

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require, on an emergency basis, due to Congressional review, 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.

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48 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
49 That this act may be cited as the “Protecting Our Children Congressional Review
50 Emergency Amendment Act of 2022”.

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

52 Sec. 101. Definitions.

53 For the purposes of this title, the term:

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

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

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

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

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

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

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

74 (8) "School" means a school in the DCPS system or an individual public
75 charter school.

76 (9) "School payment process" means the process by which the annual
77 payment for each LEA is determined pursuant to the Uniform Per Student Funding
78 Formula for Public Schools and Public Charter Schools Act of 1998, approved March 12,
79 1999, (D.C. Law 12-207; D.C. Official Code §§ 38-2901 *et seq.*).

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

84 Sec. 102. Expansion of virtual education.

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

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

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

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

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

105 (b) Distance learning provided pursuant to subsection (a) of this section shall
106 comply with the Individuals with Disabilities Education Act, approved April 13, 1970
107 (118 Stat. 2647; 20 U.S.C. § 1400 *et seq.*), section 504 of the Rehabilitation Act of 1973
108 (87 Stat. 394, 29 U.S.C. § 701 *et seq*), and their implementing regulations.

109 (c) Notwithstanding any other provision of District law, during School Year 2021-
110 2022, a student who receives distance learning instruction pursuant to subsection (a) of
111 this section shall be considered to be enrolled in the LEA for the purposes of the
112 enrollment audit, school payment process, and other reasons determined by the Office of

113 the State Superintendent of Education, even if the student has not physically attended or
114 is not physically attending the LEA during any portion of the school year; provided, that
115 the student otherwise complies with the attendance policies of the LEA.

116 Sec. 103. Asymptomatic testing for COVID-19.

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

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

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

123 (C) From November 15, 2021, through January 15, 2022, at least
124 20% of its students attending in-person learning.

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

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

131 Sec. 104. Notification requirement.

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

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

139 (3) The identity of the individual who has tested positive for the COVID-
140 19 virus shall not be disclosed in a notification provided pursuant to paragraph (1) of this
141 subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183 Sec. 201. An Act To provide for compulsory school attendance, for the taking of a
184 school census in the District of Columbia, and for other purposes, approved February 4,
185 1925 (43 Stat. 806; D.C. Official Code § 38-201 *et seq.*), is amended as follows:

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

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

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

192 “(B) For School Year 2021-2022:

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

198 “(ii) The minor did not have access to distance learning, as
199 defined in section 101(3) of the Protecting Our Children Emergency Amendment Act of
200 2021, passed on emergency basis on October 5, 2021 (Bill 24-403) (“the act”) but would
201 have been eligible to receive distance learning pursuant to section 102(a)(1)(B) of the act,
202 had the act been in effect during the period of the minor’s absence from the school;

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

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

208 “(4) Paragraph (3)(B)(iv) of this subsection shall not apply after January
209 15, 2022.”.

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

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

217 **TITLE III. TECHNICAL AMENDMENT; GENERAL PROVISIONS**

218 Sec. 301 Section 3(a) of the Returning to School Safely Emergency Amendment
219 Act of 2022, passed on emergency basis on January 18, 2022 (Enrolled version of Bill
220 24-611), is amended to read as follows:

221 “(a) Section 104(b) is amended to read as follows:

222 ““(b)(1) The notification required pursuant to subsection (a)(1) of this section
223 may be electronic.

224 “(2) The notice required pursuant to subsection (a)(2) of this section shall
225 be sent within 24 hours, or 1 business day if the case is confirmed on a day when schools

226 are closed, of a confirmed COVID-19 case to school staff assigned to the affected
227 classrooms and to parents or guardians of students in the affected classroom
228 electronically or through the preferred method of contact asserted by a student’s parent or
229 guardian, if one has been asserted.”.”.

230 Sec. 302. Applicability.

231 (a) Titles I and II of this act shall apply from January 24, 2022, through February
232 17, 2022.

233 (b) Section 301 shall apply as of February 18, 2022.

234 Sec. 303. Fiscal impact statement.

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

238 Sec. 304. Effective date.

239 This act shall take effect following approval by the Mayor (or in the event of veto
240 by the Mayor, action by the Council to override the veto), and shall remain in effect for
241 no longer than 90 days, as provided for emergency acts of the Council of the District of
242 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved
243 December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).