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NCLA Challenges COVID Quarantine Rule Keeping Child with Natural Immunity Out of School

McArthur v. Scott Brabrand, Superintendent of Fairfax County Public Schools, et al.

Washington, DC (December 23, 2021) – A second-grade student at Sunrise Valley Elementary School in Fairfax County, Virginia, was arbitrarily and unlawfully prevented from attending school earlier this semester, in violation of her federal and state Constitutional rights to Equal Protection and Due Process, as well as her right to receive an education under the Virginia State Constitution. Because of the way the irrational policy works, the student could very well have to miss additional school going forward for 10 days at a time, unless the rule changes.

M.M. (whose name has been redacted to preserve her anonymity) contracted COVID-19 in late October 2021 and completed a two-week home quarantine. Less than three weeks later, she was identified as a “potential close contact” of a student or staff member who tested positive for the virus. Under Fairfax County Public Schools (FCPS) policy, which was developed and enforced by the Fairfax County Health Department, because she had not been vaccinated against COVID-19 she was forced to quarantine again.

According to the policy, as long as she remains unvaccinated, she will be forced to quarantine any time she comes into contact with an individual at the school who tests positive, compromising her ability to receive an uninterrupted education and putting her at a significant disadvantage compared to vaccinated children, who are exempt from quarantining. M.M. has suffered mental and emotional distress, as well as learning loss, as a result of being excluded from in-person school. Today, the New Civil Liberties Alliance filed a [complaint](#), asking the U.S. District Court for the Eastern District of Virginia to vacate FCPS’s unconstitutional quarantine policy.

Insofar as it fails to exempt children with naturally acquired immunity from the quarantine requirement, the school district and health department’s policy lacks any legitimate public health justification. Having recently recovered from COVID-19, M.M. presents no greater risk of contracting the virus and transmitting it to others than her vaccinated peers. The overwhelming scientific evidence establishes that naturally acquired immunity provides equivalent or greater protection against re-infection and transmission to others than immunity generated by COVID-19 vaccines. Even the Centers for Disease Control and Prevention guidelines say that a person less than 90 days recovered from a COVID-19 infection does not need to quarantine as FCPS requires.

The quarantine policy is arbitrary, irrational, and discriminatory. It violates M.M.’s fundamental right to equal protection of the laws under the Fourteenth Amendment of the Constitution, and it deprives her of her Due Process rights. Furthermore, FCPS is depriving M.M. of her right to an education under the Virginia State Constitution, and depriving her parents of their rights to make decisions concerning her upbringing under the Virginia State Code and the U.S. Constitution. The quarantine policy also coerces M.M. into receiving a vaccine approved for her age group only under the Emergency Use Authorization (EUA) statute by predicated her access to an uninterrupted education on her receiving this vaccine, violating her right to free and informed consent.

NCLA released the following statement:

“Along with all too many children in the United States, M.M. has been deprived of her right to receive an uninterrupted, in-person education due to arbitrary and irrational policies ostensibly aimed to mitigate the spread of COVID-19. Forcing children with naturally acquired immunity to quarantine again and again after possible exposure to someone else who tests positive does not make any sense. These disruptive policies appear to be designed to coerce parents into vaccinating their children, a violation of their rights to make decisions concerning their children’s upbringing. We hope that Fairfax County Public Schools and the county Health Department begin to revisit these pointless and cruel policies and start putting children’s education first.”

— **Jenin Younes, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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