



# The University of the State of New York

## The State Education Department

Before the Commissioner

Appeal of B.O-G., on behalf of her son  
J.G., from action of St. Andrews  
Country Day School and Principal Dennis  
Welka regarding immunization.

Kennedy, Stoeckl & Martin, P.C., attorneys for respondents,  
Joseph A. Stoeckl, Esq., of counsel

Law Offices of Matthew A. Parham, attorney for petitioner,  
Matthew A. Parham, Esq., of counsel

Petitioner appeals the determination of St. Andrews Country Day School ("St. Andrews") and Principal Dennis Welka (collectively "respondents") that her son, J.G., is not entitled to an exemption from the immunization requirements of Public Health Law ("PHL") §2164. The appeal must be sustained.

In spring 2011, petitioner applied for her son, J.G., to attend a pre-kindergarten program at St. Andrews, a Catholic parochial school for grades pre-kindergarten to eight.<sup>1</sup> As part of the application process, petitioner informed the assistant principal that she refused on religious grounds to vaccinate her son with certain vaccines that contained aborted fetal tissue. Petitioner states that the assistant principal instructed her to complete the State Education Department's ("SED") "Request for Religious Exemption to Immunization Form" ("Form"), which petitioner did and submitted on March 18, 2011.

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<sup>1</sup> While Education Law §310 generally limits jurisdiction on appeal to matters involving public schools, that section and Public Health Law §2164(7)(b) provide for the Commissioner's review of any immunization decision prohibiting a child from attending school, whether it be public, private, parochial or otherwise (see also Public Health Law §2164 [1] [a]).

Petitioner stated on the Form:

It is my sincere religious belief that Gods [sic] commandment "Thou shalt not kill" includes the aborting of human fetuses.

It is known that many vaccines, including (but not limited to) HepA, MMR, and Chickenpox are cultivated on fetal tissue from aborted babies. The acceptance of these vaccines promotes abortion and directly conflicts with my religious beliefs.

On the same date, respondent Welka issued a written denial to petitioner's request, stating:

Although some vaccines must be produced in human cell [sic], these cell lines were produced over 40 years ago. The Catholic Church has no formal doctrine that would exempt Catholics from vaccination. I have included a copy of the statement of the Vatican's Pontifical Academy with respect to this issue.

This appeal ensued. Petitioner contends that she is entitled to a religious exemption for J.G. because her objection to immunization is based on sincerely held religious beliefs. She also contends that the principal's denial was arbitrary and capricious because he failed to evaluate the sincerity or religious nature of her beliefs.

PHL §2164 prohibits a school from admitting a child without evidence that the child has received certain immunizations. However, §2164(9) provides:

This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

The determination of whether petitioner qualifies for a religious exemption requires the careful consideration of two factors: whether petitioner's purported beliefs are religious and, if so, whether such religious beliefs are genuinely and sincerely held (see Farina v. Bd. of Educ. of the City of New York, et al., 116 F Supp 2d 503). It is not necessary for persons to be members of a recognized religious organization whose teachings oppose inoculation to claim the statutory exemption (Sherr, et al. v. Northport-East Northport Union Free School Dist., et al., 672 F Supp 81). However, the exemption does not extend to persons whose views are founded upon medical or purely moral considerations, scientific or secular theories, or philosophical and personal beliefs (Farina v. Bd. of Educ. of the City of New York, et al., 116 F Supp 2d 503).

Whether a religious belief is sincerely held can be a difficult factual determination that must be made, in the first instance, by school officials (Appeal of C.S., 49 Ed Dept Rep 106, Decision No. 15,971; Appeal of S.B., 48 *id.* 332, Decision No. 15,875; Appeal of L.S., 48 *id.* 227, Decision No. 15,845). A parent/guardian who seeks a religious exemption must submit a written and signed statement to the school or school district stating that the parent/guardian objects to their child's immunization due to sincere and genuine religious beliefs which prohibit the immunization of their child (10 NYCRR §66-1.3[d]). If, after reviewing the parental statement, questions remain about the existence of a sincerely held religious belief, the principal or person in charge of a school may request supporting documents (10 NYCRR §66-1.3[d]).

In determining whether beliefs are religious in nature and sincerely held, school officials must make a good faith effort to assess the credibility and sincerity of petitioner's statements and may consider petitioner's demeanor and forthrightness. While school officials are not required to simply accept a statement of religious belief without some explanation, they similarly should not simply reject a statement without further examination (Appeal of C.S., 49 Ed Dept Rep 106, Decision No. 15,971; Appeal of S.B., 48 *id.* 332, Decision No. 15,875; Appeal of L.S., 48 *id.* 227, Decision No. 15,845).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon

which petitioner seeks relief (8 NYCRR §275.10; Appeal of Aversa, 48 Ed Dept Rep 523, Decision No. 15,936; Appeal of Hansen, 48 id. 354, Decision No. 15,884; Appeal of P.M., 48 id. 348, Decision No. 15,882).

As a preliminary matter, I note that in response to a letter from my Office of Counsel, respondents' attorney stated that respondents declined to answer the petition and would rely on the principal's statement on the denial form. Accordingly, the factual allegations set forth in the petition are deemed to be true (8 NYCRR §275.11(a); Appeal of the Beaver Falls Library, 43 Ed Dept Rep 303, Decision No. 15,002).

In addition to her statement on the Form, petitioner asserts in the petition that she was raised and continues to be a devout Catholic, and that her decision not to vaccinate J.G. with any vaccines that contain material derived from aborted fetal cells:

was grounded in serious and considered research concerning the vaccines themselves in the light of a serious and considered contemplation of her sincere, deeply held Christian religious beliefs ... that God forbids abortion and deems it to be a mortal sin; the killing of innocent human life. It is equally sinful to participate in, promote, or voluntarily derive benefit from abortion ... abortion violates God's law, and in particular the Fifth Commandment of the Christian faith, that "You Shall Not Kill."

Petitioner also states that she learned that the rubella, polio and varicella vaccines can only be obtained in preparations that contain material derived from aborted fetal tissue, and that fetuses were intentionally killed so that their infected tissues could be used to produce the vaccines. According to petitioner, where vaccines were produced in preparations not derived from fetal tissues, she has permitted J.G. to receive those vaccines. Petitioner views as a "damnable example of moral relativism" the "lesson that God's commandments may be compromised for his convenience or marginal health benefit." Petitioner cites statements from the Catechism

of the Catholic Church and Evangelium Vitae in support of her position and disputes respondent Welka's reliance on statements from the Vatican's Pontifical Academy to support his denial of her request.

In this case, respondents did not answer the petition, but rather rely solely upon the principal's denial letter, which is based on respondents' position that the Catholic Church has no formal doctrine prohibiting vaccinations for Catholics. I note that there is no indication on the record before me that respondents requested any supporting documents or other information from petitioner to further explain or clarify her religious beliefs. Moreover, as noted above, it is not necessary for persons to be members of a recognized religious organization whose teachings oppose inoculation to claim the statutory exemption (see Sherr, et al. v. Northport-East Northport Union Free School Dist., et al., 672 F Supp 81). Accordingly, it is not necessary for petitioner's religious objections to be in accordance with Catholic doctrines or tradition or that of any other organized religion, provided that they are religious in nature (Appeal of D.W. and N.W., 50 Ed Dept Rep, Decision No. 16,144).

On the record before me, where respondents decline to answer and thus the factual allegations set forth in the petition are deemed to be true, the weight of the evidence supports petitioner's contention that her opposition to vaccinations is religious in nature and sincerely held (Appeal of D.W. and N.W., 50 Ed Dept Rep, Decision No. 16,144). Specifically, petitioner's objection to certain immunizations is based on her opposition to abortion, which is religious in nature and is based upon her interpretation of the Bible and Catholic teachings and doctrines (see Appeal of D.W. and N.W., 50 Ed Dept Rep, Decision No. 16,144).

This case is distinguishable on its facts from several recent decisions in which petitioners broadly claimed religious objections to vaccinations based on opposition to abortion and/or because vaccines contain aborted fetal tissues. In those cases, the Commissioner found that petitioners failed to establish a nexus between their claimed religious objection to abortion and the practice of abortion by seeking exemptions from all vaccinations, rather than limiting their exemption requests to those vaccinations that derive from fetal material (see Appeal of B.R. and M.R., 50 Ed Dept Rep, Decision No. 16,250; Appeal

of Y.R. and C.R., 50 id., Decision No. 16,165; Appeal of C.S., 50 id., Decision No. 16,163). In contrast, petitioner here specifically limits her exemption request solely to three specific vaccines that contain material derived from aborted fetal tissue - rubella, polio and varicella - and has submitted evidence to support her claim of a linkage between the use of cells derived from aborted human fetal tissues and these vaccines that is not rebutted by respondent. Indeed, petitioner asserts that she has had her son vaccinated with the Tdap (tetanus, diphtheria and pertussis) and HepB (Hepatitis B) vaccines, both of which, she claims, are available in forms that do not derive from aborted fetal tissue. To support this claim, petitioner submits medical records indicating that J.G. received such vaccinations in 2008 and 2009.

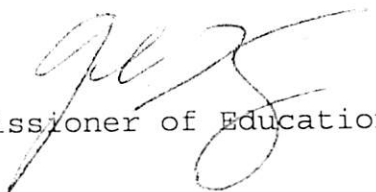
Based on the totality of the circumstances in this case, I find that petitioner has met her burden of proving that her opposition to the three specified immunizations stems from sincerely held religious beliefs and that respondents' determination is arbitrary and capricious.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that respondents grant petitioner's son religious exemptions from the immunization requirements specified in this decision pursuant to Public Health Law §2164.



IN WITNESS WHEREOF, I, John B. King, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 27<sup>th</sup> day of August 2011.

  
Commissioner of Education