

General Law

The End of an Era: The Abolition of Religious Exemptions to Immunization Requirements

Once eradicated in the United States, the measles virus is making a dangerous comeback. It starts with a fever, runny nose, cough, bloodshot eyes and sore throat, followed by a rash that spreads all over the body. From January 1 to September 5, 2019, there were approximately 1,241 confirmed cases of measles in 31 states, with over seventy-five percent of cases in New York.¹

Prior to June of 2019, New York State law required every student in public school to be immunized against measles and various other diseases. That law included an exemption for children whose parents held “genuine and sincere religious beliefs” opposing immunizations. However, lethal measles outbreaks, coupled with increasing requests for exemptions, have fueled health concerns about the vulnerability of children and school populations.²

In response, on June 13, 2019, Governor Andrew M. Cuomo signed legislation that immediately eliminated non-medical (i.e., religious) exemptions from school vaccination requirements for children. As a result, previously granted religious exemptions were – and are – no longer valid. This article describes the current law of student immunizations, summarizes the history of the religious exemption, details challenges to the new law, and explains how schools may combat a disease outbreak.

An Historic Change

Historically, parents and guardians who possessed genuine and sincere religious beliefs that were contrary to immunizations could obtain an exemption to the immunization requirements described above.³ To qualify, parents and guardians had to submit a written and signed statement declaring that their objection to immunization was based on a sincere and genuine religious belief that prohibited the immunization of their child. Traditionally, the school principal made the final decision as to whether to grant the exemption.

Prior to the repeal of the religious exemption, Suffolk and Nassau Counties were among the counties with the highest numbers of students with religious exemptions in the state (2,778 and 1,604 students, respectively).⁴

Now, as a rule, no child may enroll in or attend public school for more than 14 calendar days without either immunization certifi-



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cation or other acceptable evidence of legally required immunizations.⁵

This period may be extended up to 30 days for any student who has transferred from another state or country and can show a good faith effort to get the necessary certification or evidence of immunization. Exceptions apply only to stu-

dents who have received a medical exemption or are deemed “in process,” which means that the child must have received at least

the first dose in each required immunization series and has age appropriate appointments scheduled to complete the immunization series.

Legislative Concerns Regarding the Religious Exemption

Recent measles outbreaks sparked a new push by leaders in state government to limit nonmedical exemptions to vaccination requirements. For example, New York State Assembly Bill No. A06564B would add a new Section 2167-a to the Public Health Law that permits any child who is at least 14 years of age to have administered to himself or herself, regardless of parental consent, certain immunizations

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IMMUNIZATION ...

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that are required or recommended by law.⁶ Supporters have argued that unvaccinated students would put others at risk, especially vulnerable populations who cannot receive inoculations for various medical reasons.

Opponents have argued that religious exemptions implicate serious First Amendment issues that cannot be ignored. They claim that abolishing religious exemptions would infringe on parental rights, violate religious freedoms, and unfairly stigmatize unvaccinated students.

Current Status of the Law

In response to the public health threat posed by the recent measles outbreak, Governor Cuomo signed new legislation on June 13, 2019 to eliminate religious exemptions. The new legislation immediately repealed Public Health Law § 2164(9), which previously exempted children whose parent or guardian held “genuine and sincere religious beliefs” from complying with the state’s immunization requirements. Thus, “there is no longer a religious exemption to the requirement that children be vaccinat[ed] against measles and other diseases to attend” the following⁷:

- public, private, or parochial school (for students in pre-kindergarten through 12th grade);
- child day-care settings;
- summer schools overseen by the State Education Department;
- summer child day-care programs overseen by the Office of Children and Family Services; and
- extended school year for students with disabilities.⁸

How did the new law eliminate past religious exemptions? It did not include any “grandfather clause” or any other means for those with past religious exemptions to remain exempt. Thus, the only remaining exception from immunization is for legitimate medical reasons where it may be detrimental to a child’s health.⁹

With respect to children who previously had religious exemptions, school districts must now take the same steps that would be required for any other child who is out of compliance with the state’s immunization requirements. Among other things, school districts must inform parents that:

- their children must be immunized;
- immunizations may be administered by any health practitioner; and/or
- the child may be immunized free of charge by the health officer in the county where the child resides.

Ultimately, schools *must exclude* such students who lack required proof of immunization. Schools may not permit children without the required proof to attend school for more than 14 days, or 30 days where parents can demonstrate that their child has received at least the first dose of each required immunization series *and* has age-appropriate appointments scheduled to complete the immunization series.



Challenges to the Amendment

While numerous other lawsuits have similarly challenged the repeal, the two cases described below have received the most attention.

State Lawsuit

On July 10, 2019, fifty-five families commenced a lawsuit in Albany County Supreme Court.¹⁰ They sought to reinstate the religious exemption. Among other claims, the families argued that the change to the law interfered with their constitutionally-protected religious liberty. Initially, the families filed a motion for a temporary restraining order to reinstate the religious exemption, which the court rejected on July 12, 2019.¹¹ On August 14, 2019, the parties had oral arguments on a similar motion for a preliminary injunction to reinstate the religious exemption.

The court denied the preliminary injunction on August 23, 2019.¹² The court noted that while plaintiffs “had established the potential for irreparable harm,” they had failed to demonstrate that their potential injury was greater than that which would be suffered by individuals who cannot receive vaccinations due to age or medical reasons and other unvaccinated individuals. Additionally, the court explained that plaintiffs had failed to demonstrate a likelihood of success on the merits, a prerequisite to the grant of a preliminary injunction. The court noted that case law has indicated “mandatory vaccination laws are within states’ police power” and that protecting the public health is “unquestionably a compelling state interest.”

On August 27, 2019, the plaintiffs appealed the decision to the Third Department, which affirmed the decision of the Albany County Supreme Court.¹³ As of September 6, 2019, plaintiffs plan to appeal the decision to the Court of Appeals.¹⁴

Federal Lawsuit

On July 25, 2019, six families of children with disabilities commenced a lawsuit in U.S. District Court, Eastern District of New York.¹⁵ They challenged the religious exemption’s repeal on the basis that it interfered with the rights of children with disabilities to receive a free appropriate public education (“FAPE”) under the federal Individuals with Disabilities Education Act (“IDEA”). The families sought a preliminary and permanent injunction designed to reinstate the religious exemption with respect to both students with disabilities and “all [other] students.” They argued that the law removed special education services without providing due process and without regard to their stay-put rights.

On August 19, 2019, the court denied the families’ motion for a preliminary injunction.¹⁶ In the decision, the court similarly emphasized that vaccination mandates fall within the police powers of New York State, and that the plaintiffs had failed to demonstrate that their lawsuit had a likelihood of success. The court reasoned that the decision not to immunize their children was a voluntary one, and as such, their children’s rights were not violated by the state law. Plaintiffs have since withdrawn their complaint.

What May Be Done During a School Outbreak?

In the event of an outbreak in a school of a vaccine-preventable disease listed in Public Health Law § 2164, the State Commissioner of Health, (or in the City of New York, the Commissioner of Health of the City Department of Health and Mental Hygiene), may order the appropriate school officials to exclude from attendance all students who have medical exemptions to immunization against the disease occurring in a school, or who are in the process of receiving immunizations against such disease.¹⁷ Such susceptible students may be excluded until the danger of transmission

has passed. This temporary exclusion requirement has been upheld as constitutional.¹⁸

Conclusion

Strict adherence to immunization requirements is one way that school districts can help safeguard the health of their students, employees, volunteers and visitors by limiting exposure to potentially fatal diseases.

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1. See Centers for Disease Control and Prevention, *Measles Cases in 2019*, available at <https://bit.ly/2iMFK71>.
2. See World Health Organization, *Ten Threats to Global Health in 2019*, available at <https://bit.ly/2VRA77A> (“vaccine hesitance,” or reluctance/refusal to vaccinate, among the top 10 threats to global health).
3. Pub. Health Law § 2164(9) (repealed).
4. David Robinson, *These NY counties had highest number of students using religious exemptions to vaccination*, *The Journal News* (July 24, 2019), available at <https://bit.ly/2GwJ5Ba>.
5. Educ. Law § 914 (citing Pub. Health Law § 2164). Public school students must be immunized against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B.
6. No. A06564, Assemb. (N.Y. 2019).
7. State Department of Health, *Frequently Asked Questions About Legislation Removing Non-Medical Exemptions from School Vaccination Requirements* (June 18, 2019), available at <https://on.ny.gov/2kducvR>; *Vaccination Requirements Applicable to All Students* (July 22, 2019), available at <https://on.ny.gov/2lFt4kV>; *Vaccination Requirements Applicable to All Students* (Aug. 16, 2019), available at <https://on.ny.gov/2kGtGZ>.
8. Note, the immunization requirements do not apply to students attending “camps issued a permit by the State or local health department,” or “activities that are on school property but are open to the general public” (e.g., “SAT prep, sporting events, and plays”). State Department of Health, *Vaccination Requirements Applicable to All Students* (July 22, 2019), *supra* n.7.
9. See State Department of Health, *Department of Health and Office of Children and Family Services Issue Emergency Regulations to Strengthen Medical Exemption Process for School Vaccinations* (Aug. 16, 2019), available at <https://on.ny.gov/2kETYsV>. All medical exemptions must be issued on a medical exemption form approved by the Department of Health. Department of Health, *Immunization Requirements for School Attendance Medical Exemption Statement*, available at <https://on.ny.gov/2M-hlf19>.
10. Dan M. Clark, *Legal Challenge Filed Against NY Law Ending Religious Exemptions for Vaccines*, *New York Law Journal* (July 10, 2019), available at <https://bit.ly/2kvTpBL>.
11. See Shannon Young, *Judge rejects request to temporarily block New York’s vaccination law*, *Politico* (July 12, 2019), available at <https://politi.co/2JyYaUV>.
12. Dan M. Clark, *Albany Judge Rejects Injunction Against NY Vaccines Law Curbing Religious Exemptions*, *N.Y. Law Journal*, (Aug. 26, 2019), available at <https://bit.ly/2lGzIaq>.
13. Children’s Health Defense, *NY Lawsuit #1 Repeal of Religious Exemption (From Most Recent)* (Aug. 27, 2019), available at <https://bit.ly/2lImUAn>.
14. *Id.*
15. See Amanda Ottaway, *NY Brushes Off Bias Claims in New Anti-Vaccine Suit*, *Courthouse News* (July 26, 2019), available at <https://bit.ly/2m2qMML>.
16. See Young, *supra* note 11.
17. 10 N.Y.C.R.R. § 66-1.10. See also Kathleen R. DeCataldo, *State Education Department, Memorandum, Measles Outbreak and School Exclusion* (Dec. 20, 2018), available at <https://bit.ly/2lBrCjw>.
18. See *Phillips v. City of N.Y.*, 775 F.3d 538 (2d Cir., cert. den., 136 S.Ct. 104 (2015)).