

## S&G Information Request Staff

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**From:** FOIL <FOIL@nysed.gov>  
**Sent:** Thursday, December 17, 2020 2:05 PM  
**To:** S&G Information Request Staff  
**Subject:** RE: FOIL Request regarding schools reopening in hotspots (IR#0361)  
**Attachments:** guidance-for-school-test-out-in-red-and-orange-zones\_0.pdf; DOH - 11.14.20 - yellow-zone-update-11.1320-addendum-final - ADDITIONAL.pdf; supplemental-guidance\_yellow-zone-school-testing-11.12.2020.pdf

**Dear Ms. Brehm:**

This is in response to your Freedom of Information Law request **FL-EM-20/1132** for State Education Department records regarding **reopening schools in hotspots** which was received on **November 16, 2020**.

Please find the requested documents attached.

If you wish to appeal this response, you may do so within 30 days by emailing [FOILappeal@nysed.gov](mailto:FOILappeal@nysed.gov) or writing to:

Betty A. Rosa  
Interim Commissioner of Education  
NYS Education Department  
Room 111, Education Building  
89 Washington Avenue  
Albany, NY 12234

Sincerely,  
**Records Access Officer**

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**From:** S&G Information Request Staff <foia@sirillp.com>  
**Sent:** Monday, November 16, 2020 6:40 PM  
**To:** FOIL <FOIL@nysed.gov>  
**Subject:** FOIL Request regarding schools reopening in hotspots (IR#0361)

Good evening,

Please see the attached FOIL Request on behalf of Informed Consent Action Network and Attorney Elizabeth Brehm, Esq.

Kind regards,

Ashley Plescia, Paralegal

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**ADDITIONAL ADDENDUM to  
Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools  
Located in Areas Designated as “Yellow Zones” Under the New York State Cluster  
Action Initiative  
October 9, 2020  
Update: November 12, 2020  
Update: November 14, 2020**

Pursuant to the *Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools Located in Areas Designated as “Yellow Zones” Under the New York State Cluster Action Initiative*, the New York State Department of Health (NYSDOH) has determined that schools open to in-person instruction in yellow zones are required to test 20% of in-person students, teachers and staff, at least once a week for as long as the school remains in a designated yellow zone.

Geographic areas are designated as *yellow precautionary zones* due to increased viral spread, as demonstrated by increased new cases, positivity, hospital admissions, and other factors, or as *yellow buffer zones* that are adjacent to red or orange zones.

**UPDATE:** Effective the week of November 16, 2020, schools in yellow zones must test 20% of in-person students, faculty and staff over the two-week period immediately following the announcement of a yellow zone designation. If the results of the testing reveal that the positivity rate among the 20% of those tested is lower than the yellow zone’s current 7-day positivity rate, testing at that school will no longer be required to continue. A positivity rate in a school that is lower than in the yellow zone is a sufficient demonstration that in-person instruction is not a significant driver of local viral spread. The current positivity rate for zones can be found at, <https://forward.ny.gov/percentage-positive-results-county-dashboard>.

*However, if the results of the testing over the first two weeks reveal that the positivity rate among in-person student, staff and faculty is higher than the Yellow Zone’s current 7-day positivity rate, the school will be required to continue to test 20% of the in-person population on a bi-weekly basis.*

NYSDOH is amending the existing yellow zone testing requirement due to continued review of positivity rates within school settings. Continued activities include daily school survey submissions of COVID-19 cases by schools, a daily update of the public facing School Dashboard, and laboratory reporting of all COVID-19 test results to the Department of Health. Laboratory data on COVID-19 test results for New York State residents 5-17 years of age is matched to the school district within which an individual resides. This data reflects the number of COVID-19 tests and test results for students living in a school district. Overall, the positivity rates within school settings have remained low to date. This is most

likely due to school settings adhering to the in-person instruction requirements. Schools must maintain all requirements of [in-person instruction](#).

NYSDOH is continuing to provide rapid testing kits for the virus that causes COVID-19 to local health departments (LHDs), hospitals, pharmacies, and other health care providers at no cost so long as testing is open to the public, offered free of charge, and prioritizes vulnerable and at-risk populations that may not currently have equitable access to testing.

Schools, particularly those in a yellow zone, should contact their LHDs, and other local health care partners to establish partnerships and make arrangements for deployment of these tests in their school setting to facilitate the required testing of students, teachers, and staff attending in-person. Additional information on how to schools can work with LHDs and local health care partners is provided in the [ADDENDUM of November 12, 2020](#) to the *Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools Located in Areas Designated as “Yellow Zones” Under the New York State Cluster Action Initiative*.

Schools may also request test kits directly from the NYS Department of Health at [Covid19rapidtest@health.ny.gov](mailto:Covid19rapidtest@health.ny.gov).

To find a partner who has a limited service laboratory (LSL), you can visit this website: <https://www.wadsworth.org/regulatory/clep/limited-service-labs>. Additionally, the Department can assist with partnering a school with a community partner and schools should contact [SchoolQuestionsCOVID@health.ny.gov](mailto:SchoolQuestionsCOVID@health.ny.gov) if they are interested.



**Interim Guidance on COVID-19 Test-Out for Public and Non-Public Schools Located in Areas Designated as “Red or Orange Micro-Cluster Zones” Under the New York State Micro-Cluster Action Initiative**

*November 3, 2020*

## Background

After more than 7 months of strict adherence to data-driven, evidence-based protocols, including required social distancing and mandatory face coverings, and strategic, phased-in reopening after the pause of our economy, New Yorkers have successfully reduced the spread of COVID-19 to one of the lowest rates in the nation. While New York has continued this positive trajectory, other states have taken a less cautious approach and are now experiencing rapidly increasing rates of transmission of this deadly virus.

As certain areas of the State continue to see an increase in COVID-19 cases and test positivity, Governor Andrew M. Cuomo implemented a [cluster action initiative](#) to address COVID-19 hot spots as they occur. This science-based approach focuses on addressing these clusters and aims to prevent further community-wide transmission of the virus, and includes new rules and restrictions directly targeted to areas with the highest concentration of COVID-19 cases and surrounding communities. The initiative divides clusters and the areas around them into three categories – the cluster itself (red zone), a warning zone (orange zone), and a precautionary zone (yellow zone). Areas can also become an orange or yellow zone based upon metrics established by New York State Department of Health (DOH).

Under the authority of [Executive Order 202.68](#), schools in red and orange zones must close in-person instruction for at least two weeks. On October 30, 2020, Governor Cuomo [announced](#) strict health guidelines, as detailed herein, for schools to reopen in red and orange cluster zones during this time in order to help keep schools in focus areas safely open to in-person instruction. The guidelines require mass testing in schools before they reopen followed by intensive symptom and exposure screening conducted daily, as well as surveillance testing of 25% of the in-person student and faculty/staff weekly. New York State will provide rapid test kits upon request for schools wishing to participate.

### **For a School Seeking to Re-Open In-Person Classes in a Geographic Area Designated as a Red or Orange Zone**

The school must remain closed for at least 4 calendar days after the zone designation is announced. The school may re-open as early as the fifth day after the zone is designated in accordance with the protocols contained in this guidance.

Importantly, the affected school must ensure that no staff, faculty, or student is permitted to attend in-person instruction on campus without first receiving a negative COVID-19 test result taken after the closure of the school.

The school should ensure that it provides tests through a testing event, or accepts tests results from providers. Following such testing, schools must ensure:

- Members of the school community who test positive for COVID-19 are isolated in accordance with established guidance; and
- Contact tracing is performed, in consultation and coordination with the local health department, to ensure that contacts of newly identified positive individuals are quarantined in accordance with established guidance.
- Testing must be completed in accordance with lab requirements.

In order to reopen, schools in red and orange zones must also complete an attestation on the school survey, in addition to required dashboard reporting, that the in-person school population has been tested for COVID-19 and only individuals with a negative result are being permitted to return to campus. A [line list](#), that must include names, addresses, date of birth, result of lab test, lab performing test, ordering physician, and test date of all students, faculty, and staff returning to campus for in-person learning must be submitted with the attestation via the school survey.

If, after these above steps, and students and faculty/staff who have tested positive for COVID-19 or close contacts of positive cases are appropriately excluded from school grounds, or those who have not been tested, the school may reopen for in-person instruction.

At all times while in a geographic area designated as a red or orange zone schools must provide students not yet authorized to return to school with remote instruction options.

### **After Reopening In-Person Classes in a School in Geographic Area Still Designated as a Red or Orange Zone**

All students, faculty, and staff must have a negative COVID-19 test result at attend schools in-person. Test results must be no more than 7 days after the date of specimen collection on the day in-person learning reopens; and the date of specimen collection must be after the date the zone was established.

Once the school reopens, intensive symptom and exposure screening must be conducted daily and 25% of the in-person learning school community (inclusive of both students and faculty/staff) must be tested for COVID-19 weekly, starting 7 calendar days after reopening.

Once each week, any school in the red and orange zone that have reopened must attest that they have tested 25% of the in-person school population and provide a [line list](#). Such list must include names, addresses, date of birth, result of test, lab performing test, ordering physician, test date of all students, faculty and staff returning to campus for in-person learning must be submitted with the attestation via the school survey.

- Each week the 25% of the school population tested must be composed of unique individuals who have not previously been tested for the surveillance screening, as part of the weekly 25% testing.
- If the school continues to be inside a red or orange zone for more than 5 weeks, upon the fifth week of weekly testing the individuals who composed the 25% the first week of testing should be tested again.
- If the 25% random sampling generates 9 or more positive cases, or if for a sample size of more than 300 weekly tests, achieves a positivity rate of 2% or higher (6 cases or more depending on size) in New York City, or 3% (9) outside of the city, of one such discrete sample, then the school will be required to close.

All reopened schools are also required to continue to adhere to all existing requirements including completion of the daily school survey.

- Mask wearing, in accordance with either [Department of Health Interim Guidance for In-Person Instruction at Pre-K to Grade 12 Schools](#), or any local department of health order regarding face coverings, must be adhered to.
- The school should ensure that it provides the opportunity to be tested on school grounds, or otherwise supports testing and/or accepts test results from healthcare providers.
  - If the school does not hold a testing event or provide on grounds testing, test results provided to the school as part of the 25% testing of the population must be received within 7 days from the date of specimen collection and specimen collection must be after the date that the school reopened.
- If at any point the zone in which the school is located is becomes a yellow zone, then the yellow zone weekly testing requirement of 20% of the in person population applies immediately, and such school shall only be required to do 20% for that week.

Members of the school community who test positive for COVID-19 must isolate, according to established guidance. Contact tracing must be performed to ensure that contacts to newly identified positive individuals are quarantined, according to established guidance.

The testing requirement will apply to pre-k classes taking place on a school site.

If there is an OCFS-licensed/registered group child care program operating at such site it may continue to operate while the school is closed, and upon reopening of the school it is not subject to testing solely due to its location, however, school-aged children in the program may otherwise subject such program to testing. In accordance with Executive Order 202.68 and OCFS guidance, legally exempt group programs operating in a school must remain closed until the school has reopened pursuant to this guidance.

Students who are participating in hybrid learning or in all virtual learning, and who are attending an OCFS-licensed/registered or enrolled legally exempt group child program during school hours, are subject to the testing requirements and must be included in the school's random testing protocols.

## **Testing**

To ensure that students, faculty and staff have been tested for COVID-19, schools have the following options:

- Schools can accept written test results from healthcare providers;
- Schools can have students, faculty, and/or staff go to a test site run by New York State to have specimens collected for testing;
- Schools can establish partnerships with other entities who are authorized to perform testing to have their students, faculty, and staff tested;
- Schools that currently have a limited service laboratory (LSL) registration can add COVID-19 rapid test to their existing LSL registration, request to receive rapid tests from the state and perform testing on their students, faculty, and staff; or
- Schools can become approved to perform testing by obtaining an LSL registration and once approval is granted, request to receive rapid tests from the state and perform testing on their students, faculty, and staff.

Questions on amending or obtaining an LSL and requests for test kits should be sent to [Covid19rapidtest@health.ny.gov](mailto:Covid19rapidtest@health.ny.gov).

## **Data and Reporting**

New York State will provide rapid test kits upon request. The schools must provide trained personnel (with necessary laboratory permits) to conduct the tests, and all results must be entered into the Electronic Clinical Lab Reporting System (ECLRS) and reported on the school survey to the NYS COVID-19 Report Card.

Consistent with existing requirements, any testing conducted through schools, in partnership with other health care entities, must also be reported separately through the school dashboard survey and to ECLRS, including all rapid point-of-care testing.



## **Failure to Meet these Requirements by Schools in Geographic Area Designated as a Red or Orange Zone**

Schools that do not meet the reopening requirements set forth in this guidance must remain in remote/distanced learning for the duration of the zone designation.

Reopened schools that fail to comply with these requirements may be subject to Section 16 orders, or other fines and penalties. New York State and DOH reserve the right to keep any school closed if extenuating circumstances exist.

Questions about this guidance should be sent to [Covid19rapidtest@health.ny.gov](mailto:Covid19rapidtest@health.ny.gov).

### **Resources**

- [New York State Department of Health COVID-19 Website](#)
- [Centers for Disease Control and Prevention COVID-19 Website](#)



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

**ADDENDUM to**  
**Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools Located in Areas Designated as “Yellow Zones” Under the New York State Cluster Action Initiative**  
**October 9, 2020**  
**Update: November 12, 2020**

Pursuant to the *Interim Guidance on Mandatory COVID-19 Testing in Public and Non-Public Schools Located in Areas Designated as “Yellow Zones” Under the New York State Cluster Action Initiative*, the New York State Department of Health (NYSDOH) has determined that schools open to in-person instruction in yellow zones are required to test 20% of in-person students, teachers and staff, at least once a week for as long as the school remains in a designated yellow zone.

NYSDOH is continuing to provide rapid testing kits for the virus that causes COVID-19 to local health departments (LHDs), hospitals, pharmacies, and other health care providers at no cost so long as testing is open to the public, offered free of charge, and prioritizes vulnerable and at-risk populations that may not currently have equitable access to testing.

Schools, particularly those in a yellow zone, should contact their LHDs, and other local health care partners to establish partnerships and make arrangements for deployment of these tests in their school setting to facilitate the required testing of students, teachers, and staff attending in-person. To find a partner who has a limited service laboratory (LSL), you can visit this website: <https://www.wadsworth.org/regulatory/clep/limited-service-labs>. Additionally, the Department can assist with partnering a school with a community partner and schools should contact [SchoolQuestionsCOVID@health.ny.gov](mailto:SchoolQuestionsCOVID@health.ny.gov) if they are interested.

To be eligible for the free testing, schools must be current with their daily reporting as required under E.O. 202.61. LHDs have been advised to request enough testing resources to support weekly testing of 20% of the in-person student, staff, and teacher population within the yellow zone in their area for as long as such schools remains in the yellow zone. LHDs may also have the test kits sent directly to the partnering provider(s).

Any individual who takes the required training can conduct the rapid testing provided by the NYSDOH as long as they are affiliated with an LSL. Training is through a series of videos and takes a total of less than 3 hours. The LSL is required to upload test results in the Electronic Clinical Lab Reporting System (ECLRS). The Department has a

template that can make uploading into ECLRS easier for the LSL and can offer assistance as needed.

### **Limited Service Laboratory**

LHDs are required to allow schools to operate under their LSL for the purposes of conducting weekly testing. If the LHD does not have an operational LSL or is unable to support the school in conducting testing, the LHD must work with the school to identify community partners with an LSL.

### **Staffing School Testing**

Schools are responsible to provide appropriately trained staff to conduct the testing. School nurses and other staff conducting the testing can operate under the LHD's LSL, or an alternate LSL via partnership with a community partner.

### **Uploading Testing Data**

Testing data must be inputted into the Electronic Clinical Laboratory Reporting System (ECLRS). Data entry must be completed by either the school [on behalf of the LSL holder] or the LSL holder must enter the data into ECLRS. If neither party has the capacity to enter data, one or both parties should contract with an entity to complete the data entry and share the cost. The LSL holder must facilitate all training on how to enter the data into ECLRS. New users can submit a request for permission to access ECLRS under the LSL organization by sending an email to [eclrs@health.ny.gov](mailto: eclrs@health.ny.gov). You will then receive a form that must be completed for user access. The email must include:

- New user full name
- New user HCS ID
- LSL Facility name
- LSL Facility address
- LSL Facility phone number
- LSL CLIA #

The results must be uploaded on a line list that includes as appropriate names, addresses, date of birth, result of lab test, lab/site performing test, ordering physician, and test date of all students, faculty, and staff. The LSL holder must facilitate all training on how to enter the data into ECLRS.

Additionally, consistent with existing requirements, any testing conducted by schools in partnership with LHDs or other community partners, must be reported through the school dashboard survey.

### **How to Obtain a Limited Service Laboratory Registration**

To become registered, a facility must submit a complete LSL application. LSL application materials can be found at: <https://www.wadsworth.org/regulatory/clip/limited-service-lab-certs>. Click on "COVID-19 Response for Limited Service Laboratory Registration Requests and

*Additions*” to review additional information and to access the application materials. A school initially applying would need to fill out the “*Limited Service Laboratory Registration Application (DOH-4081)*” and follow instructions for submitting the application. Please submit completed applications to the Clinical Laboratory Evaluation Program by mail only (with the \$200 registration application fee).

If a school already has an LSL but is not approved to do COVID-19 testing, the test can be added to the LSL current approval. To add a test, go to: <https://www.wadsworth.org/regulatory/lep/limited-service-labs>. Click on “*COVID-19 Response for Limited Service Laboratory Registration Requests and Additions*” and fill out the “*Add/Delete Test Procedure Form (DOH-4236)*.” It is important to specify the type of COVID-19 test (antigen, molecular, or antibody) AND the name of the specific test being added. This application also has the option to request approval to hold community screenings. Please scan and email the form to: [clepltd@health.ny.gov](mailto:clepltd@health.ny.gov).

Questions on amending or obtaining an LSL and requests for test kits should be sent to [Covid19rapidtest@health.ny.gov](mailto:Covid19rapidtest@health.ny.gov).

Questions regarding ECLRS should be sent to [eclrs@health.state.ny.us](mailto:eclrs@health.state.ny.us).

Questions about school reporting should be sent to [SchoolQuestionsCOVID@health.ny.gov](mailto:SchoolQuestionsCOVID@health.ny.gov).

## Resources

- [New York State Department of Health COVID-19 Website](#)
- [Centers for Disease Control and Prevention COVID-19 Website](#)