



# To Vaccinate Or Not To Vaccinate?

Insights

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The last few years have seen numerous controversies surrounding childhood vaccinations. Many parents are choosing to not vaccinate their children because they feel the process is unnecessary and dangerous, or goes against their religious or personal beliefs. Other parents contend that allowing children to go without immunizations puts many people at risk because it reduces “herd immunity.” This poses tough questions for schools.

To determine how to address this issue, schools must consider their state law requirements. All states require that children meet specific vaccination requirements before entering school, but they all have slightly different requirements and exemptions to those requirements. Most states allow children to be exempt from its immunization requirements if they can show it is because of religious beliefs (44 states) or for medical reasons (45 states). 15 states also provide an exemption for “personal beliefs.”

After a 2018 measles outbreak, New York state became the fifth state (after California, Maine, Mississippi and West Virginia) to bar all nonmedical exemptions to vaccinations and now has the strictest policy in the nation. However, many of these recent laws, including the New York law, are currently being challenged in court.

## Florida Vaccination Requirements

In Florida, public and private schools (grades K through 12) are required to ensure that, prior to admittance to or attendance to school, each child presents a certification of immunization as required by the Florida Department of Health. The law, however, provides for the following exemptions:

1. If the parent of the child objects in writing that the administration of immunizing agents conflicts with his or her religious tenets or practices;
2. If a licensed physician certifies in writing that the child should be permanently exempt from the required immunization for medical reasons, based upon “valid clinical reasoning or evidence”;
3. If a licensed physician certifies in writing that the child has received as many immunizations as are medically indicated at the time and is in the process of completing necessary immunizations;
4. If the Department of Health determines that, according to recognized standards of medical practice, any required immunization is unnecessary or hazardous; or

5. If an authorized school official issues a temporary exemption, for up to 30 school days, to permit a student who transfers into a new county to attend class until his or her records can be obtained.

### **Private Religious Schools That Do Not Want To Accept A Religious Exemption**

Florida Statutes are silent as to whether a religious school has a religious right to prohibit students from attending school without the required vaccinations even if the parents have asserted a religious exemption. So far, only one Florida court has weighed in.

In the 2017 case of *Flynn v. Estevez*, a Jacksonville-area Catholic school issued a policy requiring that all students be immunized as a condition of admission. A first-grade applicant's parents provided the school with their religious objection in writing. The school denied admission and the parents sued. The school argued that it could not be compelled by a secular tribunal to comply with the statutory religious exemption, which would invade its ecclesiastical sovereignty as to an internal church policy and violate the school's First Amendment rights.

The court sided with the school and abstained from deciding whose religious views on the matter should prevail. The court reasoned that the Florida statute on immunizations, including the section on religious exemptions, remained valid and enforceable except that the exemption could not be applied if it would constitute a governmental intrusion into the church's right to determine the operation of its parochial schools. In doing so, the court reasoned that "civil courts may not insert themselves into the operation of the church to compel it to exempt a student on religious grounds from mandatory immunization, nor to admit an unimmunized student to the school."

This case was not appealed so its decision is binding in the Jacksonville area and persuasive authority for other Florida courts. As a result, then, the question remains: If a religious school in Florida establishes a policy consistent with its religious principles that vaccinations are necessary for the common good, and that any student not so vaccinated will be denied admission, will the school will have a good legal leg to stand on? Unfortunately, the answer is not so simple.

### **What Should You Do?**

If a religious school in Florida is considering establishing a policy requiring that all students be vaccinated as a condition of attendance based on the religious school's strongly held religious beliefs, we first recommend that you obtain advice of counsel regarding whether the school would be viewed as a "religious institution" entitled to exemption from legal assessment on religious grounds. Second, to make your strongest argument, a court will likely want to see that a religious authority applicable to your institution had opined on the vaccination requirement under that institution's religion. While a national expert would be helpful to bolster the school's position, a local or state religious authority might be more persuasive to the court.

Finally, schools need to understand that an issue not addressed in the *Flynn v. Estevez* case was the impact of the public accommodation law that have been enacted by many cities and counties. Many Florida cities and counties have public accommodation laws applicable to schools which prohibit

Florida cities and counties have public accommodation laws applicable to schools which prohibit “places of public accommodation” from discriminating on the basis of religion. The school’s counsel can advise whether any such law applies to the school.

Finally, many schools that have moved in this direction have found that giving parents whose children are not vaccinated plenty of notice has worked well. Ideally, you should give notice before the admissions season begins (or at least before the parent cancellation deadline ends). This will give parents plenty of time to find another school. Otherwise, the late notice could be met with a legal challenge.

## **Conclusion**

As a practical matter, private schools should evaluate and determine what their state law requires for immunizations and what exemptions are permitted. Because of the complexity and anticipated changes to these laws, schools should seek guidance from counsel, especially as these laws are developing at the state level.

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