


2-2017

Update on Student Vaccinations

Charles J. Russo

University of Dayton, crusso1@udayton.edu

Follow this and additional works at: https://ecommons.udayton.edu/eda_fac_pub

 Part of the [Educational Assessment, Evaluation, and Research Commons](#), [Educational Leadership Commons](#), [Education Law Commons](#), [Elementary and Middle and Secondary Education Administration Commons](#), and the [Supreme Court of the United States Commons](#)

eCommons Citation

Russo, Charles J., "Update on Student Vaccinations" (2017). *Educational Leadership Faculty Publications*. 198.
https://ecommons.udayton.edu/eda_fac_pub/198

This Article is brought to you for free and open access by the Department of Educational Leadership at eCommons. It has been accepted for inclusion in Educational Leadership Faculty Publications by an authorized administrator of eCommons. For more information, please contact frice1@udayton.edu, mschlange1@udayton.edu.



Update on Student Vaccinations

By Charles J. Russo, J.D., Ed.D.

Disputes over mandatory vaccinations have generated a fair amount of litigation.

After Edward Jenner developed a smallpox vaccine in 1796, health officials in Europe—most notably in England, France, and Germany—introduced the use of inoculations to lower disease rates (Hodge and Gostin 2001/2). Inoculation involves injecting individuals with microscopic amounts of a virus or disease-carrying agent to help them ward off later outbreaks of illnesses.

Shortly thereafter, officials in the United States adopted immunization as a widespread, generally safe, and cost-effective preventative tool to protect public health. In 1827, Boston became the first city to require inoculations before children could attend public schools (Hodge and Gostin 2001/2).

State inoculation laws—which are designed to reduce or eliminate the risk of infection from the most common communicable diseases—typically grant students with medical concerns exemptions from having to receive vaccines or vaccine components. Moreover, as reflected in the cases discussed below, most states allow nonmedical exemptions for religious reasons and philosophical beliefs (National Vaccine Information Center 2016).

The Centers for Disease Control and Prevention reported that for the 2014/15 school year, most American children were vaccinated. “Median vaccination coverage was 94.0% for 2 doses of measles, mumps, and rubella (MMR) vaccine; 94.2% for the local requirements for diphtheria, tetanus, and acellular pertussis vaccine (DTaP); and 93.6% for 2 doses of varicella vaccine among the 39 states and DC with a 2-dose requirement” (Seither et al. 2015, 897).

As reviewed in the next section, disputes over vaccinations generated a fair amount of litigation. In these cases, parents challenged vaccination laws as violating their

constitutional rights to be free from government interference or to freedom of religion.

Litigation Involving Vaccinations

The earliest vaccination-related case in America did not arise in a school setting. The Vermont Supreme Court upheld a community’s right to have residents vaccinated against infectious diseases (*Hazen v. Strong* 1830), ruling that a local town council could impose a tax to help defray the cost of inoculating its residents against smallpox even though no cases of the disease were reported in the area.

In the first reported school case, in 1894, the Pennsylvania Supreme Court addressed the legality of mandatory vaccinations for students (*Duffield v. School District of Williamsport* 1894). The court reasoned that even without express legislation granting them the ability to do so, educators could exclude children from school if they were not vaccinated against infectious diseases, because inoculations were designed to protect the public welfare. Ten years later, New York’s highest court affirmed the authority of school officials to exclude a student who was not vaccinated against smallpox for essentially the same reasons (*Viemester v. White* 1904).

SUPREME COURT CASES

In its only case on the merits of inoculations, the Supreme Court upheld the constitutionality of a statute authorizing local officials to require universal vaccinations (*Jacobson v. Commonwealth of Massachusetts* 1905). Although conceding the importance of individual rights to liberty under the Fourteenth Amendment when persons seek to avoid vaccinations, the Court found that under the social compact theory, communities have the right to protect themselves



against diseases that might challenge the general welfare.

Seventeen years later, the Supreme Court rejected a challenge from parents in Texas who claimed that requiring them to have their daughter vaccinated before attending school violated their rights to liberty under the Fourteenth Amendment without due process (*Zucht v. King* 1922). In rejecting the appeal, the justices unanimously agreed that states can authorize local municipalities to order vaccinations to protect the general welfare.

LITIGATION IN LOWER COURTS

Courts uniformly uphold statutes requiring or authorizing school officials to adopt vaccination policies (*Board of Education of Mt. Lakes v. Maas* 1959; *McCartney v. Austin* 1969; *Itz v. Penick* 1973a, 1973b). When children who are not vaccinated are barred from schools, parents can be subjected to fines and threats of imprisonment. In such a

Where statutes permit exceptions from compulsory vaccination requirements, parents have had more success.

case, the Arkansas Supreme Court affirmed an order removing a child from parental custody because their refusal to cooperate deprived their son of his right to an education (*Cude v. State of Arkansas* 1964).

Where statutes permit exceptions from compulsory vaccination requirements, parents have had more success. For example, the federal trial court in New Hampshire invalidated a provision granting school officials discretion to excuse children for religious reasons as unconstitutionally vague because of the lack of criteria guiding their actions (*Avard v. Dupuis* 1974).

The Eighth Circuit reviewed a case premised on the establishment clause, striking down a law from Arkansas invalidating a

religious-beliefs exemption that required students to be vaccinated against hepatitis B; the court otherwise upheld the law once the underlying immunization requirement was removed. The court rejected the appeal because the legislature broadened the exemption to encompass philosophical and religious objections (*McCarthy v. Ozark School District* 2004).

Almost 40 years earlier, the Arkansas Supreme Court rejected a challenge to a state health regulation requiring all students to be vaccinated against smallpox before they could attend school (*Wright v. DeWitt School District No. 1* 1965). The court interpreted the regulation as a reasonable directive that did not

violate the right to free exercise of religion.

In the first of six reported cases from New York, a federal trial court rejected a parental request for an exemption excusing persons who opposed immunization on the basis of their genuine and sincere religious beliefs, because their objections were medical, not religious (*Farina v. Board of Education of City of New York* 2000). More recently, another federal trial court in New York rejected a mother's claim against a faith-based school when officials refused to admit her children, because her objection to vaccinations was not based on genuine and sincere religious beliefs (*NM v. Hebrew Academy of Long Beach* 2016).

Two cases from New York reached the Second Circuit. In the first, the court affirmed that parents failed to demonstrate credibly that their refusal to vaccinate their children was based on genuine and sincere religious beliefs (*Caviezel v. Great Neck Public Schools* 2012, 2013). The Second Circuit then affirmed that New York's mandatory vaccination law did not violate the free exercise rights of parents who were opposed to inoculations for religious reasons (*Phillips v. City of New York* 2015a, 2015b). The court rejected the parental claims as

Although acknowledging the importance of parental rights to direct the upbringing of their children, policies must consider how granting even a few exemptions will affect the public health and welfare in their communities.

lacking merit, because officials could exclude children from school if their classmates reported cases of vaccine-preventable diseases. The Supreme Court refused to hear parental appeals in both of those cases.

Conversely, a mother who was a member of a religious congregation opposed to the introduction of foreign materials into humans sought a religious exemption from New York's immunization law. Although educators thought that the mother's sincerely held religious beliefs were based on a personal philosophy rather than a legitimate religion, a federal trial court disagreed. The court denied the board's motion to dismiss the mother's claim, because she established the likelihood of success on the merits of her claim insofar as her views appeared to be religious rather than philosophical or scientific (*Turner v. Liverpool Central School* 2002).

As reflected by the sixth case from New York, if parents seeking

religious exemptions comply with statutory requirements, courts rule in their favor. Where there was no disagreement over the sincerity of a family's religious beliefs, a federal trial court in New York ordered officials to permit a student to remain on his school's lacrosse team even though he had not received a shot for tetanus (*Hadley v. Rush Henrietta Central School District* 2006). The court pointed out that insofar as the student played without the shot, there was no reason to treat him differently from his peers who were not vaccinated because of religious objections but were permitted to attend school. Other courts reached the same outcome (*In re LePage* 2001; *Jones v. State Department of Health* 2001) even if parents are not required to substantiate the underlying religious justifications for their requests (*Department of Health v. Curry* 1998).

Recommendations

Education leaders may wish to consider the following suggestions when devising or revising their policies.

1. Educators should involve parent groups along with interested community members and school personnel, such as nurses, in devising and updating policies. Involving various stakeholders should help build community support and ensure compliance with policies. Of course, board attorneys should participate in this process to ensure that policies comply with state and federal vaccination requirements.
2. Education leaders should craft language addressing religious and philosophical exemptions.



Although acknowledging the importance of parental rights to direct the upbringing of their children, policies must consider how granting even a few exemptions will affect the public health and welfare in their communities.

3. Policies should require regular professional development sessions for teachers and other staff so they can be better informed if they must help allay parental concerns over vaccinations.
4. Similarly, boards should offer information meetings for parents and the general public—led by medical and public health officials, as well as on-site school nurses—to discuss the value of, and need for, vaccinations.
5. Boards should consider teaming up with community health and medical organizations to offer vaccines at no or low cost, based on family income, to help parents ensure the well-being of their children.
6. Boards should review and, if necessary, revise their vaccination policies periodically. When reviewing policies, they would be well served by waiting, rather than acting immediately after controversies, to afford themselves time to reflect on events carefully and not act prematurely in making changes.

Conclusion

Reviewing and revising vaccination policies certainly do not guarantee that all controversy or litigation will be avoided. However, because vaccinations have been a “hot button” issue, careful planning can help education leaders not only avoid costly, and perhaps unnecessary, litigation but also ensure the safety of everyone in their school communities.

References

- Avard v. Dupuis*, 376 F. Supp. 479 (D.N.H.1974).
- Board of Education of Mt. Lakes v. Maas*, 152 A.2d 394 (N.J. Super. Ct. App. Div.1959).
- Caviezel v. Great Neck Public Schools*, 500 Fed.Appx. 16 (2d Cir. 2012), *cert denied*.
- Cude v. State of Arkansas*, 377 S.W.2d 816 (Ark.1964).
- Department of Health v. Curry*, 722 So. 2d 874 (Fla. Dist. Ct. App.1998).
- Duffield v. School District of Williamsport*, 162 Pa. St. 476, 29 Ad. 742 (x894)
- Farina v. Board of Education of City of New York*, 116 F. Supp.2d 503 (S.D.N.Y. 2000).
- Hadley v. Rush Henrietta Central School District*, 409 F. Supp. 2d 164 (W.D.N.Y. 2006).
- Hazen v. Vermont*, 2 Vt. 427 (1830).
- Hodge, J. G., and L. O. Gostin. 2001/2. School vaccination requirements: Historical, social, and legal perspectives. *Kentucky Law Journal* 90 (4): 831–90.
- In re LePage*, 18 P.3d 1177 (Wyo.2001).

- Itz v. Penick*, 493 S.W.2d 506 (Tex. 1973a), *appeal dismissed*, 412 U.S. 925 (1973b).
- Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).
- Jones v. State, Department of Health*, 18 P.3d 1189 (Wyo. 2001).
- McCarthy v. Ozark School District*, 359 F.3d 1029 (8th Cir. 2004).
- McCartney v. Austin*, 298 N.Y.S.2d 26 (N.Y. App. Div.1969).
- National Vaccine Information Center. 2016. “State law & vaccine requirements” Website. www.nvci.org/vaccine-laws/state-vaccine-requirements.aspx.
- NM v. Hebrew Academy of Long Beach*, 155 F. Supp.3d 247 (E.D.N.Y. 2016).
- Phillips v. City of New York*, 775 F.3d 538 (2d Cir. 2015a), *cert. denied*, 136 S. Ct. 104 (2015b).
- Seither, M., et al. 2015. Vaccination coverage among children in kindergarten—United States, 2014–15 school year. *MMWR Weekly*, August 28, pp. 897–904. www.cdc.gov/mmwr/preview/mmwrhtml/mm6433a2.htm.
- Turner v. Liverpool Central School*, 186 F. Supp.2d 187 (N.D.N.Y.2002).
- Viemester v. White*, 179 N.Y. 235 (N.Y. 1904).
- Wright v. DeWitt School District No. 1*, 385 S.W.2d 644 (Ark. 1965).
- Zucht v. King*, 260 U.S. 174 (1922).

Charles J. Russo, J.D., Ed.D., is Joseph Panzer Chair of Education in the School of Education and Health Sciences (SEHS), director of SEHS’s Ph.D. Program in Educational Leadership, and adjunct professor in the School of Law at the University of Dayton, Ohio. Email: crusso1@udayton.edu



PROUD SPONSOR
Office DEPOT.

Keep up with actionable insights
with *School Business Minute*, delivered
to your inbox monthly!