

First read December 7, 2021

LSU Faculty Senate Resolution 21-10:

Bringing LSU's COVID-19 Policies into Compliance with State Law

By Carol Friedland, Kerry Dooley, Boris Rubin, Charles Delzell, James Stoner, Charles Berryman

1. *Whereas* President William F. Tate IV stated before the Louisiana House Health and Welfare Committee on August 16, 2021 that LSU's practices for COVID-19 vaccine requirements and exemptions were following the same guidelines in place for decades;¹
2. *Whereas* COVID-19 is not a vaccine-preventable disease² and no significant difference has been found in viral load between vaccinated and unvaccinated, symptomatic and asymptomatic groups;³
3. *Whereas* the Louisiana Revised Statutes (R.S.)⁴ establish the requirement that students entering universities for the first time be immunized against vaccine-preventable diseases or present satisfactory evidence of immunity according to a schedule approved by the Louisiana Department of Health (LDH) Office of Public Health;
4. *Whereas* no student seeking to enter any Louisiana school is required to comply with school entry immunization requirements if a written statement from a physician or a written dissent from the student or his/her parent is presented;⁵ therefore "[m]edical, religious, and philosophic exemptions will be allowed for compliance with regulations concerning... school enterers;"⁶
5. *Whereas* the COVID-19 vaccine is not listed on the LDH schedule for enrollment at schools of higher learning;⁷
6. *Whereas* LSU requested and was granted approval from LDH to add the COVID-19 to LSU's vaccination schedule, LDH specifically noted that "the legality of any action taken in this regard" had not been determined;;
7. *Whereas* no authority is given to either the institution or LDH to discriminate between immunized and unimmunized students, other than the empowerment of school administrators, upon the recommendation of the Office of Public Health, to exclude

¹ https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/aug/0816_21_HW

² <https://agjefflandry.com/files/Article/12981/Documents/11.22.21-LtrtoLDH.pdf>

http://www.ladigitalmedia.org/video_v2/asset-detail/LGJBE-20210802 Governor John Bel Edwards stated, "Based on recent CDC data, vaccinated people who do get infected have just as much virus in their systems as unvaccinated people, meaning they can likely spread the virus simply because of the power of the Delta variant." Dr. Joseph Kanter confirmed this, stating that "[I]f you are fully vaccinated and do become infected, then you can still relatively transmit the virus" and that "you will have just as much virus in your body as the early days of the pandemic as someone who was unvaccinated."

³ <https://doi.org/10.1101/2021.09.28.21264262>

⁴ 17:170(A)(1)(a) <http://www.legis.la.gov/Legis/Law.aspx?d=79952>

⁵ R.S. 17:170(E)

⁶ LAC Title 51, Part II, §701(B) <https://www.doa.la.gov/media/dtxju50z/51.doc>

⁷ <https://ldh.la.gov/index.cfm/page/3653>

unimmunized students from attendance during an outbreak of a vaccine-preventable disease⁸ but only until the appropriate disease incubation period has expired, which for COVID-19 does not exceed fourteen days;⁹

8. *Whereas* testing of unvaccinated students but not vaccinated students, when both groups can carry and spread COVID-19, violates the civil rights¹⁰ of students to obtain education without discrimination and places a burden on a student's exercise of religion;¹¹
9. *Whereas* the state health officer and LDH are prohibited by statute from imposing any mode of treatment against a person's religious tenets;¹²
10. *Whereas* the Louisiana Constitution guarantees that no law shall discriminate against a person because of religious beliefs, nor shall any law unreasonably discriminate against a person because of physical condition;¹³
11. *Whereas* Louisiana Medical Consent Law further guarantees the rights of adults to refuse treatment are not limited;¹⁴
12. *Whereas* the Louisiana Health Emergency Powers Act requires tailoring disaster emergency plans to include the unique aspects relevant to public health emergencies, including "[p]rovisions permitting persons for reasons of health, religion, or conscience to refuse medical examination or testing, vaccination, or medical treatment;"¹⁵
13. *Whereas* the responsibilities of school administrators are explicitly defined by statute, and thus limited, to 1) checking that students' immunization records, evidence of immunity, or exemptions are submitted and 2) transmitting immunization compliance reports to LDH;¹⁶
14. *Whereas* the state health officer prepares, promulgates, and enforces rules and regulations embodied within the state's Sanitary Code covering all matters within their jurisdiction, including an immunization program¹⁷ and that no other powers related to the immunization program or Sanitary Code are given to school administrators;
15. *Whereas* "nothing in the immunization programs shall authorize the state health officer or the department [LDH] to overrule the limitations in either R.S. 40:5.2, or R.S.

⁸ R.S. 17:170(F)

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>

¹⁰ RS 46:2252 <http://www.legis.la.gov/Legis/Law.aspx?p=y&d=100577>

¹¹ RS 13:5233 <http://www.legis.la.gov/Legis/Law.aspx?d=725125>

¹² R.S. 40:5.2 <https://legis.la.gov/Legis/Law.aspx?d=98553>

¹³ Louisiana Constitution of 1974 §12 <https://senate.la.gov/Documents/LAConstitution.pdf>

¹⁴ RS 40:1159.7 <http://www.legis.la.gov/Legis/Law.aspx?d=964703>

¹⁵ R.S. 29:764.A.(2)(h) <https://legis.la.gov/Legis/Law.aspx?p=y&d=207680>

¹⁶ R.S. 17:170(D)(1)

¹⁷ R.S. 40.4(A)(2) <http://legis.la.gov/Legis/Law.aspx?d=98420>

17:170(E)”¹⁸ which prohibit treatment that contradicts religious beliefs¹⁹ and allow students to opt-out of immunization requirements,²⁰ respectively;

16. *Whereas* the state health officer and LDH Office of Public Health of have “exclusive jurisdiction, control, and authority” to enforce a sanitary code for the entire state,²¹ meaning that no entity outside of these have the authority to enforce Louisiana’s Sanitary Code nor do they have the jurisdiction to create a Sanitary Code (and thus immunization program) outside the statewide Sanitary Code;
17. *Whereas* LSU Policy Statement (PS) 72 “Immunization Policy” does not mention or require immunization against COVID-19 nor provide the definition of adequate immunization for COVID-19;²²
18. *Whereas* PS 72 was last revised April 1, 2016 and is not currently in revision;²³
19. *Whereas* the latest version of the LSU Presidential Directive on COVID-19 Safety (effective date August 5, 2021) does not specify that COVID-19 immunization is required for LSU students²⁴ but does specify three separate types of discrimination against unvaccinated students: testing upon entry, periodic testing, and close contact quarantine;
20. *Whereas* LSU “takes due care to assure that Policy Statements, when issued, are in compliance with applicable controlling laws, rules, and regulations,”²⁵ but such care is not evident in the current implementation of LSU’s COVID-19 student vaccination and testing requirements, which are being promulgated and enforced outside of published LSU Policy Statements;
21. *Whereas* the LSU COVID-19 Roadmap²⁶ states that all students are required to be vaccinated against COVID-19, including continuing students, and that students who have not submitted evidence of vaccination or an exemption are not allowed to register for the spring semester;
22. *Whereas* the LSU COVID-19 Roadmap states that those unvaccinated due to medical, religious or other reasons must complete an electronic waiver that cannot be submitted without 1) relinquishment of rights not relinquished by vaccinated students and 2) agreement to comply with assigned COVID-19 testing requirements and other prevention guidance, which is unspecified;²⁷

¹⁸ R.S. 40.4(A) <http://legis.la.gov/Legis/Law.aspx?d=98420>

¹⁹ R.S. 40.5.2 <http://legis.la.gov/Legis/Law.aspx?d=98553>

²⁰ R.S. 17:170(E) <http://www.legis.la.gov/Legis/Law.aspx?d=79952>

²¹ R.S. 40.5(A) <http://legis.la.gov/Legis/Law.aspx?d=98549>

²² https://www.lsu.edu/policies/ps/ps_72.pdf

²³ <https://www.lsu.edu/policies/index.php>

²⁴ <https://www.lsu.edu/policies/ps/presidential-directive-covid-19.pdf>

²⁵ <https://www.lsu.edu/policies/index.php>

²⁶ <https://lsu.edu/roadmap/health/required-student-testing.php>

²⁷ <https://lsu.mediatconnect.com/note.aspx?formid=14269>, note this form requires logging in with LSU credentials

23. *Whereas* LSU does not accept evidence of immunity as compliance with its COVID-19 vaccine requirement, despite citation of this requirement in LDH’s approval letter to LSU, along with CDC statements²⁸ and other research²⁹ that cite long-lasting immunity from natural SARS-CoV-2 infections;
24. *Whereas* the President of LSU exercises complete executive authority for the LSU campus, subject to the direction and control of the Board of Supervisors;³⁰
25. *Whereas* the LSU Board of Supervisors received a letter on August 23, 2021 from Attorney General Jeff Landry stating that those who dissent from vaccination should not be subjected to discriminatory actions;³¹ and
26. *Whereas* the rights of Louisiana students relative to vaccine requirements for students entering schools in Louisiana were further clarified by Attorney General Jeff Landry in an open memorandum to Louisiana citizens on November 10, 2021;³²

Therefore, be it resolved that the LSU Faculty Senate recommends that the LSU Board of Supervisors exercise due diligence in its direction and control to bring LSU’s protocols and practices into compliance with state law and present a report of the updated practices at a Faculty Senate meeting within two months of passage of this resolution.

²⁸ https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/vaccine-induced-immunity.html#anchor_1635539757101

²⁹ <https://www.nature.com/articles/d41586-021-01557-z>
<https://www.nature.com/articles/s41586-021-03696-9>

³⁰ <https://www.lsu.edu/bos/docs/2021-bylaws-amended-aug2021.pdf>

³¹ <https://www.kplctv.com/2021/08/24/louisiana-ag-pens-letter-universities-regarding-mandatory-vaccinations/>

³² Memo attached to this resolution



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

MEMORANDUM

TO: Louisiana citizens, especially parents and guardians of school aged children

FROM: Jeff Landry, Attorney General

DATE: November 10, 2021

RE: Guidance relative to vaccine requirements for students entering schools in Louisiana

I am issuing this guidance, outlining the status of Louisiana law relative to vaccine mandates for persons entering schools, in light of the recent recommendation from the CDC that children between the ages of 5 and 11 receive the COVID-19 vaccine. It is important for parents to understand that while schools may adopt policies that are reasonable and necessary to protect students and others, these policies may not be designed in such a way that defeat the right to dissent from a vaccine requirement. Furthermore, these policies may not be discriminatory, punitive, and retaliatory towards a child or a parent that dissents from a vaccine requirement for their child. It is just as important for parents and educators to remember that our State Law and our State Constitution enshrine students with extensive religious and philosophical protections. *See* La. R.S. 13:5231, *et seq.*; La. R.S. 17:170(E); and La. Const. art. I, § 8.

Q: Must students in Louisiana submit proof of immunity to or immunization against certain diseases in order to attend school?

A: Yes, generally. Louisiana law at La. R.S. 17:170 requires that students present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases, subject to certain exceptions or exemptions.

Louisiana Revised Statute 17:170 regulates immunization requirements for all Louisiana public and private schools, including elementary and secondary schools, kindergartens, colleges, universities, proprietary schools, vocational schools, and licensed day care centers.¹ Each person entering school in Louisiana must provide “satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the office of public health, Louisiana Department of Health, or shall present evidence of an immunization program in progress.”² We will discuss potentially applicable exceptions later.

¹ La. R.S. 17:170(A)(1)(a).

² *Id.*

Q: What is satisfactory evidence of immunity or immunization?

A: Students may meet this requirement by showing either proof of vaccination or proof of immunity by some other means, such as the presence of antibodies.

Proof of vaccination is a common method of compliance with La. R.S. 17:170. Nevertheless, the statute refers not only to “immunization,” which is typically defined to involve vaccination, but also “immunity,” a broader concept connoting a high degree of resistance to a disease, or having or producing antibodies, regardless of the source from which the resistance or antibodies are achieved.³ This means that schools should accept submission of proof that a student possesses antibodies for a particular disease as “satisfactory evidence of immunity.”⁴ A school that refuses to accept evidence of immunity likely violates La. R.S. 17:170.

Q: May a Louisiana school require evidence of immunity to or immunization against COVID-19?

A: A Louisiana school cannot require evidence of immunity to or immunization against COVID-19 until either (1) the Office of Public Health adds COVID-19 to the statewide vaccination schedule or (2) the school receives permission from the Office of Public Health. But even then, a Louisiana school must recognize a written dissent from vaccination.

The Office of Public Health sets Louisiana’s immunization schedule according to “the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service (USPHS).”⁵ The Office of Public Health has not added the COVID-19 vaccination to its vaccine schedule for schools,⁶ but, each school, with the consent of the Office of Public Health, may require proof of immunization or immunity for additional diseases not included on Louisiana’s immunization schedule.⁷ Thus, a school may not require evidence of immunity to or immunization against COVID-19 until the disease is added to Louisiana’s immunization schedule, or the school receives permission from the Office of Public Health.

³ See IMMUNE, <https://www.merriam-webster.com/dictionary/immune>.

⁴ The CDC advises that COVID-19 reinfections are “rare.” *Reinfection with COVID-19*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>.

⁵ LAC 51:II.701(A).

⁶ The schedule was last revised in 2019 and can be found here:

https://lalink.org/linksweb/pdf/Immunization%20Schedule_January%202019.pdf. The Advisory Committee for Immunization Practice *recommends* administration of the COVID-19 vaccines “for everyone ages 12 and older within the scope of the Emergency Use Authorization for the particular vaccine,” but has not added it to the vaccine schedule for children under 18. *Recommended Child and Adolescent Immunization Schedule for ages 18 years or younger, United States, 2021, Centers for Disease Control and Prevention*, <https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html>.

⁷ La. R.S. 17:170(A)(3).

Q: What if there is a medical or personal reason why a student should not be vaccinated?

A: Louisiana law permits a student to submit a written statement from a doctor or a written dissent in lieu of proof of immunity to or immunization.

Even if the COVID-19 vaccine finds its way to Louisiana's immunization schedule, or your child's school receives the Office of Public Health's approval to require COVID-19 immunization, opt-outs are available, as provided in La. R.S. 17:170(E). Louisiana law does not permit a school to require a student to be vaccinated if the student (or their parent or guardian) submits either of the following: (1) a written statement from a physician stating that the vaccination is contraindicated, *i.e.*, inadvisable, for medical reasons or (2) "a written dissent."⁸ A dissent is simply an opposition or disagreement, regardless of the reason for or source of the opposition or disagreement, and includes, but is not limited to, religious reasons. Louisiana law does not place any restrictions or minimum standards on what constitutes a dissent for the purposes of La. R.S. 17:170(E), other than the requirement that the dissent be in writing. The statute does not permit a school to override or second guess the recommendation of a student's doctor, in the case of a physician's statement, or the personal choice of a student (or their parent or guardian), in the case of a dissent. Accordingly, the law does not permit a school to reject or make additional inquiries into a physician's statement or student's dissent that complies with the express terms of the statute. This is because in enacting La. R.S. 17:170(E), Louisiana made the conscious decision to give primary effect to the recommendation of a student's own doctor and the personal choice of a student (or their parent or guardian).

Q: What conditions or limitations may a school impose upon a student who submits a written statement from a doctor or a written dissent in lieu of proof of immunity to or immunization?

A: The only express limitation on students who choose to exercise their right under La. R.S. 17:170(E) is the ability of a school to exclude the student from campus during an outbreak.

The only caveat found in La. R.S. 17:170 for students who choose not to be immunized is that in the event of an outbreak of the disease at the school, upon recommendation by the Office of Public Health, the school may exclude unimmunized students from campus "until the appropriate disease incubation period has expired or the unimmunized person presents evidence of immunization."⁹

While La. R.S. 17:170 does not prohibit schools from imposing other safety measures that they believe to be necessary to preserve the health of students, faculty, and staff, and no statute or regulation specifically authorizes masking and testing protocols, any such additional safety measures should be applied in a nondiscriminatory and non-punitive fashion. As Judge Terry Doughty with the United States District Court for the Western District of Louisiana held recently, policies that are so punitive that they defeat the right itself will not withstand scrutiny. *See Magliulo, et al. v. Edward Via College of Osteopathic Medicine*, U.S.D.C. (Western Dist. of La.), Civil Action No. 3:21-cv-02304.

⁸ La. R.S. 17:170(E).

⁹ La. R.S. 17:170(F).