



Physicians Caring for Texans

August 7, 2020

Via Email: Opinion.Committee@oag.texas.gov

Honorable Ken Paxton
Office of Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Opinion Request RQ-0364-KP, Interpretation of Educ. Code § 38.001 and Tex. Admin. Code Title 25, Part 1, Subchapter B, § 97.62

Dear General Paxton,

The Texas Medical Association (“TMA”) was organized in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and the improvement of public health. With more than 53,000 physician and medical student members, TMA is the nation’s largest state medical society.

TMA appreciates the opportunity to submit this letter brief in response to Representative White’s request for an Attorney General opinion regarding the interpretation of Educ. Code § 38.001 and 25 Tex. Admin. Code § 97.62. For the reasons discussed in this letter, TMA believes that during an epidemic, public health considerations, as well as the language of the statute and rule, support allowing the exclusion of students who—for reasons of conscience—lack a required immunization. This is true even if the disease causing the epidemic is not one for which immunization is required.

1. Public Health Risks Support Excluding Non-Immunized Students During an Epidemic

To reduce the threat of coinfection with other infectious diseases, strain on local health systems, and increased risk to vulnerable individuals, school districts should be allowed to exclude non-immunized students. Unfortunately, the threat of COVID-19 coinfection with other infectious diseases remains possible. While fighting disease, a weakened immune system can increase susceptibility to further illness. The compounding effect of multiple disease outbreaks on community health and local health department resources can be devastating to public health, with the potential to overwhelm health care systems. Additionally, children and adults at risk for more severe outcomes from COVID-19 may include those who are unable to receive necessary vaccinations for medical reasons. Upholding vaccination requirements for schools reinforces herd immunity for those individuals, insulating them from multiple disease threats in addition to COVID-19.

Interruptions to routine vaccination schedules during a pandemic may also disproportionately impact communities with limited health care access. TMA strongly supports efforts to catch all

children up on required vaccinations and believes local health authorities are in the best position to assess risk to their community based on current vaccine coverage levels for each disease. Allowing local officials to consider exclusion of under-vaccinated students from school as a means to mitigate compounding disease outbreaks during a pandemic is in the best interest of public health. COVID-19 is a significant enough danger to the well-being of families in Texas on its own. Preventing secondary infectious disease outbreaks should be a leading public health priority.

2. The Plain Language of the Statute and Rule Do Not Require the Missing Immunization be for the Disease Causing the Epidemic

The public health considerations discussed above are also consistent with the language in—and absent from—the Education Code.¹ During an epidemic, the plain language of § 38.001(f) allows the exclusion of students who—for reasons of conscience—lack a required immunization, even if the disease causing the epidemic is not one for which immunization is required.

During an epidemic, a student who—for reasons of conscience—does not have a required immunization, may be excluded from school.² Section 38.001(a) lists six diseases for which immunization is required: diphtheria, measles, rubella, mumps, tetanus, and polio.³ However, the circumstances allowing this exclusion are not limited to those six diseases:

A person who has not received the immunizations required by this section for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.⁴

As set forth above, “time of emergency or epidemic” contains no limiting language as to the cause of those circumstances.

Interpreting “times of emergency or epidemic” to be broader than the six diseases for which immunizations is required is also consistent with the DSHS commissioner’s role in the Texas Health and Safety Code:

“Public health disaster” means:

- (A) a declaration by the governor of a state of disaster; and
- (B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:
 - (i) poses a high risk of death or serious long-term disability to a large number of people; and
 - (ii) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.⁵

¹ This also applies to the similar language in the § 97.62 of the Texas Administrative Code.

² Tex. Educ. Code § 38.001(f); *see also* 25 Tex. Admin. Code § 97.62(2) (containing similar language).

³ Tex. Educ. Code § 38.001(a).

⁴ Tex. Educ. Code § 38.001(f).

⁵ Tex. Health and Safety Code § 81.003(7).

Again, the circumstance under which the DSHS commissioner would act—threat of a “communicable disease”—is not limited to the six diseases for which § 38.001 requires immunization.⁶

Lastly, requiring that the epidemic or emergency be caused by the same disease for which immunization is not received, would add language not contained in the statute:

A person who has not received the immunizations required by this section for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic, declared by the commissioner of public health, caused by the immunization not received.

Statutes should be construed according to their plain language.⁷ Additional language should not be added to change their meaning.⁸ Accordingly, § 38.001 should not be limited to when the missing immunization is for same disease as is causing the epidemic or emergency.

Conclusion

TMA appreciates the opportunity submit this letter brief in response to the request for an Attorney General opinion regarding the interpretation of Educ. Code § 38.001 and 25 Tex. Admin. Code § 97.62. During an epidemic, public health considerations and the language of the statute and rule support allowing the exclusion of students who—for reasons of conscience—lack a required immunization. This is true even if the disease causing the epidemic is not one for which immunization is required.

Please contact me at Rocky.Wilcox@texmed.org or (512) 370-1335 if you have any questions or comments.

Sincerely,



Donald P. Wilcox, JD
TMA Vice President and General Counsel

⁶ See Tex. Health and Safety Code § 81.003(1) (“‘Communicable disease’ means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.”).

⁷ *Ferreira v. Butler*, 575 S.W.3d 331, 337 (Tex. 2019), reh'g denied (June 21, 2019) (“As we have said countless times, courts must construe a statute's words according to their plain meaning because changing the meaning of a statute by adding words to it is a legislative function, not a judicial function.”) (quotations omitted).

⁸ *Id.*

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