

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the \_\_\_th day of November, two thousand twenty-one.

**PRESENT:** Jose Cabranes  
Denny Chin  
Pierre Leval,  
Circuit Judges

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Michael Kane, William Castro, Margaret Chu,  
Heather Clark, Stephanie Di Capua, Robert Gladding,  
Nwakaego Nwaifejokwu, Ingrid Romero,  
Trinidad Smith, Amaryllis Ruiz-Toro,

Plaintiffs – Appellants,

**ORDER (PROPOSED)**

Docket No. 21-2678

v.

Bill de Blasio, in his official capacity as Mayor of the  
City of New York, David Chokshi, in his official  
capacity of Health Commissioner of the City of New York,  
New York City Department of Education,

Defendants - Appellees.

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Matthew Keil, John De Luca, Sasha Delgado,  
Dennis Strk, Sarah Buzaglo,

Plaintiffs - Appellants,

v.

Docket No. 21-2711

The City of New York, Board of Education  
of the City School District of New York,  
David Chokshi, in his Official Capacity of Health  
Commissioner of the City of New York, Meisha Porter,  
in her Official Capacity as Chancellor of the New  
York City Department of Education,

Defendants - Appellees.

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Appellants' motions for an injunction pending appeal having been heard at oral argument before a panel of this Court on November 10, 2021, it is:

**ORDERED**, that the appeals shall be referred to a merits panel of this Court for determination; and it is further

**ORDERED**, that pending hearing and determination of the appeals by a merits panel of this Court, and for a period of twenty days thereafter,

1. Appellees shall reinstate Appellants to their positions with full retroactive pay, benefits, etc., subject to the condition that Appellees shall not be required to admit Appellants physically into any school buildings where school children are present;
2. All persons who are similarly situated to Appellees who submit a written request for reinstatement to NYC DOE shall be reinstated to their positions with full retroactive pay, benefits, etc., subject to the condition that Appellees shall not be required to admit such persons physically into any school buildings where school children are present;
3. The November 30 and December 1, 2021 deadlines set forth in the Arbitration Award dated September 10, 2021 between the Board of Education of the City School District of the City of New York and United Federation of Teachers, Local 2, AFT, AFL-CIO ("UFT Award"), the Arbitration Award dated September 15, 2021 between the Board of Education of the City School District of the City of New York and the Council of Supervisors and Administrators ("CSA Award"), and the agreements reached between District Council 37, AFSCME, AFL\_CIO and the Board of Education of the City School District of the City of New York on or about October 7, 2021 ("DC-37 Agreements") relating to the

implementation of the Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination for Department of Education Employees, Contractors, Visitors, and Others issued on September 15, 2021, as amended (“Order”) are hereby stayed for all employees of the New York City Department of Education;

4. Appellees are enjoined from terminating, separating, or placing on unpaid leave, or depriving entitlements from, or discontinuing their provision to any persons of their employment, salary and all benefits or impairing the employment relationship in any way of any direct or indirect employee pursuant to any of the following:
  - a. the Order;
  - b. the UFT Award;
  - c. the CSA Award;
  - d. the DC-37 Agreements; or
  - e. any substantially similar arbitration award, agreement or order affecting persons who are or who have been employed directly or indirectly by the New York City Department of Education (NYC DOE”) or in buildings that are owned or controlled or occupied by NYC DOE; and it is further
5. **ORDERED**, that Appellees are enjoined from terminating, suspending, disciplining, penalizing or sanctioning any persons who have been placed on leave from their positions pursuant to the Order, the UFT Award, the CSA Award, the DC-37 Agreements or any substantially similar arbitration award, agreement or order affecting persons who are or who have been employed directly or indirectly by the New York City Department of Education (NYC DOE”) or in buildings that are owned or controlled or occupied by NYC

DOE, for engaging in gainful employment while in leave status prior to the twentieth day following the determination of the instant appeal by the merits panel.

F O R T H E C O U R T

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Catherine O'Hagan Wolfe  
Clerk of Court