Judge Upholds Policy Barring Unvaccinated Students During Illnesses

By BENJAMIN MUELLER   JUNE 22, 2014

In a case weighing the government’s ability to require vaccination against the individual right to refuse it, a federal judge has upheld a New York City policy that bars unimmunized children from public school when another student has a vaccine-preventable disease.

Citing a 109-year-old Supreme Court ruling that gives states broad power in public health matters, Judge William F. Kuntz II of Federal District Court in Brooklyn ruled against three families who claimed that their right to free exercise of religion was violated when their children were kept from school, sometimes for a month at a time, because of the city’s immunization policies.

The Supreme Court, Judge Kuntz wrote in his ruling, has “strongly suggested that religious objectors are not constitutionally exempt from vaccinations.”

The lawyer for the plaintiffs, Patricia Finn, said she plans to appeal the decision, announced this month. On Thursday, Ms. Finn asked the district court to rehear the case.

Amid concerns by public health officials that some diseases are experiencing a
resurgence in areas with low vaccination rates, the decision reinforces efforts by the city to balance a **strict vaccine mandate** with limited exemptions for objectors. Pockets of vaccination refusal persist in the city, despite high levels of vaccination overall.

State law requires children to receive vaccinations before attending school, unless a parent can show religious reservations or a doctor can attest that vaccines will harm the child. Under state law, parents claiming religious exemptions do not have to prove their faith opposes vaccines, but they must provide a written explanation of a “genuine and sincere” religious objection, which school officials can accept or reject.

Some states also let parents claim a philosophical exemption, though New York does not. Some parents refuse to have their children vaccinated because of a belief that vaccines can cause autism, though no link has ever been proved.

Two of the families in the lawsuit who had received religious exemptions challenged the city’s policy on barring their children, saying it amounted to a violation of their First Amendment right to religious freedom and their 14th Amendment right to equal protection under the law, among other claims. Their children had been kept from school when other students had chickenpox, their suit said.

The third plaintiff, Dina Check, sued on somewhat different grounds, saying that the city had improperly denied her 7-year-old daughter a religious exemption. She said the city rejected her religious exemption after it had denied her a medical exemption, sowing doubts among administrators about the authenticity of her religious opposition. But Ms. Check said the request for a medical exemption had been mistakenly submitted by a school nurse without her consent.

After the school barred her daughter, Ms. Check home-schooled her and then moved her to a private school that accepted her daughter without the vaccinations. State vaccination requirements cover public and private schools, but in New York City, private schools have more autonomy in handling exemptions.
Ms. Check said she rejected vaccination after her daughter was “intoxicated” by a few shots during infancy, which she said caused an onslaught of food and milk allergies, rashes and infections. Combined with a religious revelation she had during the difficult pregnancy, she said, the experience turned her away from medicine. Now she uses holistic treatments.

“Disease is pestilence,” Ms. Check said, “and pestilence is from the devil. The devil is germs and disease, which is cancer and any of those things that can take you down. But if you trust in the Lord, these things cannot come near you.”

In turning down all three families, Judge Kuntz cited a 1905 Supreme Court ruling that upheld a $5 fine for a Massachusetts man who disobeyed an order to be vaccinated during a smallpox outbreak, a case that helped establish the government’s right to require immunizations as a matter of public health.

Ms. Finn, the families’ lawyer, said that case should not be relevant. “There’s no way that court anticipated that children would be subjected” to the vaccines they must get today, she said.

In New York, the statewide mean religious exemption rate rose over the last decade, from .23 percent in 2000 to .45 percent in 2011, a 2013 study in the medical journal Pediatrics said.

New York City schools granted 3,535 religious exemptions in 2012-13, according to data from the state’s Health Department. Though city schools, public and private, have an overall immunization rate around 97 percent, according to the department, 37 private schools were below 70 percent. Health experts believe that above a certain immunization rate, outbreaks are limited because a disease cannot spread to enough people during its incubation period to sustain itself, a phenomenon known as “herd immunity.” For measles, which is highly contagious, that rate is believed to be 95 percent, according to Daniel Salmon, deputy director at the Institute for Vaccine Safety at the Johns Hopkins Bloomberg School of Public Health.

Though widespread vaccinations have practically eliminated diseases like
measles and mumps from the United States, flare-ups have occurred. The 477 measles cases reported this year represent the worst year-to-date count since 1994, according to the Centers for Disease Control and Prevention.

Among the 25 people who contracted measles in New York City between February and April this year, two were school-age children unvaccinated because of parental refusal. When one of the children, who was being home-schooled, contracted the measles, city health officials barred that child’s sibling, who had a religious exemption, from attending school. The sibling eventually contracted measles as well. Health officials credited the decision to keep the second child out of school with stopping the spread of disease in that community.

Ohio, which granted more than three times as many religious and philosophical exemptions to kindergarten students last year as it did in 2000, is struggling to contain a measles outbreak that has recently spread to 339 Amish people who were largely unvaccinated, the state health department said.

Mr. Salmon said it can be difficult for states to balance an obligation to mandate vaccination with some leniency for families who have strong objections. Rules that force parents to articulate their beliefs and require public officials to educate them about the risks of exemption are states’ best defense against the spread of disease, he said.

Still, especially because parents who refuse vaccination tend to cluster geographically, it takes only a few unvaccinated children to start an outbreak, he said. At that point, even vaccinated children are at risk.

“Diseases have a way of finding our vulnerabilities,” Mr. Salmon said, “the kinks in our armor.”