP?

A board of education determines the location where special education services will be made available to homeschooled students, which could include delivery of services by school staff or contractors in the child's home, on school property or at another location. However, for a homeschooled student's special education services to be delivered at a public, private or parochial school, the child must either be immunized consistent with Public Health Law §2164(7) or have a valid medical exemption in order to receive special education services in a school setting.

Students who are not immunized and do not have a valid medical exemption could receive their special education services in their home or at another location (e.g. therapy provider's office; or public gathering sites that are open and accessible to the general public, such as community centers).

If special education services are provided at a location other than the student's home the district would remain responsible for providing transportation. (See also Section I.(A), Question #4: "[S]tudents who have not been immunized consistent with the requirements of Public Health Law §2164 and do not have a valid medical exemption may not be transported on a school bus with other students.")

F. What is the deadline for parents of homeschooled students to submit a written request for special education services?

For homeschooled students who are students with disabilities, the parent must request special education services in writing to the board of education of the school district of location by June 1 preceding the school year for which the request for services is made. However, for a student who is first identified as a student with a disability after the first day of June preceding the school year for which the request is made and prior to the first day of April of such current school year, the parent must submit the written request for services within 30 days after the student was first identified. A request may also be submitted within 30 days of a change in the student's school district of residence.

G. Are there any exceptions to the June 1 deadline for requesting services?

If a parent does not file a written request by June 1, nothing prohibits a school district from exercising its discretion to provide services subsequently requested for a student, provided that such discretion is exercised equally among all students with disabilities who file after the June 1 deadline. For the 2019-20 school year, school districts are encouraged to honor parent requests for special education services for homeschooled children who may be impacted by the repeal of religious exemptions to vaccination requirements.

H. What options do parents have if they disagree with the recommendations on an IESP?

Parents of homeschooled students with disabilities who disagree with the IESP recommendation of the CSE would be entitled to the due process procedures set forth in Education Law §4404.

I. Can parents of homeschooled children choose which services they want their child to receive or must parents accept all or none of the services recommended on an IESP?

Parents must submit a request in writing if they want special education services provided to their child. Unless otherwise indicated, the parent's written request is for all services on the IESP. However, a parent could request that only specific services be provided (e.g., speech therapy). The school district should maintain documentation of the parent's request.

III. PRESCHOOL STUDENTS WITH DISABILITIES

A. Does Chapter 35 of the Laws of 2019 apply to students attending preschool special education programs approved pursuant to §4410 of NYS Education Law?

Yes.

B. If a parent chooses not to immunize a preschool child, does this impact the preschool special education services that the child may receive?

Preschool students with disabilities continue to be entitled to special education programs and services through an IEP developed by the committee on preschool special education (CPSE). The IEP will identify the location where special education services will be provided to preschool students with disabilities.

If the CPSE recommends special education services that can only be delivered in an approved preschool special education program, the child must either be immunized consistent with Public Health Law §2164 or have a valid medical exemption in order to attend or be admitted to that program and receive those special education services.

C. What options do parents have if they disagree with the recommendations on an IEP?

Parents of preschool students with disabilities who disagree with the IEP recommendation of the CPSE would be entitled to the due process procedures set forth in Education Law §4404.