

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

SANDRA ALTHOF, on behalf )  
of her minor child P.A. )  
6419 Ridgeline Drive )  
Hudson, OH 44236 )

Case No.:

and )

Judge

ARABELLA FEIL, on behalf )  
of her minor child H.F. )  
791 Norbury Drive )  
Hudson, OH 44236 )

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF

and )

GEORGE CARSON, on behalf )  
of his minor children F.C. and S.C. )  
2359 Exline Circle )  
Hudson, OH 44236 )

Plaintiffs, )

vs. )

HUDSON CITY SCHOOL DISTRICT )  
2400 Hudson Aurora Road )  
Hudson, OH 44236 )

and )

PHIL HERMAN, in his official capacity as )  
Superintendent of the Hudson City School )  
District )  
2400 Hudson Aurora Road )  
Hudson, OH 44236 )

and )

HUDSON CITY SCHOOL DISTRICT, )  
BOARD OF EDUCATION )  
2400 Hudson Aurora Road )  
Hudson, OH 44236 )

and )  
 )  
 DAVID ZURO, in his official capacity )  
 as President of the Hudson City School )  
 District Board of Education )  
 2400 Hudson Aurora Road )  
 Hudson, OH 44236 )  
 )  
 and )  
 )  
 STEVE DIMAURO, in his official capacity )  
 as Vice President of the Hudson City School )  
 District Board of Education )  
 2400 Hudson Aurora Road )  
 Hudson, OH 44236 )  
 )  
 and )  
 )  
 JAMES FIELDS, in his official capacity )  
 as Member of the Hudson City School )  
 District Board of Education )  
 2400 Hudson Aurora Road )  
 Hudson, OH 44236 )  
 )  
 and )  
 )  
 ADAM TOBIN, in his official capacity )  
 as Member of the Hudson City School )  
 District Board of Education )  
 2400 Hudson Aurora Road )  
 Hudson, OH 44236 )  
 )  
 and )  
 )  
 ALISA WRIGHT, in her official capacity )  
 as Member of the Hudson City School )  
 District Board of Education )  
 2400 Hudson Aurora Road )  
 Hudson, OH 44236 )  
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 Defendants. )

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Plaintiffs bring this Complaint for Declaratory Judgment and Injunctive Relief against Defendants to challenge the policy adopted by Hudson City School District (“HCSD”) requiring students to quarantine if exposed to SARS-CoV-2 and wear face masks while in school and treating unvaccinated students differently than vaccinated students. Plaintiffs contend that HCSD lacks the authority to adopt these policies.

### **PARTIES**

1. Plaintiffs are parents suing for their minor children who attend school in HCSD and sue Defendants in their official capacities.
2. HCSD is a public school district and political subdivision of the State of Ohio in Summit County, Ohio.
3. Phil Herman is the HCSD Superintendent tasked with overseeing HCSD's operations and policies. Mr. Herman is being sued in his official capacity
4. The HCSD Board of Education (“Board”) oversees and supervises the policy decisions for HCSD, including those related to SARS-Cov-2 mitigation measures, such as quarantining and mask mandates. It is the governing board of HCSD.
5. The Board of Education consists of five members: Dave Zuro, Steve DiMauro, James Field, Adam Tobin, and Alisa Wright. Each is being sued in their official capacity.

### **JURISDICTION AND VENUE**

6. This Court has original jurisdiction over this civil case under R.C. § 2305.01.
7. Venue is appropriate under Civ. R. 3(C) because Defendants are governmental bodies in this County.
8. Plaintiffs’ claims for declaratory judgment and injunctive relief are authorized by Civ. R. 57 and 65(A), respectively.

## FACTUAL ALLEGATIONS

9. HCSD and the Board have required students to wear face masks to school in the mistaken belief they block transmission of microscopic airborne particles carrying the SARS-CoV-2 virus, which every student is presumed to carry, symptomatic or not.

10. These Masks are marketed under a Food and Drug Administration (FDA) Emergency Use Authorization (EUA) which specifically states that:

- a. “No descriptive printed matter, including advertising or promotional materials, relating to the use of the authorized surgical mask may represent or suggest that such product is safe or effective for the prevention or treatment of COVID-19.”<sup>1</sup>

11. Despite this warning consistent with a Centers for Disease Control (CDC) study that found “no significant reduction in influenza transmission with the use of face masks,”<sup>2</sup> on August 24, 2021, HCSD informed these parents that “healthy students who are believed to have been exposed in an unmasked scenario face a minimum 7-day quarantine, even with no symptoms,” and “a masked student, similarly exposed, would be allowed to return to school masked and monitor symptoms.” The notification then stated that “exposed” students with “no layer” of protection, but without symptoms, can continue attending class if they wear a mask during the “proposed quarantine.”

12. Under the rules issued on or about August 24, 2021:

- a. “To avoid quarantine, there must be at least one layer [of protection] between a student and a COVID positive individual. A layer is defined as: A mask & at least

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<sup>1</sup> <https://www.fda.gov/media/140894/download>

<sup>2</sup> [https://wwwnc.cdc.gov/eid/article/26/5/19-0994\\_article](https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article)

3 feet; Vaccination (or had COVID in last 90 days); Physical distancing of at least 6 ft.”

- b. “If a student has at least one layer of protection and is exposed to a person suspected of having COVID-19, the student can continue to attend school masked and will need to monitor symptoms.”
- c. “If a student has no layer of protection and is exposed to a person suspected of having COVID-19 the student must be quarantined for 7 days with a negative test.”
- d. “There is no virtual learning (livestreaming) option for Hudson City Schools for the 2021-22 school year. Students who are quarantined will be responsible for Google Classroom assignments.”

13. On or about October 27, 2021 Defendants informed Plaintiffs that HCSD would implement a “Mask to Stay, Test to Play” policy whereby “Students and staff identified as being a close contact, regardless of vaccination or masking status, may remain in the classroom environment if they do the following: Wear a mask for 14 days after their last date of exposure; Self-monitor for COVID-19 symptoms; Isolate and get tested if they start to experience symptoms; Discontinue these quarantine procedures after seven days, if no symptoms develop and they test negative between days 5-7.

14. The October 27, 2021 email continued, “Asymptomatic individuals may continue to participate in extracurriculars if they do the following: Wear a mask when able, such as in locker rooms, on buses, and while sitting/standing on sidelines; Test on initial notification of exposure to COVID-19; Test again on days 5-7, and test out of quarantine with a negative result.

15. Plaintiffs' minor children have been forced to quarantine and/or mask several times on a rotating cycle. Plaintiffs' minor children go to school, somebody inevitably identifies a child as having been in "close contact" with a "COVID positive individual" and the student is then forced either to wear a mask or stay home and learn from Google Classroom.

16. For example, on January 6<sup>th</sup>, 2021, F.C., with a mask exemption card for religious and/or medical reasons, was sent home after being identified as sitting near a COVID positive student. The sick child and another exposed child were directed to return to school four days later. F.C. has been asked to quarantine for 10 days at home.

17. Upon information and belief, Defendants claim to adopt these policies in response to guidelines distributed by the Ohio Department of Health.

18. There is no official rule or order from the Ohio Department of Health nor the Director thereof, however, mandating the requirements Defendants are imposing upon students.

19. This violates the statutory process established by the State Legislature.

20. The Ohio Legislature recently set public policy limiting local boards of health regarding issuing orders or regulations for the public health or prevention or restriction of disease by enacting R.C. 3709.212. This statute limits the application of health orders and regulations to persons medically diagnosed with a disease or in direct contact with such persons.

21. R.C. 3313.68 says that "boards of education shall co-operate with boards of health in the prevention and control of epidemics." Essentially, the question here is "What does it mean for schools to co-operate with the board of health?"

22. A school district's authority under R.C. 3313.71 allows schools to send home

an employee or student found ill or suffering from a communicable disease (COVID-19 or presenting symptoms of COVID-19). This differs greatly from the State Legislature's grant of power to health departments under R.C. 3701.13.

23. On June 15, 2022, the Legislature clarified that the "department of health shall have supervision of all matters relating to the preservation of the life and health of the people and have authority in matters of quarantine and isolation, which it may declare and enforce, when neither exists, and modify, relax, or abolish, when either has been established."

24. While schools can send home individuals ill from COVID-19, they lack specific statutory authority to independently order a student or employee to quarantine solely due to COVID exposure, as only a board of health has the jurisdiction to issue and set parameters for quarantines due to exposure to a communicable or contagious disease.

25. Once students have been officially quarantined by the health department, as evidenced by written communication and signed order from the health department, then school districts must cooperate with the health department, per R.C. 3707.16, to exclude those students.

26. Such communication should include dates of the quarantine and clearly indicate when a child may return to school.

27. Nothing stops HCSD from having a policy in which parents could keep a child home for a time, without attendance penalties, if their child had close contact with an ill person.

28. Upon information and belief Defendants claim authority under R.C. 3313.67; R.C. 3313.68; and 3313.71 among other statutes to impose rules contrary to the legislative grant of powers to health departments and schools described above.

29. The changing requirements imposed by Defendants are detrimental to the education and social development of HCSD students.

30. Finally, Under R.C. 3792.04, a public school may not discriminate between an unvaccinated individual and one who has received a Covid-19 vaccine not fully approved by the FDA by requiring the unvaccinated individual to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who have received vaccines not fully approved by the FDA.

31. The Covid-19 vaccines currently available, Johnson & Johnson, Moderna and Pfizer, have been authorized for emergency use only (“EUA vaccines”) and have not been fully approved by the FDA. On information and belief, COMIRNATY, the only Covid-19 vaccine fully approved by the FDA, is not currently available.

32. The policy issued August 24, 2021 described above allows vaccinated but not unvaccinated children to avoid quarantine.

### **COUNT I DECLARATORY JUDGMENT**

33. Plaintiffs reincorporate and reallege the preceding paragraphs as if rewritten herein.

34. Under R.C. Chapter 2721 Plaintiffs may seek a declaration from this Court regarding “rights, status, and other legal relations whether or not further relief is or could be claimed.”

35. Neither the Board nor the Superintendent, nor any Defendant is empowered to enforce these policies against HCSD students.

**WHEREFORE** Plaintiffs pray for the following relief:

- a) A declaration that Defendants may not enforce masking and quarantine rules upon HCSD students absent a signed health department order due to the legislative scheme and public policy.

- b) Injunctive relief preventing Defendants from enforcing masking and quarantine rules upon HCSD students absent a signed health department order.
- c) A declaration that unvaccinated children may not be treated differently than vaccinated children.
- d) Reasonable attorney fees incurred as a result of bringing this action.
- e) Other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Warner Mendenhall

Warner Mendenhall, 0070165

Brian Unger, 0096884

MENDENHALL LAW GROUP

190 North Union Street, Suite 201

Akron, Ohio 44304

330.535.9160; f 330.762.9743

warner@warnermendenhall.com

brian@warnermendenhall.com