



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

September 9, 2015

*Sent Via Electronic Mail*

Rep. Heather Scott  
HScott@house.idaho.gov

Re: Questions Regarding Immunization Exemption Forms

Dear Rep. Scott:

This letter is in response to your questions that were forwarded to me concerning the attached Certificate of Immunization Exemption form which is required for student enrollment in Idaho public schools. Your questions are followed by my individual responses:

- 1. Given that the first paragraph of the form states that "The Idaho Department of Health and Welfare also recognizes that individuals have the right to make the decision whether or not to vaccinate their children", is this form informational only? If not informational, what is the specific reason for this form?**

This form was created pursuant to IDAPA 16.02.15.110.02, which requires that a school maintain documentation of an immunization exemption "on a form provided by the Department."

- 2. While page 1 of the form lists the possible negative effects of not immunizing the child for each of the specified diseases, does the form violate IC39-4804 by not providing parents with accurate explanations of the complications known to follow such immunization?**

Idaho Code § 39-4084 creates an obligation at the time an immunization is administered to a child. The form does not violate the statute because the form itself

addresses documentation by a school district that a student is eligible for an exemption to the immunization requirements. In addition, 42 U.S.C. § 300aa-26 requires that various vaccine information material must be distributed to a child receiving the vaccines identified on the form. That information also identifies risks and complications associated with the vaccines as well as contact information for the National Vaccine Injury Compensation Program, a federal program which compensates people who may have been injured by certain vaccines. You can access this information material at <http://www.cdc.gov/vaccines/hcp/vis/current-vis.html>.

- 3. Can parents/guardians cross out sections of the form they don't agree with or which they feel does not apply?**
- 4. Can parents/guardians cross out sections of the form that are worded in such a way as to force them to perjure or incriminate themselves?**
- 5. Is it legal to compel parents/guardians to fill out a form which becomes a legal document through their signature while denying them the right to adjust it, as would be allowed with any legal document?**
- 6. If parents/guardians are not allowed to cross out sections of the form which they feel would force them to perjure or incriminate themselves, can they invoke the 5th amendment of the US Constitution in order not to sign the form?**

The form is used by public schools to document an exemption to the immunization requirement. A parent or guardian is not "agreeing" with the content of the form by submitting it. Rather, a parent or guardian is simply giving written notice to the school that his or her student is eligible for an exemption and has been informed of listed risks of the diseases. Acknowledging receipt of this information does not incriminate the parent or guardian because it does not mean the parent agrees with the statements. Signing and submitting the form does not create any risk of prosecution because the state permits a parent to object to vaccinating his or her child.

- 7. The language of IC39-4802(2) is broadly worded: "Any minor child whose parent or guardian has submitted a signed statement to school officials stating their objections on religious or other grounds shall be exempt from the provisions of this chapter". Therefore, can parents/guardians submit a signed statement in their own words**

**stating their objections for any reason and which they may or may not wish to specify, as per IC 39-4802 (2)?**

As explained above, IDAPA 16.02.15.110.02 requires use of the form.

- 8. The Health & Welfare Department has clearly interpreted the wording of “objections on religious or other grounds” in IC39-4802(2) in a singular way: “other” refers only to a philosophical objection on the form. Which statute or Administrative Rule allows the Health & Welfare Department to unilaterally declare “other” to mean “philosophical” only, rather than leaving the definition of “other” to parents/guardians?**

The language following the words “Philosophical Exemption” is so broad that it realistically does not contain any limitation as to the justification for invoking an exemption so long as the parent or guardian writes something: “As the child’s parent/guardian, I am opposed to having my child receive the immunization(s) checked in Section 1 of this form for the following reason(s):” Of course, the parent or guardian is also free to strike through the word “Philosophical” and write “other.”

- 9. Do schools have the authority to define “other”?**

- 10. Do schools have the authority to force parents to define “other”?**

No. IDAPA 16.02.15.110.02 requires use of this form but the definition includes just about anything.

- 11. Section 2 of the form further includes, for each of the three prescribed exemption reasons listed, the following identical statement to be signed by the parent/guardian: “I understand that in the event of a disease outbreak my child may be excluded from school for the duration of the outbreak, both for his/her own protection and for the protection of others. I acknowledge that I have read this document in its entirety”. This implies that the unvaccinated child will be singled out for exclusion when in fact during disease outbreaks entire schools are closed, whether children are vaccinated or not. Is this statement therefore not misleading, discriminatory, and coercive in language that invites legal action?**

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IDAPA 16.02.15.150.03 provides that, "A child exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." Although the rule treats unvaccinated children differently than vaccinated children, the rule does not illegally discriminate. Stopping the spread of infectious disease throughout a community has been deemed a compelling governmental interest justifying exclusion since the eighteenth century and the United State Supreme Court explicitly found in 1905 that quarantine is a valid use of a state's police power. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

I hope you find the content of this letter helpful. If you would like to discuss this issue in greater detail, please contact me.

Sincerely,



Nicole S. McKay  
Deputy Chief  
Health and Human Services Division