

April 7, 2025

LD 174 'AN ACT TO RESTORE RELIGIOUS EXEMPTIONS TO IMMUNIZATION REQUIREMENTS'

Senator Rafferty, Representative Murphy and esteemed members of the Education and Cultural Affairs Committee,

My name is Gregory Fox, resident of Cumberland, father of school age children and am here today to strongly advocate for the passage of LD174.

LD 174 represents the statutory acknowledgement of our God given rights in the parenting of our children and recognition that in matters of personal conviction we the believers, must be guided by the Word of God, our conscience, and informed judgment. Ezekiel 6:1

Previously in 2019, this committee and the legislature enacted statutes prohibiting children from attending school with a religious exemption to vaccination, modifying more than 40 years of successful public health strategy and setting a different course to public health than 45 other states in the United States that recognize religious exemption to vaccination.

From 2015 to 2019, time and time again, members of this committee and the legislature were lobbied and reassured by experts in the medical community that it was essential, *if not critical*, to remove non-medical exemptions, including religious exemptions to protect Maine children.

During LD 798 in the 129th legislature, Senate and House amendments maintaining religious exemptions were both voted down by narrow 1 vote margins, as LD798 advocates pushed to eliminate religious exemptions *under the pretext* of protecting Maine children and the narrative of threat of spreading illness and disease if vaccination rates fell below the medical communities public health threshold of '95% herd immunity'.

Four years later, after extended litigation and deposition of Maine's expert medical witness, through publicly available documents, we know the '95% herd immunity' threshold was a pretext, and it is now clear medical professionals, upon which the legislature relied, misrepresented the underlying science of herd immunity.

In early May 2023, agents of the State conceded in Federal District Court of Maine that the **State's *asserted interest*** in removal of statutory acknowledgement of religious exemption ***was not based*** on a vaccination rate of 'specific number or specific percentage' and the State clearly articulated to the Court "there is no specific percentage [of unvaccinated students] that is permissible or not permissible"

It is my opinion that the State's removal of religious exemption acknowledgment from statute was unwarranted, the science of immunization and reduction risk through vaccination presented by leading medical experts was misleading, specifically, the herd immunity methodology was not properly scientifically validated and the arguments in favor of LD 798 were pretextual given the public school population in 2019 was more than 94% vaccinated, of which religious exemptions accounted for less than 3% of vaccination exemptions.

I personally believe that in a public health context, vaccination ***is a benefit to our population, meaningfully reduces risks*** and make no assertions that deny the benefits of public health in the prevention of illness or promotion of vaccination. I am a healthcare provider, I am not anti-vaccine, but I am pro-science, an advocate for truth, and a religious objector to vaccination as a condition of enrollment in private and public schools.

STATE'S ASSERTED INTERESTS IN COURT: The State's asserted interests and how the State arrived at the determination it was unable to provide accommodation to religious observers in the public schools to reach it's asserted interest are of legal importance today.

This committee is at a crossroads, on notice that current litigation challenges both the State's asserted interest and actions in the 2019 removal of religious exemptions.

In May 2023, Federal District Court Judge Singal held oral hearing in which a Maine Assistant Attorney General testified to the State's asserted interests in herd immunity and removal of nonmedical exemptions, including long held religious exemptions.

Public transcript is available on PACER Docket No. 2:22-cv-00251-JAW (D. Me.) ; ECF 71.

(disclaimer: Representations are factual, however complete context of all statements are available by public document, readers are encouraged to consider contents of the entire transcript)

THE COURT: What percentage of unvaccinated students would be permissible in classrooms under the State's interests? And I want an answer why, also, why that percentage is being picked. Tell me the percentage that's permissible in a classroom according to the State's interests.

MS. PATWARDHAN: So the State's interests are again not –

THE COURT: Listen to my question. Do you know what percentage is permissible under the State interests?

MS. PATWARDHAN: There is no specific percentage permissible or not permissible.

ASSERTED INTEREST CONTINUED:

HERD IMMUNITY was also an asserted interest in Federal District Court 2023 :

I request the Committee take notice of the State's additional reliance upon the concept of herd immunity as a methodology asserted in the protecting of Maine Children and reasoning why it [the State] was unable to provide accommodation to religious observers in the public schools to reach it's stated asserted interest. **(Federal District Court May 8, 2023, ECF 71)**

THE COURT: Okay. So why would you create a -- a system where religious students cannot go to school? If there's no number that you're looking for, what difference -- what difference does it make how many go into that classroom? You don't have a number goal anyway; you don't have a percentage goal anyway. What difference does it make?

MS. PATWARDHAN: So the -- at the time the State eliminated all nonmedical exemptions. That included philosophical and religious exemptions. And **when these two exemptions were repealed, the statewide exemption rate was below the levels that were necessary for herd immunity** on average. (emphasis added)

THE COURT: Did I ask you a question about herd immunity earlier and you kind of ducked it? I asked you if herd immunity is an issue here. You went off on something else; now I'm hearing about it. ***Is herd immunity an issue here?*** (emphasis added)

MS. PATWARDHAN: It is certainly part of the reasons why the State -- why the legislature repealed the nonmedical exemption.

THE COURT: What percentage does it take to get ***herd immunity in a classroom*** as far as the State's position is concerned? (emphasis added)

MS. PATWARDHAN: This isn't in the record, Your Honor.

THE COURT: How am I supposed to find that out?

MS. PATWARDHAN: Actually, I might be wrong about that, but it varies by disease.

THE COURT: Pardon me?

MS. PATWARDHAN: It varies by disease. So --

THE COURT: I'm sorry, I didn't hear you.

MS. PATWARDHAN: **The level of herd immunity required, the goal for a population level immunity varies by disease.** So generally measles is somewhere around 95 percent; other diseases might be 90 percent. (emphasis added) -ECF 71, pages 15-16.

DEPOSITION OF MAINE'S EXPERT MEDICAL WITNESS JULY 11, 2024

HERD IMMUNITY 2024: With herd immunity clearly established as a State asserted interest the prior year, the litigation moved to discovery and depositions, in which plaintiffs' focused on the scientific methodology establishing 'herd immunity', seeking to identify through deposition testimony of Maine's expert medical witness to more about the State's reliance on herd immunity'.

What plaintiff's learned was different than anticipated, in fact, the State's retained medical expert, conceded during video deposition under oath, that a public health '95% vaccination goal' is different than 'herd immunity' and more incredulous, the variable herd immunity threshold was a mathematical calculation based on a '**totally susceptible population**'.

The Education committee is encouraged to review prior legislative record, and the medical professionals reliance on herd immunity in the decision to remove religious exemptions from statute. Additionally, consider the purported 'herd immunity' methodology (R_0) used to calculate and support critical asserted interest of falling vaccination rates, theoretically threatening herd immunity **was actually based on calculation of a population with 0% vaccination**, and included no variable for the inclusion of the accepted Maine School vaccination rate of 94.7% or 5.3% non-medical exemption rate in 2019.

It's my opinion, in the removal of religious exemptions, the State deferred to the medical experts and the medical experts the legislature relied upon, either mislead the state or minimally failed to demonstrate scientific basis for justifying the restrictions upon religious observers.

CHILDREN ADVERSELY AFFECTED BY THE STATE'S ACTIONS SINCE 2021.

The State of Maine's Constitution mandates FAPE for all children of Maine and Federal regulations recognizing additional Federal protections for children with SLD's through Individualized Education Plans (IEP). The Federal IDEA rights to education are protected through statutory regulations as established by Congress, yet some children in Maine with recognized SLD's after September 1, 2021 have been prohibited from access the IDEA protections and rights to education following changes to Statute 6355 in 2019 and DOE rulemaking in 2021.

The statutory changes and rulemaking to remove religious exemptions, established a more than "burdensome effect" for families that object to vaccination, whereas previously for more than 40 years parents were permitted to file an exemption from the statutory requirements.

My testimony is intended exercise my rights to representation in the legislature, my 1st Amendment Free Speech as protected by the United States Constitution and in my personal capacity to provide support for LD 174.

My family was negatively affected by the statutory changes of LD 798 and I believe my first hand experience is relevant to speak to the State's impermissible value judgements, lack of General Applicability and Neutrality in enacting statutory removal of religious exemptions, and more than 3 years of deliberate indifference to the rights of citizens of the State of Maine.

As validation of my opinion, consider that in July 2024, the State's medical expert additionally testified at deposition that that a current public health interpretation of **'herd immunity' is materially different than a general public health goal of 95% vaccination**, and further that the **herd immunity methodology** for individual virus, varies by illness and is **calculated with the assumption that the population is 0% vaccinated or 'totally susceptible'**.

I ask this committed, is a World Health Organization (WHO) or other public health special interest's - *95% generalized goal* - sufficient to restrict religious liberty and parental rights ?

If the Committed indicates 'yes', I would gladly appreciate explanation why the State's asserted interests only affect schools ? What about summer camps ? T-ball and every other activity children participate ?

THE STATE'S MEDICAL EXPERTS OPINION:

-See publicly available deposition transcript of the State's Medical expert; transcript is available on **PACER Docket No. 2:22-cv-00251-JAW (D. Me.) ; ECF 171-6 filed on 11.8.2024.** (disclaimer the following transcript content representation is factual, however readers are encouraged to review the entire transcript as context)

Question: What's the -- where's the 95 -- do you know of any -- do you know of any public health communities or organizations -- world organizations that recommend 95 percent?

A. In the -- as a public health practitioner, the goal would be to have 100 percent protection with any given community. Given the limitations of vaccine programs, as previously stated, we shoot for 95. **I believe 95 as neither a ceiling nor a floor of desired achievement in vaccination** for -- for our communities. (emphasis added)

Q. And the 95 percent is correlated to ensure **prevention of school outbreaks** in your opinion? (emphasis added)

A. It's difficult for me to agree to a statement as vague as that because how each -- when we look at outbreaks, there are clustering of individuals that can create an outbreak despite the fact that a community state level rate of vaccination is at 95 percent. As you can imagine, there are areas of a state -- a hypothetical state where a group of individuals are unvaccinated and living in close proximity, perhaps attending school or, you know, out of school activities together that would not be represented that risk of transmission in that community would not be represented by a 95 percent vaccination rate at a population level.

Q. So the 95 percent is the population level?

A. It is the population level that we're -- a goal --one goal of a population level. I also consider, for instance, schools whose kindergarten rates go well below 95 percent in the kindergarten class to also be at risk.

Q. Okay. The 95 percent is considered the herd immunity, community immunity threshold, community immunity ?

A. You are astutely pointing out that there are lots of terms to acknowledge *the general concept that a degree of vaccination in a community allows an indirect effect* .

As you can see, the medical expert refers to multiple environments, ranging from Kindergarten Classrooms, School, Community, and State levels of populations.

As representatives of the legislature, the **true 'ends' of the State's interests** need to be identified, both from a specific target number or percentage as suggested by Judge Singal, but also in terms of what 'public health' realm we are discussing. Children and families do not exist in a bubble outside of school, only to magically be classified as protected in isolated school environments, yet again to be subjected to claims of risks of illness in societal clusters in private social settings throughout the community during non-school hours.

The legislature would be much better informed if the opponents of LD 174 and the State's medical expert drew conclusions of risk and prevalence from actual school environments, based on school occurrences and prevalence of illness. Instead opponents quite frequently cite statistics state population level data and indiscriminately apply the state level data to conclusions of what is actually occurring in the school environment, this co-mingling of data and environments is misleading and demonstrates false dilemma and slippery slope illustrations of logical fallacy.

The State's medical expert not only participated in the prior cited litigation, but also previously engaged in live televised debate on WGME 13, on Monday February 24, 2020 defended removal of the religious exemption just prior to a public referendum:

'When we have vaccination rates that are, below, 95% we have a crisis.'

<https://wgme.com/news/local/your-voice-your-future-maines-vaccine-debate-monday-at-7-pm>

Is a warning of crisis not a significant and meaningful warning to the public ? It doesn't appear so, as the Medical Experts testimony during deposition contradicts the prior public debate, but the public debate wasn't a environment subject under 'oath' or penalty of perjury as compared to the depositions , however viewed under professional obligations to the public 'oath' may be considered more meaningfully.

CONTRADICTION OF MEDICAL EXPERTS OPINION VS PUBLIC STATEMENTS:

-See publicly available transcript of the State's Medical expert; transcript is available on PACER Docket No. 2:22-cv-00251-JAW (D. Me.) ; ECF 171-6 filed on 11.8.2024.

Question. The 95 percent is considered the herd immunity, community immunity threshold, community immunity? -- I just -- or what we will agree to not use every single term every time, but if you -- if you can pick one of those or make a distinction for me.

Answer. You are astutely pointing out that there are lots of terms to acknowledge the general concept that **a degree of vaccination in a community allows an indirect effect** -- I generally use the term community immunity to talk about that sort of level. I would call it a herd immunity threshold is a level below which -- below which **we are concerned** for transmission from student to student that could lead to an outbreak or a person to person that leads to an outbreak. There is significant debate about the verbiage that we use in this -- in this public health arena. But ...-- I agree with you, ... that we could use community immunity to talk about that general sense of herd protection, herd immunity. That would -- **the 95 percent number I would call the herd immunity threshold**. And the -- **the problem being that we can become immunity through other methods besides just vaccination**. And so that's why immunity is a difficult determine to use in this regard because we can become immune either through direct exposure to the disease and a natural process of response to the disease, or we can become immune through vaccination which is the preferred public health method of immunity. (emphasis added) -see page 90 line 13 through page 91 line 19; ECF 171-6

RESPONSE TO OPPOSITION:

Today the Education committee will hear many opinions, and in preparation I have read much of the submitted testimony available online for today's hearing and would like to respond to several opinions provided by both Opposition and Support for LD174.

Opponents of LD174 are presenting many arguments of community risk reduction in the arguments of why schools must restrict religious observers, while also **co-mingling data** - indiscriminately bouncing from school vaccination rates to conclusions based on much larger community, state and national data.

Our legislature cannot rely upon conjecture, speculation, and post-hoc assertions as a basis to force children out of schools and strip religious objectors of their rights. Advocates of LD174 want science and we want facts, and we want the medical professionals opposing LD174 to testify under oath. Religious objectors will not tolerate judgment based on inconclusive or incomplete evidence; guesswork.

SPEAKING TO RELIGIOUS BELIEFS AND ACCEPTED DOCTRINE:

[57] Cf. John Paul II, Encyclical Letter *Evangelium vitae*, 73: AAS 87 (1995), 486: "Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a *grave and clear obligation to oppose them by conscientious objection*". The

right of conscientious objection, as an expression of the right to freedom of conscience, should be protected by law.

From <https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html>

The criterion of independence is not sufficient to avoid a contradiction in the attitude of the person who says that he does not approve of the injustice perpetrated by others, but at the same time accepts for his own work the “biological material” which the others have obtained by means of that injustice. When the illicit action is endorsed by the laws which regulate healthcare and scientific research, it is necessary to distance oneself from the evil aspects of that system in order not to give the impression of a certain toleration or tacit acceptance of actions which are gravely unjust. [57] Any appearance of acceptance would in fact contribute to the growing indifference to, if not the approval of, such actions in certain medical and political circles.

From <https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html>

1. As the Instruction *Dignitas Personae* states, in cases where cells from aborted fetuses are employed to create cell lines for use in scientific research, “there exist differing degrees of responsibility” [1] of cooperation in evil. For example, “in organizations where cell lines of illicit origin are being utilized, the responsibility of those who make the decision to use them is not the same as that of those who have no voice in such a decision”. [2]

From <https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20201221_nota-vaccini-anticovid_en.html#_ftn1>

I thank the Committee for its valuable time and consideration and welcome feedback.

Yours in Health,

Gregory Fox, Cumberland Maine



Pertussis

Maine Surveillance Report | 2019

Case Information:

383

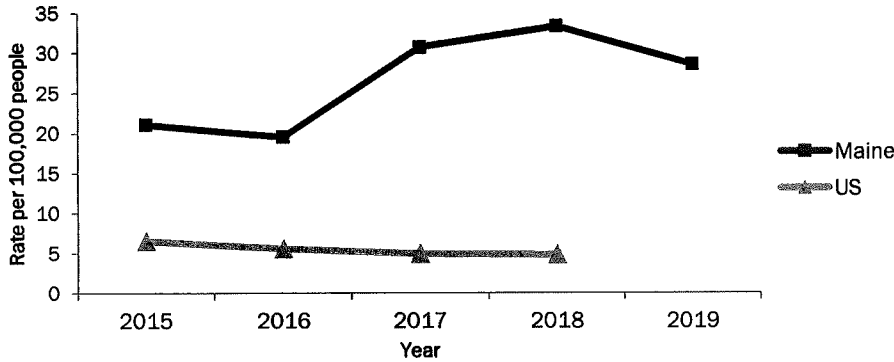
Patients diagnosed with pertussis

28.5

Cases per 100,000 people

14%

decrease from 2018



Demographics:

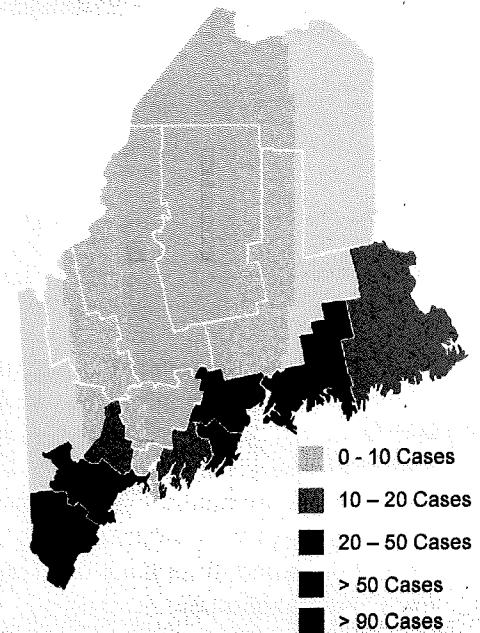


51% of patients were male
49% of patients were female

Average age 14 years
Range (24 days - 87 years)

93% White, 1.6% Black, 0.8% Asian, 0.08% American Indian, 0.3% multi-race, 3.9% unknown

Geography:



County Level Information

Seven counties had rates of pertussis above the 2019 state rate of 28.4:

- Cumberland County (32.70)
- Hancock County (120.41)
- Knox County (85.49)
- Lincoln County (40.77)
- Waldo County (128.48)
- Washington County (44.46)
- York County (32.97)

Clinical Characteristics:

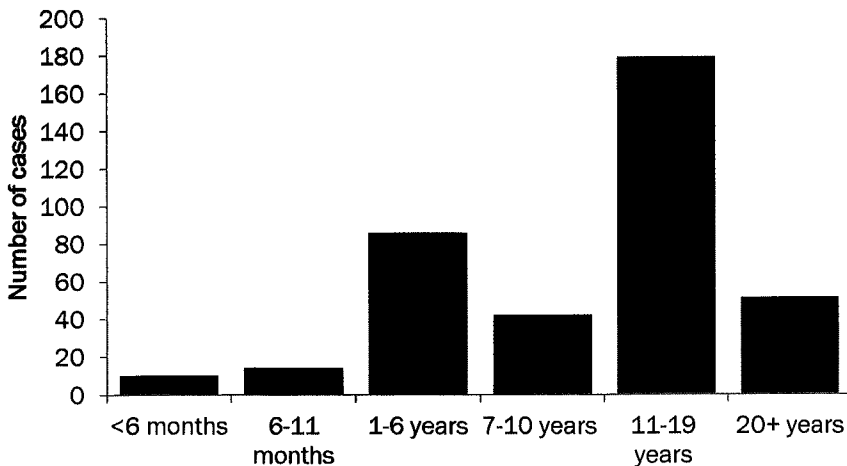
Symptom	# Cases	% Cases
Apnea (in kids <1)	4 ¹	17%
Paroxysmal cough	367	96%
Post-tussive vomiting	210 ²	55%
Whoop	29 ³	8%

¹1 unknown, ²2 unknown, ³1 unknown

3 Cases were hospitalized

20 days Average cough duration

Demographics:





Vaccination Status

64%

Of cases were up to date on vaccinations

89%

Of eligible cases had received at least one dose of vaccine

Age	Unvaccinated	Under-vaccinated	Up to Date on Vaccines	Unknown vaccination status	Total
<6 months	0	0	10	0	10
6-11 months	0	2	16	0	18
1-6 years	1	2	37	0	40
7-10 years	7	15	62	0	84
11-19 years	1	61	108	2	172
>18 years	9	17	11	22	59
Total	18	97	244	24	383

Prevention:

- The best way to prevent pertussis (whooping cough) is to get vaccinated.
- Being up-to-date with pertussis vaccines is especially important for families with, and caregivers of, new babies because pertussis in babies can be severe and in rare instances fatal. Getting the Tdap vaccine during pregnancy is an important step to protect your baby, especially before they are old enough to be vaccinated.
- Keep babies and other people at high risk for pertussis complications away from infected people.
- Like many respiratory illnesses, pertussis spreads by coughing and sneezing while in close contact with others, who then breathe in the bacteria. Practicing good hygiene is the best way to prevent the spread of respiratory illnesses including:
 - Cover your mouth and nose with a tissue when you cough or sneeze.
 - Put your used tissue in the waste basket.
 - Cough or sneeze into your upper sleeve or elbow, not your hands, if you don't have a tissue.
 - Wash your hands often with soap and water for at least 20 seconds.
 - Use an alcohol-based hand rub if soap and water are not available.



For more information visit:
www.maine.gov/dhhs/pertussis
<https://www.cdc.gov/pertussis/index.html>

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Maine Immunization Law Could Collide with Special Education

March 17, 2020

By Eric Herlan

Most readers of the School Law Advisory are well aware of the childhood immunization debate that has gone on in Maine and nationally. We do not mean to step into that thicket, but instead want to highlight Maine's own addition to that debate. As you likely know, the Legislature has approved and the Governor has signed into law changes to 20-A M.R.S.A. § 6355 regarding exceptions to the immunization mandate in Maine. The changes in this law could sharply increase the number of Maine children not attending public or private school. Whatever your views on that, we think it is important to be aware of various special education issues that could arise out of the exclusion of these children. Let us explain.

Immunization Background

Maine law has long required every child attending public school to provide a certificate of immunization in accordance with the law. This law previously had three exceptions: one was a physician's exception if immunization is "medically inadvisable," another was for a "sincere religious belief" that is contrary to immunization, and the third is for opposition to immunization "for philosophical reasons." The 2019 amendments to 20-A M.R.S.A. § 6355 removed the exceptions for religious belief and for philosophical reasons, leaving only the exception for when a parent provides the school with a written statement from a licensed physician, nurse practitioner, or physician's assistant that a required immunization would be "medically inadvisable."^[1] As stated in the law, the superintendent of schools must not permit enrollment of students who do not meet the immunization requirements or the permissible exemptions.^[2]

The law clearly applies to attendance in public schools, and seems also to apply to attendance in private schools.^[3] The removal of the exemptions for philosophical or religious beliefs takes effect on September 1, 2021.

Application of Law to Special Education Students

As the Legislature moved toward a total removal of the religious and philosophical exemptions to the immunization requirement, this raised a question about the impact of the change on students with disabilities who might no longer be permitted to attend school.

The Legislature addressed this issue as follows. The new law includes an exemption for students who had a philosophical or religious exemption on or before September 1, 2021, AND who were covered by an IEP on September 1, 2021. Note the limits in this exemption. The student must have an IEP on September 1, 2021 (when the change in the law takes effect), and the parents of the child also must have claimed the religious or philosophical exemption by that same date.

In essence, this exception grandfathers a group of students with disabilities from the new law's requirements. But it has no impact at all on students with disabilities who become eligible after September 1, 2021, or on identified students with disabilities whose parents do not first claim the religious or philosophical exemption by that date.

Legal Issues Relating to Children in Special Education

In terms of special education, the upshot of this law is that children with disabilities who are identified for special education after September 1, 2021 must be prevented by the superintendent of schools from enrolling in the public school system, and also likely must be excluded from private schools as well. This means that the only permissible school attendance option for these students will be the home schooling option in Maine.

But children in home schooling programs do NOT have a right to a free, appropriate public education ("FAPE") under Maine law.^[4] This would mean that public schools would have no duty under state law to provide an IEP or deliver services in an IEP to a child with a disability who has been excluded from school by virtue of this law.

Is this permissible? Here is the dilemma that will undoubtedly arise. The federal special education laws require each participating state to ensure that every identified child with a disability receive a free, appropriate public education. Ultimately, it is the state itself that carries this duty, although the duty is regularly delegated by state law and rule down to local school units.^[5] In some cases, undoubtedly, the families of unimmunized children will prefer to have those children in home schooling programs. But in some cases, they will not. And if a parent wants a child with a disability to attend public school, but is not allowed to do so by virtue of this law, it is the State of Maine that has created a category of child who is banned from receiving a FAPE, despite the federal law requiring the state to ensure that all identified children receive that FAPE.

In other words, at least for children identified as disabled after September 1, 2021 whose parents want them to be attending public school, the State of Maine appears to set up a legal structure that will deny those children access to any special education services at all – whether in school or out of school. This development would seem likely to give rise to litigation regarding the delivery of the federally guaranteed FAPE to this category of student. One would assume the litigation would run against the State of Maine, not against local school units, because it is the State of Maine that has created this legal structure, rather than any particular local school unit.

It is difficult to be sure what the outcome of any such litigation would be. Certainly at the present time, such claims are not ripe because the change is not yet in effect. And none of this might materialize if a statewide referendum in March 2020 sets aside the change being discussed here. But one should recognize that this special education issue lurks out there, and at some point is likely to rear itself up and compel a clear answer as to just what the proper interplay would be between the federally guaranteed right to FAPE and Maine's immunization standards.

[1] See 20-A M.R.S.A. § 6355(2).

[2] See 20-A M.R.S.A. § 6355.

[3] See 20-A M.R.S.A. § 6353(7) (definition of "school" includes public or private elementary and secondary schools in Maine).

[4] See MUSER § IV.4(H)(3) (2017).

[5] See 20 U.S.C. § 1412(a)(1)(A); MUSER I (2017).

