



DEPARTMENT OF LAW  
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**JOHN A. LASOTA, JR.**  
ATTORNEY GENERAL

July 11, 1978

Alexander Kelter, M.D.  
Assistant Director for  
Disease Control Services  
Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

Re: 78-141 (R77-400)

Dear Doctor Kelter:

This is in response to your letter of December 16, 1977 asking whether the Department of Health Services (DHS) can require submission to the county health officer of immunization histories of children enrolled in grades kindergarten through 12 in public, private and parochial schools and in licensed day care centers.

Several statutes relate to these questions. The most specific and recently enacted are A.R.S. §§ 15-342 and 36-629.E which provide for submission of immunization histories of children prior to their initial enrollment in any common school<sup>1</sup> of the state.

Additionally, the DHS Director, has the power and duty to:

Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.  
(A.R.S. § 36-136.G.1.)

The submission of immunization histories of all school children through twelfth grade and all children regularly enrolled in a day care center is a "reasonably necessary measure" for the purposes of § 36-136.G.1. It is within the authority of the Director to require such submission. This power is separate from and in addition to the

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1. A common school is a public school providing some or all of the "kindergarten and the first to eighth grades inclusive" classes. A.R.S. § 15-1212.

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provisions of A.R.S. §§ 15-342 and 36-629.

The latter provisions as indicated above mandate submission of immunization records to schools in certain situations. They do not prevent the Director, in the exercise of his or her powers, from requiring further submission of immunization records.

It is recognized that the principal impact of many communicable diseases is on those who have neither had the disease nor been immunized<sup>2</sup> against it. One portion of the population principally susceptible to communicable diseases is school and preschool children. Without reasonably accurate knowledge of the areas where significant numbers of susceptible persons are located, it is difficult to prepare a plan for preventing these diseases or for controlling an outbreak if one occurs. Thus the submission of immunization histories of all school children and of those preschool children whose exposure to communicable disease is enhanced by their attendance in a day care center<sup>3</sup> is a "reasonably necessary measure for detecting, reporting, preventing and controlling communicable and preventable disease", as required by A.R.S. § 36-136.G.1, supra.

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2. A.C.R.R. R9-6-116.C in part provides that a child is considered to be immunized against certain diseases only if he or she has received a minimum of three doses of the immunizing agent.

3. In addition, as the licensing agency for child day care centers, the Director is empowered by A.R.S. § 36-883 to prescribe reasonable rules, regulations and standards regarding the health, safety and well-being of children cared for in such a center with the proviso that:

Any rule, regulation or standard involving educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object thereto on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member. A.R.S. § 36-883.D. Cf. A.R.S. § 36-114.

Thus it is clearly authorized to prescribe rules, regulations and standards pertaining to the immunization of children in day care centers.

The question remains from whom the immunization histories of school age children can be obtained. Certainly the regulations could provide for submission of this information by the children's parents. Schools receiving federal funds, however, would jeopardize their federal funding if they release student immunization records to DHS without written consent of the student's parents or, if the student is emancipated, from the student. 20 U.S.C. § 1232g(b)(1); 45 CFR § 99.30 and A.R.S. § 15-151.A. Therefore, unless the need for student immunization records constitutes an emergency<sup>4</sup> matter, those records should not be obtained from the schools without appropriate consent.

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4. 45 CFR § 99.36 provides:

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

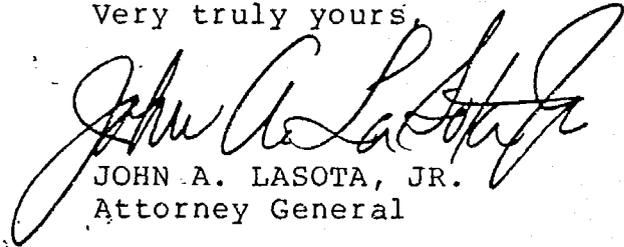
(4) The extent to which time is of the essence in dealing with the emergency.

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In conclusion, the Director of DHS has adequate statutory authority to require by regulation that immunization histories be submitted to the county health officer for all public, private and parochial school children in kindergarten through grade twelve and for all children regularly enrolled in child day care centers, provided that the Director determines such action is a reasonably necessary measure for preventing and controlling communicable and preventable diseases.

Very truly yours,



JOHN A. LASOTA, JR.  
Attorney General

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(footnote 4 continued)

(c) Paragraph (a) of this section shall be strictly construed. (20 U.S.C. 1232g(b)(1)(I).)