

Memorandum

To: Board of Education

From: Board of Education Attorney

Subject: Complaints Regarding Central Public High School Vaccination Mandate

Recent complaints filed by two Central Public High School students, Arnie and Sam, highlight issues related to the COVID-19 pandemic and vaccination requirements. The circumstances of the two complaints greatly differ. Central Public High School requested that Arnie, a vaccinated student with a medical condition, return to remote learning because of his susceptibility to serious illness. Sam, an unvaccinated star athlete, was dismissed from the basketball program due to her vaccination status. The details of Arnie's and Sam's complaints are different, but they both target the same issue of students' right to education. I strongly advise the Board of Education to handle this matter with extra caution, as these issues have caused great controversy when poorly handled. The following recommendations are suggested to prevent serious litigation.

ANALYSIS AND RECOMMENDATIONS**SAM**

Preventing students from participating in extracurricular activities like sports is a clear violation of a student's right to education. According to the National Center for Education Statistics, about 99.8% of public schools in the United States provide extracurricular activities.¹ This very high percentage shows that most schools consider extracurricular activities a part of

¹ O'Brien, Eileen and Mary Rollefson. "Extracurricular Participation and Student Engagement." National Center for Education Statistics, June 1995. <https://nces.ed.gov/pubs95/web/95741.asp>.

the school curriculum. In addition, out of the 99.8% of public schools that provide extracurricular activities, 98.7% of these schools include sports.² Thus, forceful removal from an extracurricular sport could be interpreted as an impediment to a student's right to education.

In *Horton v. Meskill*, the Supreme Court declared, "in Connecticut, elementary and secondary education is a fundamental right...pupils in the public schools are entitled to the equal enjoyment of that right."³ If Central Public High School prohibits Sam and other unvaccinated players from being part of the team, the school would not be fulfilling the equal enjoyment guaranteed in *Horton v. Meskill*, and the school could face litigation for violating students' rights.

Suspending Sam from basketball is unlawful as the state allows students to be educated on school premises regardless of vaccination status. According to *Jacobson v. Massachusetts*, whether people should be vaccinated or not is dependent on the police power of a state.⁴ Connecticut does not mandate vaccination, therefore it is unlawful to force Sam or other students to be vaccinated.⁵

The school does not have enough justification to withhold Sam and other basketball players from playing basketball. If the state does not require students to be vaccinated, this act of withholding violates the students' rights to education. It is recommended that Sam be immediately allowed to resume her activities and take proper precautions following the CDC's rule, such as incorporating a mask policy for extracurricular activities.

² Ibid

³ "Horton v. Meskill." Justia Law. Accessed February 19, 2022. <https://law.justia.com/cases/connecticut/supreme-court/1977/172-conn-615-2.html>.

⁴ Mariner, Wendy K, George J Annas, and Leonard H Glantz. "Jacobson v Massachusetts: It's Not Your Great-Great-Grandfather's Public Health Law." American journal of public health. American Journal of Public Health 2005, April 2005. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449224/>.

⁵ "Is the COVID-19 Vaccine Mandatory?" CT.gov. Accessed February 19, 2022. <https://portal.ct.gov/vaccine-portal/Vaccine-Knowledge-Base/Articles/Is-The-Vaccine-Mandatory>.

ARNIE

While Arnie’s history of chronic illness is a genuine point of concern regarding his susceptibility to COVID-19, Central Public High School cannot force Arnie to return to remote learning. Arnie elected to be vaccinated, but, regardless of his vaccination status, the school cannot exclude Arnie specifically. The school staff believes that “because he had the ability to attend school remotely” previously, remote education would not interfere with Arnie’s education. Though the staff may believe that this is the safest option for the student and believe it is acting in his best interest, such direction can be interpreted as discrimination. According to *Brown v. Board of Education*, racial segregation in public schools is unconstitutional, even if the segregated schools are otherwise equal in quality.⁶ Therefore, Arnie could use this precedent and file a claim that while remote education and in-person education may be of the same quality, it is unconstitutional for the school to keep Arnie out of a physical classroom.

Forcing Arnie to work remotely could potentially violate the Equal Educational Opportunities Act (EEOA) of 1974 as well. The EEOA prohibits a wide variety of discrimination against faculty, staff, and students.⁷ If Arnie’s chronic illness can be identified as a disability, it would cause even more problems for the school as under the Individuals with Disabilities Education Act (IDEA), students with disabilities must receive the same opportunity for education as those students who do not have a disability.⁸ The only difference between Arnie and

⁶ “History - Brown v. Board of Education Re-Enactment.” United States Courts. Accessed February 21, 2022. <https://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment>.

⁷ “Types of Educational Opportunities Discrimination.” The United States Department of Justice, March 25, 2021. <https://www.justice.gov/crt/types-educational-opportunities-discrimination>.

⁸ “About Idea.” Individuals with Disabilities Education Act, February 15, 2022. <https://sites.ed.gov/idea/about-idea/>.

other vaccinated children who are allowed to attend school is his history of chronic illness.

Therefore, to single out Arnie and force him to learn remotely could be interpreted as a violation of both the EEOA and IDEA.

While it is true that *Brown v. Board of Education* focused on racial segregation, federal acts EEOA and IDEA demonstrate United States' protection for all people regardless of race, gender, and disability. Therefore, if the school enforces its initial decision to no longer allow Arnie to attend school in person, Arnie could bring charges against the school for discrimination. Based on precedent, it is more likely that courts will side with Arnie to protect his constitutional right to receive an equal education.

The school should allow Arnie to attend school in person again. However, additional precautions should be taken to educate him on how his chronic illness puts at him additional risk of having complications related to COVID-19. As long as the staff appropriately documents Arnie and his parents' assessment and acceptance of the risks, the school will avoid any liability if he should fall ill.

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<https://sites.ed.gov/idea/about-idea/>.

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