



[Home](#)

[Appeals](#)

[Serving Legal Papers](#)

[Charters and Regents](#)

[Commissioner's Consents](#)

[Guidance Documents](#)

[Rules and Regulations](#)

## Decision No. 18,716

Appeal of A.G., on behalf of her child, from action of the Board of Education of the Oceanside Union Free School District regarding immunization.[1]

Decision No. 18,716

(March 31, 2026)

Davenport Law PLLC, attorneys for petitioner, Chad A. Davenport, Esq., of counsel

Frazer & Feldman LLP, attorneys for respondent, Dennis P. O'Brien, Esq., of counsel

ROSA., Commissioner.--Petitioner appeals the determination of the Board of Education of the Oceanside Union Free School District ("respondent") that his child ("the student") is not entitled to a medical exemption from the immunization requirements of Public Health Law ("PHL") § 2164. The appeal must be dismissed.

On September 11, 2025, petitioner submitted a New York State Department of Health ("DOH") medical exemption statement to respondent seeking an exemption from the polio, DTaP, MMR, and varicella vaccines. In support of this exemption, a physician indicated that "a genetic mutation (MTHFR gene) ... could impair [the student's] ability to detoxify, [thus] increasing her risk of vaccine injury." The physician submitted a two-page addendum identifying concerns related to each of the four vaccinations for which an exemption was sought.

On September 22, 2025, the principal of one of respondent's elementary schools requested additional information regarding "each of the prior adverse reactions experienced" by the student described in the addendum. Petitioner, through counsel, refused to provide additional information.

By letter dated September 26, 2025, respondent denied petitioner's request based on petitioner's "refus[al] to cooperate" and the fact that the exemption request "did not contain sufficient information to identify an appropriately valid medical contraindication within ACIP standards and/or that of another nationally-recognized, evidence-based standard of care." This appeal ensued. Petitioner's request for interim relief was denied on October 15, 2025.

Petitioners seek a determination that the student is entitled to a medical exemption from the immunization requirements of PHL § 2164 for the reasons articulated by the physician.

Respondent argues that petitioner has failed to prove that it acted in an arbitrary or capricious manner.

PHL § 2164 generally requires that children between the ages of two months and eighteen years be immunized against certain diseases and provides that children may not attend school in the absence of acceptable evidence that they have been immunized. The law provides a single exception to the immunization requirement: immunization is not required if a New York-licensed physician certifies that

immunization may be detrimental to a child's health (PHL § 2164 [8]). Pursuant to applicable Department of Health (DOH) regulations,

A principal or person in charge of a school shall not admit a child to school unless a person in parental relation to the child has furnished the school with ... [a] signed, completed medical exemption form ... from a physician licensed to practice medicine in New York State certifying that immunization may be detrimental to the child's health, containing sufficient information to identify a medical contraindication to a specific immunization and specifying the length of time the immunization is medically contraindicated. The medical exemption must be reissued annually. The principal or person in charge of the school may require additional information supporting the exemption.

(10 NYCRR 66-1.3 [c]). The phrase "[m]ay be detrimental to the child's health" means "that a physician has determined that a child has a medical contraindication or precaution to a specific immunization consistent with ACIP guidance or other nationally recognized evidence-based standard of care" (10 NYCRR 66-1.1 [l]).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and establishing the facts upon which he or she seeks relief (8 NYCRR 275.10; *Appeal of P.C. and K.C.*, 57 Ed Dept Rep, Decision No. 17,337; *Appeal of Aversa*, 48 *id.* 523, Decision No. 15,936; *Appeal of Hansen*, 48 *id.* 354, Decision No. 15,884).

Petitioner has failed to meet her burden of proving that respondent's determination was arbitrary or capricious. Respondent was entitled to request corroborating information regarding the alleged adverse reactions identified by the physician (*Appeal of M.M. and L.M.*, 65 Ed Dept Rep, Decision No. 18,641; *Appeal of J.O. and E.O.*, 64 *id.*, Decision No. 18,471; *Appeal of S.G.*, 59 *id.*, Decision No. 17,830; *Appeal of P.K.*, 59 *id.*, Decision No. 17,802). While petitioner complains that respondent sought to "substitute [its] judgment for that of the child's treating physician," respondent merely sought to review the information upon which the physician based his opinion.<sup>[2]</sup> This was well within respondent's discretion (10 NYCRR 66-1.3 [c]; *see also Lynch v. Clarkstown Cent. Sch. Dist.*, 155 Misc 2d 846, 850 [Sup Ct, Rockland County, 1992]). As such, I find that respondent reasonably denied the appeal for failure to comply with its reasonable request for information.

While the appeal must be dismissed, petitioner retains the right to reapply for a medical exemption on the student's behalf. Should petitioner do so, respondent must provide a detailed explanation as to why it does not consider any ACIP precautions or contraindications identified on the medical exemption statement to be legally sufficient.<sup>[3]</sup>

In light of this determination, I need not address the parties' remaining contentions.

THE APPEAL IS DISMISSED.

END OF FILE

---

[1] Petitioner also named the superintendent, an assistant superintendent, and a principal in the caption of the appeal. Because petitioner is appealing from final action of the board of education, I find that the board is the only appropriate respondent in this appeal (*see Appeal of F.P.*, 64 Ed Dept Rep, Decision No. 18,525).

[2] If the physician based this opinion on a parent's report alone, the physician should have so indicated.

[3] The addendum to the medical exemption statement identifies a precaution to DTaP (“progressive neurological disorder”) and, arguably, a contraindication to varicella (“reduced immune system,” which could constitute a “known severe immunodeficiency”). See Centers for Disease Control, “Contraindications and Precautions,” <https://www.cdc.gov/vaccines/hcp/imz-best-practices/contraindications-precautions.html> (last accessed Mar. 30, 2026).



New York State Education  
Building  
89 Washington Avenue  
Albany, NY 12234

#### CONTACT US

**NYSED General Information: (518) 474-3852**  
ACCES-VR: 1-800-222-JOBS (5627)  
TASC (formerly GED): (518) 474-5906  
New York State Archives: (518) 474-6926  
New York State Library: (518) 474-5355  
New York State Museum: (518) 474-5877  
Office of Higher Education: (518) 486-3633  
Office of the Professions: (518) 474-3817  
P-12 Education: (518) 474-3862

© 2015 - 2025 New York State Education  
Department