

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JANE DOE, individually and on behalf of her
minor child, SARAH DOE,

Plaintiffs,

v.

OCEANSIDE UNION FREE SCHOOL
DISTRICT, et al.

Defendants.

Civil Action No.: 2:25-cv-02304-GRB-ST

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION BASED ON SUBSEQUENT EVENTS**

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PRELIMINARY STATEMENT

Sarah Doe seeks narrow emergency relief to remain in school while the Oceanside Union Free School District (“Oceanside” or “the District”) reviews a new medical-exemption certification from her treating internal medicine specialist, Dr. Vincent Garbitelli. Oceanside began excluding Sarah today, October 1, without legal justification or any identified deficiency in that certification.

After this Court denied preliminary injunctive relief, Plaintiffs attempted to arrange a vaccination appointment with one of Sarah’s pediatricians. The pediatrician would not vaccinate Sarah in the office and required clearance from an infectious disease specialist. Yet Sarah’s treating infectious disease specialist, Dr. Miller, had already certified that vaccination should be deferred. On September 28, the District denied his exemption and required proof of vaccination or a valid medical exemption by October 1. Neither the District nor Dr. Haskoor identified any deficiency in Dr. Miller’s certification other than that Miller allegedly failed to return Haskoor’s three cold calls. Miller confirmed today that Haskoor never served him with a HIPAA request so that he could talk to him.

Sarah was allowed to attend school September 28-September 30, 2026 and instructed to submit a valid medical exemption or proof of vaccination prior or she would be excluded beginning on October 1, 2026. On September 30, following an in-person examination at his earliest available appointment, Dr. Garbitelli provided valid signed medical exemption forms and a detailed medical explanation supporting deferral. That evening, the District asserted that Sarah would nevertheless be excluded beginning October 1 until Dr. Haskoor approved the submission. It identified no deficiency, requested no additional documentation, and supplied no timetable for review.

That exclusion is inconsistent with the statute’s mandatory terms. Public Health Law § 2164(8) provides that if any New York-licensed physician certifies that immunization may be detrimental to a child’s health, “the requirements of this section shall be inapplicable” until immunization is found no

longer detrimental. This protection encompasses subdivision 7—the provision authorizing exclusion for failure to satisfy immunization requirements. A qualifying certification therefore removes the statutory basis for exclusion; it does not merely invite the District to exercise discretion. Unless and until vaccination is affirmatively found no longer detrimental, the District cannot exclude Sarah simply because its review remains pending.

The implementing regulations and guidance reinforce that framework. Section 66-1.3(c) prescribes the certification’s required contents and permits requests for supporting information. Dr. Garbitelli’s submission satisfies those requirements: he is a New York-licensed physician, and his certification states that vaccination may be detrimental to Sarah’s health, identifies her current medical precautions, explains their consistency with ACIP guidance, specifies the affected vaccines, and states the exemption’s duration.

NYSDOH’s procedures contemplate requesting additional documentation from the parent and allowing time to supply it. In addressing NYSDOH review, the guidance expressly states that “[t]he student may remain in school while the medical exemption is being reviewed.” Authority to obtain further information does not authorize exclusion pending review; the guidance advises the opposite.

The District’s refusal to permit temporary attendance also fails to address its independent obligations under the ADA and Section 504 among other federal laws. Sarah expressly requested continued attendance as a disability accommodation. The District responded that review would proceed “in the ordinary course,” without identifying any particularized safety risk or administrative burden requiring exclusion. It also refused to commit to notifying Jane of substantive questions or perceived deficiencies so she could obtain the information needed to resolve them. The question is whether Sarah’s disability requires a reasonable modification of that process to preserve access to school. Repeating the existing procedure does not answer it.

Jane now faces an impossible situation. It is unclear whether anyone will vaccinate Sarah, and

two treating specialists have independently recommended deferral this year. Sarah has now submitted ten medical exemption requests during her time at Oceanside high school and clearly is in need of accommodation. Exclusion pressures Sarah to undergo the very intervention her physicians advise postponing to protect her life and health.

The resulting harm is immediate and irreparable. During her sophomore year, Sarah was excluded for months while similar certifications awaited Dr. Haskoor's review, causing serious academic, emotional, and psychological harm and nearly requiring her to repeat tenth grade. Last weekend, the District again withheld clearance while Dr. Haskoor reviewed laboratory documentation confirming her blood draw, even though that testing established the compliance the District ultimately acknowledged. By the time clearance came, Sarah had missed additional school days and Homecoming was over. Later readmission cannot restore those experiences.

The District's September 30 attendance notice underscores the academic stakes: it warns that Sarah's excessive absences, whether excused or unexcused, subject her course credit to final review. Yet the District now requires her to miss additional instruction for an undefined period while it reviews her certification. Renewed exclusion compounds the educational harm precisely when the District is warning that her attendance places course credit at risk.

Plaintiffs therefore seek continued attendance during review of Dr. Garbitelli's certification and any supplemental or successor certification necessary to address concerns identified in that review, specific written notice of any additional information needed with a reasonable opportunity to respond, and a brief period following any denial to seek judicial protection. This limited relief would allow medical review to proceed while protecting a medically fragile seventeen-year-old from repeated abrupt exclusions and further harm that eventual readmission cannot undo.

RELEVANT FACTS AND PROCEDURAL POSTURE

The Court is familiar with many of the facts predating September 23, 2026 relevant to this

motion having recently adjudicated a request to enjoin an earlier exclusion threat based on the denial of Dr. Rivera's certification. Plaintiffs incorporate by reference the pleadings, docket entries, and prior submissions and exhibits in this matter, including those submitted in connection with the prior motions for injunctive relief. Selected background facts and subsequent developments are set forth below to assist the Court in deciding this emergency application. Plaintiffs request an opportunity to submit further briefing and evidence concerning continuing preliminary injunctive relief on a schedule set by the Court, particularly if Oceanside denies Dr. Garbitelli's pending medical-exemption request and additional relief becomes necessary.

I. Brief History of This Case:

This case was filed in state court on April 14, 2025 during Sarah's Sophomore year. The history of accommodation requests and decisions during Sarah's high school years illustrates the harm caused by allowing the District to exclude Sarah while Dr. Haskoor evaluates accommodation requests and the great discretion reviewers and schools have.

A. Sophomore Year Attempts to Get Accommodation

During the 2024-2025 school year, Oceanside excluded Sarah for significant periods of time based on Haskoor's seemingly conflicting decisions about her pending accommodation requests. He denied Sarah's first request from her long-time allergist, Dr. Field, without any explanation. (ECF 7-5; ECF 11-13). Sarah was allowed to stay in school after the exclusion date of October 10, 2024 until October 28, 2024 at the discretion of the principal after sending proof of an extremely elevated white count showing acute infection. ECF 11-14; ECF 11-15 and 11-16.

The District then received an exemption form from a nurse practitioner, which could have been treated as medical records supporting exemption. October 28, 2024. ECF 11-17. On October 30, 2024, Sarah tried to get vaccinated at a walk-in clinic (City MD) but was refused as "ineligible." Jane submitted the City MD doctor's letter to Principal Mitchell the same day. ECF 11-20. The District

nonetheless continued to exclude her. Even if the note was not on a medical exemption form, it was useful medical information that is part of Sarah's record and shows she needed accommodation.

On November 4, 2024, Jane then procured an exemption from Dr. Richheimer, who serves as the school district doctor for the neighboring Long Beach School District. ECF 7-7. Dr. Haskoor accepted this medical exemption, which stated only "dermatographia/hives despite mult. medications." Sarah was allowed to return to school until February 4, 2025. But when Richheimer's partner, specialist Dr. Fields submitted an identical renew exemption in January 2025, Dr. Haskoor would not grant it. ECF 7-6.

On February 4, 2025, Oceanside excluded Sarah. ECF 11-26. On February 13, 2025, Jane submitted another medical exemption certification from another treating specialist, Dr. Lang, who agreed that vaccination in Sarah's condition was not safe. ECF 7-8; 11-28. On February 19, 2025, she then provided another exemption certification from another specialist, Dr. Garbitelli. ECF 7-9. Oceanside refused to make a determination on any of these pending requests. ECF 7-2.

This action was filed in state court on April 14, 2025 along with a motion for emergency relief. Oceanside still had not made any determination on her pending requests. Oceanside failed to appear at the show cause hearing on April 21, 2025 [ECF 7-2 at 35] and then removed the case to federal court on the eve of the rescheduled appearance on April 25, 2025. [ECF 1 Notice of Removal]. On the same date, Oceanside finally gave Jane a determination on the pending medical exemption requests - denying them. [ECF 7-2 at ¶ 43]. Defendants asserted that "Dr. Haskoor opined that none of the four physicians who submitted medical exemption forms provided a clear contraindication to receiving the Hepatitis B vaccine. (*Id.*) He wrote, "If the student had severe allergic reaction (e.g., anaphylaxis) after a previous dose of Hepatitis B vaccine, then I will need to speak with the physician that treat[ed] it and provide a medical record of the event." [ECF 35 at 14]. Haskoor did not appear to have assessed or mention precautions, which are broadly defined and also allowable reasons under ACIP as a basis

for deferral of vaccination.

This Court declined to grant the preliminary injunctive relief, holding that “Plaintiffs’ delay in filing the motion undermines their claims concerning irreparable harm” and calculating the delay from the date of exclusion on or about February 4, 2025, not from the decision on the medical exemption requests on April 25, 2025. [ECF 14 at 1]. Sarah was excluded for the remainder of her Sophomore year, causing irreparable academic, emotional, psychological and other harm, including to her future prospects.

B. Junior Year Attempts to Get Accommodation

Before the start of the 2025-2026 school year, Jane submitted a new medical exemption request from Dr. Garbitelli and sought another preliminary injunction motion when Oceanside denied Dr. Garbitelli’s request. ECF 30-31-4 and sealed exhibits; ECF 38 with sealed exhibits. Dr. Garbitelli’s second request noted as the basis: “vaccine is contraindicated because of her autoimmune hypersensitivity syndrome, with blood clotting disorder and serious adverse reaction to Hep B vaccine which greatly increases the risk of serious adverse reaction...”

On August 12, 2025, the Court granted preliminary relief for the 2025-2026 school year based on Dr. Vincent Garbitelli’s certification, permitting Sarah to attend school during the 2025–2026 school year. [ECF 41; see also ECF 85-8 Transcript of Argument and Decision read into the record]. Sarah was thus able to attend her junior year of school. This Court rejected Oceanside’s argument that the certification was invalid because Dr. Haskoor allegedly lacked enough information to determine that a serious adverse reaction had occurred. 8/12/25 Tr. 21:3-25:24. The Court stated:

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

Id. 23:22-25. This Court concluded that:

The exemption process is mandatory. You get that certification from the doctor. And I recognize there are times when the outcome will be different. We had one in this case -- I'm going to go back on my word a little bit and talk about the old exemption. One of the earlier exemption forms was signed by a nurse. And the school said, it's not a doctor, it's a nurse. Absolutely, right? That's what you can say; they didn't comply with the statute. But here you have a licensed MD. There's no question that he's a doctor. He certifies that she has a problem; it's a bad idea to give her the shot.

Id. 25:17-26:2. The Decision and Order tracked this reasoning, holding:

Even though school officials have the authority to conclude that the documents submitted in support of a medical exemption contain sufficient or insufficient information, they do not have discretion to approve or deny the exemptions on a case-by-case basis for any reason.

Id. 55:24 – 56:4.

C. Senior Year Attempts to Get Accommodation

Medical exemptions requests must be renewed each year. Before the start of her senior year this academic year, Jane submitted a medical exemption from another doctor, Dr. Rivera, and upon denial, moved for a renewed preliminary injunction. [ECF 85-86]. The Court held a hearing on September 22, 2026, two days before Sarah's threatened exclusion. See, Gibson Decl. Ex. 4 (9/22/26 Hearing Tr.). On September 23, 2026, this Court denied Plaintiffs' renewed application concerning Dr. Carlos Rivera's certification. [ECF 98]. Plaintiffs appealed on September 24. [ECF 99].

II. Post September 23, 2026 Decision Events

Pediatric infectious disease specialist Dr. Miller's separate certification remained pending after the September 23, 2026 Order. Miller, Sarah's treating pediatric infectious-disease specialist, had identified acute infections and immune dysregulation and recommended deferring both hepatitis B and MenACWY vaccination during treatment. ECF 97, Ex. A, at 7.

The District nonetheless excluded Sarah on September 24. Jane Doe Decl. ¶¶ 21–22, 61. That day, Jane sought a vaccination appointment, but the pediatric practice declined to vaccinate Sarah

without infectious-disease clearance and advised vaccination in a specialist's office. Id. ¶ 29. Jane then contacted Dr. Garbitelli, who ordered hepatitis B serologic testing and arranged an in-person examination for September 30, his earliest available appointment. Id. ¶¶ 31, 37.

Sarah underwent the blood draw on September 25, after Jane and counsel had sought confirmation since September 24 that the District would honor the regulations which require schools to allow attendance while serologic results were pending up to fourteen days. Jane Doe Decl. ¶¶ 38–41; Gibson Decl. Ex. 1. Initially, the District retorted that Sarah could not come to school, even if she was in process through the titers test, accusing her of a “shell game.” Gibson Decl. Ex. 2 at 6.

On the afternoon of September 25, the District finally acknowledged that Sarah could qualify as “in process” upon proof of the blood draw, subject to Dr. Haskoor's review of that proof. Gibson Decl. Ex. 1. Jane promptly obtained and supplied laboratory documentation, which counsel also forwarded to the District. Jane Doe Decl. ¶ 41; Gibson Decl. Ex. 3. Although counsel had advised the District of that weekend's senior Homecoming activities, clearance remained pending while Dr. Haskoor reviewed the documentation. Jane Doe Decl. ¶¶ 39–43; Gibson Decl. Exs. 1–2. District counsel confirmed Sarah's eligibility to return on September 27, followed by formal notification on September 28. Jane Doe Decl. ¶ 44. By then, Sarah had missed her senior Homecoming with her classmates. Id. ¶¶ 42–44.

The September 28 letter acknowledged Sarah's “in process” status for hepatitis B but again warned that she would be excluded beginning October 1 absent acceptable MenACWY documentation “or a valid medical exemption.” Jane Doe Decl. ¶¶ 44, 57.

On September 28, in the same letter, the District also denied Miller's certification. Doe Decl. Ex. 5. At the hearing the week before, Haskoor had acknowledged that when a patient was seeing specialists for diagnostic workup, that constituted a precaution to vaccination under ACIP. Though Rivera had emailed him on August 25, 2026 prior to his denial explaining that Sarah was seeing an

infectious disease specialist and seeking deferral during workup, Haskoor said did not consider this information because “anybody could tell you I’m going to see a specialist. What does that mean?” 9/22 Tr. 145:8-9. Haskoor also rejected Rivera’s identification of precautions including active mycoplasma infection though Jane’s lab results showed “HIGH” IGM mycoplasma pneumonia infection. Id at 155:3-25. Haskoor said that he could not tell if it was “acute” without an infectious disease doctor making that diagnosis. Id. Dr. Miller is an infectious disease specialist, the same one that ordered the labs, and his medical exemption states that Sarah has multiple chronic “acute” infections including mycoplasma, the very infectious-disease assessment Haskoor testified was missing for him to credit the mycoplasma infection as an ACIP precaution.

The District nonetheless denied Dr. Miller’s exemption request, citing Dr. Haskoor’s three unsuccessful attempts to reach him by telephone. No other basis for denial was provided. Jane Doe Decl. ¶¶ 47, 53. Jane had supplied the District with a signed HIPAA authorization on September 14. Id. ¶¶ 11, 48. Dr. Haskoor acknowledged at the hearing that physicians could not give him records without authorization. Sept. 22 Tr. 168:16–18. Yet on October 1, Dr. Miller informed Jane that the school had never submitted any HIPAA authorization to him. Jane Doe Decl. ¶ 52.

Before the denial, counsel repeatedly requested written identification of any questions, deficiencies, or additional information needed and offered to obtain records or clarification from Sarah’s physicians. Gibson Decl. Exs. 1–2; Jane Doe Decl. ¶ 49. Despite those requests, neither Jane nor counsel was told what additional information was needed before the District denied Dr. Miller’s certification. Jane Doe Decl. ¶¶ 48–49.

The District’s September 28 letter expressly permitted Sarah to remain in school if she supplied “a valid medical exemption” before October 1. Jane Doe Decl. ¶ 57, Ex. 5. On September 30, Dr. Garbitelli examined Sarah and issued signed exemption forms and a detailed supporting letter identifying medical precautions warranting deferral of both hepatitis B and MenACWY vaccination.

Garbitelli Decl. ¶¶ 4–8, Ex. 1; Jane Doe Decl. ¶ 55, Ex. 7. He diagnosed moderate-to-severe acute illness, including acute and active *Mycoplasma pneumoniae* infection, and described marked immune dysregulation and a broader systemic illness under evaluation. Garbitelli Decl. ¶¶ 9–12. He explained that vaccination could increase the risk of a serious adverse reaction, exacerbate Sarah’s condition, and complicate diagnosis by superimposing adverse effects on her existing illness—concerns he identified as consistent with ACIP guidance. Id. ¶¶ 13–15. He recommended deferring both vaccines through June 30, 2027 to permit specialist evaluation, diagnostic workup, monitoring, and reassessment. Id. ¶ 16.

Jane submitted Dr. Garbitelli’s certification and supporting letter to Principal Mitchell on September 30. Jane Doe Decl. ¶ 58, Ex. 8. Counsel forwarded the submission to District counsel and requested continued attendance during review as a reasonable accommodation under the ADA and Section 504. Counsel also renewed the request for written notice of any questions or additional information needed, with Jane copied and afforded a reasonable opportunity to obtain a response. Gibson Decl. Ex. 6.

The District maintained that Dr. Haskoor “does not conduct his medical review through discussions with students or their families” and that there was “no basis to alter that process.” Gibson Decl. Ex.5, at 1. As of Jane’s October 1 declaration, the District has neither issued a decision on Dr. Garbitelli’s certification nor identified any substantive question or requested further supporting information. Its only request was for a HIPAA authorization, which Jane promptly supplied. It provided neither permission for Sarah to attend during review nor a timetable for its decision. Jane Doe Decl. ¶¶ 59–60. Jane further reported that the Section 504 meeting requested on September 24 remained unscheduled despite repeated requests. Id. ¶¶ 50–51.

Sarah is seventeen and in her senior year. Jane describes Sarah’s distress following renewed exclusion, her withdrawal and refusal to eat, and her statements that she would obtain vaccination

despite medical advice so she could return to school. Jane Doe Decl. ¶¶ 22–28. The repeated uncertainty about attendance has compounded that distress and left Jane fearful for Sarah’s health and emotional well-being. Id. ¶¶ 61–64. The District’s September 30 attendance notice also warned that excessive absences, whether excused or unexcused, would subject Sarah’s course credit to final review. Sarah now faces further missed instruction while the District reviews her new certification, with no stated completion date. Jane Doe Decl. ¶ 60.

STANDARD OF REVIEW

To qualify for a preliminary injunction, a plaintiff must demonstrate that she's likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief, and that the balance of equities tips in her favor, and that an injunction is in the public interest. *Agudath Israel vs. Cuomo*, 979 F.3d 177, 180 (2020). The standard is more forgiving depending on whether relief sought is mandatory or prohibitory. *North American Soccer League, LLC v. United States Soccer Federation, Inc.*, 883 F.3d 32, 37–38 (2d Cir. 2018). Sarah seeks a prohibitory injunction to prevent the District from excluding her in violation of state law and her federally protected rights. Until the District excluded her today, she was attending school. Even if the requested relief is deemed mandatory, Plaintiffs satisfy the heightened standard because the present record establishes a clear or substantial likelihood of success on the merits.

ARGUMENT

This is an emergency briefing and the parties recently briefed the issues governing medical exemptions in the previous three preliminary injunction motions. Plaintiff will summarize some of the governing law and apply it to the issues unique to this motion and incorporate by reference their prior briefing in the three previous motions and the pending motions to dismiss.

I. Sarah Suffers Imminent Irreparable Harm Absent Relief

A showing of irreparable harm is “the single most important prerequisite for the issuance of a

preliminary injunction.” *Faiveley Transp. Malmö AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (internal quotation marks omitted). This Court previously found that Sarah’s exclusion satisfied that requirement:

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

Aug. 12, 2025 Tr. 58:9–13. Exclusion during Sarah’s senior year poses no less harm. The present record establishes three interrelated injuries that worsen with continued exclusion.

First, Sarah is losing instruction and irreplaceable experiences during her final year of high school. Having already missed much of tenth grade, she now faces renewed exclusion with no stated end date. Jane Doe Decl. ¶¶ 26, 60–64. The District’s September 30 notice warns that excessive absences, whether excused or unexcused, subject her course credit to final review, even as the District requires her to miss additional instruction. The recent Homecoming weekend illustrates why eventual readmission is insufficient: Sarah missed school on September 24 and 25, and clearance came only after her senior Homecoming was over. Jane Doe Decl. ¶¶ 42–44, 61. Those experiences cannot be restored, and a later favorable judgment cannot return the time lost during her senior year.

Second, renewed exclusion compounds documented psychological harm. Sarah has been diagnosed with “adjustment disorder with mixed anxiety and depressed mood” associated with her exclusion. FAC ¶ 177. Jane describes Sarah lying in bed crying, refusing to eat, and withdrawing from her family after learning she would again be excluded. Jane Doe Decl. ¶¶ 22–25. She further describes the trauma caused by repeated threats of exclusion and fears renewed harm to Sarah’s health and emotional well-being. *Id.* ¶¶ 62–64. These are concrete consequences of exclusion, supported by the family’s prior experience and Jane’s current observations.

Third, exclusion pressures Sarah to obtain vaccination despite her treating physicians’ recommendations to defer. This risk is not hypothetical: Jane describes Sarah’s prior effort to arrange

vaccination at a walk-in clinic and her renewed insistence that she would get vaccinated to remain in school, telling Jane, “you can’t stop me; I have to be in school.” Id. ¶¶ 26, 28. On September 24, it was so bad Jane sought a vaccination appointment, but Sarah’s pediatric practice declined to vaccinate her without infectious-disease clearance and advised vaccination in a specialist’s office. Her treating infectious-disease specialist had already recommended deferral. Id. ¶¶ 29–30. Dr. Garbitelli’s September 30 examination independently confirmed the need for deferral: he identified acute illness and explained why vaccination in Sarah’s present condition poses a substantially increased risk of serious adverse reactions and further clinical deterioration. Garbitelli Decl. ¶¶ 4–5, 9–16.

These harms cannot be adequately remedied by damages or eventual readmission. Temporary attendance during review would protect Sarah’s education and health while the District evaluates the new certification. Without that protection, the time consumed by review itself inflicts the injuries this emergency application seeks to prevent.

II. The Balance of Equities and Public Interest Favor Attendance

The seriousness of meningococcal or hepatitis B disease does not resolve whether excluding Sarah during review of her new certification serves the public interest. The Court now has a current, individualized medical assessment addressing both the risks of vaccination and the asserted danger of continued attendance.

Following his September 30 physical examination, Dr. Garbitelli concluded that administering either MenACWY or hepatitis B vaccine in Sarah’s present condition would be detrimental to her health. Garbitelli Decl. ¶¶ 4–15. He identified moderate-to-severe acute illness, marked immune dysregulation, and reduced physiologic reserve, explaining that vaccination could cause serious adverse reactions, exacerbate her symptoms, precipitate further deterioration, and complicate ongoing diagnosis and treatment. Id. ¶¶ 9–15. The public interest in protecting Sarah’s health must account for those specific medical findings.

Garbitelli also addressed the risk to others. Sarah has received prior doses of both vaccines, and he opines that deferring additional doses would not make her a danger to others. Id. ¶ 17. He explains that hepatitis B is not transmitted through routine classroom interactions and that meningococcal disease is not spread through casual contact, including merely being in the same room or touching common surfaces. Id. ¶¶ 18–19. He further states that Sarah has neither disease and that there is no evidence she is presently infectious or poses a communicable-disease risk to students or staff. Id. ¶ 20. The CDC guidance already in the record supports his analysis and further cautions against assuming that Sarah’s receipt of an additional MenACWY dose is necessary to protect her classmates during this review. Although the guidance recognizes the vaccine’s protection of recipients and recommends the adolescent booster, it expressly states: “Experts are unsure to what extent MenACWY vaccines protect the larger, unvaccinated community through population or herd immunity.” DE 96-5 at 2–3. That uncertainty does not establish an absence of community benefit, but neither does it support treating the missing booster as proof that Sarah’s temporary attendance endangers others.

As to hepatitis B, the Second Circuit rejected segregation even of children who carried the virus where the school board failed to demonstrate a significant risk of classroom transmission. *N.Y. State Ass’n for Retarded Children, Inc. v. Carey*, 612 F.2d 644, 650–51 (2d Cir. 1979). Here, Sarah does not have hepatitis B, and Garbitelli confirms that the disease is not spread through routine classroom interactions and that deferring additional doses would not make her a danger to others. Garbitelli Decl. ¶¶ 17–20.

Against this evidence, the District has identified no particularized safety risk or administrative burden requiring exclusion while it evaluates Garbitelli’s submission or beyond. Continued attendance would allow that review to proceed without additional lost instruction, psychological injury, or pressure to obtain vaccination contrary to current medical advice. The requested relief preserves the District’s opportunity to identify questions and obtain supporting information while protecting Sarah

from the immediate consequences of an undefined review period. On this record, the balance of equities and public interest favor that limited protection.

III. Plaintiffs are Likely to Succeed

A. New York’s statutory framework and review procedures support the limited relief requested.

Plaintiffs seek a practical accommodation consistent with New York’s own medical-exemption procedures: continued attendance while Oceanside reviews Dr. Garbitelli’s new certification, notice of any additional information needed, and a reasonable opportunity to provide it and seek judicial review if denied. The District has identified no deficiency in Dr. Garbitelli’s pending medical exemption certification and no particularized reason Sarah must be excluded while its physician reviews it. The existence of an unfinished review does not itself establish a lawful basis for exclusion even under state law.

Public Health Law § 2164(8) provides that, upon a qualifying certification by a New York-licensed physician, “the requirements of this section shall be inapplicable” until vaccination is no longer detrimental to the child’s health. That protection encompasses subdivision 7, the provision authorizing exclusion for noncompliance.

The regulations predefine for a physician parameters on “what may be detrimental to a child’s health” as “a physician” having identified a precaution or contraindication that is consistent with evidence based standards of care, with the CDC’s ACIP “Best Practices Guide” being one example of possible sources. 10 N.Y.C.R.R. §§ 66-1.1(l), 66-1.3(c). The exemption is mandatory when its requirements are satisfied; it is not a matter of unrestricted administrative discretion and school districts may request information but lack authority to make case-by-case determinations for any reason. See *Miller v. McDonald*, 180 F.4th 420, 431 (2d Cir. 2026).

This Court applied that framework last year, holding that “Dr. Garbitelli’s signature on the

plaintiff's medical exemption request, along with the information contained therein, rendered the request facially valid. It complied with all mandatory requirements in the statute." Aug. 12, 2025 Tr. 57:17–58:6. When assessing likelihood of success, the Court held the requirement satisfied because: "One, Dr. Garbitelli, a licensed physician, certified that immunization may be detrimental to the child's health; two, the form contained specific information to identify medical contraindication to a specific immunization, that being the Hep B vaccine, and then he went on to say that she had a specific reaction to that in the past; and, three, it specified the length of time until June 30th, 2026, that the immunization is medically contraindicated. Thus plaintiff shows a likelihood of success on the merits." Id.

The new certification addresses those same requirements, now expressly addressing both Hepatitis B and MenACWY vaccination. Following a September 30 in-person examination, Dr. Garbitelli considered Sarah's medical history and recent laboratory findings, identified her current precautions, explained their consistency with ACIP guidance, and specified the requested duration. Garbitelli Decl. ¶¶ 4–16 & Ex. 1. Those current findings directly address the concerns about examination, medical support, and vaccine-specific reasoning identified in the September 23 Order.

NYSDOH's review procedures further support interim attendance. At the initial school-review stage, they contemplate requests for additional documentation from the parent and allow up to fourteen days to provide it. In addressing further review by NYSDOH, they expressly state: "The student may remain in school while the medical exemption is being reviewed." NYSDOH, *Medical Exemption Review Procedures for Schools Outside New York City* 1, Initial Process ¶¶ 2, 4 (Sept. 2025), annexed as Gibson Decl. Ex. 7. New York City likewise permits attendance upon submission of a medical-exemption request and pending determination. N.Y.C. Health Code § 49.05(c)(4). Its procedures go further: students may continue attending after an initial denial while seeking reconsideration and, following a second denial, throughout a timely internal appeal to the Office of School Health Medical Director. N.Y.C. Chancellor's Regulation A-701 § III.D.1–3, at 8–9 (Mar. 25, 2021). This established

approach further undermines any categorical assertion that continued attendance during medical review is incompatible with New York's immunization requirements or inherently unreasonable.

The requested written notice and opportunity to respond likewise follow the State's contemplated process. Jane has repeatedly offered to obtain information from Sarah's treating physicians and requested identification of any perceived deficiency. Yet the District has supplied no specific request concerning Garbitelli's submission, no timetable for completing review, and no assurance that Jane will be informed of questions she could help resolve. Exclusion neither supplies missing information nor advances the review. Communicating the information needed would do both.

Thus, even under the deferential approach Defendants advocate, they must explain why this student must lose additional schooling while a facially sufficient certification remains under review. Plaintiffs' request permits the District to perform its review through procedures the State already provides for, without imposing the irreversible consequences of delay on a disabled child.

B. The ADA and Section 504 independently require reasonable accommodation.

Even if Oceanside construed state law to require or allow immediate exclusion, that interpretation would not dispose of its federal accommodation obligations. In *Mary Jo C. v. New York State & Local Retirement System*, 707 F.3d 144, 161–65 (2d Cir. 2013), the Second Circuit rejected the proposition that an accommodation conflicting with state law is necessarily unreasonable. Title II may require modification of state-law requirements when necessary to provide a reasonable accommodation. Here, the requested modification is especially modest because the State's own procedures already contemplate attendance during review and opportunities to supply additional documentation.

This Court previously recognized a cognizable ADA claim and described Article 78 as background guidance within that federal analysis. Aug. 12, 2025 Tr. 54:8–25. *Doe v. Franklin Square Union Free School District*, 100 F.4th 86 (2d Cir. 2024), confirms that federal disability laws apply to

public health accommodation claims in schools. While the Court rejected constitutional claims on an argument recently called “insulting and legally unsound” by the Supreme Court’s decision in *Mahmoud*, it affirmed that plaintiffs in that case had stated viable ADA and Section 504 claims. *Id.*, slip op. at 25–29. As the Second Circuit has repeatedly held, a rational administrative determination does not necessarily satisfy the independent duty to accommodate. Nor may administrative deference substitute for adjudication of federal discrimination claims. *N.Y. State Ass’n for Retarded Children, Inc. v. Carey*, 612 F.2d 644, 648–50 (2d Cir. 1979).

Sarah’s medical evidence establishes the basis for that independent claim. Dr. Garbitelli documents impairments affecting immune function and mobility and explains why vaccination is medically detrimental in her present condition. Garbitelli Decl. ¶¶ 4–16. Those impairments create the need for temporary accommodation to access the District’s educational program. Sarah seeks to attend her existing classes while the District evaluates the prescribed medical documentation. Her accommodation is reasonable, and either required by state law or at the very least recommended. To the extent that Defendants have adopted a contrary policy, they bear the burden of proving why it would be a significant hardship or expense to modify it so that Sarah can access school.

Plaintiffs’ initial burden is to identify a plausible accommodation whose apparent costs do not clearly exceed its benefits. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003). They have done so. Continued attendance requires no new educational program, alteration of academic standards, or identified additional staffing or expense. Written questions and a reasonable opportunity to answer them facilitate the existing review. The District’s response that the review will proceed “in the ordinary course” does not establish why modifying that process would be unreasonable. Title II expressly requires necessary reasonable modifications unless the public entity demonstrates a fundamental alteration. 28 C.F.R. § 35.130(b)(7)(i).

The medical evidence also addresses safety. Dr. Garbitelli considers Sarah’s prior

vaccinations, the relevant modes of transmission, and the absence of evidence that she presently has either disease. Garbitelli Decl. ¶¶ 17–20. As discussed in Section II, those findings and the existing outbreak-specific safeguards support temporary attendance. To the extent the District invokes a direct threat, it must undertake an individualized assessment grounded in current medical knowledge or the best available objective evidence, including the probability of harm and whether reasonable modifications would mitigate it. 28 C.F.R. § 35.139(b). The seriousness of a disease does not, without that assessment, establish that Sarah’s temporary attendance poses a significant risk.

The history of unsuccessful information exchanges reinforces the need for the requested procedural accommodation. Dr. Haskoor acknowledged that authorization was necessary to obtain medical records, yet Dr. Miller subsequently informed Jane that the school had never supplied him with a HIPAA authorization. Sept. 22, 2026 Tr. 168:16–18; Jane Doe Decl. ¶ 52. Plaintiffs repeatedly requested specific written questions so that Jane could obtain responsive information, but no one identified what was needed before the District denied Dr. Miller’s certification. Jane Doe Decl. ¶¶ 48–49; Gibson Decl. Exs. 1–2. That experience supports requiring written notice and a reasonable opportunity to respond during review of Dr. Garbitelli’s certification, rather than allowing another incomplete exchange to result in continued exclusion.

Plaintiffs therefore seek continued attendance during review, written identification of any additional information needed, a reasonable opportunity to respond, and a reasonable period following any denial to seek judicial review before exclusion takes effect. Plaintiffs also request an opportunity to submit further briefing concerning continuing preliminary injunctive relief on a schedule set by the Court. This relief preserves meaningful review without requiring the Court now to approve an exemption through June 2027.

C. Plaintiffs also rely on their previously briefed constitutional grounds.

In light of the limited emergency relief requested, Plaintiffs address their constitutional

grounds briefly below and respectfully renew and incorporate the arguments in ECF No. 85-1 at 19–25 and ECF No. 96 at 12–17 as additional grounds for relief. Plaintiffs maintain those claims and would welcome an opportunity for further briefing should the Court find it helpful.

The Free Exercise claim concerns the District’s actual administration of exemptions and attendance requirements. Plaintiffs identify acceptance and rejection of certifications concerning the same child and stated medical grounds, additional attendance allowances despite rejected certifications, and attendance by students eighteen and older without the vaccination requirements imposed on Sarah. ECF No. 96 at 12–14; FAC ¶¶ 115–126, 143–145. Plaintiffs contend that these facts defeat general applicability by establishing individualized discretion and differential treatment of comparable risks under *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–37 (2021), and *Tandon v. Newsom*, 593 U.S. 61, 62–64 (2021), beyond the record considered in *Miller*.

Jane’s Fourteenth Amendment claim independently requires strict scrutiny without defeating general applicability. She seeks to follow medical advice protecting her seriously ill child while the District conditions educational access on abandoning that decision and declines to even include her in sharing concerns she could address through Sarah’s physicians. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) addressed a free exercise claim but also separately recognized parental due-process rights in consequential decisions concerning children within public schools. *Miller* considered *Mirabelli* in resolving a parental Free Exercise claim; it did not adjudicate this independent substantive-due-process theory. For the reasons developed in their prior briefs, Plaintiffs contend that intervening Supreme Court authority squarely rejects treating withdrawal from public school as an adequate answer to the asserted burden on parental rights. These constitutional claims remain before the Court, including in this motion, although the immediate relief may be granted on the independently sufficient disability claim.

Sarah’s ongoing ordeal illustrates the concrete burden on Jane’s parental authority to make

medical decisions – one of the oldest recognized fundamental rights. *Parham v. J.R.*, 442 U.S. 584 (1979). The District conditions attendance on vaccination her treating physicians advise postponing, yet excludes Jane from addressing the medical concerns on which that condition rests. At the hearing, Haskoor conceded that he was assessing whether vaccination might be detrimental to Sarah’s health, but the Court sustained objections to questions concerning whether he could make that assessment safely without meeting Sarah or speaking with her mother about her full health history and symptoms. Sept. 22, 2026 Tr. 160:20–161:22. Characterizing this process as administrative review does not eliminate its consequences for Sarah’s medical care or Jane’s protected role in directing it.

In *Mirabelli*, the Supreme Court rejected the asserted safety justification for policies that excluded parents from consequential decisions concerning their children: “But those policies cut out the primary protectors of children’s best interests: their parents.” 607 U.S. at 497. Plaintiffs submit that the same principle requires scrutiny here: the District cannot justify displacing Jane’s physician-supported medical judgment merely by invoking the very interest in her child’s safety that Jane is seeking to protect. These constitutional grounds remain before the Court, although the immediate relief may be granted on the independently sufficient disability claim.

CONCLUSION

Accordingly, Plaintiffs respectfully request a temporary restraining order preserving Sarah’s attendance pending expedited consideration of this motion, and a preliminary injunction permitting her continued attendance during the District’s review of Dr. Garbitelli’s medical-exemption certification and for a reasonable period following any denial to obtain judicial review before exclusion takes effect. Plaintiffs further request that the Court direct the District to provide any requests for additional information in writing, copy Jane on those requests, and afford a reasonable opportunity to respond; permit further briefing on continuing injunctive relief on a schedule set by the Court; and grant such other relief as the Court deems just and proper.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), I certify that the foregoing memorandum of law contains 6765 words, exclusive of the caption, table of contents, table of authorities, signature block, and this certification, as counted by the word-processing system used to prepare it, and therefore complies with the applicable word limit.

/s/ Sujata S. Gibson