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October 11, 2005

FILE # ML-44455-05

I.D. # 44455

The Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
Post Office Box 12548  
Austin, Texas 78711-2548

RQ-0403-GA

Re: Whether private schools must accept for enrollment children who have received an exemption from immunizations required by the Texas Health and Safety Code?

Dear General Abbott:

The purpose of this letter is to request an opinion on whether private schools, from preschool through secondary school, must accept for enrollment children who have received an exemption from immunizations required under the Texas Health and Safety Code.

Texas law is unclear what child immunization laws, specifically those establishing an exemption from immunization requirements, apply to children enrolled or seeking enrollment in private schools. Texas Health and Safety Code §161.004 establishes immunization requirements for "every child in the state" and provides for an exemption from those requirements under certain circumstances. Texas Health and Safety Code §81.023 references the formulation and implementation of immunization requirements for students admitted to *public or private* primary or secondary schools, but does not itself establish any requirements. Texas Human Resources Code §42.043 establishes immunization requirements and exemptions for children in facilities regulated under Chapter 42. And, finally, although Texas Education Code §38.001 establishes specific



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immunization requirements, including exemptions therefrom, it applies only to educational institutions supported in whole or in part by state tax funds.

Although Health and Safety Code §161.0041 implies that an exemption from immunization requirements may be claimed under either Health and Safety Code §161.004, Education Code §38.001, or Health and Human Services Code §42.043, it is not clear whether a private school (preschool, primary school or secondary school) not subject to the provisions of Education Code Chapter 38 is required to accept an exemption pursuant to Health and Safety Code §161.004 or Health and Human Services Code §42.043 and enroll the exempt child.

I respectfully request an opinion on the foregoing issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wentworth", with a horizontal line extending from the end of the signature.

Jeff Wentworth  
Chairman  
Senate Jurisprudence Committee

JW/kh