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September 13, 2021

The Honorable Jim Rosapepe  
Maryland Senate  
101 James Senate Office Building  
Annapolis, Maryland 21401  
*Via email*

Dear Senator Rosapepe:

You asked the following four questions:

- “1. *If schools mandate vax for 12+ kids, can they require proof of vax?*
2. *If schools don't mandate vax for 12+ kids, can they require proof of vax?*
3. *If schools mandate vax for 12+ kids, can they ask if kids are vaxxed?*
4. *If schools don't mandate vax for 12+ kids, can they ask if kids are vaxxed?”*

I believe the answer to each question is “yes,” with the following explanations. Disclosure of a student’s vaccination status would fall under the State’s ImmuNet Program set out in Health-General Article (“HG”), § 18-109. Under that law, a school, as an authorized user (*see* HG § 18-109(a)(2)(xi)), may use the program “[t]o obtain an individual immunization history.” HG § 18-109(c)(2). Nevertheless, the law also provides that “[a]n individual, or the parent or guardian of a minor child who has received a vaccination, may refuse to permit disclosure of confidential information collected by ImmuNet, to an authorized user.” HG § 18-109(d)(1). In that case, “the individual or the parent or guardian of a minor child shall complete a ‘refusal to permit’ form, provided by the Department, to be returned to the Department.” HG § 18-109(d)(2). Thus, if the school cannot access the information due to a parent’s or guardian’s refusal to permit, the school will have to ask that proof of vaccination be provided some other way.

The consequences of refusing to disclose would likely differ, of course, depending on whether vaccination is mandatory for school in-person attendance. State law,

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COMAR 13A.05.05.07E(1), provides that “[a] school shall comply with the Maryland Department of Health's immunization requirements in accordance with COMAR 10.06.04.” Those MDH regulations require parents or guardians to provide proof of vaccination for the mandatory vaccines specified in the regulations. It should not be any different for COVID vaccinations if mandated.

Moreover, it is not a HIPAA violation for a school to ask a student’s vaccination status. Nevertheless, probing into the reason for not receiving the vaccination could violate the ADA if the school’s inquiries elicit information about a disability. Further, with regard to any redisclosure of vaccine information, the school should be mindful to comply with the Family Educational Rights and Privacy Act (FERPA) statutory and regulatory requirements. The U.S. Dept. of Education has issued guidance about FERPA and COVID-19: [FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions](#).

Finally, I note that the State Board of Education has no COVID-19 vaccination policy. Rather, local boards are directed to consult with local health officials.

Sincerely,



Sandy Brantley  
Counsel to the General Assembly