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Update on Student Vaccinations

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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 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
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违因宗教信仰而受到的歧视。

在第一起由纽约市的一个联邦法庭驳回了家长对拒绝其子女接种疫苗的学校提起的诉讼。法院认为，尽管家长们确实是为了宗教原因而反对接种疫苗，但这种信仰并不基于宗教信仰的真诚信念（Farina v. Board of Education of City of New York 2000）。最近，纽约市的另一个联邦法庭拒绝了针对同校其他反对接种疫苗的家长的诉讼，因为他们反对接种疫苗的依据是基于信仰的真诚信念（NM v. Hebrew Academy of Long Beach 2016）。


通过教育和法律建议，教育领导可以考虑以下几点意见。

1. 教育者应促进参与，包括学校人员、社区成员和学校法律顾问。在制定和更新政策时，应考虑各种利益相关者。
2. 教育者应倡导和确保遵守政策。
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.

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