UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiffs,

- against -

OCEANSIDE UNION FREE SCHOOL DISTRICT, JILL DE ROSA, in her individual capacity, BRENDON MITCHELL, in his individual capacity, ANTWAN HASKOOR, M.D., in his individual capacity, and MARY CONLAN, in her individual capacity,

Defendants.

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MEMORANDUM AND ORDER

Civil Action
No. 25-2304 (GRB)(ST)

GARY R. BROWN, United States District Judge:

Approximately one year ago, this Court issued a preliminary injunction directing that plaintiff Sarah Doe, a young woman facing a number of health challenges, be permitted to attend 11th grade despite not having received the last vaccine in a series designed to prevent Hepatitis B. *See* Docket Entry ("DE") 85-8. That decision, made on an emergency basis and upon a limited record,[1] was driven by several factors, including: (1) reports by a physician, who sought a

[1] The Court has been advised that plaintiffs' counsel Sujata S. Gibson and former counsel Chad A. Davenport, Esq. caused the distribution of a letter to every school board and district in New York State characterizing this Court's preliminary injunction decision. DE 75-2 (letter available at https://childrenshealthdefense.org/wp-content/uploads/CHD-Letter-to-NYS-Boards-of-Education.pdf). In that letter, which threatens districts with legal action based on the preliminary injunction determination, states that this Court's decision was "not based on unusual facts," holds that "school districts cannot second-guess a child's certifying physician under Public Health Law," and the decision "dramatically raises your district's exposure." *Id.* This represents a gross mischaracterization of the express terms of this Court's determination. Indeed, in granting preliminary relief, the Court cautioned counsel to be "very clear on the scope of the decision," which was limited to "a very narrow question: Is Sarah going back to school in September?" DE 85-8 at 53. The decision was expressly "based on a very limited set of facts, and it's very specific to this case. This is not going to change the world in any way, but it will have an effect on the parties." *Id.* Given these constraints, the Court finds that Ms. Gibson's and Mr. Davenport's actions were both factually incorrect and professionally inappropriate.

medical exemption for Sarah which "contained specific information to identify medical contraindication to a specific immunization," to wit: an anaphylactic reaction to an earlier dose of the Hepatitis B vaccine; (2) a demonstration that she had, as a result of receiving the first two Hepatitis B vaccines "has at least some immunity to the disease"; and (3) a Second Circuit case finding that "there has never been any definitive proof that Hepatitis B can be communicated by non-parenteral routes such as saliva." DE 85-8 at 57-59 (citing *NYSARC v. Carey*, 612 F.2d 644 (2d Cir. 1979)). Accordingly, the Court issued an injunction directing defendants to allow Sarah to attend school for her junior year without receiving the third Hepatitis B vaccination.

Currently before the Court is an application for a second preliminary injunction, asking the Court to direct school officials to allow Sarah to attend school for her senior year. The circumstances, however, are substantially different. First, the deficiencies in Sarah's vaccination records are more pronounced: while she still has not received the third Hepatitis B vaccination, state health regulations also require an additional vaccination: the second in a series of vaccinations to prevent Meningitis. In enacting a statute requiring students to have this vaccine, state authorities found the following:

> Meningococcal disease is a rare but dangerous disease that strikes without warning. It can cause meningitis (an infection of the lining of the brain and spinal cord) and sepsis (blood infections). Even with treatment, an infection can lead to death within a few hours. In non-fatal cases, permanent disabilities can include loss of limbs, hearing loss and brain damage.

"New Law Requires Meningococcal Vaccine for All New York Children Entering 7th and 12th Grades," *New York State Department of Health*, August 31, 2016 [https://perma.cc/UPY3-U7VW]. Thus, the Meningococcal vaccine involves different considerations and, of course, requires a separate showing to justify an exemption.

Plaintiffs attempted to obtain an exemption for Sarah by submitting an exemption request to the district dated July 27, 2026. DE 85-3. This request is substantively and qualitatively different from that provided last year. According to her mother, Sarah "has been in a state of repeated serious medical crises and remains under the care of numerous specialists who are still trying to determine why she is so ill," and has been involved with at least "seven prior physicians." Transcript of Proceedings Dated September 22, 2026 ("Tr.") at 13. Inexplicably, the July 27 exemption request was filed by Dr. Carlos Rivera, a physician who served only as a "consultant" to Sarah because "[t]he scope of Ms. Doe's care falls outside of [his] expertise." Tr. 30. Worse still, Dr. Rivera appears on the New York State Vaccine Fraud Awareness list, meaning that he was "suspended from using the New York State immunization information system." Tr. 30, 134. This provided a red flag for the school doctor reviewing the exemption request. *Id.* At the hearing, Dr. Rivera testified that before filing the exemption, he had never examined or even spoken to Sarah and never ordered or reviewed any lab tests to consider his determination. Tr. 13, 61. Rather, his review seemed limited to interviewing Sarah's mother and reading exemption requests filed by other physicians in prior years. Tr. 13.

Dr. Rivera repeatedly (and falsely) claimed that Dr. Haskoor, the school district physician, never asked him for follow-up information. *See, e.g.* Tr. 19, 52. In fact, upon further examination, Rivera admitted that Dr. Haskoor indicated that he needed further information, and that Rivera assured that information would come from another physician. Tr. 54. Rivera advised Dr. Haskoor that he would follow up with Sarah's mother and forward any information he got from her. Tr. 54, 132. Though he claimed to have inquired with her, Jane Doe denied that Rivera ever asked her for follow up information. Tr. 110.

In a sworn affidavit, plaintiff Jane Doe asserted that she had sent the school principal an email attaching her daughter's lab results, averring that her email stated "I attached her recent lab work also." Tr. 98-99; DE 97 at ¶ 5. She attempted to maintain this assertion under oath at the hearing. Tr. 99. Confronted with a copy of the email, Jane Doe had to concede that this was false. She had *not* provided the school district with a copy of any laboratory results. Tr. 103.

Dr. Haskoor, the school physician, repeatedly contacted Dr. Rivera to request more information, including "a specific reason why Sarah Doe can't receive the meningitis vaccine." Tr. 131-32. Dr. Haskoor's testimony in this regard was corroborated by telephone records, emails and, ultimately, admissions by several other witnesses. Ultimately, after significant efforts to get more information, Dr. Haskoor recommended rejecting the exemption request "for lack of documentation demonstrating that either vaccine is detrimental to the student's health[,] i.e., that the student has a medical contraindication or precaution to either vaccine, consistent with contraindication guidance of a nationally recognized evidence-based standard of care." Tr. 133.

On this application, plaintiffs rely heavily on a second exemption request supplied by a Dr. Miller, purportedly an infectious disease specialist who submitted an exemption request dated September 14, 2026. DE 97 at 7. Dr. Miller did not testify at the hearing despite the opportunity to do so. *See* Electronic Order Dated September 17, 2026 ("The parties should also be prepared to offer testimony *from any other witnesses* . . .") (emphasis added). His exemption request is highly similar to that submitted by Dr. Rivera. Compare DE 97 at 7 with DE 85-3. Thus, it does not provide a reason that she cannot receive the Meningitis vaccine. Additionally, lab results submitted into evidence at the hearing upon which Dr. Miller principally relied do not

appear to support his exemption request.[2] Moreover, the uncontested testimony establishes that Dr. Haskoor made several attempts to get further information from Dr. Miller and has not received any response. Tr. 166. Thus, the additional submission by Dr. Miller does not change the analysis.

Standard of Review

A party seeking preliminary injunctive relief must demonstrate "(1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff's favor; and (3) that the public's interest weighs in favor of granting an injunction." *Red Earth LLC v. United States*, 657 F.3d 138, 143 (2d Cir. 2011) (citation omitted). In addition, where the preliminary injunction will affect governmental action "taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the more rigorous likelihood-of-success standard." *Doe v. United States Merch. Marine Acad.*, 307 F. Supp. 3d 121, 143 (E.D.N.Y. 2018) (citing *Sussman v. Crawford*, 488 F.3d 136, 140 (2d Cir. 2007) (citations omitted)). Further, if the party seeks a "mandatory injunction" altering the status quo, then the party must make a "'clear' or 'substantial' showing of a likelihood of success on the merits.'" *Doe*, 307 F. Supp. at 143 (citing *Jolly v. Coughlin*, 76 F.3d 468, 473 (2d Cir. 1996)). The Court has "wide discretion in determining whether to grant a preliminary injunction," as it is "one of the most drastic tools in the arsenal of judicial remedies." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (citations omitted).

[2] While not filed on the docket, the lab results were marked as Plaintiff's Exhibit 2 at the hearing.

The parties, once again, quarrel over whether the injunction sought constitutes a mandatory or prohibitory injunction. The Court need not resolve this issue, as it finds that preliminary injunctive relief would be inappropriate under either standard.

Discussion

On these facts, the request for the extraordinary remedy of a preliminary injunction is readily dispatched. As the Second Circuit recently observed:

> The medical exemption works as follows: A child whose physician certifies that a vaccine "may be detrimental to [the] child's health" does not have to receive that vaccine "until such immunization is found no longer to be detrimental to the child's health." N.Y. Pub. Health Law § 2164(8). "May be detrimental to the child's health" means "that a child has a medical contraindication or precaution to a specific immunization consistent with [Advisory Committee on Immunization Practices] guidance or other nationally recognized evidence-based standard of care." N.Y. Comp. Codes R. & Regs. 10 § 66-1.1(l). The child's parent must provide a completed medical exemption certification form, "containing sufficient information to identify a medical contraindication to a specific immunization and specifying the length of time the immunization is medically contraindicated." Id. § 66-1.3(c). School officials are authorized to ask for "additional information supporting the exemption." *Id.*

Miller v. McDonald, 180 F.4th 420, 431 (2d Cir. 2026). Here, plaintiffs' application fails in two respects. First, the exemption requests filed by both Drs. Rivera and Miller do not appear to indicate a specific contraindication with respect to the Meningitis vaccine and arguably fail to supply sufficient information to support the claim that the Hepatitis B vaccine is currently contraindicated. Second, school officials were well within their rights to request further supporting documentation, and plaintiffs' failure to comply with these requests undermines any claim of a likelihood of success on the merits.

These concerns are particularly heightened where, as here, the exemption request was completed by a physician who is listed on the New York State Vaccine Fraud list and that physician never conducted an examination of the student or obtained any relevant laboratory

results prior to filing the exemption request. Furthermore, the implication of the Meningitis vaccine along with the Hepatitis B vaccine increases the risk to the public and therefore shifts the balance of the hardships in favor of defendants. These same factors suggest that the issuance of a preliminary injunction is not in the public interest.

Accordingly, plaintiffs' renewed motion for a preliminary injunction is denied.

The Path Forward

Also pending before the Court is the defendants' motion to dismiss this action. As part of its review, the Court has encountered an additional issue which has not been briefed by the parties. The Second Circuit, in *Goe v. Zucker*, noted that "to the extent there is a disagreement on whether the [medical exemption] requirements are met in any particular case, parents can appeal to the Commissioner of Education and seek judicial review in the state court system through an Article 78 proceeding." 43 F.4th 19, 36 (2d Cir. 2022). And, as this Court has previously held, it may be appropriate to dismiss "claims alleging violation of a state statute [that] should have been brought in New York state court pursuant to Article 78 of the New York State Practice Law and Rules." *McGregor v. Suffolk Cnty*., No. 23-CV-1130 (GRB) (ARL), 2025 WL 3704289, at *6 (E.D.N.Y. Dec. 22, 2025).

Accordingly, the parties are directed to submit supplemental briefing within 14 days of this Order as to whether this litigation would be properly brought as an Article 78 proceeding and whether this notion provides grounds for dismissal or other disposition of the action.

SO ORDERED.

Dated: Central Islip, New York
September 23, 2026

/s/ Gary R. Brown
GARY R. BROWN
United States District Judge