



Members Only

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Immunization of Schoolchildren

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SUMMARY

In Ohio, a child entering school must be immunized against certain diseases, including mumps, poliomyelitis, and diphtheria, unless the child has had the disease, immunization is medically contraindicated, or the child's parents have objected in writing for reasons of conscience. Children entering kindergarten must also be immunized against chicken pox.

Immunization requirements have been challenged on a number of grounds, but have been upheld by the courts.

Introduction

Although there are no federal laws mandating immunization of schoolchildren, immunization from certain diseases is a prerequisite to school attendance in all 50 states.¹ Massachusetts passed the first mandatory immunization law in 1809, requiring smallpox vaccination and in 1855 was the first state to require vaccination for school attendance. Over time, other states enacted similar laws. By 1963, twenty states, including Ohio, required immunization for school entrance. Many other states enacted legislation in response to measles outbreaks in schools in the 1960s and 1970s and were influenced by significantly lower incidence rates of measles among pupils in states with compulsory immunization laws. By 1980, all 50 states had school immunization laws.

Immunization laws permit certain exemptions. Currently, all states permit medical exemptions for pupils who have compromised immune systems, allergic reactions to vaccine components, or other medical contraindica-

In 1855, Massachusetts was the first state to require vaccination for school attendance. By 1980, all 50 states had school immunization laws.

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Children attending most schools in Ohio must be immunized against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, rubella, and hepatitis B. Each child beginning kindergarten during or after the 2006 school year must be immunized against chicken pox.

Boards of health, municipal corporations, and townships must provide the means of immunization against certain diseases, not including chicken pox, to pupils who are not provided immunizations by their parents or guardians. The Department of Health is required, to the extent appropriations made by the General Assembly make this possible, to provide the means of immunization against chicken pox to local entities.

tions.² In 48 states, exemptions from immunization laws are permitted for religious reasons, and 20 states provide exemptions for philosophical reasons.³ According to the Centers for Disease Control and Prevention, nearly 38,000 pupils were exempted from receiving immunizations in the most recently reported year. Almost half of these exemptions were for religious reasons.

Immunization requirements for school children

In Ohio, public school district boards of education are authorized to make and enforce rules to secure the immunization of, and to prevent the spread of communicable diseases among, the children attending or eligible to attend the schools of the district, as in its opinion the safety and interest of the public require (Revised Code 3313.67). Children attending public schools or nonpublic schools that meet state educational requirements must be immunized against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, rubella, and hepatitis B. Each child beginning kindergarten during or after the 2006 school year must also be immunized against chicken pox. Unless exempted from the immunization requirements, a child cannot be permitted to remain in school for more than 14 days unless the child presents written evidence satisfactory to the school of having received the required immunizations

or being in the process of receiving the required immunizations. (R.C. 3313.671(A).)

Exceptions to immunization requirements

Under the following circumstances, a schoolchild does not have to provide proof of one or more of the required immunizations (R.C. 3313.671(B)):

(1) The child has had natural mumps, rubeola, or chicken pox and presents a signed statement from the child's parent, guardian, or physician to that effect;

(2) The child presents a written statement of the child's parent or guardian in which the parent or guardian declines to have the child immunized for reasons of conscience, including religious convictions;

(3) A physician certifies in writing that immunization against a particular disease is medically contraindicated for the child.

Ohio law provides that if the Director of Health notifies a school's principal or chief administrative officer that a chicken pox epidemic exists in the school's population, a school may deny admission to an unimmunized child otherwise exempted from the chicken pox immunization requirement (R.C. 3313.671(C)).

Provision of immunizations

On application of the local school board, Ohio law requires boards of health, municipal corporations, and



townships to provide the means of immunization against mumps, poliomyelitis, rubeola, rubella, diphtheria, pertussis, tetanus, and hepatitis B to pupils who are not provided the immunizations by their parents or guardians. The local entities are not required to provide a means of immunization against chicken pox. The immunizations must be provided without delay and at the public expense. (R.C. 3313.671(D).)

The Department of Health is required, to the extent appropriations made by the General Assembly make this possible, to provide the means of immunization against chicken pox to the local boards of health, municipal corporations, and townships (R.C. 3701.134).⁴

Case law on school child immunizations

Although widely accepted as serving important public health purposes, mandatory immunization laws have also provoked resistance. Parents and others have challenged such laws on a number of grounds, including:

- The effectiveness of or need for immunization;
- Potential harmful effects of the vaccines used in immunization;
- The source of certain vaccines;
- Legal and constitutional objections, including objections based on religious freedom, personal liberty and privacy, and due process and

equal protection.⁵

The law is well established that a state may compel immunization under its police powers (the broad power of a state to regulate matters relating to the health, safety, and welfare of the public).⁶ The constitutionality of requiring immunization for school attendance has been upheld by the United States Supreme Court.⁷ Many courts have rejected challenges to compulsory immunization laws on the basis of personal liberty, illegal search and seizure, due process, equal protection, and freedom of religion.⁸

In 1907, the Ohio Supreme Court considered the case of a father seeking to compel the local board of education to admit his unimmunized children to school (*State ex rel. Milhoof*, 76 Ohio St. 297 (1907)). In denying the father's appeal, the court held that the board could make and enforce rules under its police power to promote the common good and protect and preserve the public health. Similarly, in *State ex rel. Dunham* a parent filed an action to compel the board of education to admit a child to school. The board had refused admittance because the parent refused to have his child vaccinated for the reason that vaccination in any form was contrary to his religion and conscience and interfered with his constitutional right to freedom of religion. The court determined that the board of education had statutory authority under what is now R.C. 3313.67 to adopt a rule excluding pupils from public school who have not been vaccinated. Further, it

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It remains unclear since the enactment of H.B. 463 whether unimmunized pupils can be barred from attending school despite their parents' objections to immunization.

If a court were to conclude that H.B. 463 removed the authority of a public school district board of education to exclude an unimmunized child from school, it is possible that the Ohio Department of Health or a local board of health could bar the child from attending school.

held that enforcement of such a rule is not a violation of the constitutional right to religious freedom. (154 Ohio St. 469 (1951).)⁹

Authority to exclude unimmunized children from school

The most recent legislation regarding schoolchild immunizations was Substitute House Bill 463 of the 125th General Assembly. H.B. 463 made several changes to the immunization laws, including requiring children to be immunized against chicken pox before entering kindergarten. What remains unclear since the enactment of H.B. 463 is whether unimmunized pupils can be barred from attending school despite their parents' objections to immunization. The act broadened the circumstances under which parents can object to immunization and eliminated a prior provision in R.C. 3313.671 specifying that local school boards of education can make and enforce rules to secure immunization of pupils. Because the later provision was stricken in the act, a court could conclude that it was the General Assembly's intent to eliminate the authority of local school officials to make and enforce such rules. But the absence of a provision is not as indicative of legislative intent as an affirmative statement.

Further complicating the issue is that H.B. 463 did not amend another section, R.C. 3313.67, which, in language nearly identical to the stricken

provision, states that a public school district board of education may make and enforce rules to secure the immunization of and prevent the spread of communicable diseases among the pupils attending the schools of the district as in its opinion the safety and interest of the public require.

Even if a court were to conclude that H.B. 463 removed the authority of a public school district board of education to exclude an unimmunized child from school, it is possible that the Ohio Department of Health or a local board of health could bar the child from attending school.¹⁰ R.C. 3107.13 provides that the Department has supervision of all matters relating to the preservation of the life and health of the people and has ultimate authority in matters of quarantine and isolation. A person who is not immunized could be quarantined as part of the effort to prevent the spread of disease, thus immunization may be viewed as a means of quarantine.

The Revised Code permits the Department to make special or standing orders or rules for preventing the spread of contagious or infectious diseases and empowers it to take such actions as are necessary to encourage vaccination against certain diseases.¹¹

A person who violates any order the Director or Department of Health issues to prevent a threat to the public caused by a pandemic or epidemic is guilty of a second degree misdemeanor.¹² Further, the Director or a board of health may petition the



court of common pleas for appropriate relief requiring a person violating an order issued by the Director to comply with the rule or order.¹³ It is possible that “other appropriate relief” could include excluding unimmunized children from school.

Endnotes

¹ This memorandum focuses on immunization requirements for schoolchildren, but there are additional immunization provisions in Ohio law. The Department of Job and Family Services is authorized to require children attending day-care to obtain certain immunizations (Revised Code § 5104.011(A)(5)). Each college or university student seeking to reside in on-campus housing must disclose whether the student has been immunized against meningococcal meningitis and hepatitis B (R.C. 1713.55, 3332.25, and 3345.85). And, Ohio law requires that immunization for influenza and pneumococcal pneumonia be offered to hospital patients and residents of nursing homes and residential care facilities (R.C. 3721.041 and 3729.19).

² “Immunization Laws,” National Vaccine Program Office, *available at*: <http://www.hhs.gov/nvpo/law.htm#Religious%20and%20philosophical%20exemptions>, last visited May 22, 2006.

³ “States with Religious and Philosophical Exemptions from Immunization School Requirements,” NCSL, *available at*: <http://www.ncsl.org/programs/health/2004exChart.htm>, last visited May 22, 2006. A philosophical objection refers to nonreligious opposition to immunization by parents.

⁴ As part of the biennial budget bill for fiscal years 2006 and 2007, Am. Sub. H.B. 66 of the 126th General Assembly, the Department was appropriated approximately \$8.6 million in fiscal year 2006 and \$9.4 million in fiscal year 2007 for all immunizations (General Revenue Fund appropriation item 440-418). An additional \$800,000 is scheduled to be transferred from the Tobacco Master Settlement Agreement Fund for the purchase of varicella vaccinations (Fund 087). The varicella virus causes chicken pox, among other illnesses.

⁵ Calandrillo, Steve, “Article: Vanishing Vaccinations: Why are So Many Americans Opting Out of Vaccinating Their Children?” 37 U. Mich. J.L. Ref. 353 Winter, 2004.

⁶ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

⁷ *Zucht v. King*, 260 U.S. 174 (1922).

⁸ See *Jacobson supra note 8* at 25-27; see also *Zucht*, 260 U.S. at 176 (equal protection); *Prince v. Massachusetts* (1944), 321 U.S. 158, 169-170 (holding that the right to free exercise of religion does not include a right to place children in harm’s way); *McSween v. Bd. of Sch. Trustees* (1910), 60 Tex. Civ. App. 270, 273 (illegal search and seizure); *Seubold v. Fort Smith Special Sch. Dist.* (Ark. 1951), 237 S.W.2d 884, 887 (liberty and due process interests).

⁹ Also, in *State ex rel. Mack*, an Ohio appellate court held that a school board may refuse to admit a child who has not been immunized because of the objections of the child’s parents. The court found that although R.C. 3313.671 prohibits an unimmunized child from being admitted to school unless the child complies with a permissible exception, compliance with an exception does not require that the board admit the child to school (1 Ohio App.2d 143 (1961)).

¹⁰ The Director of Health should be aware of the number of unimmunized pupils attending

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