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November 22, 2021

Dr. Courtney N. Phillips  
Secretary  
Louisiana Department of Health  
P.O. Box 629  
Baton Rouge, LA 70821-0629

VIA EMAIL, FAX, and US MAIL

RE: Notice of Intent for Public Health Immunization Requirements, proposed LAC 51:II.701

Dear Secretary Phillips:

As I—along with the many concerned parents across our State—watch the actions of your agency and its Office of Public Health in response to the COVID-19 pandemic, we continue to have grave concerns about the policies you adopt. As the State’s chief legal officer, it is my obligation to ensure that an agency’s actions comply with the laws and Constitution of this State. With this in mind, I am advising you that the proposed rule that you plan to promulgate—adding the COVID-19 vaccine to the list of required immunizations for school entry—is not permitted under existing law.

This unprecedented vaccine mandate exceeds the scope of the authority granted to the Office of Public Health by the Legislature to approve immunization schedules for entry into schools and is contrary to existing law and the Constitution. Additionally, mandating an mRNA injection that does not prevent disease was never the intent of the Legislature in its delegation of authority to the Office of Public Health to approve a schedule of immunizations for “vaccine-preventable diseases.”

Across the country, no state legislature has passed a law requiring the COVID-19 vaccine for children. If this rule is adopted, Louisiana will join California as the only state to mandate vaccination for school children. Louisiana’s proposed rule goes even further than the California governor’s executive order as it goes so far as to require vaccination of elementary school children, whereas California only requires COVID-19 shots for middle and high school students and is not effective until July of 2022.

Your proposed rule is not only unnecessary; but it is also confusing for parents, students, and schools. Furthermore, it creates an additional coercive burden for those who choose to exercise their constitutional rights. You should be aware 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.

Whenever the State or one of its agencies adopts any rule, law, or policy that impacts the civil rights of individuals, there must be a compelling State interest and the rule, law, or policy must be implemented in a way that is rationally based and least restrictive. In evaluating potential rules or policies, we first look at the compelling interest of the State in formulating these policies.

In the case of COVID-19, your interest is mitigating the spread of COVID-19 and protecting the health of the children in the care of Louisiana's schools. However, a policy which mandates COVID-19 vaccination of students at this time has the potential of infringing upon individual rights, including but not limited to, religious freedom, right to health autonomy, personal liberty, and other objections.

We believe that a COVID-19 vaccine mandate for students attending Louisiana schools will be subject to legal challenge. And in analyzing a potential COVID-19 vaccine mandate for students, we evaluated the most recent scientific data and the law. Our evaluation could not find any data, research, or scientific study that concluded that school environments created any greater risk of the spread of COVID-19. In fact, our evaluation indicated the opposite: that transmission in the school setting is rare.

The Louisiana Department of Health has engaged in a media and outreach campaign to get children vaccinated against COVID-19. Through this months-long campaign, LDH has furnished information to parents who can choose to have their children ages 5–18 vaccinated against COVID-19—if they so decide. The adoption of proposed rule LAC 51:II.701 still ultimately allows parents to choose whether to vaccinate their child, but it makes that choice more burdensome and creates unnecessary confusion that does not advance any legitimate State interest. The proposed rule creates a false “requirement” that is a bullying tactic to pressure parents and kids to get the COVID-19 vaccine.

If finally adopted, your proposed rule requires a COVID-19 vaccination—and all potential boosters—to the extent that such vaccine has been fully approved by the FDA for the individual's age for school and daycare center attendance. Absent action by the Legislature, this rule goes into effect December 20, 2021— in the middle of the school year. There is no guidance to schools or school systems of how this will be enforced. As noted on the LDH website, “enforcement of vaccine requirements happens within the school system.” Presumably, LDH intentionally set the effective date for December 20, 2021, to take advantage of the provisions of current Subsection (D) of LAC 51:II.701 which states:

After review of the report(s) by the state health officer or his or her designee, the elementary and secondary school, kindergarten, college, university, proprietary school, vocational school, licensed day care center or residential facility operator shall notify, on or before December 31 of each year, the parent or guardian of all enrolled or housed persons 18 years or under who are not compliant of the immunization requirements of §701.A and C of this Part.

I anticipate the overwhelming majority of parents will receive a notification from their student's institution that the student is not compliant with the immunization requirements of LAC 51:II.701 with the accompanying threat that the student will be prohibited from in-person attendance. If and when the rule becomes effective, schools will be tasked with creating a procedure to enforce the false requirement of COVID-19 vaccination for students. Schools are required to enforce this "requirement" until a parent completes the appropriate paperwork and returns it to the school. Absent this paperwork, the proposed rule requires schools to prohibit in-person attendance—denying students access to education. Despite exemption paperwork being completed, if COVID-19 is added to the immunization requirements, a student may be denied attendance in the event of a COVID-19 outbreak at the school. Faced with the threat of exclusion from school attendance and denial of education, parents must choose between exercising their constitutional right to refuse the vaccination of their children and being ostracized or succumbing to the pressure of LDH to have their children injected with mRNA.

To falsely characterize the mRNA injection as the conventional vaccine contemplated by La. R.S. 17:170 in order to coerce parents to immunize their children by mRNA injection exceeds the scope of the authority granted to the Office of Public Health by the Legislature. A COVID-19 vaccine mandate for students is simply premature. The COVID-19 pandemic led to the rapid development of the first approved mRNA vaccines. These novel mRNA vaccines are a new type of vaccine, which were never contemplated nor considered by the Legislature when it enacted laws relative to immunization schedules of students in our State. And the FDA only recently authorized the *emergency use* of the COVID-19 mRNA vaccine for children 5 through 11 years of age.

Even if it were authorized, the proposed rule is also contrary to La. R.S. 17:170 because this statute only imposes evidence of immunity on two groups of people (1) each person entering any school system within the State for the first time and (2) each person entering the sixth grade. However, your proposed rule ignores the clear language of La. R.S. 17:170 and in Subsection (E) now imposes evidence of immunity on each and every student attending any school in the State. Specifically, proposed Subsection (E) states that, "*in addition to any other requirements of law, each individual entering or attending any school within the State in-person shall present to such school satisfactory evidence of having received vaccination(s) in accordance with the dosing schedule, including any booster doses.*" The proposed rule is therefore contrary to La. R.S. 17:170 as it would impose the requirement of evidence of immunity for all students, not just those identified in the law.

The proposed rule is also contrary to La. R.S. 17:170 because it specifically requires each individual entering or attending any school within the State to present evidence of vaccination. Louisiana Revised Statute 17:170 allows a person to present “satisfactory evidence of immunity to or immunization against vaccine-preventable diseases.” The proposed rule eliminates the alternate route of meeting the requirement through satisfactory evidence of immunity and is contrary to law.

Your proposed rule creates an administrative burden for schools because it tasks “each school in this State” with maintaining “records showing compliance of each attending individual,” and the fiscal impact on schools and the State is simply unknown. Each kindergarten, college, university, proprietary school, vocational school, and licensed day care center would be required to maintain records showing evidence of vaccination, regardless of grade. This requires the school to collect and maintain information for every student in every grade, not just those entering the school system or in sixth grade. If a parent does not furnish the vaccine record or dissenting paperwork, then the institution must prohibit the student from in-person attendance.

Additionally, we believe that such a mandate will be subject to legal challenge because COVID-19 is not a vaccine-preventable disease. My office looked specifically at La. R.S. 17:170, which provides for immunization of persons entering schools in our State, and this law provides:

A.(1)(a) Each person entering any school within the state for the first time, including elementary and secondary schools, kindergartens, colleges, universities, proprietary schools, vocational schools, and licensed day care centers, at the time of registration or entry shall present satisfactory evidence of immunity to or immunization against **vaccine-preventable diseases** according to a schedule approved by the office of public health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress.

....

(2) The schedule shall include but not be limited to measles, mumps, rubella, diphtheria, tetanus, whooping cough, poliomyelitis, meningococcal disease, and hemophilus influenza Type B invasive infections.

(Emphasis added.)

When we look at the diseases listed within La. R.S. 17:170 A(2), we can see first-hand the types of vaccines which meet the Legislature’s standard of “vaccine-preventable diseases.” These include vaccines for “measles, mumps, rubella, diphtheria, tetanus, whooping cough, poliomyelitis, and haemophilus influenzae Type B invasive infections” *Id.* These diseases have one thing in common—they are diseases in which highly effective vaccines have demonstrated the ability to essentially eradicate and prevent the diseases. As such, these are truly “vaccine preventable diseases,” as compared to diseases like the common flu and COVID-19, which is a disease a student can contract and transmit even if and when vaccinated.

The inclusion of the specific vaccine preventable diseases in La. R.S. 17:170 is consistent with the definition of “vaccine” which existed at the time the Legislature last amended La. R.S. 17:170. At that time, Webster’s Dictionary defined the term vaccine as “any preparation of weakened or killed bacteria or viruses introduced into the body to **prevent a disease** by stimulating antibodies against it.” Interestingly, just as we have seen the science and knowledge surrounding COVID-19 shift over the last two years, Webster’s Dictionary also shifted its definition of vaccine to now mean “a preparation that is administered (as by injection) to **stimulate the body’s immune response** against a specific infectious disease.”

Similarly, the Centers for Disease Control and Prevention (“CDC”) recently changed its definition of the term “vaccine.” The CDC’s definition changed from “a product that stimulates a person’s immune system to produce immunity to a specific disease” to the current “a preparation that is used to stimulate the body’s immune response against diseases.” Arguably, such a definition was designed to hide the fact or account for the fact that COVID-19 vaccines are not within the traditional efficacy range of 85-99% effective at preventing the disease.

The Office of Public Health traditionally recognized and made a distinction between vaccines that could prevent a disease and that could not. For example, the Office of Public Health does not place the vaccine for flu on the schedule of “required” vaccines. The seasonal influenza is not a “vaccine preventable disease,” and the Office of Public Health has correctly placed the vaccine for influenza on the list of “recommended” vaccinations.

Therefore, it is clear that—when formulating the legislation at issue—the general prevailing meaning of what should be included in the immunization schedule for students entering schools was vaccines which would actually prevent a disease. We expect that there will be a legal challenge asserting that the concept of “vaccine preventable disease” was understood to be those diseases that a vaccine could actually prevent or eradicate, and the authority of your office to place a vaccine on the required immunization schedule is limited to whether or not a disease is “vaccine preventable.”

While the risk of contracting COVID-19 may be decreased after vaccination, it is still possible for there to be an outbreak at a school even when students are vaccinated. The former White House Senior Advisor for COVID-19 response, Andy Slavitt, recently posted a detailed thread on Twitter that addressed the question of whether everyone will get the virus at some point. Mr. Slavitt admitted that “given Delta’s contagiousness and the fitness of future mutations in order to beat it, this means SARS-CoV-2 will be contagious enough that everyone will get the virus.”<sup>1</sup>

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<sup>1</sup> Slavitt, Andy@ASlavitt “given Delta’s contagiousness and the fitness of future mutations in order to beat it, this means SARS-CoV-2 will be contagious enough that everyone will get the virus”. 14 Aug. 2021. Tweet.

Data and studies conducted by the CDC reinforce Slavitt's comments. As reported by the CDC:

In July 2021, following multiple large public events in a Barnstable County, Massachusetts, town, 469 COVID-19 cases were identified among Massachusetts residents who had traveled to the town during July 3–17; 346 (74%) occurred in fully vaccinated persons. Testing identified the Delta variant in 90% of specimens from 133 patients. Cycle threshold values were similar among specimens from patients who were fully vaccinated and those who were not.<sup>2</sup>

Around the time that the CDC published the above-mentioned study, Rochelle Walensky, Director of the CDC, publicly stated, "Our vaccines are working exceptionally well. They continue to work well with delta with regard to severe illness and death. They prevent it. But what they can't do anymore is prevent transmission."<sup>3</sup>

Officials at the World Health Organization reported that despite innovations in vaccine development and research, the COVID-19 virus is not going away and will likely circulate through society in a similar way as the common flu. CNBC reported that the World Health Organization declared that COVID-19 won't be eradicated.<sup>4</sup> In the same article, CNBC further reported:

Officials at the global health agency have previously said vaccines do not guarantee the world would eradicate Covid-19 like it has other viruses. Several leading health experts, including White House chief medical advisor Dr. Anthony Fauci and Stephane Bancel, CEO of Covid vaccine maker Moderna, have warned that the world will have to live with Covid forever, much like influenza.<sup>5</sup>

These public statements, as well as statements by the CDC Director Walensky, WHO, Dr. Fauci at NIH, and the CEO of one of the vaccine manufacturers, all point to a virus that is endemic. The scientific consensus is that COVID-19 will become endemic and is more than likely here to stay. They also compare it to influenza, which will also likely be around forever and is not a "vaccine preventable disease".

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<sup>2</sup> "Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021" Centers for Disease Control and Prevention, 6 Aug. 2021. <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>

<sup>3</sup> CNN, Aug. 5, 2021; <http://www.cnn.com/TRANSCRIPTS/2108/05/sitroom.02.html>

<sup>4</sup> CNBC, Sept. 7, 2021; <https://www.cnbc.com/2021/09/07/who-says-covid-is-here-to-stay-as-hopes-for-eradicating-the-virus-diminish.html>

<sup>5</sup> *Id.*

Dr. Courtney N. Phillips  
November 22, 2021  
Page 7

Therefore, we believe your vaccine mandate for children will be challenged on the grounds that COVID-19 is not a “vaccine preventable disease” as contemplated by La R.S. 17:170, and you should not promulgate a rule mandating it on vaccination schedules required for school entry.

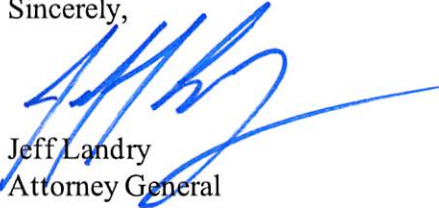
As the U.S. Fifth Circuit opined its recent decision involving vaccine mandates, no matter how tragic and devastating the pandemic has been, we cannot substitute the tragedy for the law or revise the meaning certainly without legislative action.<sup>6</sup>

We agree. We believe lower courts will interpret any attempt to mandate the currently available COVID-19 vaccines as a violation of law.

Finally, given that the mRNA vaccines used in children are not traditional vaccines, and the mandate involves emergency use only medical treatment on students, such an action represents a major policy decision reserved for our Legislature by our State Constitution.

I look forward to addressing these concerns with the Legislature at the House Health and Welfare oversight hearing scheduled for December 6, 2021.

Sincerely,



Jeff Landry  
Attorney General

cc: Page Cortez, Senate President  
Clay Schexnayder, Speaker  
Fred Mills, Chairman Health and Welfare Committee, State Senate  
Larry Bagley, Chairman Health and Welfare Committee, State House of Representatives

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<sup>6</sup> *BST Holdings, L.L.C., et al. v. OSHA*, (U.S. 5<sup>th</sup> Cir. 11/12/21).