

Memorandum

To: Central Public High School Board of Education

From: Attorney for the Board of Education

Subject: Liability for Immunocompromised Students and Sports Vaccination Mandate

I. Background

This memorandum responds to the intricacies of medical policy regarding the COVID-19 pandemic that must be considered by the Board of Education. The administration of Central Public High School has made decisions that have particularly impacted two students, Arnie and Sam. This memorandum analyzes their predicaments and provides recommendations for further action.

Arnie's chronic illness prevented him from academic and social success before the pandemic. However, with the additional time and online resources that accompanied the quarantine, he has matured mentally and physically and is excited to return to in-person learning. However, due to his chronic illness, the school is refusing to take liability for his health and is forcing him to continue learning remotely. This action brings into question considerations of academic opportunities and mental health and wellbeing.

Sam, meanwhile, has a promising future in basketball and a scout from a top-tier women's college basketball program is actively engaging with her. However, Sam is unvaccinated, and the school has passed a vaccine mandate for all sports and extracurricular

activities. The policy is preventing Sam from playing basketball and likely recruitment to college.

II. Analysis and Summary

The school cannot restrict Arnie's ability to return to in-person learning. The Constitution stresses the importance of equality of opportunity, and by preventing Arnie from going to school, the administration severely restricts his learning opportunities. As Arnie attends a state-funded, public school, it is responsible for providing him with the same educational opportunities as the rest of his classmates.

Brown v. Board of Education (1954) established the doctrine that separate is inherently unequal, particularly in educational settings.¹ The school is requiring Arnie to participate in remote learning, separating him from the rest of his classmates. At home, Arnie does not have access to the same resources and support as his classmates which places him at a significant disadvantage. Additionally, isolation severely impacts an individual's mental health and social skills, further harming his high school experience. This separation is unconstitutional, and the 14th amendment thus protects Arnie's right to learn with the rest of his classmates.²

Furthermore, Arnie is entitled to medical freedom. While the school does not want the liability for his potential illness or death, Arnie is free to ultimately decide whether or not to put himself in a dangerous situation. Arnie has expressed that he was a victim of bullying before the initial quarantine yet has had a different experience since his return. Weighing mental health and

¹ *Brown v. Board of Education*, 347 U.S. 483 (1954).

² U.S. Const. Amend. XIV

the social-emotional benefits of returning to school against the looming threat of COVID-19 is Arnie's prerogative, and he should be entitled to make his own decision.

It is important to note that while the 14th amendment protects Arnie's return to in-person education, it does not protect Sam's participation in basketball. In *Pegram v. Nelson*, a federal court in North Carolina acknowledged that there is no property interest in participating in extracurricular activities.³ The basketball team is a program within the public school, and the school's purpose is to provide equal opportunity education to all students. However, the basketball team is an extracurricular activity that is not essential to learning. Therefore, the school is not necessarily responsible for providing every student with the opportunity to play a specific sport, exemplified when individuals are cut from the team and cannot participate.

Additionally, the vaccine mandate is particularly relevant during physical activity.⁴ While playing basketball, players are constantly in close contact, increasing the risk of transmission. As players are continually moving and circulating throughout the court, all players interact. Further, when the game becomes physical, masks often fall below the noses and mouths of players, endangering them. During water breaks, players also have to remove their masks while huddling with their teammates. There is an increased risk of contracting and transmitting COVID-19 while playing a contact sport such as basketball, thus emphasizing the importance of being vaccinated.

According to *Zucht v. King* (1922), vaccine powers fall under the control of the states, and as such, public schools can mandate vaccines.⁵ While Central Public High School is not going so far as to demand the vaccine to attend, it is entirely within the school's influence to

³ 469 F. Supp. 11 34, 1 139 (M.D.N.C. 1979); Larry Bartlett and James McCullagh, Exclusion from the Educational Process in the Public Schools: What Process is Now Due, 1993 BYU Educ. & L.J. 1 (1993).

⁴ Johannes Pauser et al., "SARS-COV-2 Transmission during an Indoor Professional Sporting Event," Nature News (Nature Publishing Group, October 20, 2021), <https://www.nature.com/articles/s41598-021-99997-0>.

⁵ *Zucht v. King*, 260 U.S. 174 (1922)

mandate the vaccine for extracurricular activities, particularly those with a high risk of transmission.

III. Recommendations

Based on the analysis provided, there are three policies that I recommend implementing to ensure maximum safety while allowing for the freedom and opportunity of students at Central Public High School.

1. Maintain a mask mandate for every individual in the school building, regardless of vaccination status. While students can exercise medical freedom when it comes to vaccination, masks are a necessary baseline of protection. Furthermore, only surgical masks, N95s, or KN95s should be acceptable face coverings. Gaiters, valved masks, or cloth masks are insufficient for maximum safety and protection.⁶
2. Uphold the vaccine mandate for all extracurricular activities. Central Public High School is only responsible for the educational opportunities of students, and the Board of Education should prioritize student health over other activities. Further, athletic extracurricular activities are typically the events with the highest transmission rates, emphasizing the need for vaccination to be safe.⁷
3. Provide students with the opportunity to choose their learning methods. Students like Arnie who wish to remain in person should have the chance to do so. Oppositely,

⁶ Kristin Andrejko et al., “Effectiveness of Face Mask or Respirator Use in Indoor Public Settings for Prevention of SARS-COV-2 Infection - California, February–December 2021,” Centers for Disease Control and Prevention (Centers for Disease Control and Prevention, February 10, 2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm7106e1.htm>.

⁷ Pauser et al., “SARS-COV-2 Transmission during an Indoor Professional Sporting Event”

immunocompromised students or students who feel uncomfortable in the school environment and want to learn remotely should have the opportunity to do so as well.

It is essential to recognize that rates of COVID-19 are constantly changing, and these recommendations are subject to change as the reality of the pandemic evolves. However, given the severity of the current situation, these procedures are the optimal manner to ensure health and safety for the school community.

Works Cited

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Pegram v. Nelson, 469 F. Supp. 1134 (1979)

U.S. Const. amend. XIV, § 2

Zucht v. King, 260 U.S. 174 (1922)