

Judge Dismisses Case Challenging NY Regulations Reducing the Number of Medical Exemptions for Vaccinations

On Feb. 17, 2021, Judge Brenda K. Sannes of the Northern District of New York, dismissed a lawsuit which sought to challenge the regulations announced by the New York Department of Health (DOH) in 2019 aimed at reducing the number of medical exemptions from vaccination in school children.

Based on the DOH's recent regulations, a medical exemption must, among other things, contain "sufficient information to identify a medical contraindication to a specific immunization and specify[] the length of time the immunization is medically contraindicated." "Detrimental to the child's health" is defined such that "a physician has determined that a child has a medical contraindication or precaution to a specific immunization consistent with ACIP guidance or other nationally recognized evidence-based standard of care."

The defendants in this case, *Doe v. Zucker, et al*, were made up of school districts from across the state as well as the DOH itself, the Commissioner of Health, and the DOH Director of the Bureau of Immunizations. The plaintiffs consisted of seven families who argued that the state's medical exemptions were "burdensome and narrow" and that they violated their 14th Amendment substantive due process and equal protection rights. The families further argued that New York's practices violated their right to free public education as well as their liberty interest in parenting and informed consent. The court found that the plaintiffs failed to state "a plausible constitutional violation or a federal claim."

The court found that, as has been repeatedly held in the past, education is not a fundamental right. The decision also noted that "courts have repeatedly found that it is for the legislature" to make decisions about immunization requirements and that the courts will oftentimes defer to such decisions. The court concluded "that it is within the legislature's authority to pass regulations defining the conditions under which a medical exemption to school vaccination requirements is to be issued." As such, the court dismissed all of plaintiffs' facial substantive due process claims.

The court further found that the plaintiffs' claims involving their "liberty rights" to informed consent and refusal of unwanted medical treatment were not fundamental rights in the context of the New York state mandatory vaccination laws, as these laws and regulations do not compel parents to consent to vaccinating their children. The court acknowledged the longstanding constitutionality of the legislature's ability to vest state agencies and local officials (i.e., the DOH and the school districts' respective superintendents and principals) with enforcement authority over the New York state vaccination laws and regulations. Lastly, the court rejected the plaintiffs' argument attempting to equate medical exemptions to state vaccinations laws with abortion-related medical exemption jurisprudence, reasoning that unlike medical exemptions to abortions where a mother's health is placed at an unnecessarily high risk, parents of allegedly "medically fragile" schoolchildren may forgo vaccinations and elect to homeschool their children (which several plaintiffs have already done).

The court granted defendants' motion to dismiss in its entirety and dismissed the complaint.

If you have questions about the topics referenced in this memo, please contact [Kate Reid](#), [Kristin Warner](#), any [attorney](#) in Bond's [School Law practice](#) or the attorney at the firm with whom you are regularly in contact.



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