

Public Education Options for Students Who Opt Not to be Immunized

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October 9, 2019 | 2019-R-0243

Issue

Describe whether states that do not allow a religious exemption for school immunization requirements offer an alternate form of public education to the students whose parents or guardians refuse to have them immunized on religious grounds.

Summary

According to the National Conference of State Legislatures ([NCSL](#)), three states (California, Mississippi, and West Virginia) have no religious exemption from mandatory school immunization requirements and two (Maine and New York) recently passed legislation to repeal the religious exemption. None of these five states have statutes that specifically address the issue of alternative public education. However, California and Maine each have provisions addressing education for such students who are entitled to special education and related services. Also, New York recently issued guidance that parents who choose not to vaccinate their children must ensure school-age children are educated and, consequently, must provide homeschooling instruction for them.

Below, we provide a brief description of the requirements of each of the five states.

California

California removed its exemption from mandatory immunization on the basis of personal belief, including religious beliefs, in 2015 ([Senate Bill 277](#)). The legislation did not address whether students who refuse immunizations (or whose parents refuse it on their behalf) are entitled to an

alternative form of education. However, it specified that students who refuse immunizations based on personal belief and qualify for an individualized education program (IEP) under special education law are still entitled to receive special education and related services required by the IEP. The law does not specify how such services must be provided to these students (e.g., in the public school building, in the home, or at another location).

Maine

[LD 798 \(HP 586\)](#), as [amended](#), removes the religious exemption from mandatory immunization for students beginning September 1, 2021. The new law does not address alternative public education for students whose parents refuse to have them immunized on religious grounds. However, Maine's law specifies that students with IEPs as of September 1, 2021, who have exercised a religious exemption prior to that date are still entitled to special education and related services.

The law specifies that these services must be provided in the student's public school only if the student's parent or guardian (or the student, if aged 18 or older) provides a statement from a licensed physician, nurse practitioner, or physician assistant that the medical professional has consulted with the parent, guardian, or student, about the risks and benefits associated with immunization.

Mississippi

In Mississippi, the state legislature has not removed the religious exemption from state law, but rather the state's Supreme Court ruled that the exemption was unconstitutional ([Brown v. Stone, 378 So.2d 218 \(1980\)](#)). In *Brown v. Stone*, the court did not address the question of whether children whose parents refuse to have them immunized on religious grounds must receive an alternative public education. The state law requiring immunizations for both public and private school enrollment also does not address this issue ([Miss. Code Ann. § 41-23-37](#)).

New York

The state legislature repealed the religious exemption for school immunizations on June 13, 2019, and the governor signed it into law the same day ([S2994](#)). The New York departments of Health and Education have since issued joint [guidance](#) that addresses the public education options for students who choose not to receive immunizations.

The guidance states that parents who choose not to vaccinate their children, and whose children do not have a valid medical exemption, must ensure that school age children are educated and, thus, would need to provide home instruction (i.e., "homeschooling") for those children. It further states

that homeschooled students who are not immunized cannot (1) attend state assessments held at school or (2) ride a school bus or other school vehicle with other students.

Also, the guidance indicates that homeschooled students who are not immunized may be entitled to special education services under an individualized education services program (IESP) (essentially an IEP for homeschooled students) from the public school district in which the homeschool is located. Homeschooled students who are not immunized and are entitled to special education services may receive the services in their home or other location, such as a mental health provider's office, but not at a public or private school.

West Virginia

State law does not allow a religious exemption from the compulsory school immunization requirements but does allow exemptions for medical reasons ([W. Va. Code § 16-3-4](#)). The law does not address whether children whose parents refuse to have them immunized on religious grounds must receive an alternative public education.

JM:kl