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We are concerned and outraged by the recent ruling from Judge Allyne Ross, in V.D. v. State of New York.

Judge Ross would have parents of students who qualify for special education believe that a sudden removal of and refusal to provide services for your student does not constitute a denial of FAPE or that refusal to allow your child to attend their previously agreed upon placement, solely based on immunization status, does not constitute a modification of placement. In direct contradiction with IDEA, she boldly claims that families have no right to file for 'stay-put'. All of these egregious assumptions are based on a her repeated statement that a mandatory immunization law is a neutral policy that does not conflict with the provisions of the federal IDEA, nor does it take into account ADA protections afforded to students with disabilities.

To what extent is a mandatory immunization law "neutral" when considering special education students?

*"[The] Cost of restrictive policies will be borne most heavily by people with the fewest resources, so errant social distancing actions have implications for distributive justice."*  
Social Distancing and the Unvaccinated, New England Journal of Medicine, 2015

On it's face, state immunization policies appear to be neutral (although, discriminatorily applied only to students, not adults or volunteers on campus denotes a violation of equal access of the 14th amendment), however, when they are applied to the entire student body, without regard for disability status under the ADA, the Rehabilitation Act of 1973 or special education eligibility under IDEA, we experience a subset of students who are systematically excluded and marginalized.

This exclusion begets social distancing of students with exceptional needs and denies equal access to the general education environment. The law, now, disparately impacts a protected class of students, affecting equity, equality and access.

Families are forced to file due process and state complaints against districts, a costly and prohibitive measure that has a severe socioeconomic impact.

What can families of students with IEP's do if excluded?

A student found eligible for special education is entitled to a free and appropriate public education (FAPE) in the least restrictive environment (LRE). IDEA mandates that your child is educated, to the maximum extent appropriate for their unique needs, in the least restrictive environment with their non disabled peers. Your child cannot be removed from this placement \*unless\* their unique needs cannot be met satisfactorily with

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supplementary aids and services. IDEA entitles your child to make progress in the general education curriculum, including extracurricular and nonacademic activities. The needs of your child are not solely academic, the school must consider the students functional social, behavioral and emotional needs when determining or modifying placement, just as they do when they completing a comprehensive assessment in multiple areas, such as cognitive, motor, communication skills, etc as disabilities impact a wide range of educational performance.

A school that excludes your child solely based on immunization status is effectively modifying that child's placement without holding an IEP meeting nor providing the parent the opportunity to effectively participate. You, the parent, did NOT choose to forgo services and placement for your child. The state of NY and your district have chosen to ignore their federal obligations under IDEA. Revocation of services under IDEA must be fully informed and in writing to be actionable. The school must make reasonable efforts to obtain a written revocation from the parent, they cannot simply assume a parent revokes consent for services because their child is not immunized in accordance with a new state law. It is the school that has chosen to revoke services, not the parent.

The school must provide you with prior written notice detailing their decision to revoke services and modify your child's placement.

If your child, eligible for special education services or a disability that severely impacts their daily life has been refused enrollment, assessment, admittance to school, please consider the following steps:

## **1) State Complaint**

When filing a state complaint, note specific areas of noncompliance, such as Parent Participation, Prior Written Notice, Least Restrictive Environment and Free and Appropriate Public Education. For an outline on these complaint categories, please email Educate Advocate (see link below).

<http://www.p12.nysed.gov/specialed/formsnotices/samplecomplaint.htm>

## **2) Due Process**

With the guidance of a licensed special education attorney or special education advocate, file a Due Process Complaint Notice with the New York State Education Department, with a request for "Stay-Put", which returned your child to their previously

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agreed upon placement. Sample document  
here: </specialied/publications/policy/dueprocess7105.doc>

### **3) Office of Civil Rights Complaint**

File a complaint with the federal Office of Civil Rights (OCR), detailing the discrimination your child with a disability has suffered:

<https://ocrcas.ed.gov>

### **4) Contact the NY Civil Rights Bureau**

Let the Attorney General of NY know how your child, disabled in the eyes of the law, is being denied equal access to a free and appropriate public education.

<https://ag.ny.gov/civil-rights/equal-educational-opportunity>

### **5) Contact Advocacy Groups**

Urge these groups to take a stand against discrimination of special education students:

Disability Rights NY: <https://www.drny.org/intake.php>

Advocates 4 Children

NY: [https://www.advocatesforchildren.org/get\\_help/helpline/send\\_us\\_a\\_message](https://www.advocatesforchildren.org/get_help/helpline/send_us_a_message)

### **6) Contact the NY Special Education Policy Unit**

Demand that they abide by federal requirements in IDEA. You did not revoke services, the school has modified your child's placement and is currently denied FAPE in the LRE.

<http://www.p12.nysed.gov/specialied/contacts.htm>

For general information on special education laws and rights in New York, please visit Disability Rights New York at: [https://www.drny.org/vs-uploads/pdfs/1530034163\\_Special-Education-Plain-Language.pdf](https://www.drny.org/vs-uploads/pdfs/1530034163_Special-Education-Plain-Language.pdf)

If you need further assistance or have questions regarding the exclusion of special education students and immunization law, please visit our website at:

<https://www.educateadvocateca.com/sb277-iep/>

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