

NEW YORK ELIMINATES RELIGIOUS EXEMPTIONS TO IMMUNIZATION MANDATES FOR STUDENTS

Hodgson Russ Education Alert
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On the evening of June 13, 2019, Governor Andrew Cuomo signed into law legislation that removed a parent's legal right to obtain a religious exemption from immunization requirements for their children. In large part, this action is attributed to the recent measles outbreak in the State – the worst in more than 25 years – a disease that the Center for Disease Control (CDC) had declared eliminated in the United States in 2000. Indeed, the Department of Health recently shuttered a number of schools in New York City and Rockland County for failure to provide proof of immunity for students at school and/or allowed unvaccinated children and staff on site in violation of the New York State Public Health Law. In Upstate New York, we have seen a rise in pertussis cases (whooping cough) and even reported cases of measles.

The Public Health Law and its corresponding regulations require every student entering or attending public, private or parochial school in the State to be immune to certain communicable diseases; namely, diphtheria, tetanus, pertussis, measles, mumps, rubella, poliomyelitis, hepatitis B, varicella, Haemophilus influenza type B (Hib), meningococcal disease, and pneumococcal disease. Public Health Law Section 2164 previously permitted parents to request an exemption from immunization requirements for students based on either sincerely held religious beliefs or whether such immunization may be detrimental to a child's health (medical exemption).

Religious exemption requests required school administrators to perform the Herculean task of assessing the credibility and sincerity of a parent's request, whether the parent's purported beliefs were religious and if so, whether they were genuinely and sincerely held. This often resulted in communications and meetings with parents to ask questions or request other supporting documentation. At times, parents took issue with this process and would engage in adversarial interactions. If the school administrator found that the parent's beliefs were not genuine and sincerely held and/or that the parent's beliefs were founded upon medical or purely moral considerations, scientific or secular theories, or philosophical and personal beliefs, such exemption request would be denied. At times, these denials would result in litigation causing schools to expend more time and financial resources on this issue.

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Thus, the elimination of religious exemptions assists schools in protecting their students, staff and community against dangerous communicable diseases and also relieves them of this administrative burden.

This new law does not change the previously existing exemption granted to students who cannot receive vaccines for medical reasons. We suspect that this new law may prompt students and their families who previously enjoyed the religious exemption to now request an exemption based upon medical reasons. We note, however, that it is imperative for school districts to critically examine such medical exemption requests. For example, a parent or physician stating that a child “does not react well” to an immunization would not be sufficient. In order to receive a medical exemption, parents must provide schools with acceptable medical evidence from a State licensed physician which certifies the (1) vaccines the medical exemption is referring to; (2) complete contraindication information (i.e. how the vaccine is detrimental to the student’s health); (3) date on which the exemption ends; and (4) complete medical provider information.

Since this new law takes effect immediately, schools must promptly review their records to determine which students currently receive a religious exemption, including nonpublic school students and those students who receive your transportation services. After this process is complete, schools must advise those parents that the religious exemption is no longer valid. The new law does not change the 14-day “grace period” for a limited period of attendance granted to parents of unvaccinated children who make a good faith effort to obtain the necessary documentation and immunizations. Therefore, students who currently receive a religious exemption will not be affected for the remainder of this school year. Unvaccinated students transferring from another state or country will have up to thirty (30) days after they enter a school to demonstrate that he or she has received the first dose of each required immunization.

This new law will likely prove to be a large undertaking for our school clients and our attorneys are ready to assist you with this change. We will provide more information as it becomes available. In the interim, please contact one of our education law attorneys if you have questions.

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