

IN THE COURT OF COMMON PLEAS

WOOD COUNTY, OHIO

Kam Warner on behalf of her
Minor children G.W., D.W., and L.W.
26960 West River Rd.
Perrysburg, OH 43551

Jennifer Cordova on behalf of her minor child
S.C.
28985 White Rd.
Perrysburg, OH 43551

Scott Maines on behalf of his minor children
T.M and E.M.
26563 Cedarwood Lane
Perrysburg, OH 43551

Denise Maines on behalf of her minor
children T.M and E.M.
26563 Cedarwood Lane
Perrysburg, OH 43551

Plaintiffs,

v.

Perrysburg Schools Board of Education
Eric Benington
Kelly Ewbank
Sue Larimer
Ray Pohlman
Lori Reffert
As Board Members
140 East Indiana Ave.
Perrysburg, OH 43551

Defendant.

CASE NO.: 2022-cv-0068

JUDGE: MATTHEW REGER

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiffs bring this Complaint for Declaratory Judgment against the Perrysburg Schools Board of Education because (1) it lacks authority to enforce health policy that conflicts with R.C.

3709.212 and its policy decisions (2) violate R.C. 3792.04, (3) violate Article 1 Section 7 of the Ohio Constitution, and (4) violate Article 1 Section 1 of the Ohio Constitution.

PARTIES

1. Plaintiffs sue for their minor children who attend school in the Perrysburg School District (District).

2. Kam Warner has legal custody of her minor children G.W., D.W., and L.W.

3. Jennifer Cordova has legal custody of her minor child S.C.

4. Scott and Denise Maines have legal custody of their minor children T.M. and E.M.

5. The Perrysburg School District is a political subdivision of the State of Ohio in Wood County, Ohio.

6. The Perrysburg Board of Education (“Board”) governs the District and is responsible for District policy including Covid-19 mitigation measures, such as quarantining and mask mandates.

7. The Board has five members: Eric Benington, Raymond Pohlman, Susan Larimer, Kelly Ewbank, and Lori Reffert. They are being sued in their official capacity.

JURISDICTION AND VENUE

8. This Court has jurisdiction under R.C. § 2305.01.

9. Venue is proper under Civ. R. 3(C) because Defendant is a governmental body in Wood County.

10. Plaintiffs’ claims for declaratory judgment and injunctive relief are authorized by Civ. R. 57 and 65(A), respectively.

FACTUAL ALLEGATIONS

11. The District required students to wear face masks to school and on school buses under a belief they block transmission of microscopic airborne particles carrying the SARS-CoV-2 virus, which every student is presumed to carry, symptomatic or not.

12. 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.”¹

13. The District’s “Perrysburg Schools Continuity of Service Plan” is attached as **Exhibit 1**.

a. Section 8 “Quarantine/Isolation” states that communication regarding quarantine and isolation will be sent out to families by the District. **Exhibit 1**.

b. Section 8.2 states that “the school district will follow the guidance of the Ohio Department of Health for decisions on isolation/quarantine.”

14. On December 30th, 2021, The Ohio Department of Health (“ODH”) released updated quarantine guidelines aligning with those from the Center for Disease Control (“CDC”). This news release is attached as **Exhibit 2**. The CDC guidelines that ODH follows are attached as **Exhibit 3**.

15. Under section 14 of the Continuity of Service Plan “Transportation,” states that the District is following CDC guidelines and requiring masks be worn on all public transportation regardless of vaccination status. **Exhibit 1**.

¹ <https://www.fda.gov/media/140894/download> *Last visited on May 26th, 2022.

VIOLATION OF R.C. 3792.04

16. R.C. 3792.04 Prohibits the District from discriminating against an individual who has not received a vaccine for which the United States Food and Drug Administration (“FDA”) has not granted full approval, including requiring an individual to engage in, or refrain from engaging in, activities that differ from the activities of an individual who has received a non-FDA approved vaccine.

17. The Covid-19 vaccines currently available, Johnson & Johnson, Moderna COVID-19 Vaccine, and Pfizer-BioNTech COVID-19 vaccine, are authorized for emergency use only (“EUA vaccines”) and are not fully approved by the FDA. On information and belief, Pfizer-COMIRNATY and Moderna-Spikevax, are the only Covid-19 vaccines fully approved by the FDA and are not available in the United States. ²

18. The District’s quarantine policy violates R.C. 3792.04 because it treats people who received an EUA vaccine differently than someone who is unvaccinated. **See Exhibit 3.**

19. Specifically, the quarantine policy requires an unvaccinated student to “stay home for five days after their last exposure, then they must wear a mask around others for the next five days.” The policy treats someone who received an EUA vaccine differently by requiring them to “wear a mask around others for 10 days after your last exposure. Test on day five.” **Exhibit 3.**

LACK OF AUTHORITY

20. The District lacks authority to order public health or preventative health measures, such as masking, testing, or limitation of activities for persons not diagnosed with a disease or who have not come into direct contact with someone diagnosed with a disease.

21. Under R.C. 3313.20(A), the District has general authority to make rules for

² <https://www.cdc.gov/vaccines/programs/iis/COVID-19-related-codes.html> * Last visited on May 26th, 2022.

its governance. However, Ohio case law limits that general authority by requiring the exercise of such authority be reasonable. See *State ex rel. Barno v. Crestwood Bd. Of Edn.*, 134 Ohio App 3d 494, 503 (11th Dist. 1998). Reasonableness must be evaluated by the standards of “common sense ... guided by considerations of public policy manifested in relevant statutory, administrative, and decisional law.” *Id.* at 304. This interpretation avoids the unconstitutional delegation of legislative authority to the District that would arise if there was no intelligible principle to which the District must conform. The District’s apparent interpretation that its general authority under R.C. 3313.20(A) authorized it to issue the Covid-19 measures described above would constitute a violation of the anti-delegation doctrine, which precludes the legislature from delegating its legislative power.

22. The Ohio Legislature recently set relevant 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. The District’s Covid-19 measures described above far exceed the limits of the Ohio Legislature’s explicit statement of public policy. The District is using its general authority make rules governing the District, to assume powers to issue health regulations that the Ohio Legislature has expressly prohibited local boards of health from issuing. This is manifestly unreasonable and is beyond defendants’ authority under Ohio case law.

23. Plaintiffs’ minor children are not currently diagnosed with Covid-19 and have not currently come into direct contact with someone medically diagnosed with Covid-19.

24. The above-described Covid-19 measures are regulations for the prevention or restriction of disease, which are applied to those, including plaintiffs’ minor children, who have

not been diagnosed with a disease or have not come into direct contact with someone who has been medically diagnosed with a disease, and which therefore exceed the District's general authority to set rules governing the District.

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

26. A school district's authority under R.C. 3313.71 allows a school to send home an ill employee or student or someone suffering from a communicable disease (COVID-19 or presenting symptoms of COVID-19). This differs from the State Legislature's grant of power to health departments under R.C. 3701.13.

27. On June 15, 2021, 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." R.C. 3701(B)(1).

28. While schools can send home individuals ill from COVID-19, they lack statutory authority to independently order a student or employee to quarantine due to COVID exposure, as only a board of health has that power.

29. Once students are 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.

30. Such communication must include quarantine period and indicate when a child may return to school.

31. Nothing stops a school district from having a policy in which parents decide

whether to keep child home, without attendance penalties, if they believe their child had close contact with an ill person.

32. Upon information and belief Defendant claims 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 power to health departments and schools as described above.

33. The changing requirements imposed by Defendant damages the education and social development of students.

THE DISTRICT’S VIOLATION OF ARTICLE 1, SECTION 7 OF THE OHIO CONSTITUTION

34. Article 1, Section 7 of the Ohio Constitution states, “No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; **nor shall any interference with the rights of conscience be permitted.**”

35. Upon information and belief, the District denied all religious exemption requests to its masking policy. Attached is a table demonstrating these blanket denials dated February 2nd, 2022, as **Exhibit 4**.

36. By denying religious exemptions, the District unconstitutionally interfered with student and parental constitutional religious rights under Article 1, Section 7 of the Ohio Constitution.

THE DISTRICT’S VIOLATION OF ARTICLE 1, SECTION 1 OF THE OHIO CONSTITUTION

37. Plaintiffs have a fundamental right under Article I, Section 1 of the Ohio Constitution to refuse medical treatment to protect their right to personal security, bodily integrity, and autonomy. *Steele v. Hamilton Cty. Community Mental Health Bd.*, 90 Ohio St. 3d 176, 180-181 (2000):

34. “The liberty interests infringed upon when a person is [medically treated] against his or her wishes is significant...This type of intrusion clearly compromises one's liberty interests in personal security, bodily integrity and autonomy.” *Id.* at 182.

35. “The right to refuse [medical treatment] is not absolute and it must yield when outweighed by a compelling government interest.” *Id.* at 181. “Whether the potential benefits of [medical treatment] are worth the risks is a personal decision that, in the absence of a compelling state interest, should be free from government intrusion.” *Id.* at 183.

36. A state may have a compelling interest to override an individual's decision to refuse [medical treatment] to prevent harm to that individual or others. *Id.* at 183. However, the state’s right to invoke its police power to override an individual's decision to refuse [medical treatment] arises only when there is an imminent danger of harm. *Id.* at 184.

37. Any such forced [medical treatment] must be medically appropriate for the individual and it must be the least intrusive means of accomplishing the state's interest of preventing harm. *Id.* at 184. And the state must establish its compelling interest to override the individual decision to refuse [medical treatment] by clear and convincing evidence. *Id.* at 180.

38. The Mandates’ mask requirement is medical treatment. **Exhibit 1.** The Mandate requires use of cloth face masks, surgical masks or N95 masks (the “masks”). The masks are currently authorized by the FDA as medical devices intended for a medical purpose. Their use is medical treatment which Plaintiffs can refuse under Article I, Section 1 of the Ohio Constitution. Further, the emergency use authorization of masks is conditioned on Plaintiffs’ right to refuse their use.

**COUNT I
DECLARATORY JUDGMENT**

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

40. 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.”

41. Neither the Board is not empowered to enforce these policies against District students.

WHEREFORE Plaintiffs pray for the following relief:

- a) A declaration that the Board may not enforce masking and quarantine rules upon students in the District absent a signed health department order according to the legislative scheme and public policy.
- b) Injunctive relief preventing the Board from enforcing masking and quarantine rules upon students in the District absent a signed health department order.
- c) Injunctive relief from Defendant’s unconstitutional policy denying religious exemptions under Article 1 Section 7 of the Ohio Constitution.
- d) A declaration that the Board cannot force medical treatment on students in the District under Article 1 Section 1 of the Ohio Constitution.
- e) A declaration that unvaccinated children may not be treated differently than vaccinated children.
- f) Reasonable attorney fees incurred as a result of bringing this action.
- g) Other relief this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 5-27-2022 a copy of the foregoing was served by regular U.S. mail and/or email, if listed, upon the following:

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