

# MICKES O'TOOLE

## DOS AND DON'TS FOR "FORM 11": MISSOURI'S RELIGIOUS IMMUNIZATION EXEMPTION

February 13, 2020

*By: Steven D. Hall*

### **Background**

Anyone with a Facebook account or a Twitter handle will likely recognize that there are certain subjects that families from across America don't seem to get tired of debating. One such subject is the risk and benefits of immunizations, especially those required of pupils. These debates occur in Missouri and have a profound effect on administrators throughout our state. Many school administrators find themselves in a heated situations in which they are confronted by a parent or guardian who holds concerns about immunizing their child.

As a general matter of law, the subject isn't really open to debate. There's an unbroken line of cases from the courts, including the U.S. Supreme Court, that allows the states to require that pupils be immunized before attending school. Missouri, in line with the Supreme Court's ruling, also requires this. What is being debated, however, is what a state can specifically require a parent or guardian to do if that state, like Missouri, offers to waive the immunization requirement for parents or guardians who hold religious beliefs against immunizing their child. This is the issue the Mickes O'Toole recently was successful in litigating behalf of school districts and individual school administrators who were accused of violating the constitutional rights of parents who sought to obtain an immunization waiver for their child.

On January 30, 2020, a federal judge for the U.S. District Court for the Western District of Missouri granted a motion to dismiss filed by Mickes O'Toole on behalf of school district and administrators. Here, the plaintiffs had filed a proposed class action lawsuit challenging Missouri's immunization waiver process. Under that process, a parent or guardian may obtain an immunization waiver for their child if they certify on an original form provided by the state that a certain immunization violates one's religious belief. This form (known as "Form 11") contains a statement about the risks associated with not being immunized,

and it requires the parent or guardian to sign it and date it. Plaintiffs alleged that the process of obtaining Form 11 from the Missouri Department of Social Services (DSS), signing it and submitting it violated their constitutional rights. In granting the motion to dismiss the school districts and administrators, the federal court sharply disagreed and ruled that Missouri's waiver form did not violate any of the plaintiffs' constitutional rights. In part, the judge pointed to much more onerous restrictions on obtaining immunization waivers in other states, like one in Michigan (that has been upheld as constitutional by the federal courts) that requires a parent or guardian to attend a class on the risks of not being immunized before obtaining an immunization waiver.

What school districts can learn from this litigation is that a district can strictly require parents or guardians who seek to obtain an immunization waiver to follow the procedures for obtaining a religious exemption from the state's immunization requirement.

- Districts do not have to physically provide Form 11 to parents but should direct those seeking it to contact DSS either by phone or mail to obtain an original form.
- Districts should not accept anything less than a properly completed and signed Form 11.
- Districts should not accept copies of Form 11 or generalized statements that may match the substance of the language contained on Form 11.
- Districts should not entertain requests for a waiver on any basis other than religious belief, because no other exception (except for medical reasons) is recognized in Missouri.
- Districts should keep all properly-executed Form 11s with immunization health records that schools are required to maintain and keep.

**Further questions may be directed to Mickes O'Toole on this and related subjects.**

