

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To require, on an temporary basis, that the District of Columbia Public Schools (“DCPS”) and public charter school local education agencies provide a distance learning program that complies with the Individual with Disabilities Education Act and section 504 of the Rehabilitation Act of 1973 to a certain number of students who are ineligible for the COVID-19 vaccine and for whom a physician, nurse practitioner, or physician assistant recommends that the student not attend in-person school either because the student has a medical condition that places the student at high risk of severe illness from COVID-19 infection or an individual in the student’s household has a medical condition that places the individual at high risk of severe illness from COVID-19 infection, to make clear that students who attend distance learning are to be considered enrolled in the local education agency (“LEA”) for the purposes of the enrollment audit, school payment process, and other reasons as determined by the Office of the State Superintendent of Education, even if the student is not physically attending the LEA, to mandate progressive COVID-19 asymptomatic testing in public and public charter schools, to require that each DCPS school and public charter school provide certain notifications to parents, guardians, and school staff when there is a confirmed case of COVID-19 in the school or classroom, to require certain reporting requirements related to COVID-19 cases by the Department of Health and certain reporting by the Department of General Services and DCPS on school facility issues, to direct the Department of Consumer and Regulatory Affairs to waive fines if it fails to approve an LEA’s applications for permits for outdoor eating and learning structures within 3 weeks of receiving the application; and to amend an Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes to define excused absences for DCPS schools and public charter schools as including certain absences related to COVID-19 infections during School Year 2021-2022.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protecting Our Children Temporary Amendment Act of 2021”.

**TITLE I. COVID-19 PUBLIC EDUCATION REQUIREMENTS**

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) “Classroom” means a group of students and school personnel assigned to or opting to partake in school-authorized educational or enrichment activities in-person together, including combinations of students and school personnel participating together in core subjects, specials, extracurricular activities, or aftercare.

(2) “DCPS” means District of Columbia Public Schools.

(3) “Distance learning” means virtual instruction provided through simulcasting, streaming a classroom, or another mechanism that provides a student with instruction while the student is not physically present in school.

(4) “Elementary school student” means a student enrolled in grade pre-kindergarten 3 through grade 5 during School Year 2021-2022.

(5) “Enrollment audit” means the process by which the Office of the State Superintendent of Education determines the number of students enrolled in DCPS or a public charter school LEA pursuant to section 107(d) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, approved March 12, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2906(d)).

(6) “LEA” means local education agency, which is the District of Columbia Public School system or any individual or group of public charter schools operating under a single charter in the District.

(7) “Secondary school student” means a student enrolled in grade 6 through grade 12 during School Year 2021-2022.

(8) “School” means a school in the DCPS system or an individual public charter school.

(9) “School payment process” means the process by which the annual payment for each LEA is determined pursuant to the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, approved March 12, 1999 (D.C. Law 12-207; D.C. Official Code §§ 38-2901 *et seq.*).

(10) “Special education school” shall have the same meaning as provided in section 102(11D) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, approved March 12, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2901(11D)).

Sec. 102. Expansion of virtual education.

(a)(1) During School Year 2021-2022, an LEA shall provide distance learning to a student who is enrolled in the LEA and who is ineligible for a vaccine that is approved and authorized in the United States to prevent COVID-19 if a licensed physician, nurse practitioner, or physician assistant has recommended that the student participate in distance learning and not in-person school because:

“(A) The student has a documented medical condition that puts the student at high risk of severe illness from COVID-19, consistent with the guidance of the Centers for Disease Control and Prevention; or

“(B) The student’s in-person attendance would endanger an individual in the student’s household because the individual has a documented medical condition, as defined by the Centers for Disease Control and Prevention, that places the individual at high risk of severe illness from COVID-19.

(2) DCPS may limit the total number of students who receive distance learning pursuant to paragraph (1) of this subsection to 200 elementary school students and 150 secondary school students in addition to those students already enrolled in its virtual learning academy as of October 5, 2021.

(3) A public charter school LEA may limit the total number of students who receive distance learning instruction pursuant to paragraph (1) of this subsection; provided, that the limit shall be no less than 3% of the total number of students enrolled in the public charter school LEA.

(b) Distance learning provided pursuant to subsection (a) of this section shall comply with the Individuals with Disabilities Education Act, approved April 13, 1970 (118 Stat. 2647; 20 U.S.C. § 1400 *et seq.*), section 504 of the Rehabilitation Act of 1973 (87 Stat. 394, 29 U.S.C. § 701 *et seq.*), and their implementing regulations.

(c) Notwithstanding any other provision of District law, during School Year 2021-2022, a student who receives distance learning instruction pursuant to subsection (a) of this section shall be considered to be enrolled in the LEA for the purposes of the enrollment audit, school payment process, and other reasons determined by the Office of the State Superintendent of Education, even if the student has not physically attended or is not physically attending the LEA during any portion of the school year; provided, that the student otherwise complies with the attendance policies of the LEA.

Sec. 103. Asymptomatic testing for COVID-19.

(a)(1) Each school shall conduct weekly asymptomatic testing for the COVID-19 virus of:

(A) Before November 1, 2021, at least 10% of its students attending in-person learning;

(B) Beginning November 1, 2021, at last 15% of its students attending in-person learning; and

(C) From November 15, 2021 through January 15, 2022, at least 20% of its students attending in-person learning.

(2) The testing methodology a school uses to comply with the requirements of paragraph (1) of this subsection shall be of equal or greater accuracy than the methodology the school employed as of October 1, 2021.

(b) A special education school may seek a waiver from the Office of the State Superintendent of Education for the testing requirements required in subsection (a) of this section.

**Sec. 104. Notification requirement.**

(a)(1) Each school shall notify all parents or guardians of students attending the school whenever it receives notice that a student who attends in-person learning at the school or a staff member who physically works at the school tests positive for the COVID-19 virus.

(2) After a confirmed COVID-19 case of a student attending in-person learning or a school employee assigned to a classroom, a school shall send notice to all parents or guardians of students in the affected classroom and to all school personnel known to have spent at least one 15-minute period in the prior 3 days in the same classroom as the student or school employee. The notice shall disclose the fact of a positive test in the classroom and provide information on COVID-19 testing locations.

(3) A school shall be deemed to have complied with paragraphs (1) and (2) of this subsection if the school's LEA provides the notification on the school's behalf.

(4) The identity of the individual who has tested positive for the COVID-19 virus shall not be disclosed in the notifications provided pursuant to paragraphs (1) and (2) of this subsection.

(b) The notifications required in subsection (a) of this section may be electronic.

**Sec. 105. COVID-19 infection and mitigation reporting requirements.**

(a)(1) On or before November 1, 2021, the Department of Health shall make available and update the following information on a weekly basis for the previous week on the District's coronavirus website ([coronavirus.dc.gov](https://coronavirus.dc.gov)), broken out by week:

(A) The number of students who tested positive for COVID-19, broken out by LEA, school, and grade level;

(B) The number of school personnel who tested positive for COVID-19, broken out by LEA and school;

(C) The total number of students tested, broken out by LEA, school, and grade level;

(D) The total number of school personnel tested, broken out by LEA and school;

(E) The number of students currently in quarantine, broken out by LEA, school, and grade level; and

(F) The number of school personnel in quarantine, broken out by LEA and school.

(2) If, when broken out by LEA, school, or grade, the number of individuals required to be reported pursuant to paragraph (1)(A), (B), (C), (D), (E), or (F) of this subsection is less than 10, the actual number shall be suppressed, and the Department of Health shall report the number as "n<10".

(b) On or before November 1, 2021, and every 2 weeks thereafter, the Department of General Services (“DGS”) shall transmit to the Council and post on the DGS website:

(1) A list of open work orders for HVAC units serving school facilities, including the status of any repairs and the anticipated repair date; and

(2) The date of the most recent inspection of HVAC units, by school.

(c) On or before November 1, 2021, and every 2 weeks thereafter, DCPS shall provide to the Council and post on the DCPS website a report that includes the following information:

(1) A list of unfulfilled requests for outdoor learning equipment, which shall include requests for tents or awnings, outdoor furniture, and electric or wi-fi hookups, disaggregated by school; and

(2) For each request, whether it will be fulfilled, in whole or in part, and the anticipated date of the equipment’s delivery and installation, when appropriate.

Sec. 106. Waiving of building fines for outdoor eating and learning.

Notwithstanding any other provision of law, if the Department of Consumer and Regulatory Affairs does not issue a permit to a LEA for the building of outdoor eating and learning structures or equipment within 3 weeks of receiving the application for the permit from the LEA, all fines associated with building the outdoor eating and learning structures or equipment shall be waived.

## **TITLE II. COVID-19 PUBLIC SCHOOL ATTENDANCE**

Sec. 201. An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-201 *et seq.*) is amended as follows:

(a) Section 2(c) of Article II (D.C. Official Code § 38-203(c)) is amended by adding new paragraphs (3) and (4) to read as follows:

(3) The absence of a minor from a District of Columbia Public Schools school or a public charter school shall be deemed excused if:

“(A) The cause of the minor’s absence falls into a category identified in 5A DCMR § 2102.2; or

“(B) For School Year 2021-2022:

“(i) The minor is absent from school following a determination that the minor or a member of the minor’s household is a close contact, pursuant to current Department of Health guidelines, of a person who tested positive for the COVID-19 virus, and the period of the minor’s absence from the school is not longer than the period of quarantine for COVID-19 recommended by the Department of Health;

“(ii) The minor did not have access to distance learning, as defined in section 101(3) of the Protecting Our Children Temporary Amendment Act of 2021, passed on 2nd reading on November 2, 2021 (enrolled version of Bill 24-413) (“act”), but would have been eligible to receive distance learning pursuant to section 102(1)(B) of the act, had the act been in effect during the period of the minor’s absence from the school;

“(iii) The minor is participating in distancing learning pursuant to section 102 of the act and has a valid excuse for an absence listed in 5A DCMR § 2102.2; or

“(iv) The minor’s school determines the absence to be excused.

“(4) Paragraph (3)(B)(iv) of this subsection shall not apply after January 15, 2022.”.

(b) Section 7(c)(1) of Article II (D.C. Official Code § 38-208(c)(1)) is amended by adding a new subparagraph (D) to read follows:

“(D) During School Year 2021-2022, a referral made pursuant to subparagraphs (A) or (B) of this paragraph shall include any information the educational institution has that would indicate whether the absences listed in the referral were because the student or a member of the student’s household was determined to be a close contact of a person who has tested positive for the COVID-19 virus.”.

**TITLE III. GENERAL PROVISIONS**

**Sec. 301. Fiscal impact statement.**

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-307.47a).

**Sec. 302. Effective date.**

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia