

LONG & DiPIETRO, LLP
ATTORNEYS AT LAW
175 Derby Street
Unit 17
Hingham, MA 02043

www.long-law.com

MICHAEL J. LONG
ROSANN DiPIETRO
KELLY T. GONZALEZ
LESLIE C. CAREY

JOSEPH P. LONG
OF COUNSEL

TELEPHONE (781) 749-0021
FACSIMILE (781) 749-1121
email@long-law.com

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LEGAL ADVISORY:

REVIEW OF SCHOOL VACCINATION LAW

A. Introduction

According to the Centers for Disease Control, between January 1, 2015 and February 26, 2015 at least 154 people across the United States were diagnosed with measles. California state officials have reported that at least 123 of those people were infected in California, with most of those having ties to an outbreak at Disneyland beginning in December of 2014. The United States suffered its highest number of measles cases in decades in 2014, with 667 cases in 27 states being reported to the Centers for Disease Control for that year.

These outbreaks are occurring despite the measles having been declared “eliminated” in the United States in the year 2000, thanks to decades of childhood vaccination efforts. Many experts attribute the rise in outbreaks of diseases considered to be eradicated or nearly eradicated in the United States for many years, such as measles, to the growing anti-vaccination movement and its vocal supporters. In this current public health climate, it is important for school departments to recognize that the Commonwealth’s clear and well settled law requiring student

immunizations remains unchanged. Enforcement policies for unvaccinated or under vaccinated students must be developed and implemented by individual schools or school districts.

B. Massachusetts Law

Mass. Gen. L. c. 76, §15 provides the state statutory framework for immunization requirements and exemptions in Massachusetts. Under Mass. Gen. L. c. 76, §15:

“No child shall, except as hereinafter provided, be admitted to school except upon presentation of a physician’s certificate that the child has been successfully immunized against diphtheria, pertussis, tetanus, measles and poliomyelitis and such other communicable diseases as may be specified from time to time by the department of public health.”

Therefore, under state law any student failing to provide a physician’s certification of required immunizations¹ must not be allowed to attend school, with just two main exemptions: (1) medical exemption or (2) religious exemption.

Regarding the medical exemption, Mass. Gen. L. c. 76, §15 provides that a child who has not been immunized for medical reasons shall be admitted to school only

“...upon certification by a physician that he has personally examined such child and that in his opinion...[the child’s] health would be endangered by such vaccination or by any of such immunizations.”

A physician’s certification claiming a student’s medical exemption must be submitted to the “physician in charge of the school health program” at “the beginning of each school year.” If the school’s physician is not in agreement with the certifying physician’s opinion that medical exemption is warranted, the Massachusetts Department of Public Health will make a decision on the matter, having “final” authority.

¹ Under 105 CMR 220.500(c)(3), written documentation of immunity to a specific disease, as defined in Department of Public Health guidelines, is acceptable in lieu of immunization for that specific disease. A history of serologic proof of immunity is acceptable in lieu of immunization for measles, mumps, rubella, hepatitis B and varicella. For varicella only, a physician certificate or physician diagnosis is also acceptable.

As for the religious exemption, Mass. Gen. L. c. 76, §15 provides that a child who has not been immunized because of religious beliefs shall be admitted to school only

“[i]n the absence of an emergency or epidemic of disease declared by the department of public health” and if a “parent or guardian states in writing that vaccination or immunization conflicts with his [or her] sincere religious beliefs...”

Whether the religious exemption is applicable in the case of a particular student is not determined by claimed membership of a recognized, organized religion, but rather by whether written verification of a sincere religious belief has been shown. See Dalli v. Board of Education, 358 Mass. 753 (1971). A student’s or parent’s philosophical or secular opposition to immunization or the required vaccination schedule is not a valid exemption under the law, even if framed by the objector as a form of religious belief. See Morin v. MGH Inst. of Health Professions, 2002 WL 31441509, at *5 (Mass. Super. Nov. 1, 2002)(analyzing the religious exemption under Mass. Gen. L. c. 76, §15C, pertaining to the required immunization of college health science students).

Massachusetts courts have continually upheld the legality and enforceability of compulsory immunization and state immunization laws. A law requiring compulsory inoculation against smallpox, enacted in 1810, was codified as Statute 1809, Chapter 117 in the second volume of General Laws of Massachusetts in 1823. See Com. v. Childs, 299 Mass. 367, 368 (1938). In Dalli, 358 Mass. at 756 (1971), the Massachusetts Supreme Judicial Court observed that such laws have been “universally upheld as proper exercises of the police power.” The United States Supreme Court has likewise upheld mandatory immunization laws as proper exercise of a state’s police power since at least since the early 1900s. See Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11 (1905).

The Code of Massachusetts Regulations is also instructive relative to student immunization requirements, student immunization records and the exclusion of unvaccinated students from school. 105 CMR 220.000 specifies the minimum immunization requirements for school attendance. 603 CMR 23.07(4)(h) allows school health personnel and local and state health departments to access student health records, including immunization records (which are required to be kept on file), without student or parent consent when necessary for the performance of official duties. 105 CMR 300.00 provides that if even one case of an illness that is required to be vaccinated against presents in a typical school setting, all “susceptible” students, including those that are unvaccinated or under-vaccinated for any reason, are subject to exclusion from school.

C. McKinney – Vento Act

In addition to the medical and religious exemptions provided for by state statute, there is an *exception* under federal law to the state requirement that a student’s immunization records be provided to a school prior to the student’s enrollment. The McKinney-Vento Homeless Education Assistance Act, 42 U.S.C. §11301 et seq., provides in §11432 that homeless students may not be prevented from attending school due to a lack of immunizations or vaccination records. If a homeless student has not been immunized and/or does not have access to documentation of immunization, his or her “Homeless Education Liaison” must immediately assist the student in obtaining the required immunizations and/or immunization records. A homeless student may not be prevented from enrolling in or continuing to attend school in the interim.

D. Conclusion

For more information, please visit the Massachusetts Executive Office of Health and Human Services school immunization requirements website at <http://www.mass.gov/eohhs/gov/departments/dph/programs/id/immunization/school-immunizations.html>.

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