

## A Repeal of the Religious Exemption to Vaccinations – Effective Immediately

On June 13, 2019, Governor Cuomo signed a bill<sup>1</sup> into law that eliminated the religious exemption to the requirement that children attending school must receive certain immunizations. This law is effective immediately.

### Background

In New York State, children are required by law to receive the following immunizations in order to attend school: poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease.<sup>2</sup> Prior to the passage of this law, parents or legal guardians could seek a religious or medical exemption to the vaccination requirement. *The New York Times* reported that during the 2017-18 school year, 26,217 students in New York State had religious exemptions.

The decrease in the number of students receiving vaccinations has been linked to a significant measles outbreak this year. Although in 2000 measles was considered to be eradicated in the U.S., this year 800 cases of measles were reported in New York State. New York City Mayor Bill de Blasio declared the outbreak a public health emergency and required unvaccinated individuals in Brooklyn to receive the measles vaccine in April.

### Implications for Schools

This law will result in some significant changes for schools. Schools may not permit students who have not received at least the first dose in each immunization series, according to the Advisory Committee on Immunization Practice's [Recommended Immunization Schedules for Persons Aged 0 through 18 Years](#), to attend school for more than 14 days.<sup>3</sup> Parents will need to demonstrate that their children have received the first dose of vaccines required for their age group before their children can attend school. Moreover, parents must present documentation that their children have age appropriate appointments scheduled to complete the immunization series.

Schools are no longer permitted to admit students who are not vaccinated for religious reasons. The only students that may receive exemptions are those who cannot be vaccinated for medical reasons.

As this law is effective immediately, schools can utilize the 14 day grace period to allow students to stay in school for the remainder of this (2018-2019) school year.<sup>4</sup> However, any summer school programs should require that students receive at least the first dose of the required immunizations for their age group and provide documentation that all further doses of the immunizations are scheduled.

1 S. 2994 and A. 2371.

2 New York Public Health Law 2164(6).

3 The 14 day period may be extended to a period of no more than 30 days under certain circumstances for an individual student transferring from out-of-state or another country, or where it can be shown that the student has received at least the first dose in each immunization series required.

4 Using the 14 day grace period, students will be able to stay in school until July 3, when most schools will have finished the regular school year.

All schools should send home a letter as soon as possible, explaining the changes to the new law, that any current religious exemptions are no longer valid, and that no further religious exemptions will be allowed. The letter should also establish a timeline, outlining when students attending various programs must present proof of immunization. For example, students attending a summer program will need to present proof sooner than a student who will not be back in the building until September. Reach out to your school attorney regarding any specific questions concerning timelines.

The new law also applies to private and parochial schools.

### Constitutionality

While some parents may attempt to challenge this law on the basis of religious freedom, the Second Circuit, which has jurisdiction over New York State, has already held in *Phillips v. City of New York*, that mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause. 775 F.3d 538, 543 (2015). Therefore, any case challenging the constitutionality on the basis of religious freedom is unlikely to be successful.

If you have any questions about this Information Memo, please contact [Megan K. Thomas](#), [Jeffrey A. Kehl](#), any of the [attorneys](#) in our [School Districts Practice](#), or the attorney in the firm with whom you are regularly in contact.



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