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c 41 Immunization of School Pupils Act, 1982

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CHAPTER 41

An Act to protect the Health of Pupils in Schools

Assented to July 7th, 1982

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

- | | |
|---|------------------------|
| | Interpre-
tation |
| <p>(a) "Board" means the Health ^{Protection} Facilities Appeal Board under the <i>Ambulance Act</i>; ^{Health Prot. a.s.s. 1980}</p> | R.S.O. 1980,
c. 20 |
| <p>(b) "board" means a "board" as defined in the <i>Education Act</i>;</p> | R.S.O. 1980,
c. 129 |
| <p>(c) "designated diseases" means diphtheria, measles, mumps, poliomyelitis, rubella and tetanus;</p> | |
| <p>(d) "immunization record" means a record of immunization maintained by a medical officer of health under this Act;</p> | |
| <p>(e) "medical officer of health" means "medical officer of health" as defined in the <i>Public Health Act</i>;</p> | R.S.O. 1980,
c. 409 |
| <p>(f) "parent" includes an individual or a corporation that has the responsibilities of a parent;</p> | |
| <p>(g) "person" includes a board;</p> | |
| <p>(h) "physician" means legally qualified medical practitioner;</p> | |
| <p>(i) "prescribed" means prescribed by the regulations;</p> | |
| <p>(j) "pupil" means a pupil who is a minor;</p> | |
| <p>(k) "regulations" means regulations made under this Act;</p> | |

R.S.O. 1980,
c. 129

- (l) "school" means a "private school" and a "school" as defined in the *Education Act* and includes a kindergarten, a junior kindergarten and a beginners class within the meaning of the *Education Act*;
- (m) "school day" means "school day" as defined in the *Education Act*;
- (n) "statement of medical exemption" means a statement in the prescribed form signed by a physician stating that the prescribed program of immunization in relation to a designated disease or designated diseases,
 - (i) may be detrimental to the health of the person named in the statement, or
 - (ii) is unnecessary in respect of the person named in the statement by reason of past infection or laboratory evidence of immunity;
- (o) "statement of religious belief" means a statement in the prescribed form signed by a parent of the person named in the statement that immunization conflicts with the tenets and practices of the religious denomination of which the parent is an adherent or a member.

Purpose
of Act

2. The purpose of this Act is to increase the protection of the health of children against the diseases that are designated diseases under this Act.

Order for
suspension re
designated
diseases

3.—(1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person who operates a school in the area served by the medical officer of health to suspend from attendance at the school a pupil named in the order.

Grounds for
order re
designated
diseases

- (2) The circumstances mentioned in subsection (1) are,
 - (a) that the medical officer of health has not received,
 - (i) a statement signed by a physician showing that the pupil has completed the prescribed program of immunization in relation to the designated diseases,
 - (ii) a statement of medical exemption in respect of the pupil or, where the medical officer of health has received a statement of medical exemption, the effective time period specified in the statement has expired and the medical officer of

health has not received a further statement of medical exemption, or

(iii) a statement of religious belief in respect of the pupil; and

(b) that the medical officer of health is not satisfied that the pupil has completed, has commenced and will complete or will commence and complete the prescribed program of immunization in relation to the designated diseases.

4. A suspension under an order by a medical officer of health under section 3 is for a period of twenty school days. Term of suspension

5.—(1) A medical officer of health who makes an order under section 3 shall serve a copy of the order upon a parent of the pupil. Service of copy of order upon parent

(2) An order under section 3 is not valid unless written reasons for the order are included in or attached to the order. Written reasons

(3) A medical officer of health may make orders under section 3 from time to time in respect of a pupil where the circumstances specified in the section for making the order continue to exist. Repeated orders

6. A medical officer of health who has made an order under section 3 shall rescind the order where the circumstances for making the order no longer exist. Rescission of order

7. Every physician who administers an immunizing agent to a child in relation to a designated disease shall furnish to a parent of the child a statement signed by the physician showing that the physician has administered the immunizing agent to the child. Statement by physician

8.—(1) Every medical officer of health shall maintain a record of immunization in the form and containing the information prescribed by the regulations in respect of each pupil attending school in the area served by the medical officer of health. Record of immunization

(2) A medical officer of health shall keep under review the immunization record maintained by the medical officer of health in respect of a pupil who has not completed the prescribed program of immunization in relation to the designated diseases. Review of record

9.—(1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person who operates a school located in the health unit served by the medical officer of health to exclude from the school a pupil named in the order. Order by M.O.H.

Grounds
for order

- (2) The circumstances mentioned in subsection (1) are,
- (a) that the medical officer of health is of the opinion, upon reasonable and probable grounds, that there is an outbreak or an immediate risk of an outbreak of a designated disease in the school at which the pupil attends; and
 - (b) that the medical officer of health has not received,
 - (i) a statement of immunization signed by a physician showing, or is not otherwise satisfied, that the pupil has completed the prescribed program of immunization in relation to the designated disease, or
 - (ii) a statement of medical exemption in the prescribed form signed by a physician stating that the prescribed program of immunization in relation to the designated disease is unnecessary in respect of the pupil by reason of past infection or laboratory evidence of immunity.

Term of
order

(3) An order under subsection (1) remains in force until rescinded in writing by the medical officer of health.

Rescission
of order

(4) A medical officer of health who makes an order under subsection (1) shall rescind the order as soon as the medical officer of health is satisfied that the outbreak or the immediate risk of the outbreak of the designated disease has ended.

Service
of copy
of order

(5) The medical officer of health shall serve a copy of the order under subsection (1) upon a parent of the pupil and, where the pupil is sixteen or seventeen years of age, upon the pupil.

Service of
copy of
rescinding
order

(6) The medical officer of health shall serve a rescinding order made under subsection (4) upon the person who operates the school and shall serve a copy of the order upon a parent of the pupil and, where the pupil is sixteen or seventeen years of age, upon the pupil.

Written
reasons

(7) An order under subsection (1) shall include written reasons for the making of the order.

Hearing and
submissions

10. A medical officer of health need not hold or afford to any person an opportunity for a hearing or afford to any person an opportunity to make submissions before making an order under this Act.

11.—(1) Where a pupil transfers from a school, the person who operates the school shall give notice of the transfer in the prescribed form to the medical officer of health serving the area in which the school is located. Notice of transfer of pupil

(2) Where the notice under subsection (1) states that the pupil is transferring to a school in an area under the jurisdiction of another medical officer of health, the medical officer of health shall send a copy of the immunization record of the pupil to the other medical officer of health. Transmittal of copy of immunization record

12.—(1) Where a medical officer of health makes an order under this Act requiring the suspension of a pupil or requiring that a pupil be excluded from a school due to an outbreak or an immediate risk of an outbreak of a designated disease, the medical officer of health shall serve upon a parent of the pupil or, where the pupil is sixteen or seventeen years of age, upon the pupil a notice of entitlement to a hearing. Notice

(2) A notice under subsection (1) shall inform the parent or pupil, as the case may be, that the parent or pupil is entitled to a hearing by the Board if the parent or pupil mails or delivers to the medical officer of health, to the Board and to the person who operates the school, within fifteen days after the notice is served on the parent or pupil, notice in writing requiring a hearing and the parent or pupil may so require such a hearing. Idem

(3) Where a hearing by the Board is required in accordance with this section, the medical officer of health shall afford to the parent or pupil requiring the hearing a reasonable opportunity before the hearing, Opportunity to show compliance and to examine documents

(a) to show or to achieve compliance with all lawful requirements concerning the subject-matter of the hearing; and

(b) to examine any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Where a hearing is required in accordance with this section, the Board shall appoint a time and place for and hold the hearing and the Board by order may confirm, alter or rescind the decision or order of the medical officer of health and for such purposes the Board may substitute its finding for that of the medical officer of health. Powers of Board where hearing

(5) The medical officer of health, the parent or pupil who has required the hearing and such other persons as the Board may specify are parties to the proceedings before the Board. Parties

Effect of order

(6) Notwithstanding that a hearing is required in accordance with this section, an order under this Act by a medical officer of health takes effect when it is served on the person to whom it is directed.

Members holding hearing not to have taken part in investigation, etc.

(7) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(8) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(9) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(10) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(11) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal to court

13.—(1) Any party to the proceedings before the Board under this Act may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Record to be filed in court

(2) Where any party appeals from a decision or order of the Board under this Act, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the

decision of the Board and may exercise all powers of the Board to confirm, alter or rescind the order that is the subject of the appeal and to substitute its findings for that of the person who made the order as the court considers proper and for such purposes the court may substitute its opinion for that of the person who made the order or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

14. The Lieutenant Governor in Council may make regula-^{Regulations}tions,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) prescribing forms and providing for their use;
- (c) governing the custody, recording, inspection and destruction of records in respect of immunizations in relation to designated diseases;
- (d) prescribing programs of immunization in respect of designated diseases, including specifying immunizing agents and the number and timing of dosages of immunizing agents;
- (e) classifying children, pupils or persons and exempting any such class from any provision of this Act or the regulations and prescribing conditions to which such exemption shall be subject;
- (f) requiring and governing reports by persons who operate schools to medical officers of health in respect of records and documentation related to the immunization of children applying for admission to the schools and pupils and former pupils in the schools;
- (g) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

15.—(1) Any notice, order or other document under this Act^{Service} or the regulations is sufficiently given, served or delivered if delivered personally or sent by ordinary mail addressed to the person to whom it is to be given, served or delivered at his last known address.

(2) A notice, order or other document sent by ordinary mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing,^{When service deemed made}

unless the person to whom it is sent establishes that, acting in good faith, he did not receive the notice, order or other document until a later date through absence, accident, illness or other cause beyond his control.

Commence-
ment

16. This Act comes into force on the day it receives Royal Assent.

Short title

17. The short title of this Act is the *Immunization of School Pupils Act, 1982*.