

Multiple Courts Uphold the Repeal of the Religious Exemption

Following the New York State Legislature's repeal of the religious exemption from immunization in New York Public Health Law Section 2164 on June 13, 2019, there have been legal challenges brought in both state and federal courts attempting to circumvent the new law. In a decision rendered on Friday, August 23, 2019 in Albany Supreme Court, Judge Denise Hartman denied the plaintiffs' motion for a preliminary injunction. Plaintiffs, parents of diverse religious backgrounds who had previously qualified for and received religious exemptions, argued that the repeal of the religious exemption was based on religious discrimination and violated their rights to free exercise of religion.

In a 33-page decision, Judge Hartman acknowledged that plaintiffs had established a potential of irreparable harm if the repeal is enforced because parents are left with three choices: (1) violate their religious beliefs by having their child vaccinated; (2) home school their children which can be disruptive to their children's educational and social structure; or (3) move their families to a state that permits a religious or personal belief exemption from vaccination requirements. However, Judge Hartman observed that the potential for irreparable harm had to be weighed against the potential harm to people who are unvaccinated because they are too young or medically fragile, who "are placed at increased risk of contracting diseases which, as history shows, can result in life-long disabilities or death." Accordingly, Judge Hartman held that the plaintiffs were unlikely to succeed on the merits of their claims in light of the litany of cases upholding the state's police powers to require children to be vaccinated before attending schools. Judge Hartman emphasized that the new law does not single out individuals with religious beliefs because the purpose of Section 2164 is the protection of public health.

Although this Albany County Supreme Court lawsuit described above generally challenged the constitutionality of the repeal of the religious exemption, another lawsuit that has been brought in United States District Court, Eastern District of New York, by six parents of children with disabilities, asserts that the repeal of the religious exemption is pre-empted by the Individuals with Disabilities in Education Act (IDEA), and that disabled students are entitled to attend school regardless of their vaccinated status. At the outset of their lawsuit, the plaintiffs requested an injunction to ensure that schools continue to permit disabled students to receive special education services during the course of the litigation, regardless of their vaccinated status.

On August 19, 2019, U.S. District Judge Allyne Ross denied the plaintiffs' motion for a preliminary injunction. Judge Ross held that the IDEA does not preempt Section 2164 of the Public Health Law because there is no conflict between the federal requirement to provide special education to students with disabilities and Section 2164 which mandates compliance with immunization requirements for all students.

Judge Ross also held that parents of students with disabilities who voluntarily choose to not comply with Section 2164 immunization requirements are not entitled to a "stay put" or "pendency" order pursuant to the IDEA because Section 2164 neither mandates nor imposes a change in placement. Since "stay put" orders are issued when a school

changes or proposes to change a student's educational placement, a parent's unilateral decision not to comply with immunization requirements does not trigger the "stay put" procedural safeguards in the IDEA. The plaintiffs discontinued the lawsuit on August 22, 2019, three days after Judge Ross denied their motion for preliminary injunction.

Below are some take-away points regarding the new requirements of Section 2164:

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1. Students are not exempt from the requirements of Section 2164, unless they receive a valid medical exemption. The new requirements regarding medical exemptions are outlined in our previous informational memo titled, "New York State Tightens Requirements for Medical Exemptions to Vaccinations."
2. Students who previously received a religious exemption must receive the age-appropriate doses of the required vaccines in order to attend any school.

If you have any questions about this new law or have a situation that raises additional questions, please contact [Kate I. Reid](#), [Ayanna Y. Thomas](#), or any attorney at Bond with whom you are regularly in contact.



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