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MEMORANDUM

TO: Louisiana citizens, especially parents and guardians of school aged children

FROM: Jeff Landry, Attorney General

DATE: November 10, 2021

RE: Guidance relative to vaccine requirements for students entering schools in Louisiana

I am issuing this guidance, outlining the status of Louisiana law relative to vaccine mandates for persons entering schools, in light of the recent recommendation from the CDC that children between the ages of 5 and 11 receive the COVID-19 vaccine. It is important for parents to understand that while schools may adopt policies that are reasonable and necessary to protect students and others, these policies may not be designed in such a way that defeat the right to dissent from a vaccine requirement. Furthermore, these policies may not be discriminatory, punitive, and retaliatory towards a child or a parent that dissents from a vaccine requirement for their child. It is just as important for parents and educators to remember that our State Law and our State Constitution enshrine students with extensive religious and philosophical protections. *See* La. R.S. 13:5231, *et seq.*; La. R.S. 17:170(E); and La. Const. art. I, § 8.

Q: Must students in Louisiana submit proof of immunity to or immunization against certain diseases in order to attend school?

A: Yes, generally. Louisiana law at La. R.S. 17:170 requires that students present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases, subject to certain exceptions or exemptions.

Louisiana Revised Statute 17:170 regulates immunization requirements for all Louisiana public and private schools, including elementary and secondary schools, kindergartens, colleges, universities, proprietary schools, vocational schools, and licensed day care centers.¹ Each person entering school in Louisiana must provide “satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the office of public health, Louisiana Department of Health, or shall present evidence of an immunization program in progress.”² We will discuss potentially applicable exceptions later.

¹ La. R.S. 17:170(A)(1)(a).

² *Id.*

Q: What is satisfactory evidence of immunity or immunization?

A: Students may meet this requirement by showing either proof of vaccination or proof of immunity by some other means, such as the presence of antibodies.

Proof of vaccination is a common method of compliance with La. R.S. 17:170. Nevertheless, the statute refers not only to “immunization,” which is typically defined to involve vaccination, but also “immunity,” a broader concept connoting a high degree of resistance to a disease, or having or producing antibodies, regardless of the source from which the resistance or antibodies are achieved.³ This means that schools should accept submission of proof that a student possesses antibodies for a particular disease as “satisfactory evidence of immunity.”⁴ A school that refuses to accept evidence of immunity likely violates La. R.S. 17:170.

Q: May a Louisiana school require evidence of immunity to or immunization against COVID-19?

A: A Louisiana school cannot require evidence of immunity to or immunization against COVID-19 until either (1) the Office of Public Health adds COVID-19 to the statewide vaccination schedule or (2) the school receives permission from the Office of Public Health. But even then, a Louisiana school must recognize a written dissent from vaccination.

The Office of Public Health sets Louisiana’s immunization schedule according to “the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service (USPHS).”⁵ The Office of Public Health has not added the COVID-19 vaccination to its vaccine schedule for schools,⁶ but, each school, with the consent of the Office of Public Health, may require proof of immunization or immunity for additional diseases not included on Louisiana’s immunization schedule.⁷ Thus, a school may not require evidence of immunity to or immunization against COVID-19 until the disease is added to Louisiana’s immunization schedule, or the school receives permission from the Office of Public Health.

³ See IMMUNE, <https://www.merriam-webster.com/dictionary/immune>.

⁴ The CDC advises that COVID-19 reinfections are “rare.” *Reinfection with COVID-19*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>.

⁵ LAC 51:II.701(A).

⁶ The schedule was last revised in 2019 and can be found here:

https://lalink.org/linksweb/pdf/Immunization%20Schedule_January%202019.pdf. The Advisory Committee for Immunization Practice *recommends* administration of the COVID-19 vaccines “for everyone ages 12 and older within the scope of the Emergency Use Authorization for the particular vaccine,” but has not added it to the vaccine schedule for children under 18. *Recommended Child and Adolescent Immunization Schedule for ages 18 years or younger, United States, 2021, Centers for Disease Control and Prevention*, <https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html>.

⁷ La. R.S. 17:170(A)(3).

Q: What if there is a medical or personal reason why a student should not be vaccinated?

A: Louisiana law permits a student to submit a written statement from a doctor or a written dissent in lieu of proof of immunity to or immunization.

Even if the COVID-19 vaccine finds its way to Louisiana's immunization schedule, or your child's school receives the Office of Public Health's approval to require COVID-19 immunization, opt-outs are available, as provided in La. R.S. 17:170(E). Louisiana law does not permit a school to require a student to be vaccinated if the student (or their parent or guardian) submits either of the following: (1) a written statement from a physician stating that the vaccination is contraindicated, *i.e.*, inadvisable, for medical reasons or (2) "a written dissent."⁸ A dissent is simply an opposition or disagreement, regardless of the reason for or source of the opposition or disagreement, and includes, but is not limited to, religious reasons. Louisiana law does not place any restrictions or minimum standards on what constitutes a dissent for the purposes of La. R.S. 17:170(E), other than the requirement that the dissent be in writing. The statute does not permit a school to override or second guess the recommendation of a student's doctor, in the case of a physician's statement, or the personal choice of a student (or their parent or guardian), in the case of a dissent. Accordingly, the law does not permit a school to reject or make additional inquiries into a physician's statement or student's dissent that complies with the express terms of the statute. This is because in enacting La. R.S. 17:170(E), Louisiana made the conscious decision to give primary effect to the recommendation of a student's own doctor and the personal choice of a student (or their parent or guardian).

Q: What conditions or limitations may a school impose upon a student who submits a written statement from a doctor or a written dissent in lieu of proof of immunity to or immunization?

A: The only express limitation on students who choose to exercise their right under La. R.S. 17:170(E) is the ability of a school to exclude the student from campus during an outbreak.

The only caveat found in La. R.S. 17:170 for students who choose not to be immunized is that in the event of an outbreak of the disease at the school, upon recommendation by the Office of Public Health, the school may exclude unimmunized students from campus "until the appropriate disease incubation period has expired or the unimmunized person presents evidence of immunization."⁹

While La. R.S. 17:170 does not prohibit schools from imposing other safety measures that they believe to be necessary to preserve the health of students, faculty, and staff, and no statute or regulation specifically authorizes masking and testing protocols, any such additional safety measures should be applied in a nondiscriminatory and non-punitive fashion. As Judge Terry Doughty with the United States District Court for the Western District of Louisiana held recently, policies that are so punitive that they defeat the right itself will not withstand scrutiny. *See Magliulo, et al. v. Edward Via College of Osteopathic Medicine*, U.S.D.C. (Western Dist. of La.), Civil Action No. 3:21-cv-02304.

⁸ La. R.S. 17:170(E).

⁹ La. R.S. 17:170(F).