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**TOXIC TORTS AND
ENVIRONMENTAL
LAW** page 34



Also in This Issue

**GOVERNMENTAL
LIABILITY** page 8

**Lucid Legal
Writing** page 67

**Helping Others
Shine: Look Out for
Number Two** page 68

And More



Vaccination: Balancing Students' Welfare and Constitutional Rights

By Olivia F. Amlung

Evaluating the delicate balance between individual religious freedom and protection of the general welfare in public schools.

Religion and Vaccination in Schools

Vaccination is consistently regarded as one of the greatest public health achievements in the twentieth century. See Isabel Delany *et al.*, *Vaccines for the 21st century*, 6 *EMBO Mol. Med.* 708 (June 2014). However, at the turn of the

twenty-first century, Western Civilization has begun to experience a dramatic increase in those declining to vaccinate themselves or their children. Some children are unvaccinated because a doctor has diagnosed them with a condition making it medically unsafe for them to receive vaccines. But the increasing trend in vaccine refusal stems from nonmedical reasoning. Whether the objection is one based on personal philosophy, discredited science, or a religious belief, the “anti-vaxxer” movement is gaining popularity.

While there are no blanket vaccination requirements for citizens in general, all 50 states have enacted legislation requiring children to receive selected vaccines before they are permitted to attend school. These requirements are, of course, subject to varied exemptions. As the anti-vaxxer movement has gained momentum and more individuals take advantage of these exemptions, the United States has experienced a rise in outbreaks of diseases previ-

ously brought under control. In response, state legislatures across the country are starting to crack down on nonmedical exemptions to their respective vaccination requirements. Many lawmakers have introduced legislation to remove certain bases for exemptions, primarily those stemming from moral, philosophical, or other personal beliefs.

Generally speaking, school districts are obligated to police the vaccination requirements enacted by their respective state legislatures. Students who are not adequately vaccinated, or who do not have a valid exemption on file, are not permitted to enroll in school. The schools themselves are often forced to evaluate the validity of claimed exemptions, thereby placing them in a precarious position. On one hand, schools have a duty to protect the welfare of the students they educate; but on the other, a school must acknowledge and protect the constitutional rights of its students. Thus, as vaccination opposition increases, but



■ Olivia F. Amlung is an associate attorney at Adams Stepner Woltermann & Dusing PLLC in Covington, Kentucky. As a member of the firm's litigation and local government practice groups, she primarily focuses on state and federal claims involving local government defense, school law, personal injury, and a variety of other matters. Ms. Amlung also assists with general counsel work for local businesses, school districts, cities, and governmental entities. She is an active member of various bar associations, including the National and Kentucky School Board Associations, Kentucky Defense Counsel, Inc., and DRI.

statutory avenues for exemptions decrease, schools are placed squarely on the frontlines of the impending war. This article will address these competing interests and evaluate the potential liability of schools in the midst of increasing allegations of constitutional violations due to vaccine and outbreak-related matters.

A Brief History of Vaccination Development and the Anti-Vaccination Movement

The concept of immunization has been around for centuries. As early as the seventeenth century, Buddhist monks learned to drink small amounts of snake venom to immunize them against the effects of various snake bites. In 1796, Edward Jenner—the father of immunology—developed the first recognized vaccination after he inoculated an eight-year-old boy with vaccinia virus (cowpox), and demonstrated immunity to smallpox. Stefan Riedel, *Edward Jenner and the History of Smallpox and Vaccination*, 18 BUMC Proceedings 21, 24 (Jan. 21, 2005). By the end of the nineteenth century, medical professionals had developed several vaccines, including those against smallpox, rabies, plague, cholera, and typhoid.

Although only the smallpox vaccine was readily available, Massachusetts became the first state to require vaccination for school children in 1855. Since then, vaccination requirements have become increasingly more commonplace. As vaccination development has progressed, the world has seen a significant decrease in many preventable diseases that once wreaked havoc on civilization. To date, smallpox has been entirely eradicated by vaccines, saving approximately five million lives annually. UNICEF, “Vaccines Bring 7 Diseases Under Control,” in *The Progress of Nations 1996* (Peter Adamson, ed., June 11, 1996). With sufficient vaccination rates, many others could be eradicated in the near future.

Many individuals do not understand how vaccines work and why it is important to maintain certain vaccination levels throughout a community for vaccines to be fully effective. The concept of “community immunity” is what drives states to go to such lengths to encourage mass vaccination of students. As with most things in life, there is strength in numbers.

To understand how vaccines work, one must first understand how the body fights illness. When germs, such as bacteria or viruses, invade the body, they attack and multiply; this is called an infection, and the infection leads to illness. Ctrs. for Disease Control & Prevent., *Understanding How Vaccines Work* (July 2018), <https://www.cdc.gov/vaccines/hcp/conversations>. When first encountering a specific germ, the body must quickly process how to fight it. *Id.* Often, the body requires several days to “make and use all the germ-fighting tools” needed to fight off the infection effectively. *Id.* Once the process is complete, and the infection has been overcome, the immune system retains “memory cells” for quick recall if needed to protect the body against that disease once more in the future. *Id.*

There are many types of vaccinations (*i.e.*, subunit, conjugate, live, inactivated). *Id.* But generally speaking, they all work toward the same goal: by imitating an infection, the vaccination teaches the body how to fight specific diseases. Thus, if a vaccinated individual comes into contact with that disease later on in life, he or she will be able to defend the body from infection effectively. This is not to say that a person will not ever experience minor symptoms, whether from the disease or the vaccine itself. But vaccination allows the individual to have his or her best ability to fight the infection, and vaccination can often prevent contraction of the disease altogether if the community as a whole is immune.

Community immunity occurs when a sufficient proportion of a population is immune to an infectious disease, through vaccination and prior illness, which makes its spread from person to person unlikely. Ctrs. for Disease Control & Prevent., *Vaccine Glossary of Terms*, (last updated Aug. 17, 2015), <https://www.cdc.gov/vaccines>. Essentially, vaccination of the many implicitly protects the few who are medically unable to receive vaccinations (*i.e.*, infants and the ill). If one individual does happen to contract a particular disease, community immunity prevents its spread. Eventually, the disease becomes rare, and ultimately may be eradicated altogether. In sum, vaccines save lives—not just the lives of those who receive them, but also those who medically cannot.

Despite the ready availability of this information, data from the Centers for Disease Control and Prevention shows that vaccination exemption rates among infants and school-aged children have been steadily rising over the past few years. J.L. Mellerson *et al.*, *Vaccination Coverage for Selected Vaccines and Exemption Rates Among Children in Kindergarten—United*

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If one individual does happen to contract a particular disease, community immunity prevents its spread. Eventually, the disease becomes rare, and ultimately may be eradicated altogether.

States, 2017–18 School Year 67 MMWR 1115 (Oct. 12, 2018). The increasing exemption rates have created volatile pockets of unimmunized individuals, and outbreaks of preventable diseases have sprouted across the country. In 2015, Oregon became home to the first person to die of measles in the United States in over a decade. Liz Szazbo, *Measles Kills First Patient in 12 Years*, USA Today, July 2, 2015. Her death was consistently characterized as “a preventable, but predictable, consequence of falling vaccination rates.” *Id.*

One may wonder if vaccines are scientifically proven to save lives, why is there such opposition?

While opposition to vaccines is as old as the vaccines themselves, Western countries have seen a recent surge in this opposition over the last decade. Azhar Hussian *et al.*, *The Anti-vaccination Movement: A Regression in Modern Medicine*, *Cureus* 10(7) (July 3, 2018): e2919. doi:10.7759/cureus.2919. Many medical professionals blame one man for inciting strong reju-



vention in the anti-vaxxer movement. In 1998, Andrew Wakefield, a former British doctor and researcher, published a study lending credence to the now-debunked claim of a connection between the measles, mumps, and rubella (MMR) vaccine and development of autism in young children. *Id.* (citing Andrew Wakefield *et al.*, *Ileal-lymphoid-nodular Hyperplasia, Non-*

All jurisdictions

permit exemption to state vaccination requirements based on medical necessity, as is constitutionally required.

specific Colitis, and Pervasive Developmental Disorder in Children, 351 *The Lancet* 637 (Feb. 28, 1998), *retracted*, 375 *The Lancet* 445 (Feb. 6, 2010)). Ultimately, the findings were retracted and declared “utterly false.” *Id.* (citing S. Boseley, *Lancet Retracts “Utterly False” MMR Paper*, *The Guardian*, Feb. 2, 2010). By that time, however, miseducation about vaccine safety had begun to spread like wildfire.

Today, opposition to vaccinations continues to come in many forms. Some have residual fear due to Wakefield’s debunked science, perpetuated by misinformed celebrity advocates across the internet. Others are simply distrustful of “Big Pharma.” Some oppose vaccination for no reason other than the fact that the government requires it. But as this negative attention is increasingly directed toward vaccines, an increasing amount of individuals express disapproval based on religious, moral, or spiritual grounds.

The majority of religions do not explicitly prohibit vaccination; however, many religions promote alternative perspectives on vaccination. Generally speaking, these objections are derived from two schools of thought: 1) using human tissue cells to develop the first vaccines leads to ethical dilemmas; and 2) a firm belief in the

sanctity of the body, and promoting natural healing practices will preserve that sanctity. Regardless of the reasoning, these objections continue to fuel the anti-vaxxer movement. Now, instead of simply debating the scientific validity of vaccinations, the anti-vaccination rhetoric has evolved into that of a free exercise challenge: essentially, parents argue that their decision to refuse vaccination for their children is unequivocally protected by the First Amendment to the Constitution.

Sources of Vaccine Law

As mentioned, there is no federal mandate regarding vaccinations. In fact, there is not even a single state mandate broadly demanding that all children be vaccinated. Instead, state vaccination laws are incorporated into those laws that regulate prerequisites to attend schools and daycares.

Vaccination requirements vary among the states, but there are similarities among them. All fifty states and the District of Columbia have enacted legislation requiring a specified schedule of vaccines for students. Nat’l Conf. of State Legisl., *States with Religious and Philosophical Exemptions from School Immunization Requirements* (last updated Jan. 30, 2019), <http://www.ncsl.org>. All jurisdictions permit exemption to state vaccination requirements based on medical necessity, as is constitutionally required. The states differ in their nonmedical exemptions. Currently, forty-seven states and the District of Columbia offer nonmedical exemptions. *Id.* While these exemptions are fully defined within each respective state’s statutes, there are generally two types of nonmedical exemptions that may be available: religious and philosophical.

The exemptions are fairly self-explanatory. Religious exemptions allow parents to exempt their children from state vaccination requirements if they affirm that the administration of all or some vaccines contradicts a sincere religious belief. Philosophical exemptions, however, are often liberally construed to include beliefs beyond those derived from purely religious or spiritual ideologies. For example, Maine allows exemptions based on “religious” or “philosophical” reasons. Me. Stat. 20-A §6355. And Minnesota allows objections based on “conscientiously held

beliefs of the parent or guardian,” Minn. Stat. §121A.15. Of those states that offer nonmedical exemptions, only 17 currently permit exemption based on personal philosophy without religious justification. See Nat’l Conf. of State Legisl., *supra*.

As noted, almost every state has enacted laws that permit religious exemptions. But with the rapid increase in preventable disease outbreaks throughout the nation, more states have begun to repeal philosophical exemptions. Before a well-publicized measles outbreak in Disneyland, which affected more than 130 Californians in 2014, twenty states permitted philosophical exemptions. Am. Ass’n of Family Physicians, *Study Finds Disturbing Trends in Vaccination Exemptions*, AAFP News (June 20, 2018), <https://www.aafp.org>. In response to the Disneyland outbreak, as well as others that cropped up across the nation, that number started to shrink. Only seventeen remain as of 2019, and legislative initiatives in many states continue to threaten that number.

As philosophical exemptions shrink, more and more parents will turn to their states’ respective religious exemptions to avoid vaccination requirements. Religion is often a taboo topic in the governmental context, and the validity of a religion’s belief system is rarely questioned. Thus, in some circumstances, it can provide the enticing excuse for parents to use in an effort to avoid compliance with various government directives. This is where school districts often experience difficulty.

The level of discretion afforded to school districts in awarding religious exemptions varies significantly among the states, and even among districts within those states. In Kentucky, parents are simply required to provide a “written sworn statement [objecting] to the immunization of [their] child on religious grounds.” Ky. Rev. Stat. §214.036. Here, little discretion is left to the schools. Religious exemptions in New York are more particularized; such exemptions are only granted to “children whose parent, parents, or guardian hold genuine and sincere religious beliefs.” N.Y. Pub. Health Law §2164(9). While the distinction may seem slight, many schools have interpreted nuances such as these to afford them the discretion to evaluate what constitutes a “genuine and sincere religious belief.”

In some districts, students are required to provide supporting documentation in their request for religious exemption. See Dan Goldberg, *Push to Broaden Religious Exemption Gains Momentum*, Politico (May 30, 2018), <https://www.politico.com>.

In light of the above, school districts can quickly find themselves faced with one of two scenarios:

Scenario 1: School A has tightened the reins on awarding nonmedical exemptions, while still acting in compliance with its interpretation of state law. It has a high vaccination rate, and there are no preventable disease outbreaks. Parent A and her children are devout members of the Church of the Flying Spaghetti Monster, which practices a strict prohibition against vaccinations. She sought a religious exemption for her children, but School A denied her request. In response, Parent A brought a legal claim alleging that School A has violated her rights by arbitrarily denying her children an exemption based on their sincerely held religious beliefs.

Scenario 2: School B freely gives religious exemptions in accordance with either its own discretion and/or the statutory construction of its applicable state law. However, School B is now experiencing a measles epidemic. The local health department has directed the school to prohibit all unvaccinated students from attending school for 21 days. In response, Parent B, whose child is unvaccinated, has brought a claim alleging that School B has violated her child's right to an education and Free Exercise rights.

Take a moment to identify the constitutional rights perceived to be at play. Are these schools acting within their constitutional powers? Do you think that they violated any individual's rights?

Competing Constitutional Concerns

Religious or philosophical objection to various forms of medicine is not a novel concept. Jehovah's Witnesses, for example, refuse to accept blood transfusions based on various interpretations of scripture prohibiting the same. The Amish refuse to undergo heart transplants, and in some cases, they will even refuse life-saving heart surgery because of their belief that

the heart is "the soul of the body." And because of their belief that killing animals is a sin, many Hindus disapprove of the use of any drugs, implants, skin grafts, or medical dressings that contain parts of pigs or bovines. These objections have occurred in hospitals across the globe for years without a great deal of public outcry.

However, the constitutional (and practical) implications of these religious objections are significantly different from those found in the wake of the anti-vaxer movement.

Those who refuse treatment for specific ailments, e.g., a blood transfusion, have a constitutional right to do so without question. Such refusal affects that person and that person alone. However, communicable diseases require an entirely different analysis: refusal to vaccinate affects not just the refusing individual, but also the community at large, as described above.

So in regard to vaccinations, the question becomes more complex: how does a government entity, i.e., a school district or health department, maintain balance between its duty to acknowledge individual religious liberties while still adhering to its responsibility to protect the general welfare?

The debate about individual liberties versus public health priorities was first presented to the Supreme Court over 100 years ago in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). In *Jacobson*, a citizen challenged his state's then-existing statute requiring compulsory smallpox vaccination. *Id.* at 22. In opposing the statute, he argued that the law violated his right to care for his own body and the personal liberties afforded to him under the Fourteenth Amendment. *Id.* Citing a state's police power, the Supreme Court rejected his claim. *Id.* at 24–25. At the time of this decision, the First Amendment had not yet been applied to the states and was therefore not addressed. Regardless, *Jacobson* has continued to serve as the foundation to support state actions that limit individual liberties to protect the public health.

Seventeen years later, the Court considered another mandatory vaccination law, this time aimed at school children. *Zucht v. King*, 260 U.S. 174 (1922). In *Zucht*, children were excluded from a Texas public school because they were not vaccinated,

and in response, they brought due process and equal protection claims against the district. *Id.* at 175. Relying on *Jacobson*, the Court rejected these claims, stating that it was long-ago "settled that it is within the police power of a state to provide for compulsory vaccination." *Id.* at 176.

The question of individual liberties versus the public interest appeared again in the Supreme Court in 1944, but this time in the context of child labor laws. *Prince v. Massachusetts*, 321 U.S. 158 (1944). In *Prince*, the Court addressed the constitutional concerns at play when balancing a state's ability to enact child labor laws with a parent's disregard of the same law due to his religious views on a child's work ethic. See generally *id.* at 167. In its assessment, the Supreme Court posed a persuasive hypothetical:

And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being [sic], the state as

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parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination

As states begin to crack down on vaccination requirements, *Jacobson* and its progeny have even been effectively applied to validate legislative initiatives that outright repeal statutory religious exemptions.

for the child more than for himself on religious grounds. *The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.*

Id. at 166–67 (emphasis added) (footnotes omitted). And thus, based on this extremely pointed dictum, jurisdictions that had addressed this issue agreed that state laws requiring vaccination as a prerequisite for school admission did not violate the Free Exercise Clause. See, e.g., *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (declaring New York law “clearly constitutional” that precludes school attendance by non-vaccinated children exempted from the state’s vaccination requirement for religious reasons during an outbreak of a vaccine-preventable disease); *Workman v. Mingo Cty. Bd. of Educ.*, 419 F. App’x 348, 353–54 (4th Cir. 2011) (concluding “that the West Virginia statute requiring vaccinations as a condition of admission to school does not unconstitutionally infringe [the plaintiff’s] right to free exercise”). Indeed, such a requirement

is unequivocally within a state’s police power. See *Jacobson*, 321 U.S. at 37–38; *Zucht*, 260 U.S. at 176.

As states begin to crack down on vaccination requirements, *Jacobson* and its progeny have even been effectively applied to validate legislative initiatives that outright repeal statutory religious exemptions. California’s Senate Bill 277, enacted on June 30, 2015, removed a parent’s previous ability to obtain an exemption from the state’s vaccination requirements based on that parent’s personal beliefs. *Whitlow v. Cal. Dep’t of Educ.*, 203 F. Supp. 3d 1079, 1082 (S.D. Cal. 2016). After the bill’s enactment, a group of parents unsuccessfully sought to preliminarily enjoin the state Department of Education from enforcing the law. *Id.* Relying on *Jacobson* and various other cases that have addressed this issue, the district court opined that although a state may provide a religious exemption to mandatory vaccination, there is no constitutional requirement that it must. *Id.* at 1085 (citing *Workman*, 419 F. App’x at 355). Thus, the religious exemption repeal was a valid exercise of state police powers.

Thus, any free exercise challenges brought against state vaccination requirements for school children are, in general, constitutionally unsound. Instead, keeping with the maxim that “no good deed goes unpunished,” the problematic constitutional concerns tend to manifest in states that elect to provide religious exemptions.

Once state legislatures take the extra step to provide individuals with a statutory avenue for a nonmedical exemption, schools are, in some instances, placed in a precarious position. Depending on the statutory construction governing exemptions, schools have the ability to evaluate requests. When they deny those requests, individuals argue that a slew of constitutional concerns are implicated. Even if such requests are granted without issue, but an outbreak of preventable disease follows, schools across the nation have been increasingly forced to consider temporary attendance bans for nonimmune students. For these situations, there is little precedent to provide schools with definitive guidance on the limits of their police power.

In evaluating the ability of a district to ban nonimmune students temporarily from school in the midst of an epidemic of

preventable disease, the Second and Fourth Circuits have been inclined to apply a rational basis standard of review. See *Phillips*, 775 F.3d at 543; *Workman*, 419 F. App’x at 353–54. Citing relevant Supreme Court precedent, the courts have noted that “a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). These circuits essentially reasoned that because a state could bar unvaccinated children from school altogether, a fortiori, a state’s “more limited exclusion during an outbreak of a vaccine-preventable disease is clearly constitutional.” See *Phillips*, 775 F.3d at 543. Even more persuasive, these jurisdictions have recognized that no one is targeting religion by merely aiming to prevent the spread of communicable disease.

It is unclear whether other jurisdictions will follow suit because only two circuits have even contemplated this issue. It is even more unclear whether this same standard is appropriately applied when school districts evaluate and deny religious exemptions when an outbreak is not an immediate threat, although it seems unlikely. However, given the Supreme Court’s dicta in *Prince* that “[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death,” it may be prudent for attorneys for schools defending against such claims to frame the issues in the context of mere statutory interpretation as opposed to one that begs an assessment for potential religious discrimination. *Prince*, 321 U.S. at 166–67.

At this point, only one thing is certain: states are afforded police power to mandate compulsory vaccination as a prerequisite for school attendance. It is not a court’s place to evaluate the validity of vaccine science; it is instead only for the courts to decide the tipping point at which public health concerns outweigh individual liberties. As *Jacobson* made clear, it is up to each state’s legislature to determine the validity of vaccine science and whether requirements are justified. See *Jacobson* 197 U.S.

Vaccination, continued on page 65

Vaccination, from page 20

at 37–38. But by actively electing to provide nonmedical exemptions, states have undermined this very power and inadvertently created the grey area in which many school districts now find themselves. Thus, the resulting constitutional concerns will likely require evaluation on a state-by-state basis, wholly dependent on the statutory construction of each state’s respective exemptions laws and incorporation within a specific school district.

How to Prepare Your Schools

Take a moment to refer back to the scenarios previously set forth. Each scenario contains its own set of costs, as well as benefits. In Scenario A, students are arguably safer and less likely to spread preventable diseases. But the procedures in this scenario undeniably set up the district to receive a religious discrimination challenge. In Scenario B, current controlling precedent would tend to support the constitutionality of the school district’s actions, but by that point, an outbreak would have already occurred.

Each of these scenarios has already begun to play out in school districts across the nation. The scenarios are based on cases currently pending in various jurisdictions. Thus, regardless of a state’s statutory construction on vaccine requirements, schools need to prepare themselves for what could easily come to pass.

Without any controlling precedent advising schools on the exposure that they may have with regard to medical exemptions, what can you do to prepare your district and put it in the best position?

First and foremost, do what is best for the general welfare of your district’s students.

Second, take proactive steps to ensure that your school district not only knows the law but has exemption forms and procedures that are compliant with the law. Each state’s exemption is different. Be sure that your schools are implementing the restrictions to the degree that the text of the statute requires.

More importantly, identify the safeguards that your state legislature may have included within the exemptions laws text. Some states provide a caveat to an exemption that explicitly permits a district or health department to exclude nonimmune

students from schools during an outbreak of a vaccine-preventable disease. *See, e.g.,* Ky. Rev. Stat. §214.036; Md. Code Ann., Educ. §7-403; N.D. Cent. Code §23-07-17.1. This caveat can be your school district’s saving grace if the time comes when tough decisions must be made to control an epidemic.

Finally, be aware of the status of pending cases on this topic. Across the country, variations of the scenarios previously discussed are actively being adjudicated. For example, in the Southern District of New York, a federal judge recently denied a parent’s request for preliminary injunction after a local school district temporarily banned nonimmune students from school in the midst of a measles outbreak. *M.A. v. Rockland Cty. Dep’t of Health*, Case No. 7:19-cv-02066-VB, Dkt. No. 15 (S.D.N.Y. 2019). The Kentucky Court of Appeals is currently reviewing a circuit court judge’s denial of a similar request after a local health department temporarily banned nonimmune students from attending school during a varicella outbreak. *Kunkel, et al. v. No. Ky. Indep. Dist. Health Dep’t., et al.*, 2019-CA-000575 (Ky. Ct. App. 2019). In another case, the New York Supreme Court refused to evaluate a school district’s denial of two students’ request for religious exemption that has kept them out of school for multiple months. *Williams v. Orchard Park Sch. Dist.*, 2019 N.Y. Slip Op. 50306(U) (N.Y. Sup Ct. Erie Cty. 2019). The court declined to order the school to permit the children to return to school because the matter is also on appeal with the state Commissioner of Education, and the available administrative remedies have not been exhausted. Thus, each of these cases is far from over. While still in their infancies, the precedent set in these cases could provide direct guidance for schools when evaluating the extent of police power afforded in these situations.

At this point, it remains to be seen what exposure schools may face when they are forced to maintain balance between religious freedom and protecting their students’ general welfare. For now, it is critical that school district attorneys continue to take proactive measures to fend off a wave of vaccination litigation. 

FAPE, from page 23

challenge students—not merely provide skill maintenance.

The IEP Team

The IEP Team has great responsibility. The IEP Team must *develop, review, and revise* an IEP in accordance with law. *See* 34 C.F.R. §300.320(a) (emphasis added). As long as the student is eligible for special education and related services, the IEP Team has those three ongoing responsibilities. Further, the school district must implement the IEP with fidelity—that is, as written. A tremendous IEP that is not implemented appropriately is both a denial of FAPE and, more importantly, very likely detrimental to the child and the family. The developed IEP is only step one, and as some would say, “Now the work begins.”

The IEP Team’s responsibilities of review and revision are triggered periodically (*i.e.*, at least yearly; 34 C.F.R. §300.324(b)(i)) and, perhaps more importantly, when the child is not making the meaningful progress anticipated by (and “reasonably calculated” by) the IEP Team. *See* 34 C.F.R. §§300.324(a)(2)(ii) (regarding IEP Team’s obligation to address student’s behavior that interferes with his education or that of others) and 300.324(b)(1)(ii)(A) (regarding IEP Team’s obligation to address “any lack of progress toward the annual goals”). “The IEP ‘is the centerpiece of the statute’s education delivery system for disabled children.’” *Andrew F.*, 137 S. Ct. at 994 (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)). The IEP Team must take good care of that centerpiece.

Conclusion

For the vast majority of the jurisdictions in the United States, *Andrew F.* did not prompt a change in the substantive standard of FAPE under IDEA. *Andrew F.* firmly reinforced the lessons of *Rowley*, which remains the Court’s seminal IDEA decision. School districts and their counsel would be wise to re-read *Rowley* and then read *Andrew F.* as the next and companion chapter on the foundations of IDEA, as interpreted by the Supreme Court. As we wait for Congress to tackle the next IDEA re-authorization, *Andrew F.* provides important perspectives—still consistent with *Rowley*—and a fresh look at what may have become tired material. 