

March 1, 2023

The Honorable Kevin McCarthy  
2468 Rayburn House Office Building  
Washington, DC, 20515

Sent to Congressional Leadership and the New York Delegation

**Re: Call to Investigate New York City's Use of "Problem Codes" for Educators who Declined Vaccination**

Dear Speaker of the House McCarthy,

This letter requests a Congressional investigation into the secret "Problem Codes" placed by New York City officials into the files of New York City educators who lawfully declined vaccination. NYC's unwillingness to be transparent about how and when these codes are used and under what circumstances requires a thorough and complete investigation.

We must uncover the City's purpose for these designations and what punitive measures it contemplated or carried out against employees for their personal healthcare decisions. City Hall recently denied that these Problem Codes have any external impact on employees or former employees, but that is incorrect.

According to the [NY Post](#), a City Hall spokesman denied such codes exist in the following statement:

"No code is part of anyone's permanent personnel record or is ever sent to any other department, agency or outside organization. In fact, no outside entity can see any code placed on anyone's internal [human-resources] record for any reason."

The City's statement that "no code is part of anyone's permanent personnel record" is inaccurate. The Problem Code is for disciplinary purposes and whether the codes are permanent or temporary is irrelevant. The same Problem Code NYC used to flag unvaccinated teachers is used for anyone accused of molesting, raping or injuring a child. These codes have a profound negative impact on flagged educators and can prevent them from further employment.

We know all educators who declined vaccination were assigned a Problem Code when they were placed on unpaid leave. On Feb. 9, 2022, an [email sent by NYC DOE employee Eric Amato](#) confirmed this when

he wrote, “PR = Problem code – Problem code was added to all employees who were placed on 2VM vaccine mandate leave. It was placed there the day you went on the leave.”

It is nearly impossible to successfully have a Problem Code removed, even with legal assistance, and most educators are unaware such a code has been placed on their personnel records until they are denied employment elsewhere. Therefore, City Hall is incorrect that these codes are seen by “no outside entity.” Whether the code itself is “seen” or not, it has a clear, often devastating impact on the flagged educator. We need to uncover the precise mechanisms by which the City has caused this harm and its motivation for doing so.

## **Misconduct**

Betsy Combier, President of Advocatz.com and paralegal advocate, has represented approximately 100 NYC educators in arbitration and Section 3020a due process proceedings over the past two decades. She is currently involved in 11 cases before the Public Employment Relations Bureau (PERB), where she is requesting that educators have the Problem Codes removed from their files. Many of these educators only learned of them because they tried to seek employment elsewhere and were denied the opportunity to apply.

In addition, a [PERB ruling from June 2022](#) declared that a substantiated report of discipline or misconduct had to be reported for a Problem Code to be placed in an educator’s personnel file, and the educator must be informed of the discipline or misconduct. Placing a Problem Code on unvaccinated educators secretly, with no notice, does not square with this ruling.

Clearly, Problem Codes are strictly intended for discipline or misconduct. Yet on Feb. 8, in [New Yorkers for Religious Liberty \(NYFRL\) v. The City of New York](#), a federal lawsuit sponsored by Children’s Health Defense, City attorney Susan Paulson stated definitively that educators fired for declining COVID vaccination were not dismissed for actual misconduct but merely for noncompliance with an employment requirement (i.e., lawfully declined COVID-19 vaccination).

If what Ms. Paulson stated on behalf of the City is true, then why were Problem Codes placed in the personnel records of these employees?

According to Betsy Combier, what Ms. Paulson stated in court was false.

“Attorney Paulson’s statement that unvaccinated educators were not fired for misconduct is deliberately false,” said Ms. Combier. “The problem code is a disciplinary label used to prevent an employee from getting employment, and was placed on the personnel files of all Department employees who did not get vaccinated because they were accused of committing an act of insubordination and misconduct.”

Combier has also represented educators at their Unemployment Insurance Appeal Board (UIAB) hearings after the former Department employees were terminated for being unvaccinated. The UIAB has consistently denied almost all appeals for unemployment benefits.

The UIAB’s denial of a claim on Apr. 15, 2022, was notably conclusive on the issue of misconduct:

“The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits on the basis that the claimant voluntarily separated from employment without good cause...[and] disqualifying the claimant from receiving benefits on the basis that the claimant **lost employment through misconduct** in connection with that employment and holding that the wages paid to the claimant by THE CITY SCHOOL DISTRICT prior to October 2, 2021, cannot be used toward the establishment of a claim for benefits.” [emphasis added]

UIAB makes clear that NYC viewed the decision to decline vaccination as misconduct. So why did NYC argue the opposite in federal court on Feb. 8? Is declining vaccination misconduct or is it an individual right protected by the Constitution and human rights?

### **Flags to the FBI and DOJ**

In addition, NYC sent educators’ fingerprints to the Federal Bureau of Investigations (FBI) and the New York Criminal Justice Services. Many questions surround the City’s protocols and procedures for sending or flagging fingerprints, especially after Problem Codes were added.

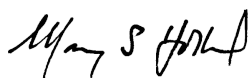
Yet City Hall denies anything like this has occurred, according to [NY Post](#):

“City Hall added that the standard background-check procedure is: HR units request information from the FBI or state agency based solely on fingerprinting information.”

City Hall has provided false and misleading information regarding the existence of Problem Codes, what they are, exactly how the City uses them, and their impact on teachers’ livelihoods. City Hall’s comments—in an attempt to exonerate itself from any wrongdoing—cannot be accepted at face value, given that the City has not been forthcoming on Problem Codes doled out to educators.

Again, NYC uses the same codes to flag a teacher accused of molesting, raping or injuring a child as it uses for an educator who simply declined vaccination [and was terminated]. Given NYC’s utterly inexplicable and unjustifiable decision to place a misconduct code on educators based on their personal medical decisions, we respectfully request an immediate investigation.

Sincerely yours,



Mary Holland  
President and General Counsel

[Children’s Health Defense](#)

cc: House Minority Leader Rep. Hakeem Jeffries, Senate Majority Leader Charles Schumer, Senate Minority Leader Mitch McConnell, Sen. Kristen Gillibrand, Rep. Nicole Malliotakis, Rep. Andrew Garbarino, Rep. Mike Lawler, Rep. Anthony D’Esposito, Rep. Marc Molinaro, Rep. Elise Stefanik, Rep. Nick LaLota, Rep. Nick Langworthy, Rep. George Santos, Rep. Brandon Williams, Rep. Gregory Meeks, Rep. Grace Meng, Rep. Nydia Velazquez, Rep. Yvette Clarke, Rep. Dan Goldman, Rep. Jerry Nadler, Rep. Adriano Espaillat, Rep. Alexandria Ocasio-Cortez, Rep. Ritchie Torres, Rep. Jamaal Bowman, Rep. Pat Ryan, Rep. Paul Tonko, Rep. Joe Morelle, Rep. Brian Higgins