



## Memorandum in Opposition

A 8123-B Gottfried

S6141-D Golden

*Relates to the admission of unvaccinated students where parents submit a form stating that such vaccinations are contrary to their religious beliefs*

### **The New York State Association of School Nurses opposes this proposed legislation.**

The New York State Association of School Nurses (NYSASN) is the professional organization representing New York's school nurses. NYSASN's mission is to advance the practice of school nursing and enhance the educational success of students by promoting quality school health service

School nurses are the bridge between education and health in the school setting. School nurses are also responsible for the day to day management of their school's immunization programs, including record keeping and follow up with parents/guardians in cases where there are outstanding required immunizations. As such, school nurses have a good grasp of (a) the concerns driving this legislation, and (b) how the current law is operationalized in New York's schools, and (c) the unintended consequences of this legislation. We are thus uniquely positioned to provide our legislators with our perspective and our expert opinion.

### **Some Facts about Immunization Exemptions:**

New York's Public Health Law §2164 permits religious and medical exemptions to immunization for sincerely held religious beliefs and medical contradictions to immunizations. New York Law does not permit philosophical exemptions.

PHL§2164 requires that schools have procedures in place to determine whether a requested exemption is either medically indicated, or in the case of a request for a religious exemption, whether the declared belief is religious in nature, and sincerely held. PHL §2164 provides parents with a robust appeal process.

PHL §2164 also requires schools to maintain a list of 'susceptible' students. Susceptible students include all students who have requested and been granted a medical or religious waiver from the requirements of PHL §2164, as well as a list of all partially immunized students – students who are not yet in full compliance with the requirements of PHL §2164.

It is important to recognize at the outset that PHL §2164 imposes unique responsibilities on all parties: schools, parents or guardians of immunized children and parents or guardians of children seeking a medical or religious exemption to the immunization requirements.

### **Procedural Safeguards:**

Not all requests for religious exemptions are approved; however, there are procedural safeguards in place for those families whose requests for religious exemptions are denied. Parents/guardians who have had their request denied may appeal to the Office of Counsel, New York State Education Department. It is noteworthy that a 2015 audit of the Department of Health and the Department of Education by the New York State Office of the Comptroller, found that in the two years of data they reviewed, “there were 11 appeals in schools outside of New York City. All of the schools’ decisions to deny the exemptions were upheld” p. 5.<sup>1</sup>

### **The Role of the State in Protecting Public Health:**

In order to understand why there should be procedures in place to screen all requests for religious and medical exemptions, it is important to understand the role of government in public health. The primary priority of our government is to safeguard public health, and New York’s PHL §2164 is an example of one of the ways in which New York State safeguards the public health of all of our citizens. A secondary priority is to allow religious exemptions if they can be accommodated without jeopardizing the government’s first order priority.

It is therefore important for our legislators to understand certain key concepts, namely the concept of herd immunity and the importance of conceptualizing non-medical vaccine waivers for what they are: a scarce, conditional resource.

### **Herd Immunity:**

A mandatory immunization scheme such as PHL §2164, is designed to bring about robust levels of ‘herd immunity’. Herd immunity is the level of complete immunization rates needed to protect the community at large. Herd immunity protects those who are too young to receive immunizations as well as those who, due to medical conditions such as cancer, leukemia, and immunosuppression, are thus unable to receive vaccinations. According to the CDC, the vaccine coverage rate needed to achieve herd immunity is 95%. Herd immunity is a public good and it protects everyone – those who have been vaccinated and those who have not.

### **Conceptualizing non-Medical Vaccine Waivers as a Scarce Resource:**

If the primary priority of government is to safeguard the public’s health and if a herd immunity level of 95% is required to achieve that goal, then it follows that there can only be a limited number of exemptions granted – 5% to be exact. Of this 5%, medical exemptions are prioritized

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<sup>1</sup> New York State Office of the State Comptroller, Division of State Government Accountability (2015): ‘Oversight of Student Immunization in Schools, Department of Health, Department of Education’. Available at: <http://osc.state.ny.us/audits/allaudits/093016/15s85.pdf>

over all other claims. It follows that there must be a process in place for the state or the agents of the state to make the distinction between a sincerely held religious belief (permitted) and a philosophical belief (not permitted) so that those with sincerely held religious beliefs can be fully accommodated as permitted under NYS Public Health Law.

#### **Stewardship of our Scarce Resources:**

The following sentence in the memorandum in support of A8123B which provides the justification for this legislation is of particular concern to NYSASN: “This legislation helps those families by allowing them to exempt their children from vaccination requirements without fearing denial of admission to the public school district.”

If families can exempt their own children from New York’s vaccination requirements by filling out and submitting a short form, what is to stop anyone from filling out this form? Indeed, a family may find complying with the many immunizations required for school to be onerous (and many do); the proposed form would provide an easy way for anyone – not just those with sincerely held religious beliefs - to opt out of New York’s immunization requirements.

If control over this process moves from the control of the state to individual families, then the state will cede control of one of its most important public health functions, and New Yorkers will be left vulnerable to outbreaks of vaccine-preventable diseases.

#### **Unintended Consequences:**

This is not just a theoretical threat to the health and safety of New Yorkers. In states where the herd immunity fell short of 95% due to non-medical exemptions, as was the case in California in 2015, the inevitable did happen; there was a large measles outbreak. Due to the public outcry following the 2015 outbreak, the California legislature introduced strict new laws prohibiting all non-medical exemptions, *including religious exemptions*.

New York has always maintained the fine balance between maintaining sufficient herd immunity to protect our citizens, while at the same time permitting religious exemptions to this legal requirement for our citizens who hold sincere religious beliefs against immunization. New York’s schools and New York’s school nurses have been integral to the success of this delicate public health endeavor.

#### **NYSASN’s Position:**

NYSASN is in favor of retaining the provisions of PHL §2164 as it currently exists because these provisions have successfully enabled the delicate balance between public health protection through herd immunity, and the accommodation of sincerely held religious beliefs to be maintained.

**It is therefore the position of NYSASN that A8123b/S6141d be opposed.**