

**ASSEMBLY CONCURRENT
RESOLUTION No. 157**

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED NOVEMBER 22, 2010

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Determines that DHSS regulations concerning immunization of pupils in school are not consistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/21/2011)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 Department of Health and Senior Services regulations pursuant
3 to Article V, Section IV, paragraph 6 of the Constitution of the
4 State of New Jersey.

5
6 **BE IT RESOLVED** *by the General Assembly of the State of New*
7 *Jersey (the Senate concurring):*

8
9 1. Pursuant to Article V, Section IV, paragraph 6 of the
10 Constitution of the State of New Jersey, the Legislature may review
11 any rule or regulation of an administrative agency to determine if
12 the rule or regulation is consistent with the intent of the Legislature
13 as expressed in the language of the statute that the rule or regulation
14 is intended to implement.

15
16 2. The Legislature enacted section 7 of P.L.1947, c.177
17 (C.26:1A-7) to provide for a State Sanitary Code for “the
18 preservation and improvement of public health and the prevention
19 of disease in the State of New Jersey, including the immunization
20 against disease of all school children in the State of New Jersey,”
21 and stipulated in section 9 of P.L.1947, c.177 (C.26:1A-9) that the
22 State Sanitary Code, embodied in the regulations of the Department
23 of Health and Senior Services, “shall have the force and effect of
24 law” and “shall be observed throughout the State.” The Legislature
25 enacted section 6 of P.L.1974, c.150 (C.26:1A-9.1) to permit an
26 “exemption for pupils from mandatory immunization if the parent
27 or guardian of the pupil objects thereto in a written statement signed
28 by the parent or guardian upon the ground that the proposed
29 immunization interferes with the free exercise of the pupil's
30 religious rights”; however, the Legislature qualified this exemption
31 by providing that it may be suspended by the Commissioner of
32 Health and Senior Services “during the existence of an emergency”
33 as determined by the commissioner, which clearly sets forth the
34 intent of the Legislature to accord priority to the essential purposes
35 for which the Legislature enacted P.L.1947, c.177, by reflecting the
36 primacy of public health protection over individual concerns about
37 mandatory immunization when the public health is endangered.
38 The intent of the Legislature with regard to qualifying an
39 individual's right to a religious exemption from mandatory
40 immunization requirements established by legislative enactment
41 was further clarified by the enactment of P.L.2002, c.58
42 (C.18A:61D-8 et al.), which requires hepatitis B vaccinations for
43 students in high school and at institutions of higher education, and
44 in which the Legislature gave clear guidance as to the grounds upon
45 which a religious exemption may be granted by providing that such
46 an exemption shall be based upon “a written statement submitted to
47 the secondary school or institution of higher education, as
48 applicable, by the student, or the student's parent or guardian if the

1 student is a minor, explaining how the administration of the vaccine
2 conflicts with the bona fide religious tenets or practices of the
3 student, or the parent or guardian, as appropriate” and providing
4 further “that a general philosophical or moral objection to the
5 vaccination shall not be sufficient for an exemption on religious
6 grounds.” This provision of P.L.2002, c.58 was incorporated into
7 regulations adopted by the Commissioner of Health and Senior
8 Services and codified in chapter 57 of Title 8 of the New Jersey
9 Administrative Code, at N.J.A.C.8:57-4.4.

10

11 3. Effective July 19, 2010, the Commissioner of Health and
12 Senior Services adopted regulations codified in chapter 57 of Title 8
13 of the New Jersey Administrative Code, in the form of amendments
14 to N.J.A.C.8:57-4.4, which have the effect of permitting a religious
15 exemption from mandatory immunization of pupils in school to be
16 granted based upon a written statement by a pupil’s parent or
17 guardian that does not meet the requirements of P.L.2002, 58,
18 because it does not explain how the administration of the vaccine
19 conflicts with the bona fide religious tenets or practices of the
20 student, or the parent or guardian, but only requests an exemption
21 on the ground that the mandated immunization interferes with the
22 free exercise of the pupil’s religious rights, as long as the statement
23 does not rely solely on a moral or philosophical objection.

24

25 4. The Legislature finds that the amendments to N.J.A.C.8:57-
26 4.4 are not consistent with the legislative intent of P.L.2002, c.58
27 because these regulations deleted the language of N.J.A.C.8:57-4.4
28 that met the requirements of P.L.2002, c.58 and, instead, permit a
29 religious exemption from mandatory immunization of pupils in
30 school based upon a standard that does not meet the requirements of
31 P.L.2002, c.58.

32

33 5. The Legislature further finds that these amendments to
34 N.J.A.C.8:57-4.4 will have the effect of increasing the number of
35 religious exemptions to mandatory immunizations of pupils in
36 school that are granted, without any justification provided by a
37 pupil’s parent or guardian that the exemption is based upon the
38 bona fide religious tenets or practices of the student, or the parent or
39 guardian, which the Legislature stipulated in P.L.2002, c.58,
40 explicitly with respect to hepatitis B vaccinations and implicitly
41 with respect to all vaccinations of pupils in school, is required for
42 an exemption on religious grounds from mandatory immunizations
43 of pupils in school.

44

45 6. The Legislature further finds that the amendments to
46 N.J.A.C.8:57-4.4 will have the effect of undermining the ability of
47 local health and school officials to comply with the intent of the
48 Legislature in its enactment of section 7 of P.L.1947, c.177

1 (C.26:1A-7) to provide for a State Sanitary Code for “the
2 preservation and improvement of public health and the prevention
3 of disease in the State of New Jersey, including the immunization
4 against disease of all school children in the State of New Jersey”;
5 and that by so doing, these amendments will conduce to the
6 detriment of the public health by leaving some children, and those
7 with whom they come in contact in school, at home, and in the
8 community, at risk of contracting serious communicable diseases
9 that, in some cases, may pose a significant threat to the health and
10 lives of the individual affected.

11

12 7. The Clerk of the General Assembly and the Secretary of the
13 Senate shall transmit a duly authenticated copy of this concurrent
14 resolution to the Governor and the Commissioner of Health and
15 Senior Services.

16

17 8. The Commissioner of Health and Senior Services, pursuant to
18 Article V, Section IV, paragraph 6 of the Constitution of the State
19 of New Jersey, shall have 30 days following transmittal of this
20 resolution to amend or withdraw the regulations or the Legislature
21 may, by passage of another concurrent resolution, exercise its
22 authority under the Constitution to invalidate the regulations in
23 whole or in part.

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25

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STATEMENT

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28 This concurrent resolution embodies the findings of the
29 Legislature that the regulations set forth at N.J.A.C.8:57-4.4 are not
30 consistent with legislative intent pursuant to Article V, Section IV,
31 paragraph 6 of the State Constitution.

32 The concurrent resolution finds that these regulations, as
33 amended by the Department of Health and Senior Services,
34 effective July 19, 2010, are not consistent with the legislative intent
35 of P.L.2002, c.58 (C.18A:61D-8 et al.) because the amended
36 regulations deleted the language of N.J.A.C.8:57-4.4 that met the
37 requirements of P.L.2002, c.58 and, instead, permit a religious
38 exemption from mandatory immunization of pupils in school based
39 upon a standard that does not meet the requirements of that
40 legislative enactment.

41 P.L.2002, c.58 (C.18A:61D-8 et al.), which requires hepatitis B
42 vaccinations for students in high school and at institutions of higher
43 education, specifies that a religious exemption may be granted only
44 by providing “a written statement submitted to the secondary school
45 or institution of higher education, as applicable, by the student, or
46 the student's parent or guardian if the student is a minor, explaining
47 how the administration of the vaccine conflicts with the bona fide

1 religious tenets or practices of the student, or the parent or guardian,
2 as appropriate.”

3 The amended regulations permit a religious exemption from
4 mandatory immunization of pupils in school to be granted based
5 only upon a written statement by a student’s parent or guardian that
6 the mandated immunization interferes with the free exercise of the
7 student’s religious rights, without explaining how the immunization
8 conflicts with the bona fide religious tenets or practices of the
9 student, or the parent or guardian.

10 The amended regulations will have the effect of increasing the
11 number of religious exemptions to mandatory immunizations of
12 pupils in school that are granted, without any justification provided
13 by a pupil’s parent or guardian that the exemption is based upon the
14 bona fide religious tenets or practices of the student, or the parent or
15 guardian, which the Legislature stipulated in P.L.2002, c.58,
16 explicitly with respect to hepatitis B vaccinations and implicitly
17 with respect to all vaccinations of pupils in school.

18 The amended regulations will have the effect of undermining the
19 ability of local health and school officials to comply with the intent
20 of the Legislature in its enactment of section 7 of P.L.1947, c.177
21 (C.26:1A-7) to provide for a State Sanitary Code for “the
22 preservation and improvement of public health and the prevention
23 of disease in the State of New Jersey, including the immunization
24 against disease of all school children in the State of New Jersey”;
25 and by so doing, the amended regulations will conduce to the
26 detriment of the public health by leaving some children, and those
27 with whom they come in contact in school, at home, and in the
28 community, at risk of contracting serious communicable diseases
29 that, in some cases, may pose a significant threat to the health and
30 lives of the individual affected.

31 This concurrent resolution provides that the Commissioner of
32 Health and Senior Services will have 30 days following transmittal
33 of the concurrent resolution to amend or withdraw the proposed
34 regulations or the Legislature may, by passage of another
35 concurrent resolution, exercise its authority under the Constitution
36 to invalidate the regulations in whole or in part.