



## MEMORANDUM

**DATE:** August 20, 2021

**TO:** Presidents, State-Operated Colleges  
Presidents, Community Colleges

**FROM:** Anta Cissé-Green, Senior Vice Chancellor and General Counsel

**SUBJECT:** Guidance on Exemptions for the COVID-19 Vaccination Policy

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On June 23, 2021, the State University of New York (“SUNY”) Board of Trustees (“BOT”) adopted a resolution granting the Chancellor authority to create and implement a policy requiring students who will have an on-campus presence in the Fall 2021 term and beyond at any SUNY campus or facility<sup>1</sup> receive a COVID-19 vaccination.<sup>2</sup> The policy will take full effect once at least one COVID-19 vaccine receives final approval by the U.S. Food and Drug Administration (“FDA”).

Students will only be excused from the COVID-19 vaccination requirement if they qualify for and are granted a temporary medical accommodation and/or a medical or religious exemption. The purpose of this memo is to provide SUNY campuses with additional guidance on how to implement the medical and religious exemptions as well as the medical accommodations described in the SUNY COVID-19 Vaccination Policy.

### **MEDICAL EXEMPTION REQUESTS**

Pursuant to State and Federal law, campuses are required to offer medical exemptions to students related to the SUNY COVID-19 Vaccination mandate. These laws include, without limitation, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the New York State Human Rights Law. This requirement is similar to the medical exemptions made available to students who would otherwise need to obtain the measles, mumps, and rubella (MMR) vaccine pursuant to the NYS Public Health Law.

As further described in the SUNY COVID-19 Vaccination Policy (although it is subject to change):

Students may be exempt from this vaccine requirement if a duly licensed health care provider certifies in writing that the COVID-19 Vaccination may be detrimental to the student’s health. The campus shall provide reasonable accommodations to those students whose medical condition(s) contraindicates COVID-19 Vaccination so long as the failure to be vaccinated does not prevent

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<sup>1</sup> Facility is defined in the COVID-19 Vaccination policy as any SUNY owned, leased, licensed, or operated space, facility, property, grounds, equipment, motor vehicle, or buildings.

<sup>2</sup> [State University of New York Board of Trustees Resolution 21-24](#) adopted June 23, 2021.

the student from otherwise fulfilling the programmatic or curricular requirements of their academic program.

Any requests for a medical exemption should be reviewed by the designated campus office and granted on a case-by-case basis. This includes engaging in the traditional interactive process with the student as needed and reaching a determination that is reasonable given the nature of the request. Campuses should assign a department to collect and maintain the appropriate documentation to support the decisions reached and that department should also oversee the appeals process.

The first aspect of the policy relates to providing medical exemptions to students if the COVID-19 Vaccination would be detrimental to the student's health. Generally, requests will be accompanied by a health care provider certification<sup>3</sup> or other medical condition is obvious to the decisionmaker. Obviousness will likely not be a factor in most decisions regarding the COVID-19 Vaccine. Campuses may request medical documentation if needed to make a determination. However, the lack of medical documentation alone does not alleviate the campus' responsibility to make a decision on the request. The lack of corroborating evidence may be a reason leading to the denial, but campuses should consider the information otherwise available to it in making its final decision on the request.

The second part of the medical exemption relates to students that may have contraindications with the vaccines themselves. The U.S. Center for Disease Control provides guidance to healthcare providers on this topic,<sup>4</sup> but they should be considered on a case-by-case basis.

#### **TEMPORARY MEDICAL ACCOMMODATION REQUESTS**

The SUNY COVID-19 Vaccination Policy allows for temporary medical accommodations for students that are not Fully Vaccinated once the mandate takes effect including, without limitation, pregnant students, those students that have started but not yet completed the vaccine protocol, and international students that received a COVID-19 Vaccination that is not yet FDA or WHO-approved, among others.

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<sup>3</sup> The definition of disability under New York State law is actually broader than that of the Americans with Disability Act. For the purpose of this process, the definition of "disability" should be: all individuals with physical, mental or medical impairments that either impede normal bodily function or are demonstrable by medically accepted diagnostic technique.

<sup>4</sup> The U.S. Center for Disease Control's [Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States](#). As of the date of this memo, contraindications for the COVID-19 Vaccinations according to the CDC include, without limitation:

- Severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine.
- Immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the vaccine.
- However, allergic reactions (including severe allergic reactions) not related to vaccines (COVID-19 or other vaccines) or injectable therapies, such as allergic reactions related to food, pet, venom, or environmental allergies, or allergies to oral medications (including the oral equivalents of injectable medications), are not a contraindication to COVID-19 vaccination.
- The vial stoppers of COVID-19 vaccines are not made with natural rubber latex, and there is no contraindication for people with a latex allergy.
- In addition, because the COVID-19 vaccines do not contain eggs or gelatin, people with allergies to these substances do not have a contraindication.

The language of the policy states the following (although is subject to change):

Students who are not yet Fully Vaccinated and international students who received a COVID-19 vaccine not authorized or approved by the FDA or the WHO may apply for a temporary medical accommodation to allow them time to become Fully Vaccinated. Any such requests will be reviewed and granted on a case-by-case basis by the campus. All students granted a medical accommodation under this section will be subjected to certain restrictions set forth in Sec. III. B. [of the policy] and may be subject to other restrictions imposed by the campus.

The key difference for medical accommodations versus medical exemptions is that they are meant to be temporary and the timeframe should be set by the campus upon approval. For example, the accommodation should expire on the date the student is anticipated to be Fully Vaccinated, or two weeks after the receiving the final dose of the applicable COVID-19 Vaccination.

### **RELIGIOUS EXEMPTION REQUESTS**

Requests for religious exemptions from the COVID-19 Vaccine are also similar to the religious exemptions offered to students who would otherwise need to obtain the MMR vaccine. The general standard is that a student may be exempt from vaccination if in the opinion of the institution the student (or student's parent/guardian if under 18) holds genuine and sincere religious beliefs that are contrary to the practice of immunization. This does not require that the student be a member of an established religious organization, but rather they must hold individual beliefs that are of a *religious* nature.

The SUNY COVID-19 Vaccination Policy states the following (although is subject to change):

Students who hold genuine and sincere religious beliefs which are contrary to COVID-19 Vaccination may be exempt after submitting a written statement to that effect as required by SUNY Facility. Such statement should explain how receiving the COVID-19 Vaccination conflicts with the student's sincere religious belief or practice and how not receiving the COVID-19 Vaccination will not otherwise prevent the student's completion of their programmatic or curricular requirements of the academic program. General philosophical or moral objections to such vaccine shall not suffice as the basis for a religious exemption. Students granted a religious exemption will be subjected to certain restrictions set forth in Sec. III. B. [of the policy] and may be subject to other restrictions imposed by the campus.

As described in the March 9, 2021 guidance issued by the Office of General Counsel, the interactive process should be utilized to discuss requests for religious exemption, where appropriate. In limited circumstances, campuses may request additional information about an individual's religious beliefs that may better help guide the process. Generally, the follow-up requests and questions that may be posed to a student around the process, if any, should focus on the credibility of the individual making the request rather than a challenge to the validity of the underlying beliefs. This is a sensitive area of the law. It is strongly recommended that you consult with your campus counsel before requests for additional information about an individual's religious beliefs are made.

The decision to approve or deny religious exemption requests can be nebulous. Campuses are strongly encouraged to ensure that student exemption requests are completely filled out and then utilize their best judgment as to whether the stated belief or practice is religious in nature, rather than merely philosophical or moral, and then make a reasonable decision as to whether it is sincerely held based upon the information provided. In most instances, it is anticipated that the campus will not have much of a basis to question the authenticity of the request nor the usual amount of time necessary to dig into each and every request like it would during its usual MMR religious exemption review process. Campuses may also ask the student to certify on their religious exemption form that the information that is provided is true and accurate and that it is sincerely held, but the form itself need not be notarized.

The Office of General Counsel has prepared a model form for Religious Exemption Requests that reflect all the salient points of the parameters outlined in this guidance memo. Use of the model form is not required. The model form may be wholly adopted, used as-is, or the campus may create its own form. No matter which form is used, the students should be asked to respond to points listed above and the statement should be signed by the student if 18 years of age or older, or the student's parent or guardian if under the age of 18.

If you have any questions or concerns about the guidance contained herein, please contact your campus counsel.