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Bill Analysis
Legislative Service Commission

H.B. 463

125th General Assembly
(As Introduced)

Reps. Combs, Clancy, Young, Hollister, Collier, Flowers, Schneider, Schaffer, Wolpert, Hagan, Hughes, McGregor, Gibbs, Daniels, Walcher, Schmidt, Wilson, Jerse, Carano, Seaver

BILL SUMMARY

- Requires, with certain exceptions, that pupils beginning kindergarten during or after the 2005 school year be immunized against chicken pox.
- Adds chicken pox to the diseases for which boards of health, municipal corporations, and townships must provide immunizations at the public expense if pupils are not provided with the immunizations by their parents or guardians.

CONTENT AND OPERATION

Current immunization requirements

(R.C. 3313.671 and 3701.13)

Current law requires pupils attending public schools or nonpublic schools that meet state educational standards to be immunized against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, and rubella. Since the 1999 school year, kindergartners have also been required to have been immunized against hepatitis B.

A pupil may not be permitted to remain in school for more than 14 days unless the pupil presents written evidence satisfactory to the person in charge of admission that the pupil has been immunized against the disease or diseases or is in the process of being so immunized. "In the process of being so immunized" means the pupil has been immunized against mumps, rubeola, and rubella, and if not immunized against poliomyelitis, diphtheria, pertussis, tetanus, or hepatitis B, has received at least the first dose of the immunization sequence and presents written evidence to the school principal of each subsequent dose required to obtain immunization at the intervals prescribed by the Ohio Department of Health.

Boards of health, municipal corporations, and townships, on application of a school board, are required to provide immunizations against the diseases for which immunization is required to pupils who have not been provided with them by their parents or guardians. The immunizations are to be provided without delay and at public expense.

The Department has authority to approve methods of immunization against the diseases for which pupils are required to be immunized.

Exceptions to immunization requirements

There are several statutory exceptions to the immunization requirement. A pupil who has had natural rubeola or mumps, and presents a signed statement from a parent or physician to that effect, is not required to be immunized against the disease for which there is immunity. A pupil is not required to be immunized if a written statement is presented by the parent or guardian stating an objection to immunization for good cause, including religious convictions. If a physician certifies in writing that an immunization against a particular disease is medically contraindicated, a pupil is not required to be immunized against that disease. Current law provides, however, that the exceptions do not limit or impair the right of a public school district board of education to make and enforce rules to secure immunization of the pupils under its jurisdiction (see **COMMENT**).

The bill

Immunization requirement

The bill requires that pupils who begin kindergarten during or after the 2005 school year be immunized against chicken pox. It revises the definition of "in the process of being immunized" to include chicken pox as one of the diseases against which a pupil must have been completely immunized.

The bill also applies the current exceptions to the immunization requirements to chicken pox, except that it amends the exception pertaining to religious objections. The bill provides that a pupil is not required to be immunized if the pupil presents a written statement of the parent or guardian in which the parent or guardian *declines* to have the pupil immunized *for reasons of conscience, including religious convictions*.

In addition, the bill removes the provision in current law providing that the right of a public school district board of education is not limited or impaired with respect to making and enforcing rules to secure immunizations against the various diseases. In place of this provision, the bill adds a provision authorizing a school to deny admission for a period of time to a pupil otherwise excepted from the

immunization requirement if the Director of Health notifies the school's principal or chief administrative officer that a risk to public health exists. The existence of a risk must be based on the circumstances surrounding the risk as determined in the sole discretion of the Director.

Department of Health

Chicken pox is added by the bill to the diseases for which the Department is authorized to approve methods of immunization.

COMMENT

Existing law provides that a school district board of education has authority to make and enforce rules to secure the immunization of the pupils attending or eligible to attend the district's schools. Prior to enactment of the current statute, the Ohio Supreme Court upheld the authority of school boards to make and enforce such rules. (*State, ex rel. Milhoof v. Board of Education* (1907), 76 Ohio St. 297; *State ex rel. Dunham v. Board of Ed. of City School Dist. of Cincinnati* (1951), 154 Ohio St. 469.) The Miami County Court of Appeals later considered this authority in light of the current statute, which requires immunization but permits exceptions. It held that the provision stating that the statute does not limit or impair a board's right to make and enforce rules to secure immunization reaffirms the authority of school boards to require immunization of all pupils. (*State ex rel. Mack v. Board of Ed. of Covington* (Miami 1963), 1 Ohio App. 2d 143.) Since the bill eliminates the provision of current law authorizing a school board to make and enforce rules to secure immunization of the pupils attending or eligible to attend the district's schools, a court interpreting the law after the enactment of this bill would likely hold that these prior decisions are no longer applicable.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-15-04	p. 1760

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