

MEMORANDUM

TO: Central Public Board of Education

FROM: School Board Attorney

DATE: February 15, 2022

SUBJECT: Central Public High School Response to Low Vaccination Rates

I. BACKGROUND

In response to the school's low vaccination rate, Central Public High School has recently established a vaccine mandate for student athletes that prohibited them from playing sports while unvaccinated in order to preserve the health of the student body. This effectively barred several athletes from participating, including one student, henceforth known as Student A, with a plan for UCONN recruitment for their sport. Because Student A has chosen not to become vaccinated, they have been deemed ineligible for school sports. Student A wishes to challenge their ineligibility.

At the same time, the school also denied a student, henceforth known as Student B, their ability to attend school in person due to their chronic illness, despite this student's full vaccination status and desire to remain in school. The school believes Student B to be a liability should they become sick or even die due to exposure received from in-person learning. As such, the school is sending this student back to online learning without the student's consent. Student B wishes to be returned to in-person classroom learning.

For each of these students' cases, there are several court case precedents and laws that may be used as guidance. This includes federal laws and recommendations as well as Supreme Court cases that should be used to handle these conflicts.

II. ANALYSIS AND SUMMARY

To address Student A's concern on their ability to participate in sports due to their being unvaccinated, this ineligibility must be upheld in order to best protect the health and safety of Central Public High School's learning environment. According to the Centers for Disease Control and Prevention (CDC), all high risk sports participants should be fully vaccinated. High risk sports, labeled by the CDC for their heavy contact, include Student A's sport.¹

One may argue that it is Student A's liberty to avoid vaccination as a matter of personal choice; however, as shown in U.S. Supreme Court case *Jacobson v. Massachusetts* (1905), one person's liberty can not trump everyone else's right to health and safety. A vaccine mandate is a legitimate exercise of the right of local authorities to protect public health and safety. So long as a vaccine mandate does not go beyond what is "reasonably required for the safety of the public," they are neither arbitrary nor oppressive to individual liberties.² Furthermore, though this case may be seen as applying only to state and city mandates, *Jacobson v. Massachusetts* (1905) has been used as precedent for school mandates as well. This is shown in the U.S. Supreme Court case *Zucht v. King* (1922), which ruled that schools can constitutionally deny enrollment to unvaccinated students: "We find in the record no question as to the validity of the ordinance

¹ "Guidance for COVID-19 Prevention in K-12 Schools." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html.

² "HENNING JACOBSON, Plff. in Err., v. COMMONWEALTH OF MASSACHUSETTS." Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/197/11.

sufficiently substantial to support the writ of error... These ordinances confer not arbitrary power, but only that broad discretion required for the protection of the public health.”³ As the Central Public High School athletics rule would not be considered unreasonable, it is the right of the school to uphold the vaccination requirement for school athletics.

On the other hand, it is entirely necessary for Student B’s ability to continue in-person learning to be reinstated in accordance with the Individuals with Disabilities Education Act (IDEA). IDEA requires the creation of the least restrictive learning environment for students with disabilities. According to IDEA, it is essential for all students with disability to “receive their education, to the maximum extent appropriate, with nondisabled peers” and that they “are not removed from regular classes unless...education in regular classes cannot be achieved satisfactorily.”⁴ As Student B is fully vaccinated, their education may be satisfactorily achieved in a regular classroom setting. This being the case, Student B must be properly educated alongside their nondisabled peers in order for the school to properly align with the regulations of IDEA.

Furthermore, guidance may be sought from the U.S. District Court for the District of New Jersey case *Oberti v. Board of Education* (1993), in which a disabled student was removed from his classroom due to a combination of behavioral issues and intellectual development concerns, causing him to be separated from his nondisabled peers. In accordance with the requirements of IDEA, the Court ruled that the schools were discriminating against the student by refusing to

³ “Zucht v. King, 260 U.S. 174 (1922).” Justia Law, supreme.justia.com/cases/federal/us/260/174/.

⁴ “Sec. 300.114 LRE Requirements.” Individuals with Disabilities Education Act, 3 May 2017, sites.ed.gov/idea/regs/b/b/300.114.

educate him in a regular classroom.⁵ In Student B's case, the school is also refusing to educate him in a regular classroom along side his nondisabled peers despite his wishes, effectively discriminating against him. Similarly, in the U.S. Supreme Court case *Honig v. Doe* (1988), a disabled student was suspended for misconduct relative to his disability. The Court ruled that the Education of the Handicapped Act of 1970 prohibited state or local authorities from excluding disabled students from regular classrooms even when their disabilities resulted in conduct deemed disruptive or dangerous to both the student themselves and others.⁶ Though Student B's case is not a result of conduct or behavior, it stands to precedent that, though their disability may appear to be a danger to themselves and others in the context of the pandemic, this student may not be excluded from the classroom as result of such a disability.

III. OPTIONS AND RECOMMENDATIONS

In dealing with Student A's athletic ineligibility, the best course of action would be to uphold the vaccine requirement for sports. While it is Student A's right as an individual as well as their guardians' right as caregivers to determine the best choice for the health and safety of Student A, it is equally the school's right to establish the necessary rules and guidelines to preserve the learning environment. As such, should Student A choose to reject full vaccination, there are consequences that must be upheld to protect the health and safety of their peers, teammates, teachers, and themselves.

⁵ "Oberti v. Board of Education of Clementon." Berney & Sang, 6 Oct. 2017, www.berneylaw.com/oberti-v-board-of-education-of-clementon/#:~:text=In addition to finding a,Id.

⁶ "Honig v. Doe, 484 U.S. 305 (1988)." Justia Law, supreme.justia.com/cases/federal/us/484/305/.

As for Student B's case, the best option is to return the student to in-person learning. To deny a student inclusion in a regular classroom on the basis of a chronic illness is a discriminatory practice that must not be upheld. It is the right of the student to experience the full quality of education alongside their peers regardless of their disability.

In addition, it is highly recommended that Central Public High School continue to encourage vaccination among students to the best of its ability, including in-depth education of the safety of the vaccine and the necessity of vaccination to protect both themselves and their peers around them. Furthermore, the school should clearly illustrate to the public through additions to superintendent newsletters why these vaccine measures have been implemented and why they are necessary, including laws and court case precedents that permit it, to avoid another conflict relative to these mandates.

Works Cited

- "Guidance for COVID-19 Prevention in K-12 Schools." Centers for Disease Control and Prevention.
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.
- "HENNING JACOBSON, Plff. in Err., v. COMMONWEALTH OF MASSACHUSETTS." Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/197/11>.
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