

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JANE DOE,	:	25-CV-02304(GRB)
Plaintiff,	:	
	:	
-against-	:	United States Courthouse
	:	Central Islip, New York
	:	
OCEANSIDE UNION FREE	:	August 12, 2025
SCHOOL DISTRICT, et al.,	:	2:00 p.m.
Defendants.	:	

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TRANSCRIPT OF CIVIL CAUSE FOR PRE-MOTION CONFERENCE
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by computerized stenography. Transcript
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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise. Calling case civil
3 2025-2304, Doe versus Oceanside Union Free School District, et
4 al.

5 Counsel, please state your appearances for the
6 record.

7 MS. GIBSON: Sujata Gibson and Chad Davenport
8 appearing for the plaintiff.

9 THE COURT: Use the mic, otherwise we wont be able
10 to hear you. Feel free to remain seated while you speak.

11 MS. WEISBORD: Chelsea Weisbord and Danielle Jacobs
12 from Sokoloff Stern, and we represent the school defendants.

13 THE COURT: We are here for argument on the
14 preliminary injunction motion. I have lots of questions, but
15 plaintiff's counsel, do you want to lead off?

16 MS. GIBSON: I represent the plaintiff Jane Doe --

17 THE COURT: Is this our first time meeting?

18 MS. GIBSON: It is, your Honor.

19 THE COURT: I don't know if you had an indication
20 that there were lots of people coming today. It would have
21 been quite helpful and professional to help us know that. I
22 managed to arrange to get the big courtroom on short notice.

23 MS. GIBSON: I did call the Court. I did call.

24 THE COURT: You did? News to me. All right. I'm
25 always the last to know everything.

1 Ms. Gibson, take it away.

2 MS. GIBSON: Thank you, your Honor.

3 So I represent the plaintiff, Jane Doe, who brings
4 this motion on behalf of her 16-year-old daughter, Sarah Doe.
5 They are here with us at the table.

6 This motion seeks preliminary injunction to allow
7 Sarah Doe to enjoin the Oceanside Union Free School District
8 from excluding Sarah Doe from school for her upcoming junior
9 year.

10 The exclusion triggers, as in the motion papers, the
11 exclusion triggers not only violations of the state and
12 federal disability laws, but it also violates the United
13 States Constitution and the plain language of the Public
14 Health Law in New York State.

15 Sarah was a healthy child until 2019 when she was
16 forced to take 18 vaccine doses on a very compressed time line
17 over a course of a matter of weeks in order to attend school,
18 after New York appealed the religious exemption. The impact
19 on her health was catastrophic. She has now been in and out
20 of the hospital. She's almost died multiple times. She has a
21 whole list of symptoms that doctors cannot fully understand, a
22 lot of conditions that are debilitating. She suffers from von
23 Willebrand's disease and a host of anaphylactic rashes that
24 will not go away with treatment. She gets paralyzed sometimes
25 and nobody knows why. So she submitted -- she's only missing

1 one vaccine dose, and this year -- last year, she submitted a
2 medical exemption because her titers were no longer high
3 enough to show she was immune to Hepatitis B.

4 THE COURT: You can assume I've read everything
5 you've submitted, and that's actually a fairly big statement
6 because it's bigger than me. I can barely carry it, but I've
7 read everything. I really would like you to focus, if you
8 would, on the current request. In other words, I believe
9 what's relevant for today is a request for the coming year,
10 which really turns, I think, on one of the certified exemption
11 forms, I think, but if you, sort of, focus in on that, that
12 would be helpful.

13 MS. GIBSON: Thank you, your Honor. That is
14 helpful.

15 Yes, so we come to you with a fresh injunctive
16 request that is based on the denial this summer. Her doctor
17 certified that she is -- she has a precaution and
18 contraindication to the Hepatitis B vaccine because her
19 conditions are listed on the package inserts, which is one of
20 the things the form says is a basis for granting exemption,
21 and she needs exemption to avoid catastrophic impacts on her
22 health.

23 THE COURT: It's Dr. Garbitelli; correct?

24 MS. GIBSON: That's right. Dr. Garbitelli, Your
25 Honor.

1 Dr. Garbitelli is one of seven physicians, if you
2 include our expert, who has certified Sarah Doe cannot take
3 this vaccine.

4 THE COURT: For today's purposes, we have one;
5 right? In other words, we're really focused on the current
6 request and whether it satisfies the statute, yes?

7 MS. GIBSON: That is correct, your Honor. The
8 others are corroborating evidence.

9 THE COURT: Fair. It's an interesting background.
10 It really is.

11 MS. GIBSON: Especially because even a walk-in
12 clinic refused to vaccinate her.

13 THE COURT: Yes. I did pay close attention to that.

14 MS. GIBSON: So she was denied on July 14th, and the
15 District's discretionary denial violates her rights, not only
16 under the disability statutes, but also under the law. So I'm
17 going to press first likelihood of success and then talk about
18 irreparable harm.

19 So starting with the disability claims, which this
20 court did not rule on in the previous motion, defendants do
21 not contest that Sarah has asserted the elements of a
22 disability claim and that she is likely to succeed on them.
23 They do not contest that she's disabled, which under the ADA's
24 broad definition, and under New York State Humans Rights Law's
25 broad definition since 2009 amendments, there is no question

1 about they do not contest that she submitted an accommodation
2 request or that it was denied. She has met her *prima facie*
3 case requirement.

4 The burden then shifts to them to prove that it
5 would be an undue hardship to accommodate her, which they
6 cannot do as a matter of law.

7 In New York State, since the '70s, it has been
8 illegal to exclude children, even if they have active
9 Hepatitis B. So under *New York State Association for Retarded*
10 *Children v. Carey*, the Eastern District of New York held that
11 there's not enough of a risk of transmission in a school
12 setting to make these children dangerous and justify their
13 exclusion from school, and the Second Circuit affirmed that.

14 So to the extent that --

15 THE COURT: In fairness, the Second Circuit said on
16 these facts in this case, and these things change all the
17 time, fair?

18 MS. GIBSON: Yes, Your Honor.

19 THE COURT: I don't know that that matters here, but
20 I just want to point out that that was a fairly long time ago.

21 MS. GIBSON: Well, since the '70s there has been no
22 case where a school has tried to exclude someone because they
23 have active Hepatitis B that would overturn that, so there's
24 no, like, new case law. In fact, we have in our papers that
25 the CDC recently submitted a response to a FOIL request saying

1 there's never been, in the entire nation, a single case of
2 transmission, that they're aware of, of Hepatitis B in a
3 school setting.

4 So -- but that's even for children with Hepatitis B.
5 So the ADA actually requires a more individualized look to see
6 if the particular child poses risk, and you have to prove it.
7 The school district has to prove it using objective evidence
8 that she presents such a danger that they cannot accommodate
9 her in any way.

10 So Sarah doesn't even have Hepatitis B. She's just
11 missing the third dose of the vaccine, and all of her treating
12 physicians -- and this is where all of them become relevant,
13 because she has all kinds of physicians who have certified
14 that the risks of this vaccine to her, given her current
15 conditions, far outweigh any risk that Hepatitis B would pose
16 to her. So there is no argument -- safety argument that the
17 school can employ.

18 But then we look at the Public Health Law. The
19 Public Health Law says, if any physician certifies that a
20 child may be at risk of harm, they're exempt. Well, that
21 would mean that any one of these six would count, and the
22 school doesn't have any authority to overrule it. That is
23 what the *Starpoint* decision in the Western District held.

24 But, going forward to the regulations, the *Starpoint*
25 decision also looked at those, the school district argues,

1 well, maybe that gives us some leeway to deny her because it
2 predefines, may be detrimental to a child's health, to mean
3 that a physician has certified that the condition of the child
4 is such that there's a precaution or contraindication that's
5 consistent with ACIP guidelines from the CDC or other
6 nationally recognized evidence-based standards of care.

7 To read those regulations in the manner that the
8 school district is reading them violates not only the ADA, but
9 also the Constitution and also the supremacy clause. They
10 cannot read it in such a way that it violates the ADA or New
11 York State Human Rights Law, and so forth.

12 THE COURT: I think the supremacy clause is a reach.
13 But, that said, your adversary has raised this issue. It's
14 really very interesting. I was listening very carefully, and
15 you started out with the ADA -- there are some issues there --
16 but the Public Health Law is much more interesting to me. The
17 standard, one would think, and your adversaries argued to me,
18 this should be an Article 78 proceeding in the state court
19 where they enforce the state law.

20 Did you file such a proceeding?

21 MS. GIBSON: No, your Honor. It's well established
22 law that you can bring either an Article 78 or a plenary
23 claim. And especially for an ADA claim where you have issues
24 of accommodation where -- and a constitutional claim. They
25 can't reach -- it's a different standard. So the Second

1 Circuit has case law, and I'm happy to provide it
2 afterwards --

3 THE COURT: I'm very familiar with the hybrid --

4 MS. GIBSON: You can bring one or the other or both.

5 THE COURT: What are you here about? In other
6 words, right now, you have a family who wants to get a child
7 back to school. I get it. You are here. It's important.
8 You wrote me, I scheduled it, we're here. But I don't know if
9 I can help you.

10 In other words, it may be that that has to go back
11 to a state judge who is going to interpret the state law, even
12 if it were blazingly obvious to me.

13 Hear the whole thing and then you can shake your
14 head no, okay?

15 Even if it were blazingly obvious to me that they
16 misapplied the state law, am I really the right person to make
17 that determination? That's the part I don't understand.

18 MS. GIBSON: Your Honor, this court has jurisdiction
19 and must exercise jurisdiction over the ADA claim, and if it
20 finds that she's likely to succeed there, she'll grant
21 preliminary injunctive relief, and we did bring this case in
22 state court and they removed it themselves to federal court.

23 THE COURT: Correct. I agree with you there. I
24 will have some questions for them, don't worry.

25 But if it were conceivable to deem this complaint

1 amended to include a request for Article 78-type relief, would
2 you want that?

3 MS. GIBSON: Yes, but it wouldn't solve all -- it
4 wouldn't address all of her damages.

5 THE COURT: Well, nothing fixes everything. But for
6 today's purposes, it just strikes me that perhaps the Article
7 78 standard is really what you're looking to enforce here.

8 MS. GIBSON: Your Honor, I'm trying to enforce the
9 preliminary injunction standard, which is that this court can
10 enjoin behavior, if it's likely that she'll succeed, and not
11 as -- you know, essentially akin to an Article 78, but she's
12 not required to limit herself to such relief in order to bring
13 these claims. And, in fact, this court must exercise
14 jurisdiction over the ADA and constitutional claims and
15 cannot -- cannot -- the state law cannot undermine that and
16 say, you're now relegated to a special proceeding with
17 different procedural rules and the burdens.

18 THE COURT: Okay.

19 MS. GIBSON: But moving forward to the --

20 THE COURT: I think you have a long road to try to
21 get a preliminary injunction tied solely to the ADA here. I
22 think that's a really tough road.

23 On the other hand, I tend to agree with you that the
24 Public Health Law seems more obvious, so you're putting, I
25 guess, the Court in a very difficult position.

1 MS. GIBSON: Would the Court be able to share, what
2 is the -- since she's done -- she's asserted a *prima facie*
3 claim and they haven't shown a burden on danger --

4 THE COURT: It's not necessarily a violation of the
5 ADA to misread a state statute. That's the problem. In other
6 words, you're here saying, look at state statute, Judge. It
7 says certification, exemption, we're done. That's
8 interesting. I just don't know if that's actionable under the
9 ADA.

10 MS. GIBSON: Your Honor, I can address that point.
11 I'm so glad you clarified.

12 So the ADA requires them to accommodate her. It's a
13 proactive requirement that they accommodate disabilities
14 when -- unless they can show that the child is a danger to
15 others or there's a significant hardship. So the way that the
16 statute ties in is they're trying to say the statute so
17 clearly requires them to deny her that it would be an undue
18 hardship because they would be issuing a per se violation of
19 the law if they allowed this child to be accommodated under
20 the ADA. And that is a real stretch. As your Honor said, the
21 statute is pretty clear and it in no way requires them to deny
22 her. If they argue that they have discretion whether to
23 accept or deny her, they can't exercise that discretion in
24 such a way as violating the ADA and that ADA statute requires
25 accommodation.

1 We're not talking here about a discrimination claim
2 under the ADA, although I think she has those, too, but those
3 are going to be preserved for plenary action or for the merits
4 action. What we're only addressing right now is the failure
5 to accommodate claim, and they have a proactive burden to do
6 that. So the only defense they could have is to say that the
7 law doesn't allow them to.

8 But if you look at the facts of this case beyond
9 even the statute, they can't make that argument because even
10 the letter that they purport to have gotten from the State
11 Department of Health, which, by the way, is unsigned and sent
12 by a nurse -- e-mailed by a nurse -- says at the bottom, you
13 know, the District may seek a consultation with the school
14 district doctor or the state, but, ultimately, the principal
15 or person in charge has to make this determination and that
16 determination has to comply with the ADA. It also has to
17 comply with the US Constitution.

18 So I'm happy to answer more questions on the
19 disability claim, but I would like to try to talk about --

20 THE COURT: Counsel, you tend to blend things a
21 little bit. When you say, as per the US Constitution, that's
22 a long document. There's a lot in there.

23 Are you referring to your substantive due process
24 claim at that point? I don't understand what you're referring
25 to.

1 MS. GIBSON: Yes, your Honor. There are
2 substantive -- it all comes down to a case called *Mahmoud*. So
3 in June, the Supreme Court issued a new case --

4 THE COURT: Thanks to you, I read it very carefully.
5 I just don't see how it applies here at all.

6 MS. GIBSON: The Second Circuit has been dealing
7 with the issue of whether religious accommodation is required
8 from a vaccine --

9 THE COURT: Counsel, I will stop you really early
10 there and say this: The Second Circuit has found that the
11 state's religious exemption system is constitutional. You
12 tell me that *Mahmoud* changes that. I will not say whether I
13 believe you or not or I agree with you or not. It doesn't
14 matter. If I agreed with you 100 percent, you need to go to
15 the Second Circuit and have them change that law. I am not
16 authorized to change Second Circuit precedent. You know that.

17 So let's not talk about the religious exemption
18 because the facts of this case don't really relate to it, A.

19 And then, B, I can't help you even if I wanted to;
20 right?

21 MS. GIBSON: Your Honor, if I could, in our reply,
22 we address when the Court is to apply Supreme Court versus
23 Second Circuit precedent when there's an intervening change in
24 the law. But beyond that, the first point is that our case
25 under *Miller v. McDonald*, which is the controlling Second

1 Circuit precedent, our case has the facts that would
2 require -- would find for religious violation, so I'm going to
3 talk about *Miller* briefly.

4 THE COURT: Please don't. You're wasting your time.
5 This is a medical exemption case. That's what's in front of
6 me today. The preliminary injunction you want has nothing to
7 do with the religious objections that were raised in 2019.
8 That's not what we're here about today.

9 MS. GIBSON: Your Honor, if I may, she's being
10 burdened right now with her religious beliefs.

11 THE COURT: Counsel, you can spend your time any way
12 you want, but sometimes you should read the room and know when
13 you're barking up the wrong tree. I can't help you with that.
14 That's not within my authority today to help you with. The
15 medical exemption is a really serious issue. A really serious
16 issue. If you want to spend your time somewhere, that's what
17 I would do, if I were you. But do what you want.

18 MS. GIBSON: I'm listening to your Honor. I would
19 like to just address one thing from *Miller* and then I will
20 move on.

21 *Miller* said that it couldn't give First Amendment
22 protection on the facts of that case, and the reason was
23 because there was no evidence that school districts were
24 exercising discretion to deny religious -- to deny medical
25 exemptions. And if they had had that evidence, the law would

1 not be generally applicable and strict scrutiny would apply to
2 the free exercise burden. This is a new free exercise burden
3 we're talking about. Not a 2019 one, but a new one, where the
4 school district is asking a child, whose parents already had
5 to violate their religious beliefs with catastrophic
6 consequences, and do not want to do that again, to do it
7 again. That is an upcoming burden. And under *Mahmoud* and
8 *Miller*, that means -- and *Mahmoud*, by the way, changes
9 *Miller's* central holding, which was that they could get around
10 it by saying that the children could attend school in another
11 state or home school. *Mahmoud* says that is not acceptable,
12 and when there are burdens on parental religious rights, it
13 is, per se, irreparable harm, to exclude them from school.

14 So I will move on from that. The Court has the
15 papers, and I understand your position. I would ask that you
16 consider that point, if you haven't already.

17 But moving on to the disability claims and
18 irreparable harm.

19 One of the things that we put in our papers is,
20 under *Plyler v. Doe*, it is also already longstanding
21 irreparable harm to exclude a child from school. And in this
22 case, it's not just, per se, irreparable harm, but there's
23 actual urgent harms that are awaiting this family. One of
24 them is that six, seven doctors, if you count our expert, have
25 now certified she could die, or she could get catastrophically

1 injured if she took this vaccine. She is thinking about it.
2 Her mental state is in such a state of desperation that she is
3 thinking about doing it anyway. And, if she were to do that
4 and get harmed, she would have no remedy.

5 I represent another family in Long Island, who was
6 in that precise situation, that child took the vaccine because
7 was suicidal, like my client is, and she was catastrophically
8 injured and she has no remedy. This child deserves to go to
9 school. She is an athlete. She has suffered horrifying
10 disabilities, and all she wants is to try her best to be a
11 normal kid, go to school, play sports, try to get into
12 college, and move on with her life. And the Public Health Law
13 very clearly allows her to do that. There is nothing in the
14 Public Health Law that says she cannot. It is this school
15 district's exercise of unfettered discretion that is keeping
16 her from it, despite the overwhelming medical evidence that
17 she cannot safely take this vaccine. That violates the ADA
18 and the New York State Human Rights Laws accommodation
19 provisions.

20 THE COURT: Did you seek an appeal with the
21 commissioner under 3107 of the education?

22 MS. GIBSON: I actually won a case against the same
23 counsel on that issue, and the Second Circuit held that it's
24 unnecessary. That case is *Doe v. Franklin* --

25 THE COURT: I'm not asking about unnecessary.

1 Counsel, I'm not unsympathetic to what you're saying, but why
2 wouldn't you chase every avenue? That's what I don't
3 understand. And that's the same question I had about your
4 conduct regarding Article 78. Why didn't you file it? It's
5 an expedited proceeding that would have gotten this resolved
6 quickly.

7 MS. GIBSON: Two reasons, your Honor. One, I've
8 don't it before. They take like a year and a half. Two, the
9 commissioner of education has no medical expertise. They rule
10 all over the place on those decisions. They don't even have a
11 doctor look at them.

12 THE COURT: Would it have stopped you from coming
13 here or proceeding with an Article 78 anyway? In other words,
14 why wouldn't you pursue more than one venue is my question.

15 MS. GIBSON: I mean, we -- I have done it before and
16 it's yielded -- it takes so long that it will be moot at the
17 time that she gets a decision.

18 THE COURT: Okay.

19 MS. GIBSON: But also, the arbitrary and capricious
20 standard is not the most favorable standard to us. It's not
21 the one we need to meet. She may need to meet -- under the
22 ADA and New York State Human Rights Law, it's their burden to
23 prove it's unreasonable. We don't need to drag ourselves into
24 a, is there any rational basis for their determination. And
25 that's a completely different burden and it's not fair to her.

1 This court can grant preliminary injunctive relief that can
2 immediately give her relief while the merits of this case play
3 out.

4 THE COURT: Okay.

5 What else?

6 MS. GIBSON: Absent a discussion on the
7 Constitution, which I would really like to have, I think --

8 THE COURT: Save it for another day.

9 MS. GIBSON: I guess, in closing, you know, I will
10 say that the district has not actually offered -- not only do
11 they not contest the three elements of a failure to
12 accommodate claim, which everybody -- you know, they have
13 to -- since they didn't contest them, they've conceded that
14 she's met them, but they also have not offered an undue
15 hardship, and they have not even addressed the balance of the
16 public interest.

17 The public interest has been -- is very clearly --
18 supports accommodating disabled children. The Americans with
19 Disabilities Act was specifically amended in 2009 to take the
20 focus off of fighting about whether the child really is
21 disabled or really needs accommodation and make the focus be
22 on whether that child could be accommodated and what the undue
23 hardship was.

24 THE COURT: I think the public has an interest in
25 Sarah going to school. Right? That's your argument to me,

1 yes?

2 MS. GIBSON: Yes, your Honor.

3 THE COURT: You kind of had me at hello on that one.

4 MS. GIBSON: Thank you, your Honor.

5 THE COURT: All right.

6 Counsel, is there anything you would like to respond
7 to?

8 MS. WEISBORD: Yes, your Honor, but I will keep it
9 brief and focused on the issue that you pinpointed as being
10 the issue that we're here to discuss today, which -- well,
11 first, I would just like to say that, as everyone knows, we're
12 here to discuss a mandatory preliminary injunction, so
13 plaintiff has to show a clear and substantial likelihood of
14 success on the merits. That's one of the core requirements
15 for her motion. So we're not here to talk about whether she
16 may or may not have stated a viable claim under the
17 Constitution or any federal statutes, but we're here to
18 discuss that in particular.

19 So, with that said, I disagree with opposing counsel
20 that we didn't dispute any of the elements of a failure to
21 accommodate claim. One of them is to provide a reasonable
22 accommodation, and the important word here is "reasonable."
23 And the reason why the most recent exemption request form was
24 not a reasonable request is -- comes back to the Public Health
25 Law. The Public Health Law has clear standards on how to

1 navigate state immunizations laws and how to navigate
2 exemption requests.

3 THE COURT: Indeed it does. Let's talk about that.
4 Go ahead.

5 MS. WEISBORD: Yes.

6 It's not discretionary, as plaintiff's counsel has
7 indicated. In fact, there is -- *Miller v. McDonald*,
8 specifically rejected that argument. It held that -- I
9 apologize. I'm in the wrong part of my notes.

10 (Pause.)

11 MS. WEISBORD: It is *Miller*. It held that the
12 statutory exemption under the Public Health Law is mandatory
13 and applies an objectively defined group. And it also goes on
14 to hold that the authority conferred to physicians isn't
15 discretionary. But a physician, when using their professional
16 medical judgment to complete a form, is bound by the contents
17 of the state law and the regulation and that any school
18 officials who are deciding -- ultimately giving the decision
19 to the family is also, you know, bound by those.

20 So to the extent school officials can decide how to
21 go about reviewing exemptions, they don't have this unfettered
22 discretion to, you know, grant or deny an exemption.

23 THE COURT: If you notice, I'm looking puzzled.

24 You're citing the same law to me that I was about to
25 say to you, so I just want to explain to you, I think we're

1 looking at this a little bit differently, but we're in the
2 right place.

3 So Public Health Law, Section 2164(8), it says that
4 if a licensed physician certifies that an immunization may be
5 detrimental to a child's health, the requirements of this
6 section -- meaning, you have to get the shot -- shall be
7 inapplicable until the immunization is found no longer to be
8 detrimental to the child's health.

9 Right?

10 MS. WEISBORD: Correct.

11 THE COURT: Okay. Stay with me.

12 Then in *Miller v. McDonald*, they found -- the Second
13 Circuit, a court I must listen to, says that that exemption is
14 mandatory.

15 Fair?

16 MS. WEISBORD: Correct.

17 THE COURT: So in *Miller*, the Second Circuit says,
18 even though school officials have the authority to conclude
19 that the documents submitted in support of a medical exemption
20 contain sufficient or insufficient information, they do not
21 have discretion to approve or deny the exemptions on a
22 case-by-case basis for any reason.

23 Fair?

24 MS. WEISBORD: Correct.

25 THE COURT: Okay. So, as I said earlier, in this

1 case, there is a long history of medical exemption forms, and
2 they say all different things, but there's one that matters
3 for today for this coming school year. That's Dr. Garbitelli
4 on 6/10. And the reason I say that's the only relevant one is
5 it's the only one that covers the time period.

6 We're on the same page so far, yes?

7 MS. WEISBORD: Yes.

8 THE COURT: So that's DE 32 at 122. We can agree, I
9 think, unless you have information to the contrary, that
10 Dr. Garbitelli is a licensed New York physician, yes?

11 MS. WEISBORD: Yes.

12 THE COURT: He certified in that form that the
13 vaccine may be detrimental to Sarah's health, he signs and he
14 dates it, and he sets out the period for which he thinks it's
15 detrimental going through this school year.

16 Fair?

17 MS. WEISBORD: Yes.

18 THE COURT: So you've got that form, which looks
19 like it satisfies the statute, yes?

20 MS. WEISBORD: No.

21 THE COURT: Well, hang on. Let's go through it a
22 little bit more.

23 If there's any noise, I will clear the courtroom. I
24 don't want to hear any reaction. I don't want to hear
25 anything.

1 He wrote, quote, the vaccine is contraindicated
2 because of, among other things, quote, her adverse reaction to
3 a Hep B vaccine, which greatly increased the risk of a serious
4 adverse reaction, and such risk greatly outweighs any benefit
5 of the vaccine.

6 Do I have this wrong, or is that about right?

7 MS. WEISBORD: That's what it says.

8 THE COURT: Okay.

9 The District then hires a doctor. Or has a doctor
10 on retainer, whatever your relationship is. He reviews this
11 and he says that he would need a medical record documenting a
12 prior severe reaction to a Hep B vaccine, as well as a letter
13 from a treating hematologist, indicating the student should be
14 exempt.

15 Do I have that right?

16 MS. WEISBORD: Yes.

17 THE COURT: Okay. Let's talk about that in two
18 parts.

19 He says, I need a medical record and then I need
20 something from a hematologist.

21 Let's do the medical record first.

22 When he says, I need a medical record documenting
23 this, what does that even mean? In other words, he has a
24 certification, a sworn certification from a licensed doctor,
25 saying this happened. What else is he looking for there? I

1 don't understand.

2 MS. WEISBORD: He's looking for medical
3 documentation showing that there was an adverse reaction to
4 the Hepatitis B vaccine in the past.

5 THE COURT: Right. But you have a doctor saying she
6 had this reaction in the past and the doctor signs it.

7 Isn't that a medical record documenting the past
8 reaction? Does he need to know what her temperature was?

9 I don't understand what he's looking for.

10 MS. WEISBORD: Well, that was not the doctor who
11 treat -- first of all, I don't know if and when any adverse
12 reaction took place. As, you know, plaintiff indicates in her
13 papers, in 2019 she received all of her vaccines on a catch-up
14 schedule. So I think it would be very difficult to show that
15 there was an adverse reaction specific to Hepatitis B, which
16 is the vaccine that we're looking at.

17 But as the Second Circuit said in *Goe v. Zucker*, a
18 state licensed physician can certify the need for a medical
19 exemption, which would be granted if it's based on evidence
20 and not merely her say so. And, in this case, the medical
21 evidence was missing. And it wasn't just the District's
22 physician that reached that conclusion. It was also the New
23 York State Department of Health who reached the same
24 conclusion. And I think it's important to note that's the
25 same exact state agency that the legislator tasked with

1 enforcing this area of law and school immunizations. And the
2 DOH agrees that, at this time, the time of the denial, the
3 required medical information that was needed to show
4 entitlement to the exemption wasn't provided.

5 THE COURT: Okay. I'm not quite following that
6 because I think the statute is pretty clear and we have a
7 certification from the physician. But the school district
8 doctor also says, and I need something from a hematologist.

9 How is it that the school's consulting physician can
10 elevate the requirement?

11 The statute and the requirement is a doctor. It
12 says physician. We all know what that means. But he says,
13 nope, I need a hematologist on this one.

14 How is that following the statute? How is that
15 consistent with the mandatory requirements as set forth by the
16 Second Circuit?

17 The exemption process is mandatory. You get that
18 certification from the doctor. And I recognize there are
19 times when the outcome will be different. We had one in this
20 case -- I'm going to go back on my word a little bit and talk
21 about the old exemption. One of the earlier exemption forms
22 was signed by a nurse. And the school said, it's not a
23 doctor, it's a nurse. Absolutely, right? That's what you can
24 say; they didn't comply with the statute.

25 But here you have a licensed MD. There's no

1 question that he's a doctor. He certifies that she has a
2 problem; it's a bad idea to give her the shot. Under the law,
3 as I can understand it -- and I'm not a doctor, I'm a judge
4 trained in the law -- how in the world can the District say,
5 no, that's not good enough?

6 MS. WEISBORD: Well, so, regarding the other
7 impairments that were alleged, I think both Dr. Haskoor and
8 the state agreed that those are not recognized
9 contraindications or precautions.

10 And as for the previous adverse reaction piece of
11 it, I just want to reiterate that this doesn't just lie with
12 the school physician who, you know, he denied the request
13 based on his finding that there wasn't sufficient medical
14 documentation showing that, but that the Department of Health
15 made an independent investigation and also reached the same
16 conclusion that there's not enough information at this time.

17 And I would also like to point out that the school,
18 in relying on both its school physician and taking the extra
19 step to reach out to the Department of Health and request an
20 opinion before issuing a denial letter, included that language
21 from the letter into the June 10th letter basically saying,
22 according to the state, this is what they think you would need
23 to be able to show that particular precaution or
24 contraindication, and it's been two months and the school has
25 not received anything to that effect.

1 THE COURT: Okay. But what troubles me, I guess, I
2 have a student who wants to go back to school, her parents are
3 here, they submit this documentation, they get the
4 certification, and your doctor's response is, I need a medical
5 record documenting this.

6 What are they supposed to get for him? In other
7 words, I don't even understand, if I'm the parent reading
8 that, what they're supposed to do.

9 I do know, in the history of this matter, they gave
10 up and took her to a -- forgive me -- a clinic,
11 doc-in-the-box. I forget which clinic it was, but one of the
12 drive-by places where they get paid money to give shots, and
13 they said, we're not giving her a shot, not with this
14 background.

15 So I guess the question is, what were they supposed
16 to give you that would make the exemption work?

17 Can you tell me that from the record here?

18 MS. WEISBORD: Well, I just want to start by saying,
19 I'm not a doctor, but from the record, the medical
20 documentation showing that there was an adverse reaction at
21 the time of -- that she received the prior vaccinations.

22 THE COURT: Right. But what I'm asking you is, what
23 did those words mean?

24 Does it have to be a contemporaneous record?

25 I don't understand what they're even looking for.

1 They have a doctor saying, she had a bad reaction in the past.
2 Don't give her the shot now.

3 Why would you need more than that?

4 And what else would you need?

5 That's my question.

6 MS. WEISBORD: So, you know, the school physician is
7 relying on the language set forth in the Public Health Law and
8 accompanying regulations and making a decision based on that,
9 and the school is relying on that decision. And also, in this
10 case, consulting the Department of Health and getting the same
11 response.

12 To the extent that plaintiff is claiming that
13 there's some ambiguity in the statute, or there's some
14 disagreement, that's something that should have been dealt
15 with in a state claim.

16 THE COURT: But I don't think that's what they're
17 suggesting. I don't think they're suggesting there's
18 ambiguity. They're saying it's not ambiguous. In other
19 words, it's what I went through with you before. It says that
20 you need a licensed physician to certify that an immunization
21 may be detrimental to the child's health and then the law is
22 inapplicable to that child, so they have that. I don't think
23 it's a question of ambiguity. The ambiguity comes up from,
24 what did the District's doctor mean when he said, I need
25 medical documentation on this?

1 What does that mean?

2 MS. WEISBORD: That's something that I -- I mean, he
3 obviously is not here. I don't represent him.

4 THE COURT: Okay.

5 MS. WEISBORD: But, you know, based on his email,
6 which is part of the record that I'm trying to find. I
7 apologize. My papers got shuffled.

8 (Pause.)

9 MS. WEISBORD: So as I think your Honor said
10 earlier, he indicated that he would need a letter from a
11 treating hematologist who would be the type of doctor equipped
12 to make that type of diagnosis.

13 THE COURT: Okay. I understand what you're saying.

14 Let me flip to a different piece of this going back
15 to the Second Circuit's case in *NYSARC v. Carey*, which is an
16 old case counsel brought up earlier. I think it's relevant
17 here for a different thought, which is this: It says: The
18 Second Circuit ruled that the activities that occur in a
19 classroom setting were not shown to impose any significant
20 risk that the disease would be transmitted from one child to
21 another.

22 I think that's interesting because there, the Second
23 Circuit is dealing with children who have infections. This is
24 a student who doesn't have an active infection but just hadn't
25 gotten the third in a series of three vaccines. Given the

1 facts here, I think the risk of transmission would have to be
2 less than that.

3 So how should that factor into the Court's analysis?

4 Does that bear on balancing the equities?

5 Does that bear on the public interest?

6 What does that bear on?

7 How do I factor that in here?

8 MS. WEISBORD: You are referring to the case from
9 1978 that was affirmed in 1979?

10 THE COURT: Yes.

11 MS. WEISBORD: First of all, I would like to point
12 out that that case predates the Hepatitis vaccine, which was
13 created in 1991, so it's not analyzing the issue of school
14 immunizations.

15 It's also distinguishable because it was involving a
16 situation where plaintiffs were claiming that they were being
17 discriminated against for having Hepatitis B and being
18 excluded, so this is a completely different fact pattern that
19 we're dealing with here.

20 You know, I would just like to point out that the
21 legislator, you know, is the one who has decided what
22 immunizations students need to have and --

23 THE COURT: But --

24 MS. WEISBORD: -- they included that vaccine for a
25 reason because they wanted to protect the health and safety of

1 the school community.

2 THE COURT: I hear you. There's a lot of other
3 hypotheticals I can spin out here where I would say that's a
4 concern; right? That's easy.

5 But, here, where the risk of transmission seems
6 extremely low, because if kids were actively infected, the
7 Second Circuit went on and said there's no significant risk of
8 transmitting it to somebody who just simply doesn't have the
9 third vaccine as someone with titers -- I'll call them
10 titers -- it has to be lower than that.

11 So assuming we can conclude -- again, we're not
12 medical doctors, but using rational reason that there's a very
13 low risk of impact on anybody else, if that's the case in this
14 particular case, how does that factor into the questions that
15 surround the issuance of a preliminary injunction? Again,
16 balancing the hardships, public interest, all those sorts of
17 things.

18 MS. WEISBORD: Well, there is some risk, as the
19 school nurse explained in her initial affidavit that it's an
20 illness that's transmitted by, you know, fluids, including
21 blood. And in a school, people get injured. Like, she is in
22 a situation where she often has to deal with, like,
23 significant injuries. There have been students who have had
24 significant injuries during shop class. Or, you know,
25 plaintiff is a student athlete. If there's a significant

1 injury and, you know, it would be a risk to her, but also to
2 anyone else who can't get certain vaccines because they have a
3 valid medical exemption, so that goes back to the reasoning
4 why it's on the list in the first place.

5 THE COURT: Okay. All right.

6 What else?

7 MS. WEISBORD: I just wanted to spend a little time
8 talking about a case that plaintiff's counsel cited called
9 *Starpoint Central School District*. She used it as a
10 comparison to this case, but on the facts, it's extremely
11 different.

12 There, first of all, it granted a preliminary
13 injunction motion on the Article 78 claim, but it was after a
14 full factual hearing and limited discovery, and they were able
15 to hear people testify before granting the extraordinary
16 relief of a mandatory injunction, but, in that case, the
17 testimony showed that the school district wasn't going to
18 grant the exemption.

19 Like, for instance, the plaintiff there asked for a
20 short extension because he had a pending doctor's appointment
21 and it was denied.

22 In this case, the exact opposite happened.

23 In fact, in -- I believe it was in October of 2024,
24 plaintiff asked for an extension of her original exclusion
25 date indicating that she had a doctor's appointment scheduled

1 for October 28th where she was going to get her daughter
2 vaccinated with the Hepatitis B vaccine and the principal
3 granted that. So that goes towards the disability
4 discrimination failure to accommodate claims. The school did
5 engage in interactive process and granted leniencies and
6 exceptions -- exemptions when they could.

7 For instance, they granted one of the exemption
8 requests which provided for -- I think it was three months,
9 from November 4th to February 4th. So this isn't a school who
10 is not willing to grant extensions or exemptions to the
11 vaccine laws under any circumstances.

12 The other difference in that case was that the
13 record showed that the reason put in the exemption form was a
14 recognized precaution or contraindication and that there was
15 sufficient proof of it. But, here, we maintain that the
16 impairments that have been identified are not on that list and
17 the one that would qualify, she hasn't provided the requisite
18 documentation to justify an exemption.

19 THE COURT: Let's be clear what you mean when you
20 say the one that would qualify.

21 What are you referring?

22 MS. WEISBORD: Well, the ACIP guidelines identify
23 the adverse reaction --

24 THE COURT: Right, but what's the one thing you're
25 saying she identified that would qualify but you didn't have

1 sufficient information to add on?

2 MS. WEISBORD: When she's claiming an adverse
3 reaction to the Hepatitis B vaccine in the past.

4 THE COURT: Okay.

5 MS. WEISBORD: There's no treatment records or
6 anything from a doctor who treated her at that time to show
7 that that happened, and it's, like I said earlier, it's not
8 even -- she's claiming she had to get all of her vaccines on
9 the catch-up schedule, so there's no evidentiary link
10 between --

11 THE COURT: Just to be clear, you think that the
12 school district is empowered to disbelieve the doctor's
13 certification?

14 MS. WEISBORD: No. The school district -- the
15 school district -- the building principal, the administrators,
16 they're not doctors, just like I'm not a doctor. So they --
17 the board, you know, they retain a school physician and they
18 rely on them to make these types of medical determinations.
19 They're not doctors. And so that's what they did here. And,
20 in this case, their school physician told them that the
21 medical exemption is not valid and can't be approved, and they
22 also went to the Department of Health who said the exact same
23 thing.

24 So with the very agency who created these
25 regulations saying that she hasn't shown a medical exemption

1 that's valid, it's hard to say that there's no truth to that.
2 Like, I think that the Department of Health agreeing is a
3 compelling piece of evidence here that shows that the school's
4 actions were reasonable and that the request wasn't.

5 And it's also on the undo burden requirement of a
6 failure to accommodate claim and also going to the other
7 elements of a preliminary injunction, it's important to note
8 that the school district is required to follow this law.

9 So, you know, at one point in plaintiff's papers,
10 she was suggesting that the school district should -- this
11 might have been more in the context of the religious
12 exemption -- that the school district should just grant it
13 anyway, but, you know, the school is a creature of the state
14 and has to follow the law and follow the regulations and
15 that's what they were doing when they relied on their school
16 physician and the Department of Health, itself.

17 THE COURT: Okay. Thank you.

18 Anything else?

19 MS. WEISBORD: I also wanted to point out that in
20 response to something that my opposing counsel said, she
21 was -- and I think this goes towards irreparable harm, that
22 she was describing that plaintiff has -- is in and out of the
23 hospital and paralyzed, and that's a piece of her motion, but
24 I just want to point out that, you know, this morning, I was
25 made aware of several social media posts from the plaintiff.

1 And just a couple of weeks ago, there's a video of her doing a
2 back flip off of a dock into the water, so I think the
3 allegations of emotional -- or of physical harm are -- there's
4 an issue with credibility.

5 THE COURT: Okay.

6 Is that it?

7 MS. WEISBORD: Yes.

8 THE COURT: Thank you.

9 Anything you would like to follow up with?

10 MS. GIBSON: Yes, your Honor. I would like the
11 Court to strike that last part from the record.

12 THE COURT: Absolutely not. I have to listen to
13 everybody and see what everybody has to say.

14 MS. GIBSON: So there's a couple of things that I
15 want to reply to.

16 The first is just the contention that this doesn't
17 fit within the parameters of what may be the regulation saying
18 what may be detrimental to a child's health, predefining it.
19 Just like the state statute, the regulatory guidance uses a
20 singular physician standard, so it doesn't say that all
21 physicians have to agree that this constitutes a precaution or
22 contraindication under evidence-based standards of care. It
23 says that a physician has certified that it constitutes a
24 precaution or contraindication under evidence-based standards
25 of care.

1 Second of all, under ACIP, defendants, themselves,
2 list as a precaution moderate to severe illness with or
3 without fever. Clearly, her host of conditions constitute
4 moderate to severe illness with or without fever. That is a
5 listed precaution under ACIP's guidance.

6 Third, ACIP's guidance itself said it's not
7 exhaustive. It can't begin to list all of the conditions that
8 would qualify. And to read it so narrowly as to say, unless
9 it's one of the proffered examples in a non-exhaustive list is
10 not only unlawful but extremely dangerous.

11 In *Goe v. Zucker*, the Court actually looked at it.
12 And that case, by the way, is distinguishable because the
13 question in that case was whether there's a substantive due
14 process right and whether the State's regulation, that the
15 regulation violates the Constitution of the United States.
16 And the Court held, it doesn't violate the Constitution of the
17 United States, it doesn't shock the conscience, precisely
18 because it doesn't limit it to the few conditions in ACIP.
19 But, as the Court in *Goe v. Zucker* recognized, it allows for
20 all other kinds of diagnoses to fit under it's regulatory
21 guidance.

22 For example, anything on the package inserts which,
23 on the form, itself, that a doctor has to fill out, it says,
24 you know, say whether she has a precaution or contraindication
25 and that means consistent with ACIP or package inserts for

1 vaccines, it lists the package inserts. Defendants do not
2 dispute that multiple conditions that Sarah has and has been
3 diagnosed with appear on those package inserts.

4 THE COURT: Let me stop you there.

5 I looked at that. I don't see it.

6 MS. GIBSON: The package inserts?

7 THE COURT: No. I have the package inserts. You
8 gave it to me.

9 What conditions does she have?

10 I mean, you have an affidavit from one doctor who
11 makes a long link to something else that could be implicated,
12 but nothing that she has is actually listed on that.

13 MS. GIBSON: I think it's the hyperimmune -- I could
14 bring my expert to testify, if your Honor would like, but I
15 think it's the hyperimmune --

16 THE COURT: We can put this off for another day, but
17 I thought you were looking for seriously quick relief.

18 MS. GIBSON: So she's -- well, anyway --

19 THE COURT: That's the sort of --

20 MS. GIBSON: It's on here. It's the -- hyperimmune
21 function is on some of them as an adverse reaction.

22 But the primary point, really, this all brings us to
23 the primary point, which this is not a battle of the experts.
24 The structure of the singular physician standard means, and
25 the school -- the Second Circuit's decision in *Miller* and in

1 the *Starpoint* case say it doesn't matter if the school
2 district has some reasonable other interpretation of what ACIP
3 requires or what a valid evidence-based precaution or
4 contraindication is. I mean, this court knows, if you have a
5 medical malpractice case, you could have two different experts
6 arguing over the standard of care, and if you fail to bring an
7 expert, you're actually going to lose your case because
8 they're going to have radically different interpretations of
9 what evidence-based standards of care mean because it deals
10 with a whole body of medical literature, otherwise you could
11 just have a checklist and say if it's this checklist or that
12 checklist, and that's obviously not safe.

13 So the singular physician standard doesn't give
14 discretion to the school district to have a different
15 interpretation. It's the child's treating physician.

16 And, notably, the school district doctor has never
17 treated this child. The neighboring school district doctor
18 didn't want to give her an exemption either until he saw her
19 and then he had to give it to her. And then when she went to
20 his school district when she was temporarily kicked out, he
21 had to, again, give her another -- on his own, gave her a
22 60-day additional extension because she still had this
23 anaphylactic rash, which he describes as dermatographia,
24 slash, hives, which is something that they accepted and, I
25 note, is not on the list of ACIP contraindications or

1 precautions either, showing that they are exercising
2 discretion to decide when to accept them or when not to.

3 Another point that I will bring up is the contention
4 that the *Starpoint* case is somehow different.

5 The *Starpoint* case very clearly said they do not
6 have discretion to overrule a treating physician. Not they
7 are supposed to wait and allow them a few more days to get
8 another doctor's note. That is not what it held in the plain
9 language of the case. And the reason it didn't hold that is,
10 with reading *Miller v. McDonald*, which your Honor read, which
11 is very clear, the District doesn't have discretion to second
12 guess the treating physician for any reason. I don't know who
13 at the Department of Health looked at this and said they
14 didn't think it was an ACIP contraindication, but really it's
15 not their call. It might have been a nurse. It might have
16 been a doctor. I don't know. It certainly wasn't the
17 treating doctor and it wasn't the ones who know what's going
18 on with this child.

19 I will address another point as well, your Honor,
20 which is the shocking admission from counsel, my colleague,
21 which I believe is consistent with what we're saying this
22 school district doctor has created as far as binding policy,
23 that the school district would take the position that even if
24 they had, were able to find the doctor that diagnosed the
25 immediate reaction, and even if they had all the records, they

1 still would not accept her because they wouldn't be able to
2 tell whether it was from the Hepatitis B vaccine or the other
3 18 doses she took. If that isn't shocking to the
4 conscience -- you know, it may be the case that on a
5 constitutional substantive due process claim, like just
6 requiring the physician to say -- to certify that it's -- that
7 they've made their decision in accordance with evidence is,
8 you know -- that's not shocking to the conscience. It
9 certainly is shocking to the conscience to say a child would
10 have to retake each of those 18 vaccines to see which one
11 kills her before she gets an exemption, and that is what their
12 position is. That is exactly what the physician stated
13 originally.

14 Second, he's -- and he goes even to other lengths.
15 The hematologist's requirement is also irrational. I mean,
16 she has three immunologists, an allergist, and rheumatologist
17 that all said she can't take it. I don't know what a
18 hematologist could add. But they also never told her about
19 it. The first time we learned about this request or this
20 statement from the doctor was yesterday when we got their
21 papers. They just said she was denied. They never said, come
22 back with a note from a hematologist. Come back with more
23 medical documentation. So they cannot rely on this false
24 statement that they somehow just were lacking enough
25 information or she wasn't cooperating.

1 But I really don't see the relevance anyway, and I
2 think this Court was asking questions to that end, of those
3 documents because ultimately the law in the Second Circuit is
4 that school districts don't have discretion to second guess
5 these doctors, and it wouldn't be a safe policy if they did,
6 because they are not treating -- they are not doctors. This
7 is not within their expertise. Even if they hire some random
8 consultant, that doctor has never seen the child. They don't
9 know what this child is going through.

10 I have no idea what social media posts counsel is
11 referring to, but it is also quite offensive to a disabled
12 child to assume that if she has any athletic ability or
13 anything she's somehow not disabled. I mean, six treating
14 physicians have looked at her and said she is and that she's
15 severely in danger if she takes this vaccine. And the ADA
16 defines the disability not just as a condition that is
17 completely disabling a person at all times but that comes and
18 goes and you are defined as a disabled child either way.

19 I would also like to respond to the notion that
20 somehow granting her an extension to get an exemption in last
21 fall absolves the school district of any further accommodation
22 responsibility.

23 Take, hypothetically, an example of a child in a
24 wheelchair. If the school were allow her to use her
25 wheelchair one day and then deny her a month later, they would

1 not be able to say they have no further accommodation
2 requirements if they did not allow her to go to school in her
3 wheelchair a month later. And actually this did happen in
4 this case.

5 As the papers show, the disability discrimination,
6 which will be addressed later, but the failure to accommodate
7 has not just been over this vaccine. The school district
8 would not even allow Sarah to use her scooter when her leg was
9 paralyzed. Her mother got a wheelchair and they forced her to
10 be excluded from school while they decided whether to allow
11 her to use it. They did not allow her to get treatment for
12 her nerve pain when her sensation came back to her foot and
13 her nerves exploded in pain. The school district nurse said,
14 you can't use my office because you have a preexisting
15 condition on your foot and this office is only for new
16 conditions.

17 THE COURT: Counsel, I know you have a lot of things
18 you would like to argue and that's not today's question,
19 though; right?

20 MS. GIBSON: Yes, your Honor.

21 THE COURT: As I see it, you have two and a half
22 weeks to get an order from somebody to see if Sarah can go
23 back to school, so let's try to focus on that.

24 MS. GIBSON: Thank you, your Honor.

25 Our basic point is the school district has an

1 accommodation responsibility and they can't shirk that. And
2 they can't shirk that by pointing to any discretion given them
3 by the regulation, which we contend doesn't even exist in the
4 first place, and the Western District contends the same, and
5 we believe the Second Circuit has held the same. And they
6 can't shirk it through some sort of battle of the experts.
7 This really is quite clear-cut and Sarah deserves to be in
8 school.

9 THE COURT: Okay.

10 Counsel, any further response?

11 MS. WEISBORD: Yes.

12 So the Public Health Law, I just want to reiterate
13 that it doesn't give schools this huge amount of discretion
14 when they're reviewing these exemption requests, and what
15 happened here was not -- in the *Starpoint* case, you had a
16 school not taking into account a doctor's reason and denying a
17 request. That's not what happened here. It wasn't a matter
18 of just second-guessing a form that the *Starpoint* court found
19 to be valid under the Public Health Law.

20 Here, the issue is that what was submitted did not
21 comply with the Public Health Law. And I just want to
22 reiterate that the Second Circuit in the *Goe v. Zucker* case
23 indicated that when physicians are writing out these forms,
24 they're bound by the law and they have to comply with it and,
25 you know, there was -- and the issue here is that that form

1 did not comply with the law that they were bound by. And
2 schools have an obligation to ensure that they are following
3 the immunization laws, and that's precisely what they did
4 here.

5 And, you know, the Second Circuit also went on to
6 say, to the extent there's a disagreement on whether the
7 requirements are met in any particular case, parents can
8 appeal to the commissioner of education and seek judicial
9 review in the state court system through an Article 78
10 proceeding, and, as we know, that hasn't been done.

11 And the reason that it's important to note the
12 extensions that were provided before the student was excluded
13 is because part of the analysis of a failure to accommodate
14 claim is whether there was a good faith interactive process,
15 and there absolutely was one here.

16 At the beginning, the nurse gave additional time for
17 the plaintiff to get her materials in order. She wasn't
18 excluded, you know, immediately. The principal gave
19 additional time when she said she had a doctor's payment
20 pending.

21 And even with the third exemption, it was granted,
22 and she was provided with a temporary exemption.

23 But when February 5th came around, there came a time
24 where the school had no choice, based on the opinion of its
25 doctor, to exclude her for not complying with the law.

1 And I just want to reiterate that the fact that the
2 Department of Health reviewed not just the most recent
3 exemption request, but all of them, and agreed that they are
4 not sufficient should be highly taken into account.

5 That's it.

6 THE COURT: Okay.

7 MS. GIBSON: Your Honor, I did find the package
8 insert where it mentions her condition. Can I just --

9 THE COURT: Sure.

10 MS. GIBSON: I would direct the Court's attention to
11 document ECF 31-4 at page 227. It lists adverse reactions,
12 including hypersensitivity reactions, including anaphylactic
13 urticaria, which is her anaphylactic rash. That is what it's
14 also called.

15 THE COURT: If you want to spell that for the court
16 reporter, that would be helpful.

17 Anaphylactic what.

18 MS. GIBSON: So hypersensitivity reactions including
19 anaphylactic, A-N-A-P-H-Y-L-A-C-T-I-C, or anaphylactoid
20 reactions; urticaria --

21 THE COURT: That one.

22 MS. GIBSON: That's U-R-T-I-C-A-R-I-A. That is her
23 rash, urticaria.

24 And then, you know, syndromes that create that on an
25 ongoing basis, which is exactly what she's going through right

1 now. And really the main reason, the walk-in clinic, one
2 vaccinator, why Dr. Garbitelli said she cannot get vaccinated,
3 why Dr. Field and the other doctor who they accepted, they
4 were all mentioning this. They call it dermatographia or
5 hives. It's also called urticaria. They were all mentioning
6 this as a clear contraindication to vaccination right now
7 because they don't know what's causing it precisely, but it
8 does seem to be from a vaccine reaction, and it could quickly
9 turn into a life-threatening situation. When you have that
10 kind of anaphylactic rash, you can die if you have an exposure
11 because it gets worse each time, so if that is what it's from,
12 she could die.

13 THE COURT: I'm struggling with one aspect of your
14 application, which is the likelihood of success on the merits
15 as to which claim. In other words, I didn't get into the fact
16 that there's at least an argument -- I don't really know if it
17 carries the day -- that because you didn't take the appeal to
18 the commissioner, whether or not that's exhaustion of
19 administrative remedies, that would prevent those state law
20 claims from going forward, which leaves you only with the
21 federal claims.

22 In looking at Goe, I'm not sure that we have the
23 shocks the conscience standard met here. Goe seems to see the
24 opposite, so if you show a likelihood of success -- it's
25 bizarre to me because, again, reading Public Health Law --

1 this is why I brought up Article 78 at the beginning --
2 reading Public Health Law, it seems to me like there's a
3 problem, but I'm trying to still figure out, what bucket does
4 that problem fit in?

5 It's your position that it's the ADA that carries
6 the day, yes?

7 MS. GIBSON: Yes, your Honor, because counsel claims
8 that there's some *prima facie* case burden of showing that the
9 accommodation is reasonable when, in fact, that is their
10 burden to show. The *prima facie* burden on an ADA failure to
11 accommodate claim is to show that the child is disabled --
12 asserted credibly -- that the child is disabled, that they
13 requested accommodation for the disability and that they were
14 denied.

15 The burden then shifts to show that they couldn't
16 reasonably accommodate that disability. And when it's a
17 direct threat claim, like when you're saying the reason is
18 because she would be such a threat to others, it's not like
19 could she pose any threat whatsoever. It's a significant
20 threat and four factors have to be proven with objective
21 evidence --

22 THE COURT: Before you go there, are we agreed that
23 she is disabled for the purposes of the ADA?

24 MS. GIBSON: They have not contested it, and so they
25 have to be deemed to have conceded it.

1 THE COURT: Please don't tell me they have to be
2 deemed.

3 Is there an issue on the disability? If somebody
4 can't get vaccines, that would qualify as a disability, I
5 think, yes?

6 MS. WEISBORD: No, not necessarily, because in -- I
7 believe it was *D.A.B. vs. NYC Department of Ed*, 45 F.Supp. 3d
8 400. It's a 2014 case, Southern District. There, a student
9 with autism was challenging his exclusion from school when his
10 request to be exempt from a vaccine was denied, and in that
11 case -- I apologize. I was citing the wrong case.

12 THE COURT: Okay. I will forget it.

13 MS. WEISBORD: I was referring to *Starpoint*. In
14 that case, even though the Court found -- let the Article 78
15 claim proceed, finding that there was an issue as to whether
16 the school was unreasonable in denying it, they still
17 dismissed the ADA claims based on the absence of a disability,
18 so the two don't go together.

19 And, in this case, we're not conceding that that
20 plaintiff is disabled.

21 THE COURT: It's interesting that both of you would
22 like me to pay attention to *Starpoint* but for different
23 reasons, right?

24 MS. GIBSON: Your Honor, if I may, the *Starpoint*
25 case has distinguishable facts.

1 THE COURT: I know.

2 MS. GIBSON: And I --

3 THE COURT: By the way, it's another district judge
4 from another district, which is always interesting to me, but
5 I don't have to listen to it.

6 MS. GIBSON: Right.

7 The ADA was amended in 2009, which I'm not sure was
8 even raised in that case. There used to be a very difficult
9 standard to meet for proving disability, but in 2009, the
10 Congress amended the ADA so that disability would not become
11 the focus of litigation and they redefined disability to mean
12 a physical or mental impairment that substantially limits one
13 or more major life activities, which could include functions
14 of the immune systems, functions of the hemic system, and it
15 doesn't have to be all the time. They clarified that if you
16 are, like, okay for a little while but you might get triggered
17 another time, you are still disabled and you still require
18 accommodations, so you don't have to sit here splitting hairs.

19 If you have the kinds of disabilities that this
20 child has, you qualify as disabled under the ADA.

21 THE COURT: Anything further?

22 MS. GIBSON: No, your Honor.

23 Thank you.

24 THE COURT: Anything further?

25 MS. WEISBORD: Just one thing.

1 A few minutes ago, plaintiff's counsel was
2 mentioning certain things on, I think, the package inserts and
3 I just wanted to point out that pursuant to the Department of
4 Health's April 10th opinion that the school received
5 autoimmune rashes are not a contraindication or precaution to
6 Hepatitis B.

7 And also the ACIP guidance, in their entirety, also
8 says that autoimmune disease is a condition that's commonly
9 misperceived as a contraindication or precaution for the
10 Hepatitis vaccine when, in reality, it isn't.

11 So, you know, to the extent that plaintiff is trying
12 to rely on those prior impairments that were outlined in the
13 letters, or also in the current letter, the State Department
14 of Health has spoken on that with respect to this particular
15 request.

16 THE COURT: All right.

17 MS. GIBSON: Your Honor, if I may just respond to
18 that point and point the Court to the -- any of the
19 immunization exemption requests that are in the record. The
20 form, itself, gives guidance for medical exemptions and the
21 State Department of Health specifically argued in *Goe* that the
22 package inserts count as well as much broader definitions than
23 ACIP. And so the form specifically gives the guidance and
24 says, it could include contraindications, indications, and
25 precautions described in the vaccine manufacturer's package

1 insert or the most recent ACIP guidance.

2 That's right on the forms, and the Second Circuit
3 held that that is true. It cannot be so narrowly described
4 otherwise it would have violated the shocks the conscience
5 standard. And that's really a facial issue. We are talking
6 now about one child. I think it would shock the conscience to
7 require a child who this many doctors in a walk-in clinic said
8 may die to get a vaccine that can't even stop transmission,
9 but I will leave that up to the Court.

10 Thank you.

11 THE COURT: Okay.

12 MS. WEISBORD: Sorry, your Honor, just one more
13 thing.

14 THE COURT: Sure. I will send out for dinner first.
15 Go ahead.

16 MS. WEISBORD: Plaintiff's counsel keeps making
17 reference to the shock the conscience standard, but that's
18 related to the federal due process claim, which clearly fails
19 for other reasons under the Second Circuit precedent.

20 THE COURT: Thank you.

21 All right. So I'm going to issue a ruling because
22 time is of the essence here and we have to get some
23 resolution, and if the parties want to take further steps
24 based on this decision, you are obviously free to do so. I
25 want to give you time to be able to do it.

1 Before the Court is the plaintiff's motion for a
2 preliminary injunction. I want to be very clear on the scope
3 of the decision I'm about to render. There are lots of
4 arguments and allegations. The attorneys have done a fine job
5 on both sides briefing everything in the world from what the
6 standards are as to the CDC, to religious exemptions. None of
7 that is what is at issue today. I have a very narrow
8 question: Is Sarah going back to school in September?

9 That's the focus today. It's based on a very
10 limited set of facts, and it's very specific to this case.
11 This is not going to change the world in any way, but it will
12 have an effect on the parties here, so I want to be very clear
13 on the scope of what I'm about to say.

14 So to get an preliminary injunction, which is an
15 extraordinary piece of relief, a plaintiff must demonstrate
16 that she's likely to succeed on the merits, likely to suffer
17 irreparable harm in the absence of preliminary relief, and
18 that the balance of equities tips in her favor, and that an
19 injunction is in the public interest.

20 And that's *Agudath Israel vs. Cuomo*, and that's 979
21 F.3d 177 at 180, a Second Circuit binding case from 2020.

22 So I recognize the standard changes somewhat
23 depending on whether this is deemed a mandatory or prohibitive
24 injunction and the parties are disagreeing greatly on how I
25 should construe that. But what I'm going to say is that under

1 either standard, either mandatory or prohibitive, I believe
2 it's going to be the same outcome.

3 It's interesting that both parties have cited me to
4 this *Starpoint* case, at times saying, you should listen to
5 this and then say, don't pay attention to that. And I'm not
6 basing this on *Starpoint*, but there's a few interesting
7 things.

8 I asked significantly about which bucket this fits
9 into, and I disagree with the *Starpoint* case. I do think that
10 under the ADA, there is a cognizable claim here. The reason I
11 say that as the opener is because I then want to take a
12 different piece of the *Starpoint* decision, which was to deem
13 this, over disapproval of plaintiff's counsel, to deem this an
14 Article 78-like proceeding, and I'm not going to do quite
15 that, but I will say that Article 78 of the state law provides
16 a standard that's very instructive here. If this were an
17 Article 78 proceeding in front of the state court, one of the
18 questions that would be addressed is, quote, whether a
19 determination was made in violation of a lawful procedure, was
20 affected by an error of law, or was arbitrary and capricious
21 or an abuse of discretion, including abuse of discretion as to
22 the measure or mode of penalty or discipline imposed.

23 And that's CPLR 7803.

24 Again, that's only sort of constructive in the
25 background because this is in the context of an ADA claim, but

1 I do believe that looking at that standard and looking at the
2 law I'm about to cite to you will suggest why I believe there
3 is sufficient demonstration of likelihood of success.

4 As we've said, New York Public Health Law,
5 Section 2164(8), says that if any physician licensed to
6 practice medicine in this state certifies that such
7 immunization may be detrimental to a child's health, the
8 requirements of this section shall be inapplicable until such
9 immunization is found no longer to be detrimental to the
10 child's health.

11 That's a quote.

12 While true to that quote, school officials are
13 authorized to ask for additional information supporting the
14 exemption, which happened in this case. There were questions
15 about an earlier doctor, whether he had someone's phone
16 number, whether a particular provider is a doctor or a nurse.
17 That happens.

18 But the statutory exemption is mandatory and applies
19 to an objectively defined group. In addition, the authority
20 conferred to physicians is not discretionary; a physician's
21 use of her professional medical judgment is limited by statute
22 and regulations. And, of course, the quote is from *Miller vs.*
23 *McDonald*, 130 F.4th 258 and 269.

24 Furthermore, *Miller* tells us that, quote, even
25 though school officials have the authority to conclude that

1 the documents submitted in support of a medical exemption
2 contain sufficient or insufficient information, they do not
3 have discretion to approve or deny the exemptions on a
4 case-by-case basis for any reason.

5 And there they are quoting another case called *We*
6 *the Patriots*, which is 76 F.4th at 151.

7 So let's apply this to what's going on here.

8 The plaintiffs submitted a, quote, completed medical
9 exemption certification form containing sufficient information
10 to identify a medical contraindication to a specific
11 immunization in specifying the length of time the immunization
12 is medically contraindicated and that's also from *Miller*, but
13 there they're quoting *New York Comp Codes R. & Regs*, 10
14 Section 66-1.3(c).

15 What do I refer to?

16 Well, it specifically says in this certification
17 that she had a bad reaction to the shot in the past. The
18 plaintiff submitted a medical exemption request from
19 Dr. Garbitelli that indicated she needed a medical exemption
20 for the Hepatitis B vaccine due to a, quote, autoimmune
21 hypersensitivity syndrome with blood clotting disorder and
22 previous serious adverse reaction to Hep B vaccine which
23 greatly increases the risk of a serious adverse reaction and
24 such risk greatly outweighs any benefits of the vaccine.

25 The doctor continued: My medical opinion as an

1 internal medicine expert is within a reasonable degree of
2 medical certainty.

3 He signed that on June 10th, of 2025. DE 37 at
4 page 31.

5 On June 11, 2025, the District's physician,
6 Dr. Haskoor, H-A-S-K-O-O-R, wrote an email stating that,
7 quote, he would need a medical record documenting a prior
8 severe reaction to Hepatitis B vaccine as well as a letter
9 from a treating hematologist indicating the student should be
10 exempt because of von Willebrand's disease.

11 That's DE 36-1 at 4.

12 The District asserts that the medical exemption
13 request is facially invalid because it, quote, failed to
14 identify any contraindications or precautions to the Hepatitis
15 B vaccine as indicated in the CDC's ACIP guidelines.

16 That's found in DE 35 at 13 to 14.

17 Contrary to the defendants' assertion,
18 Dr. Garbitelli's signature on the plaintiff's medical
19 exemption request, along with the information contained
20 therein, rendered the request facially valid. It complied
21 with all mandatory requirements in the statute:

22 One, Dr. Garbitelli, a licensed physician, certified
23 that immunization may be detrimental to the child's health;
24 two, the form contained specific information to identify
25 medical contraindication to a specific immunization, that

1 being the Hep B vaccine, and then he went on to say that she
2 had a specific reaction to that in the past; and, three, it
3 specified the length of time until June 30th, 2026, that the
4 immunization is medically contraindicated.

5 Thus plaintiff shows a likelihood of success on the
6 merits.

7 So I'm going to go to the question of irreparable
8 harm.

9 The irreparable harm suffered by the plaintiff takes
10 the form of her absence from school during her junior year of
11 high school, a formative year for a child's education, and
12 therefore I believe that continuing an exclusion from school
13 would constitute an irreparable harm on her part.

14 Then we go to the balance of hardships.

15 The plaintiff has received two doses of Hepatitis B
16 vaccine and thus has at least some immunity to the disease.
17 And that's actually been documented in the record here by the
18 administration of having some, though somewhat substandard
19 levels of titers, but she definitely has some resistance to
20 it.

21 Moreover, the Second Circuit has found that, quote,
22 there has never been any definitive proof that Hepatitis B can
23 be communicated by non-parenteral routes such as saliva. Even
24 assuming that there were, the activities that occur in
25 classroom settings were not shown to impose any significant

1 risk that the disease would be transmitted from one child to
2 another.

3 And that's, again, the *NYSARC* case at 612 F.2d, 644.

4 Thus, the defendants' argument that granting a
5 preliminary injunction of risk, quote, exposing the District's
6 students, staff, and community and members to a contagious
7 disease is misplaced.

8 It's important to remember that in the *NYSARC* case
9 they were actually dealing with children with active
10 infections and there they said, no, that's not a risk in a
11 classroom setting.

12 So, here, in a much different circumstance. I would
13 say there, the balance of hardship tips in favor of plaintiff.

14 Finally, the public interest.

15 A preliminary injunction here is in the public
16 interest because the public has an interest in younger people
17 attending school. Given that there is little risk of
18 transmission of Hepatitis B and the plaintiff has already
19 received two doses of Hepatitis B vaccine, essentially some
20 immunity, the public's interest in health is mitigated and,
21 therefore, I think, on balance, the public interest weighs in
22 favor of an injunction, so I'm going to grant a preliminary
23 injunction directing that she go back to school.

24 There are more things to do. You can celebrate
25 later. Stand by.

1 I want to say to the plaintiffs, the defendants
2 point out that there's not a basis for individual liability as
3 to the individual defendants under the ADA and the
4 Rehabilitation Act. As you know, quote, individuals may not
5 be sued in their individual or personal capacity under the ADA
6 or Rehabilitation Act. That's *Cohn vs. Keyspan*, which is an
7 EDNY case.

8 In light of that, is it fair to deem the individual
9 claims as against Dr. DeRosa, the principal, and the nurse
10 under the ADA and Rehabilitation Act withdrawn?

11 MS. GIBSON: Your Honor, I believe the complaint
12 specifies that we don't bring the personal capacity claims
13 under those statutes.

14 THE COURT: Okay. So then to the extent they exist,
15 they're withdrawn, yes?

16 MS. GIBSON: Yes, but they exist for the other
17 claims.

18 THE COURT: Okay.

19 And then the pseudonymity issue. I want to make it
20 very clear, Sarah is a minor and therefore her identity will
21 be protected.

22 Did you seek leave in the state court for
23 pseudonymous for the mother?

24 MS. GIBSON: Your Honor, we just discovered we
25 didn't submit the motion. We did get consent from the

1 defendants, and we will be submitting the application
2 tomorrow.

3 THE COURT: Fine. Just file it or we have to put
4 our name on future pleadings, either way.

5 MS. GIBSON: Would your Honor accept a letter
6 motion?

7 THE COURT: Absolutely.

8 Anybody else here have anything else for today?

9 MS. WEISBORD: Yes, your Honor. I just wanted to
10 clarify, the preliminary injunction, that applies for the one
11 school year? It doesn't continue --

12 THE COURT: Correct. That's a good question.

13 The exemption actually says it's only good through
14 June of '26, which I assume is the end of next school year and
15 they have to be done every year. So, yes, the school district
16 is directed to grant the exemption for this year. That would
17 be the best way to say it. And who knows what the future
18 holds.

19 What else?

20 Anything else for defendant?

21 MS. WEISBORD: No, your Honor.

22 THE COURT: Anything else for the plaintiffs?

23 MS. GIBSON: No, your Honor.

24 Thank you.

25 THE COURT: All right. We are adjourned.

1 Thank you.

2 (Matter concluded.)

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