

Question Presented

Can a yeshiva in New York State deny student applications for a religious exemption from immunizations?

Brief Answer

No. All schools, including yeshivas, are bound by New York State law regarding immunizations. This includes ALL the requirements, including a mandate to accept religious waivers.

Discussion

STATUTE:

1. Immunization laws are mandated at the state level. New York State has mandated that all children attending all schools and daycares must be up to date on certain immunizations. (The statute is appended with relevant selections highlighted.)
2. The statute clearly states that a parent may file a religious exemption with the school, and that all schools are required to accept said religious exemptions.
3. NY CLS Pub Health §2164(1a) specifically includes within its jurisdiction, all schools, including yeshivas:

The term “school” means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.

CASE LAW:

1. A student can go in front of the Commissioner of Education and appeal a denial of a religious exemption. Many cases involving private schools have gone before the Commissioner, and the Commissioner has ruled time and time again that private schools, including yeshivas, are bound by NYS law and must accept religious exemptions.
2. In the Appeal of D.W. and N.W. v. Yeshiva of Spring Valley [Decision No. 16,144. August 30, 2010], the Commissioner affirmed the appeal of applicants for the religious waiver against a yeshiva preschool, requiring the yeshiva to accept the student’s religious exemption. (The decision is appended with relevant selections highlighted.)
3. In addition to affirming the right of an applicant to a yeshiva to file a religious exemption, the Commissioner also noted that the yeshiva is not permitted to deny a religious waiver based upon public health concerns.

4. The Commissioner also rejected the yeshiva's contention that religious objections to immunizations are not grounded in Judaic law or cited by outside religious authorities. (The law, as amended in 1989, requires that schools assess solely the *applicant's* interpretations of the religious teachings of the religion which the applicant professes to practice. Not that of third parties or authorities in the field.)
5. The Commissioner ruled:

Respondent asserts that [...] petitioners' claims are not supported by any independent or outside religious authority, written source, tradition, tract, movement, sect, group or the like; and that as a private school it has the right "to deny admission, enrollment or reenrollment to any student on any valid ground which may include concerns over undue and avoidable danger to the health and safety of its pupils and staff."

[...]

First, I reject respondent's contention that as a private school it has the right to deny petitioners' religious exemption request based on its concerns over the health and safety of its pupils and staff. The religious exemption set forth in Public Health Law §2164[9] applies to private and parochial schools and is available to students that attend such schools (*Bowden, et al. v. Iona Grammar School, et al.*, 284 AD2d 357). This was specifically brought to respondent's attention in *Appeal of L.S.* (47 Ed Dept Rep 476, Decision No. 15,758). Also, with respect to the age of petitioners' children, Public Health Law §2164[1][b] provides in pertinent part, "the term 'child' shall mean and include any person between the ages of two months and eighteen years." Accordingly, the exemption provisions apply to petitioners' children.

[...]

Respondent argues that petitioners' objection to immunization is not based on Jewish law or tradition. Respondent also asserts that petitioners' claims are not supported by an independent or outside religious authority. As stated above, it is not necessary for a person to be a member of an organized religion which opposes immunization to claim the exemption. Accordingly, it is not necessary for petitioner's religious objections to be in accordance with Jewish law or tradition or that of any other organized religion (*Appeal of L.S.*, 48 Ed Dept Rep 227, Decision No. 15,845) provided that they are religious in nature.

Public Health Law

TITLE VI- POLIOMYELITIS AND OTHER DISEASES

§ 2164. Definitions; immunization against poliomyelitis, mumps, measles, diphtheria, rubella, Haemophilus influenzae type b (Hib), hepatitis B and varicella.

1. As used in this section, unless the context requires otherwise:
 - a. The term "school" means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.
 - b. The term "child" shall mean and include any person between the ages of two months and eighteen years.
 - c. The term "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown.
 - d. The term "health practitioner" shall mean any person authorized by law to administer an immunization.
2. Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, Haemophilus influenzae type b (Hib), hepatitis B and varicella which meets the standards approved by the United States public health service for such biological products, and which is approved by the state department of health under such conditions as may be specified by the public health council.
3. The person in parental relation to any such child who has not previously received such immunization shall present the child to a health practitioner and request such health practitioner to administer the necessary immunization against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, hepatitis B and varicella as provided in subdivision two of this section.
4. If any person in parental relation to such child is unable to pay for the services of a private health practitioner, such person shall present such child to the health officer of the county in which the child resides, who shall then administer the immunizing agent without charge.
5. The health practitioner who administers such immunizing agent against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenza type b (Hib), rubella, hepatitis B and varicella to any such child shall give a certificate of such immunization to the person in parental relation to such child.
6. In the event that a person in parental relation to a child makes application for admission of such child to a school or has a child attending school and there exists no certificate or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type

b (Hib), the principal, teacher, owner or person in charge of the school shall inform such person of the necessity to have the child immunized, that such immunization may be administered by any health practitioner, or that the child may be immunized without charge by the health officer in the county where the child resides, if such person executes a consent therefor. In the event that such person does not wish to select a health practitioner to administer the immunization, he shall be provided with a form, which shall give notice that as a prerequisite to processing the application for admission to, or for continued attendance at, the school such person shall state a valid reason for withholding consent or consent shall be given for immunization to be administered by a health officer in the public employ, or by a school physician or nurse. The form shall provide for the execution of a consent by such person and it shall also state that such person need not execute such consent if subdivision eight or nine of this section apply to such child.

7. (a) No principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school, or to attend such school, in excess of fourteen days, without the certificate provided for in subdivision five of this section or some other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type b (Hib); provided, however, such fourteen day period may be extended to not more than thirty days for an individual student by the appropriate principal, teacher, owner or other person in charge where such student is transferring from out-of-state or from another country and can show a good faith effort to get the necessary certification or other evidence of immunization.

(b) A parent, a guardian or any other person in parental relationship to a child denied school entrance or attendance may appeal by petition to the commissioner of education in accordance with the provisions of section three hundred ten of the education law.
8. If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health.
- 8-a. Whenever a child has been refused admission to, or continued attendance at, a school as provided for in subdivision seven of this section because there exists no certificate provided for in subdivision five of this section or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type b (Hib), the principal, teacher, owner or person in charge of the school shall:
 - a. forward a report of such exclusion and the name and address of such child to the local health authority and to the person in parental relation to the child together with a notification of the responsibility of such person under subdivision two of this section and a form of consent as prescribed by regulation of the commissioner, and

b. provide, with the cooperation of the appropriate local health authority, for a time and place at which an immunizing agent or agents shall be administered, as required by subdivision two of this section, to a child for whom a consent has been obtained. Upon failure of a local health authority to cooperate in arranging for a time and place at which an immunizing agent or agents shall be administered as required by subdivision two of this section, the commissioner shall arrange for such administration and may recover the cost thereof from the amount of state aid to which the local health authority would otherwise be entitled.

9. This section shall not apply to children whose parent, parents, or guardian holds genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.
10. The commissioner may adopt and amend rules and regulations to effectuate the provisions and purposes of this section.
11. Every school shall annually provide the commissioner, on forms provided by the commissioner, a summary regarding compliance with the provisions of this section.

Appeal of D.W. and N.W., on behalf of their children R.W. and Y.W., from action of Yeshiva of Spring Valley regarding immunization.

Decision No. 16,144

(August 30, 2010)

STEINER, Commissioner.--Petitioners appeal the determination of Yeshiva of Spring Valley (“respondent”) that their children, R.W. and Y.W., are not entitled to an exemption from the immunization requirements of Public Health Law §2164. The appeal must be sustained.

On or about November 25, 2009, petitioners submitted a request for a religious exemption from immunization for their children. By letter dated December 4, 2009, respondent notified petitioners that their request was denied. This appeal ensued. Petitioners’ request for interim relief was denied on January 8, 2010.

Petitioners claim that immunizations are against their sincerely held religious beliefs of Orthodox Judaism and that respondent improperly rejected their request for an exemption.

Respondent asserts that the petition fails to state a claim; that petitioners’ request is an expression of personal philosophy and is not based upon the Orthodox Jewish religion; that petitioners’ claims are not supported by any independent or outside religious authority, written source, tradition, tract, movement, sect, group or the like; that petitioners’ children are preschool age and therefore not required to attend school; and that as a private school it has the right “to deny admission, enrollment or reenrollment to any student on any valid ground which may include concerns over undue and avoidable danger to the health and safety of its pupils and staff.”

I must first address a procedural matter. Additional affidavits, exhibits and other supporting papers may only be submitted with the prior permission of the Commissioner (8 NYCRR §276.5). While this provision permits the submission of additional evidence, it cannot be used to add new claims against a respondent for which notice has not been provided (Appeals of Cass, et al., 46 Ed Dept Rep 321, Decision No. 15,521; Appeal of Johnson, 46 id. 67, Decision No. 15,443). Both parties submitted additional information for consideration. Neither party objected to the submissions. Accordingly, I have considered both submissions.

Respondent contends that at the time of this appeal Rockland County was experiencing an outbreak of mumps and that its school had several students who had been diagnosed with the mumps. The regulations of the Commissioner of Health permit the exclusion of non-immunized students, including those with a religious exemption, until the Commissioner of Health determines that the danger of transmission has passed or other regulatory requirements have been met (10 NYCRR §66-1.10). Based on records on file with the State Education Department, while there was an outbreak of mumps at the time of the commencement of this appeal affecting respondent, there appears to have been a subsequent determination by health officials that the danger of transmission has passed. Regardless, respondent has

failed to demonstrate that there is an exclusion order that remains in effect. Moreover, as petitioners contend, such an exclusion order would not be dispositive of this appeal because petitioners are seeking a permanent religious exemption and an exclusion pursuant to §66-1.10 is by its nature temporary.

Public Health Law §2164 prohibits a school from admitting a child without evidence that the child has received certain immunizations. However, §2164(9) provides:

This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

Whether petitioners' children qualify for a religious exemption requires the careful consideration of whether petitioners' purported beliefs are religious in nature and, if so, whether such religious beliefs are genuinely and sincerely held (see *Farina v. Bd. of Educ. of the City of New York, et al.*, 116 F Supp 2d 503). It is not necessary for persons to be members of a recognized religious organization whose teachings oppose inoculation to claim the statutory exemption (*Sherr, et al. v. Northport-East Northport Union Free School Dist., et al.*, 672 F Supp 81). However, the exemption does not extend to persons whose views are founded upon medical or purely moral considerations, scientific or secular theories, or philosophical and personal beliefs (*Farina v. Bd. of Educ. of the City of New York, et al.*, 116 F Supp 2d 503).

Whether a religious belief is sincerely held can be a difficult factual determination that must be made, in the first instance, by school officials (*Appeal of K.E.*, 48 Ed Dept Rep 54, Decision No. 15,792; *Appeal of R.P. and R.P.*, 47 id. 124, Decision No. 15,648; *Appeal of C.D. and E.D.*, 46 id. 317, Decision No. 15,520). A parent/guardian who seeks a religious exemption must submit a written and signed statement to the school stating that the parent/guardian objects to their child's immunization due to sincere and genuine religious beliefs which prohibit the immunization of their child (10 NYCRR §66-1.3[d]). If, after reviewing the parental statement, questions remain about the existence of a sincerely held religious belief, the principal or person in charge of a school may request supporting documents (10 NYCRR §66-1.3[d]).

In determining whether beliefs are religious in nature and sincerely held, school officials must make a good faith effort to assess the credibility of a petitioner's statements and sincerity and may consider a petitioner's demeanor and forthrightness. While school officials are not required to simply accept a statement of religious belief without some explanation, they similarly should not simply reject a statement without further examination (*Appeal of L.K.*, 45 Ed Dept Rep 10, Decision No. 15,243; *Appeal of D.K.*, 44 id. 47, Decision No. 15,094; *Appeal of C.R. and C.R.*, 44 id. 39, Decision No. 15,091).

First, I reject respondent's contention that as a private school it has the right to deny petitioners' religious exemption request based on its concerns over the health and safety of its pupils and staff. The religious exemption set forth in Public Health Law §2164[9] applies to private and parochial schools and is available to students that attend such schools (*Bowden, et al. v. Iona Grammar School, et al.*, 284

AD2d 357). This was specifically brought to respondent's attention in Appeal of L.S. (47 Ed Dept Rep 476, Decision No. 15,758). Also, with respect to the age of petitioners' children, Public Health Law §2164[1][b] provides in pertinent part, "the term 'child' shall mean and include any person between the ages of two months and eighteen years." Accordingly, the exemption provisions apply to petitioners' children.

In their request to respondent, petitioners described their beliefs as follows:

We believe there is a supreme universal force or spirit which can be found everywhere. This supreme universal force or spirit could be called "God", the guiding and Supreme Authority. The human body is a creation of this Supreme Authority and is therefore divine.

We believe the body's immune system is also divine and must not be defiled by immunizations which are a violation of the Supreme Authority, and therefore "unholy". Since immunizations are "unholy" they violate our religious beliefs.

Our religious beliefs are also based upon the understanding of what God requires of us as provided for in the Bible.

For the life of flesh is in the blood and I have given it to you upon the alter to make an atonement for your souls; For it is the blood that maketh an atonement for the souls (Leviticus 17:11).

Follow God your Lord, remain in awe of Him, keep His commandments, obey and serve Him and you will then be able to cling to Him. The physical body is the form which houses the lofty soul and therefore must remain holy and pure and God would keep the body healthy without defilement, you must be holy, since I am God your Lord, and I am holy (Leviticus 19:1).

Petitioners further state:

Our religious beliefs teach us that the soul of man dwells within the blood of one's body. An invasion of this holy sphere is viewed by us as a defilement to the holy dwelling place of the soul. Since we are divine creations and holy, the invasions of a substance (immunizations) that man has created (and therefore not divine or holy), defiles this sacred vessel. This includes all immunizations.

Petitioners explain that many Orthodox Jews have different religious views and different Biblical interpretations; they cite the differing interpretations of views on women covering their heads and men shaving their beards as examples. Petitioners also argue that simply because many Orthodox Jews who share the same interpretation of a Biblical reference may cite that reference for their belief does not mean that their belief is not sincerely held.

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief (8 NYCRR §275.10; Appeal of Brown, 46 Ed Dept Rep 584, Decision No. 15,602; Appeals of Hubbard, 46 id. 533, Decision No. 15,585; Appeal of Darrow, 46 id. 182, Decision No. 15,477).

Based on the record before me, I find that petitioners have met their burden of proving that respondent's determination that their objections to immunization are based on philosophical rather than religious beliefs is arbitrary and capricious. The weight of the evidence supports petitioners' contention that their opposition to immunization stems from genuine and sincerely held religious beliefs. Respondent argues that petitioners' objection to immunization is not based on Jewish law or tradition. Respondent also asserts that petitioners' claims are not supported by an independent or outside religious authority. As stated above, it is not necessary for a person to be a member of an organized religion which opposes immunization to claim the exemption. Accordingly, it is not necessary for petitioner's religious objections to be in accordance with Jewish law or tradition or that of any other organized religion (Appeal of L.S., 48 Ed Dept Rep 227, Decision No. 15,845) provided that they are religious in nature.

The record does not support respondent's conclusion that petitioners' objection to immunization is philosophical. Petitioners' beliefs and their objection to immunization appear to be principally based upon their interpretation of Biblical passages and concepts that are religious in nature (see Appeal of L.S., 48 Ed Dept Rep 227, Decision No. 15,845). They believe in a supreme universal force or spirit which "could be called 'God'," that the soul dwells within the blood, and that invasion of this sphere by an immunization substance defiles the dwelling place of the soul.

Respondent's executive director reviewed petitioners' statement and rejected the exemption stating that petitioners' request "seems to be an expression of personal philosophy and is not at all based upon the Orthodox Jewish religion." There is no indication in the record that respondent requested any supporting documents or other information from petitioners to further explain or clarify their religious beliefs. Even though respondent is in the best position to assess petitioners' credibility, there is no indication that an assessment of credibility was made. Instead, respondent rejected petitioners' application as an expression of personal philosophy without further examination and as not based on an organized religion. Moreover, there is no evidence in the record that petitioners' concerns were actually based upon health or medical concerns or personal objections to immunizations, or that anyone disputes the sincerity of petitioners' beliefs. Accordingly, on the record before me, I find respondent's determination to be arbitrary and capricious.

Finally, I note that respondent was not represented by an attorney in this appeal. Section 275.15 of the regulations of the Commissioner of Education states, in pertinent part, "A school district, corporation, LLC, LLP or other business entity shall appear only by an attorney" According to records on file with the State Education Department, respondent is a not-for-profit corporation. Accordingly, respondent is reminded that in any future appeals, it must be represented by an attorney.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that respondent grant petitioners' children religious exemptions from the immunization requirements pursuant to Public Health Law §2164(9).

END OF FILE.