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To: BOCES District Superintendents
Superintendents of Public Schools
Public School Administrators
Charter School Administrators

From: Kathleen R. DeCataldo

Subject: In-person Learning and COVID-19 testing and sports participation

The Department has received reports from the field that some school districts are requiring parental 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.

The Governor's Cluster Action Initiative and the New York State Department of Health (NYSDOH) guidance require schools providing in-person instruction to test specific percentages of in-person students, teachers, and staff for COVID-19 if the school is in a designated micro cluster zone. Currently there is no requirement to test 100% of the school population for a school to open or remain open. While a school district has an interest in achieving testing of a percentage of the school population when in a zone designation, it cannot impose remote instruction on students whose parents/guardians do not consent to surveillance tests for COVID-19.

We remind schools that the only permissible ground for excluding students is, according to Education Law §906(1), whether they are ill or symptomatic, or if a local health department has otherwise ordered students to quarantine based upon actual or potential exposure to COVID-19. Thus, districts may not exclude healthy or asymptomatic students; students who are participating in a sport; or students whose parent/guardian does not give consent for COVID-19 testing. Relatedly, schools do not have the authority to exclude well or asymptomatic students and staff based on protected characteristics, including race or country of origin.