



# COMMONWEALTH of VIRGINIA

## Office of the Attorney General

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October 21, 2022

The Honorable Glenn Youngkin  
Governor of Virginia  
Office of the Governor  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Youngkin:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

### Issue Presented

You relate that the Centers for Disease Control and Prevention (CDC), upon the October 20, 2022, recommendation of its Advisory Committee on Immunization Practices (ACIP), is poised to modify its childhood immunization schedule to include vaccination against COVID-19. You ask whether such a modification would require children enrolled in schools and childcare facilities in Virginia to obtain a COVID-19 vaccine as a condition of attendance.<sup>1</sup>

### Applicable Law and Discussion

As part of its authority to issue guidance with respect to public health, the CDC has adopted and published a schedule of immunizations recommended for children.<sup>2</sup> The current schedule does not include COVID-19 vaccination, but ACIP recently voted to recommend that the CDC add COVID-19 vaccination to the list of recommended immunizations.<sup>3</sup>

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<sup>1</sup> Your inquiry more specifically extends to attendance at a public or private elementary, middle or secondary school, child care center, nursery school, family day care home, or developmental center, but in this opinion I refer to these institutions collectively as “schools and childcare facilities.”

<sup>2</sup> CENTERS FOR DISEASE CONTROL & PREVENTION [hereinafter “CDC”], RECOMMENDED CHILD & ADOLESCENT IMMUNIZATION SCHEDULE (Feb. 17, 2022), <https://www.cdc.gov/vaccines/schedules/downloads/child/0-18yrs-child-combined-schedule.pdf>. The CDC, however, has published an interim schedule regarding COVID-19 vaccination for children starting at six months of age. CDC, INTERIM COVID-19 IMMUNIZATION SCHEDULE FOR PERSONS 6 MONTHS OF AGE & OLDER (Oct. 17, 2022), <https://www.cdc.gov/vaccines/covid-19/downloads/COVID-19-immunization-schedule-ages-6months-older.pdf> (last visited Oct. 21, 2022).

<sup>3</sup> Press Release, CDC, ACIP Immunization Schedule Vote (Oct. 20, 2022), <https://www.cdc.gov/media/releases/2022/s1020-immunization-vote.html> (reporting that ACIP “recommended updates to the 2023 childhood and adult immunization schedules, which includes incorporating additional information

The CDC schedule is a series of recommendations only; unlike a statute or regulation, the schedule does not have the force of law and is not binding.<sup>4</sup> Indeed, as this Office previously has noted, “CDC recommendations . . . are not enforceable regulations having the force and effect of law.”<sup>5</sup> Because the CDC schedule consists of nonbinding recommendations only, I conclude that it imposes no conditions on school attendance in Virginia. Indeed, the CDC itself acknowledges that it “only makes recommendations for use of vaccines, while school-entry vaccination requirements are determined by state or local jurisdictions.”<sup>6</sup>

Virginia law directs that “[n]o student shall be admitted by a school unless at the time of admission the student or his parent submits documentary proof of immunization.”<sup>7</sup> The General Assembly has provided that “[t]he required immunizations for attendance at a public or private elementary, middle or secondary school, child care center, nursery school, family day care home, or developmental center shall be those set forth in the State Board of Health Regulations for the Immunization of School Children.”<sup>8</sup> The General Assembly has directed further that those regulations include, at a minimum, fifteen specific vaccinations, as enumerated by statute.<sup>9</sup> A vaccine other than those enumerated in the statute may be imposed as a condition of attending schools and childcare facilities only upon further legislative action by the General Assembly or through the State Board of Health by regulation. The State Board of Health previously declined to add the COVID-19 vaccine to the list of required vaccinations,<sup>10</sup> and nothing in the relevant statutes requires the State Board of Health to incorporate CDC recommendations.<sup>11</sup>

The CDC childhood immunization schedule does not itself require anyone to obtain a vaccine in order to attend schools and childcare facilities; Virginia law, not the CDC, imposes vaccination requirements for attending such institutions. Virginia law does not condition attendance on obtaining a COVID-19 vaccine.<sup>12</sup> I therefore conclude that the anticipated addition of COVID-19 vaccination to the CDC’s childhood immunization schedule will not alter the legal requirements for attending schools and childcare facilities in Virginia, and it will not require any child to obtain a COVID-19 vaccination in order to attend schools and childcare facilities in the Commonwealth.<sup>13</sup>

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for approved or authorized COVID-19 vaccines.”). The CDC provides the following description of ACIP’s role: ACIP “provides advice and guidance to the Director of the CDC regarding use of vaccines and related agents for control of vaccine-preventable diseases in the civilian population of the United States. Recommendations made by the ACIP are reviewed by the CDC Director and, if adopted, are published as official CDC/HHS recommendations in the Morbidity and Mortality Weekly Report (MMWR).” CDC, *COVID-19 ACIP Vaccine Recommendations*, <https://www.cdc.gov/vaccines/hcp/acip-recs/vacc-specific/covid-19.html> (emphasis added) (last visited Oct. 21, 2022).

<sup>4</sup> *George Mason Univ. v. Malik*, 296 Va. 289, 299 (2018).

<sup>5</sup> 1985-86 Va. Op. Att’y Gen. 178, 179 (1985).

<sup>6</sup> CDC Press Release, *supra* note 3.

<sup>7</sup> VA. CODE ANN. § 22.1-271.2 (2021).

<sup>8</sup> VA. CODE ANN. § 32.2-46(A) (Supp. 2022).

<sup>9</sup> Section 32.1-46(A)(1)-(15).

<sup>10</sup> See VA. STATE BOARD OF HEALTH, *Vaccination Requirements for School Employees & Students* (Petition 352), VA. REGULATORY TOWN HALL, <https://townhall.virginia.gov/L/ViewPetition.cfm?petitionId=352> (last visited Oct. 21, 2022).

<sup>11</sup> Indeed, the CDC has long recommended that children receive an annual influenza vaccination, but the State Board of Health has exercised its lawful discretion not to require such a vaccination for school attendance.

<sup>12</sup> VA. CODE ANN. § 32.2-46(A); 12 VA. ADMIN CODE § 5-110-70.

<sup>13</sup> This opinion is limited to vaccination requirements imposed by state law as a condition of attending schools and childcare facilities. To attend schools and childcare facilities, state law requires only that children receive those

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### Conclusion

It is my opinion that, should the CDC modify its recommended childhood immunization schedule to include vaccination against COVID-19, children enrolled in schools and childcare facilities in Virginia will not be required to obtain a COVID-19 vaccine as a condition of attendance.

With kindest regards, I am,

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jason S. Miyares".

Jason S. Miyares  
Attorney General

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vaccinations expressly enumerated in the statute or otherwise promulgated in the State Board of Health's regulations. It does not require that children receive every vaccination recommended by the CDC. The statutory provision that parents "cause" their children "to be immunized in accordance with the Immunization Schedule developed and published by the [CDC]" does not alter the analysis. Section 32.1-46(A). That provision does not impose any requirements for school attendance; all such vaccination requirements are expressly enumerated in the statute and the State Board of Health's regulations. Thus, for example, a child who has not received an annual influenza vaccination may attend school in Virginia notwithstanding that the CDC recommends that children receive annual influenza vaccinations precisely because the General Assembly and State Board of Health have elected not to require the influenza vaccination as a condition of school attendance.