

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
NO. 2084CV02924

TAMAR MASSOYAN-ARTINIAN, on behalf
of her children, and MADISON SCHILTZ,

Plaintiffs,

v.

MONICA BHAREL, in her official capacity as
Commissioner of the Massachusetts Department
of Public Health, and the MASSACHUSETTS
DEPARTMENT OF PUBLIC HEALTH,

Defendants.

AFFIDAVIT OF ELIZABETH SCURRIA MORGAN

I, Elizabeth Scurria Morgan, do hereby depose and state, upon my personal knowledge and under oath, the following:

1. I am the Acting General Counsel for the Massachusetts Department of Public Health (the “Department”).
2. As of today, January 15, 2021, the Department has removed the requirement that students attending schools in the Commonwealth of Massachusetts receive the influenza vaccine as a condition of attending school after February 28, 2021. The requirement has been removed as to all schools in the Commonwealth, including pre-schools, primary schools, secondary schools, and post-secondary institutions.
3. The Department has issued a form of communication to school personnel and other relevant parties, which is attached hereto as Exhibit A. This communication references

an updated Massachusetts school immunization schedule document (attached hereto as Exhibit B) in which the influenza vaccine has been removed. The Department has also posted the updated immunization schedule to its website.

4. The relevant parties the Department has notified directly on this matter include, but are not limited to:
 - a. Six regional nurse consultants who are employees of school districts but are also funded by the Department to serve as intermediaries between the Department and public and private schools including pre-kindergarten through grade twelve. These consultants then distribute the communication to their communication lists in order to send the communication across the Commonwealth, including to the Waltham public schools. This is the Department's usual course of practice when communicating with these constituencies;
 - b. The Executive Office of Education and its constituent agencies; and
 - c. The local and regional health email list which includes local boards and departments of health, public safety, municipal employees, and public health nurses.
5. Upon information and belief, in the ordinary course, the above listed relevant parties will then further notify the following groups: superintendents, charter school leaders, collaborative leaders, leaders of approved special education schools, private school leaders, and principals, higher education segment leads for the University of Massachusetts, other state universities, community colleges, and private universities.

Signed under the pains and penalties of perjury this 15th day of January 2021.

/s/ Elizabeth Scurria Morgan
Elizabeth Scurria Morgan

Signed with approval:

/s/ Richard S. Weitzel
Richard S. Weitzel
BBO No. 630303

CERTIFICATE OF SERVICE

I certify that this document with its exhibits was served by email upon counsel for the Plaintiffs on January 15, 2021.

/s/ Richard S. Weitzel
Richard S. Weitzel
Assistant Attorney General

EXHIBIT A

IMPORTANT UPDATE FOR SCHOOL NURSES RE INFLUENZA VACCINE REQUIREMENT

Robitaille, Karen (DPH)

Fri 1/15/2021 12:16 PM

To: Toulouse, Shanyne <shanyne.toulouse@haverhill-ps.org>; Connolly, Jill <jill.connolly@braintreeschools.org>; Guertin-Moruzzi, Janet <moruzzij@weston.org>; O'Brien, Mary Jane <mobrien@bostonpublicschools.org>; Veronica Webb <webbv@springfieldpublicschools.com>; ANN LINEHAN <ANLINEHAN@bpsma.org>;

Cc: Pettengill, Caitlin (DPH) <Caitlin.Pettengill@mass.gov>; Shattuck, Kathleen (DPH) <kathleen.shattuck@mass.gov>; Russo, Elizabeth T. (DPH) <Elizabeth.T.Russo@mass.gov>;

Greetings from the School Health Unit;

The Massachusetts Department of Public Health is removing the requirement for flu vaccination for attendance in childcare/preschool, primary, secondary and postsecondary education. Preliminary data show that this has been a mild flu season to date, presumably as people have received their seasonal flu vaccine and have been adhering to mask-wearing and social distancing due to COVID-19. Given the intensive Commonwealth-wide efforts regarding COVID-19 vaccination, DPH wants to alleviate the burden to obtain flu vaccination and focus on continuing our COVID -19 vaccination efforts.

DPH continues to strongly recommend that everyone age six months and older receive their seasonal flu vaccine each year.

The updated schedule can be found [here](#).

Thank you for all your hard work on behalf of the young people and families of our Commonwealth,
Karen

Karen Robitaille, MBA, MSN, RN, NCSN

<she, her, hers>

Director of School Health Services

Division of Child/Adolescent Health and Reproductive Health

Massachusetts Department of Public Health

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EXHIBIT B

Massachusetts School Immunization Requirements 2020-2021[§]

Massachusetts school immunization requirements are created under authority of [105 CMR 220.000 Immunization of Students Before Admission to School](#)

Requirements apply to all students including individuals from another country attending or visiting classes or educational programs as part of an academic visitation or exchange program. Requirements apply to all students, even if over 18 years of age.

Childcare/Preschool^{¶†}

Attendees <2 years should be immunized for their age according to the [ACIP Recommended Immunization Schedule](#). Requirements listed in the table below apply to all attendees ≥2 years. These requirements also apply to children in preschool classes called KO or K1.

Hib	1-4 doses; the number of doses is determined by vaccine product and age the series begins
DTaP	4 doses
Polio	3 doses
Hepatitis B	3 doses; laboratory evidence of immunity acceptable
MMR	1 dose; must be given on or after the 1 st birthday; laboratory evidence of immunity acceptable
Varicella	1 dose; must be given on or after the 1 st birthday; a reliable history of chickenpox* or laboratory evidence of immunity acceptable

[§] Address questions about enforcement with your legal counsel.

[¶] Meningococcal vaccine requirements (see Grades 7-10 and 11-12) also apply to residential students in Grades Pre-K through 8 if the school combines these grades in the same school as students in Grades 9-12.

[†]Medical exemptions (statement from a physician stating that a vaccine is medically contraindicated for a student) must be renewed annually at the start of the school year and religious exemptions (statement from a student, or parent/guardian if the student is <18 years of age, stating that a vaccine is against sincerely held religious beliefs) should be renewed annually at the start of the school year.

* A reliable history of chickenpox includes a diagnosis of chickenpox, or interpretation of parent/guardian description of chickenpox, by a physician, nurse practitioner, physician assistant, or designee.

See following pages for Grades K-6, 7-10, Grades 11-12, and College (Postsecondary Institutions)

Massachusetts School Immunization Requirements 2020-2021[§]

Grades Kindergarten – 6^{¶†}

In ungraded classrooms, Kindergarten requirements apply to all students ≥5 years.

DTaP	5 doses; 4 doses are acceptable if the fourth dose is given on or after the 4 th birthday. DT is only acceptable with a letter stating a medical contraindication to DTaP
Polio	4 doses; fourth dose must be given on or after the 4 th birthday and ≥6 months after the previous dose, or a fifth dose is required. 3 doses are acceptable if the third dose is given on or after the 4 th birthday and ≥6 months after the previous dose
Hepatitis B	3 doses; laboratory evidence of immunity acceptable
MMR	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; laboratory evidence of immunity acceptable
Varicella	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; a reliable history of chickenpox* or laboratory evidence of immunity acceptable

§ Address questions about enforcement with your legal counsel. School requirements are enforced at the local level.

¶ Meningococcal vaccine requirements (see Grades 7-10 and 11-12) also apply to residential students in Grades Pre-K through 8 if the school combines these grades in the same school as students in Grades 9-12.

† Medical exemptions (statement from a physician stating that a vaccine is medically contraindicated for a student) must be renewed annually at the start of the school year and religious exemptions (statement from a student, or parent/guardian if the student is <18 years of age, stating that a vaccine is against sincerely held religious beliefs) should be renewed annually at the start of the school year.

* A reliable history of chickenpox includes a diagnosis of chickenpox, or interpretation of parent/guardian description of chickenpox, by a physician, nurse practitioner, physician assistant, or designee.

See following pages for Grades 7-10, Grades 11-12, and College (Postsecondary Institutions)

Massachusetts School Immunization Requirements 2020-2021[§]

Requirements apply to all students including individuals from another country attending or visiting classes or educational programs as part of an academic visitation or exchange program. Requirements apply to all students, even if over 18 years of age.

Grades 7 – 12[†]

In ungraded classrooms, Grade 7 requirements apply to all students ≥12 years.

Tdap	1 dose; and history of DTaP primary series or age appropriate catch-up vaccination. Tdap given at ≥7 years may be counted, but a dose at age 11-12 is recommended if Tdap was given earlier as part of a catch-up schedule. Td or Tdap should be given if it has been ≥10 years since last Tdap
Polio	4 doses; fourth dose must be given on or after the 4 th birthday and ≥6 months after the previous dose, or a fifth dose is required. 3 doses are acceptable if the third dose is given on or after the 4 th birthday and ≥6 months after the previous dose
Hepatitis B	3 doses; laboratory evidence of immunity acceptable. 2 doses of Heplisav-B given on or after 18 years of age are acceptable
MMR	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; laboratory evidence of immunity acceptable
Varicella	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; a reliable history of chickenpox* or laboratory evidence of immunity acceptable

NEW – Meningococcal Requirements

Grade 7	1 dose; 1 dose MenACWY (formerly MCV4) required. Meningococcal B vaccine is not required and does not meet this requirement.
Grade 11 [‡]	2 doses; second dose MenACWY (formerly MCV4) must be given on or after the 16th birthday and ≥ 8 weeks after the previous dose. 1 dose is acceptable if it was given on or after the 16th birthday. Meningococcal B vaccine is not required and does not meet this requirement.

Meningococcal Vaccine Phase-In Schedule

	2020-2021	2021-2022	2022-2023	2023-2024
1 Dose MenACWY	Grade 7	Grades 7-8	Grades 7-9	Grades 7-10
2 Doses MenACWY	Grade 11	Grades 11-12	Grades 11-12	Grades 11-12

[§] Address questions about enforcement with your legal counsel. School requirements are enforced at the local level.

[†]Medical exemptions (statement from a physician stating that a vaccine is medically contraindicated for a student) must be renewed annually at the start of the school year and religious exemptions (statement from a student, or parent/guardian if the student is <18 years of age, stating that a vaccine is against sincerely held religious beliefs) should be renewed annually at the start of the school year.

* A reliable history of chickenpox includes a diagnosis of chickenpox, or interpretation of parent/guardian description of chickenpox, by a physician, nurse practitioner, physician assistant, or designee.

[‡] Students who are 15 years old in grade 11 are in compliance until they turn 16 years old.

Massachusetts School Immunization Requirements 2020-2021[§]

Requirements apply to all students including individuals from another country attending or visiting classes or educational programs as part of an academic visitation or exchange program. Requirements apply to all students, even if over 18 years of age.

College (Postsecondary Institutions)**†

Requirements apply to all full-time undergraduate and graduate students under 30 years of age and all full- and part-time health science students. Meningococcal requirements apply to the group specified in the table below.

Tdap	1 dose; and history of a DTaP primary series or age appropriate catch-up vaccination. Tdap given at ≥7 years may be counted, but a dose at age 11-12 is recommended if Tdap was given earlier as part of a catch-up schedule. Td or Tdap should be given if it has been ≥10 years since Tdap.
Hepatitis B	3 doses; laboratory evidence of immunity acceptable; 2 doses of Heplisav-B given on or after 18 years of age are acceptable
MMR	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; laboratory evidence of immunity acceptable. Birth in the U.S. before 1957 acceptable only for non-health science students
Varicella	2 doses; first dose must be given on or after the 1 st birthday and second dose must be given ≥28 days after first dose; a reliable history of chickenpox* or laboratory evidence of immunity acceptable. Birth in the U.S. before 1980 acceptable only for non-health science students
Meningococcal	1 dose; 1 dose MenACWY (formerly MCV4) required for all full-time students 21 years of age or younger. The dose of MenACWY vaccine must have been received on or after the student's 16 th birthday. Doses received at younger ages do not count towards this requirement. Students may decline MenACWY vaccine after they have read and signed the MDPH Meningococcal Information and Waiver Form provided by their institution. Meningococcal B vaccine is not required and does not meet this requirement

§ Address questions about enforcement with your legal counsel. School requirements are enforced at the local level.

** The immunization requirements apply to all students who attend any classes or activities on campus, even once. If all instruction and activities are remote and the student will never be on campus in person, the requirements would not apply. Should a student physically return to campus, they would need comply with this requirement

†Medical exemptions (statement from a physician stating that a vaccine is medically contraindicated for a student) must be renewed annually at the start of the school year and religious exemptions (statement from a student, or parent/guardian if the student is <18 years of age, stating that a vaccine is against sincerely held religious beliefs) should be renewed annually at the start of the school year.

A reliable history of chickenpox includes a diagnosis of chickenpox, or interpretation of parent/guardian description of chickenpox, by a physician, nurse practitioner, physician assistant, or designee.