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

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

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

2. The Legislature enacted section 7 of P.L.1947, c.177
(C.26:1A-7) to provide for a State Sanitary Code for “the
preservation and improvement of public health and the prevention
of disease in the State of New Jersey, including the immunization
against disease of all school children in the State of New Jersey,”
and stipulated in section 9 of P.L.1947, c.177 (C.26:1A-9) that the
State Sanitary Code, embodied in the regulations of the Department
of Health and Senior Services, “shall have the force and effect of
law” and “shall be observed throughout the State.” The Legislature
enacted section 6 of P.L.1974, c.150 (C.26:1A-9.1) to permit an
“exemption for pupils from mandatory immunization if the parent
or guardian of the pupil objects thereto in a written statement signed
by the parent or guardian upon the ground that the proposed
immunization interferes with the free exercise of the pupil’s
religious rights”; however, the Legislature qualified this exemption
by providing that it may be suspended by the Commissioner of
Health and Senior Services “during the existence of an emergency”
as determined by the commissioner, which clearly sets forth the
intent of the Legislature to accord priority to the essential purposes
for which the Legislature enacted P.L.1947, c.177, by reflecting the
primacy of public health protection over individual concerns about
mandatory immunization when the public health is endangered.
The intent of the Legislature with regard to qualifying an
individual’s right to a religious exemption from mandatory
immunization requirements established by legislative enactment
was further clarified by the enactment of P.L.2002, c.58
(C.18A:61D-8 et al.), which requires hepatitis B vaccinations for
students in high school and at institutions of higher education, and
in which the Legislature gave clear guidance as to the grounds upon
which a religious exemption may be granted by providing that such
an exemption shall be based upon “a written statement submitted to
the secondary school or institution of higher education, as
applicable, by the student, or the student’s parent or guardian if the
student is a minor, explaining how the administration of the vaccine conflicts with the bona fide religious tenets or practices of the student, or the parent or guardian, as appropriate” and providing further “that a general philosophical or moral objection to the vaccination shall not be sufficient for an exemption on religious grounds.” This provision of P.L.2002, c.58 was incorporated into regulations adopted by the Commissioner of Health and Senior Services and codified in chapter 57 of Title 8 of the New Jersey Administrative Code, at N.J.A.C.8:57-4.4.

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

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

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

6. The Legislature further finds that the amendments to N.J.A.C.8:57-4.4 will have the effect of undermining the ability of local health and school officials to comply with the intent of the Legislature in its enactment of section 7 of P.L.1947, c.177
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(C.26:1A-7) to provide for a State Sanitary Code for “the
preservation and improvement of public health and the prevention
disease in the State of New Jersey, including the immunization
against disease of all school children in the State of New Jersey”;
and that by so doing, these amendments will conduce to the
detriment of the public health by leaving some children, and those
with whom they come in contact in school, at home, and in the
community, at risk of contracting serious communicable diseases
that, in some cases, may pose a significant threat to the health and
lives of the individual affected.

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

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

STATEMENT

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

The concurrent resolution finds that these regulations, as
amended by the Department of Health and Senior Services,
effective July 19, 2010, are not consistent with the legislative intent
regulations deleted the language of N.J.A.C.8:57-4.4 that met the
requirements of P.L.2002, c.58 and, instead, permit a religious
exemption from mandatory immunization of pupils in school based
upon a standard that does not meet the requirements of that
legislative enactment.

vaccinations for students in high school and at institutions of higher
education, specifies that a religious exemption may be granted only
by providing “a written statement submitted to the secondary school
or institution of higher education, as applicable, by the student, or
the student’s parent or guardian if the student is a minor, explaining
how the administration of the vaccine conflicts with the bona fide
religious tenets or practices of the student, or the parent or guardian, as appropriate.”

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

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

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

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