

FILED
10-20-2021
Clerk of Circuit Court
Brown County, WI
2021CV001166
Honorable Tammy Jo
Hock
Branch 3

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

STEPHANIE MCMANUS, on behalf of
R.M. and M.M.,
2001 Hawthorne Heights Dr., De Pere, WI 54115
Plaintiff,

vs.

Case No.:
Case Code: Declaratory Judgment: 30701
 Other Injunction: 30704

UNIFIED SCHOOL DISTRICT OF DE PERE,
1700 Chicago Street, De Pere, Wisconsin 54115
BOARD OF EDUCATION OF THE UNIFIED
SCHOOL DISTRICT OF DE PERE,
1700 Chicago Street, De Pere, Wisconsin 54115

and

BENJAMIN VILLARRUEL, in his official capacity
1700 Chicago Street, De Pere, Wisconsin 54115,
Defendants.

SUMMONS

To Defendants, Unified School District of De Pere, the Board of Education of the Unified School District of De Pere, and Benjamin Villarruel (an individual sued in his official capacity):

You are hereby notified that Plaintiff, Stephanie McManus, on behalf of R.M. and M.M., has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this summons, you must respond with a written Answer, as that term is used in Wis. Stat. § 802, to the Complaint. The Court

may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court whose address is 100 South Jefferson Street, Green Bay, Wisconsin 54301, and to Levine Eisberner LLC, located at 2802 Coho Street, Suite #201, Madison, Wisconsin 53713. You are entitled to retain an attorney to assist or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or may own in the future and may also be enforced by garnishment or seizure of property.

Dated October 20, 2021.

Respectfully submitted,

Levine Eisberner LLC

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A handwritten signature in black ink, appearing to read "Brent Eisberner". The signature is fluid and cursive, with the first name "Brent" and last name "Eisberner" clearly distinguishable.

Atty. Brent G. Eisberner

Attorneys for Plaintiff

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and

BENJAMIN VILLARRUEL, in his official capacity
1700 Chicago Street, De Pere, Wisconsin 54115,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Plaintiff, Stephanie McManus, on behalf of R.M. and M.M., by undersigned counsel, files this Complaint for a Declaratory Judgment pursuant to Wis. Stat. § 806.04 and a Permanent Injunction pursuant to Wis. Stat. § 813.02 against Defendants and alleges the following:

INTRODUCTION

1. This is an action for declaratory and injunctive relief pursuant to Wis. Stats. §§ 806.04 and 813.01 to determine certain actions taken and policies enacted by the

above-named Defendants to be invalid, unlawful, and beyond the scope and limits of their statutory authority.

2. The Wisconsin Constitution provides that Wisconsin is a “home rule” state, meaning that cities and villages may determine their own local affairs and government, subject only to the Constitution and to statewide concerns. Wis. Const. art. XI, § 3.
3. As such, measures taken to prevent, suppress, and control communicable diseases, such as quarantine and isolation orders, are largely left to local public health departments. Wis. Stat. § 252.03.
4. The Wisconsin Legislature has also delegated certain powers to certain departments and individuals when it comes to public health issues.
5. Specifically, the Wisconsin Legislature has created a Department of Health Services (“DHS”). Wis. Stat. § 15.19.
6. However, neither the Wisconsin Legislature nor the Wisconsin Constitution has authorized school districts to quarantine students who do not appear to have a communicable disease.
7. Such a delegation of power would be constitutionally impermissible.
8. This Court should invalidate these unlawful actions and policies, reestablish the limits of Defendants’ authority, and enjoin Defendants from overstepping their authority in the future.

PARTIES

9. Plaintiff Stephanie McManus is an adult resident of the State of Wisconsin and at all times relevant to this lawsuit, Plaintiff is a parent whose children, R.M. and M.M., attended De Pere High School.
10. Plaintiff challenges the enforcement actions by the Unified School District of De Pere, The Board of Education of the Unified School District of De Pere, and Benjamin Villarruel.
11. The Unified School District of De Pere (“USDD”) is a Wisconsin school district with the capacity to sue and be sued in this Court. Its principal place of business is located at 1700 Chicago Street, De Pere, Wisconsin 54115.
12. The Board of Education of the Unified School District of De Pere is a school board with the capacity to sue and be sued in this Court. Its principal place of business is located at the Unified School District of De Pere, 1700 Chicago Street., Du Pere, Wisconsin 54115.
13. Benjamin Villarruel is an adult resident of the State of Wisconsin and at all times relevant to this lawsuit was the Superintendent of the Unified School District of De Pere and is sued in his official capacity.

JURISDICTION AND VENUE

14. This is an action for declaratory and injunctive relief under Wis. Stat. §§ 806.04 and 813.01.
15. The Court has personal jurisdiction over Defendants pursuant to Wis. Stat. § 801.05.
16. Venue is proper in the Brown County Circuit Court pursuant to Wis. Stat. § 801.50 because a substantial part of the events giving rise to this suit occurred

within Brown County and Defendants have their principal place of business located within Brown County.

STATEMENT OF FACTS

17. Plaintiff Stephanie McManus is the parent of two high-school-aged daughters who attend De Pere High School. McManus Aff. ¶¶1, 2.
18. Plaintiff is employed as a substitute teacher for De Pere High School, a school within the Unified School District of De Pere. McManus Aff. ¶3.
19. Throughout the 2020-2021 school year, USDD taped QR codes to each school desk in order to trace contact and did not allow those desks to be moved. McManus Aff. ¶4.
20. USDD does not utilize any such tracing tools in order to trace contact this year. McManus Aff. ¶5.
21. In August 2021, USDD enacted a policy entitled “USDD COVID-19 Exposure Protocols.” McManus Aff. 6.
22. Plaintiff’s sophomore-aged daughter, R.M., pursuant to the USDD COVID-19 Exposure Protocols, was quarantined on September 27, 2021, due to a potential exposure on September 23, 2021. McManus Aff. ¶8.
23. R.M. was tested on September 29, 2021 and received a negative test result on September 30, 2021. McManus Aff. ¶9.
24. Pursuant to the USDD COVID-19 Exposure Protocols, R.M. was forced to remain in quarantine until October 1, 2021. McManus Aff. ¶10.
25. Had R.M. not been tested, she would have remained in quarantine until October 4, 2021. McManus Aff. ¶11.

26. On October 11, 2021, Plaintiff received a letter from Nick Joseph, the principal of De Pere High School, and Defendant Villarruel. McManus Aff. ¶12.
27. The letter stated that, on October 6, 2021, Plaintiff's eldest daughter, M.M., a junior in high school, was thought to have had close contact with a student who tested positive for COVID-19. She did not exhibit any symptoms. McManus Aff. ¶14.
28. M.M. was quarantined on October 11, 2021 pursuant to the USDD COVID-19 Exposure Protocols. McManus Aff. ¶15.
29. With a negative test result, the earliest that M.M. could return to school would have been October 14, 2021. McManus Aff. ¶16.
30. Without a negative test result, M.M. could not return to school until October 17, 2021, for sporting activities and October 18, 2021, for school. McManus Aff. ¶17.
31. As of the filing of this Complaint, USDD does not accept negative test results from the so-called "rapid test." McManus Aff. ¶18.
32. USDD only accepts test results from a PCR test. McManus Aff. ¶19.

CAUSES OF ACTION

Count I – For a Declaration that Defendants' Quarantine Policy Goes Beyond Defendants' Statutory Authority and is Therefore Unlawful

33. Plaintiff incorporates herein by reference the allegations made above.
34. The Wisconsin Legislature has delegated powers and duties to the Department of Health Services, the local health officers acting on behalf of the department, and local health departments to prevent and suppress diseases. Wis. Stats. §§ 250.04(1), 250.03(1).

35. DHS and local health officers also have the power to require the isolation of an infected person and quarantine of his or her contacts. Wis. Stat. § 252.06(1).
36. In addition, the public health authority may, in addressing a public health emergency, isolate or quarantine an individual who is unable or unwilling to receive a vaccination for religious, medical, or conscientious reasons. Wis. Stat. § 252.041(1)(b).
37. Pursuant to the authority granted to DHS under Wis. Stats. §§ 252 and 254, DHS promulgated its own Administrative Code, DHS Chapter 145, “Control of Communicable Diseases.”
38. DHS Chapter 145’s purpose is to control the incidence and spread of communicable diseases. DHS § 145.02.
39. DHS also has promulgated general statements of power to control certain communicable diseases such as COVID-19. DHS § 145.06.
40. Specifically, DHS has the power to deem certain individuals as having a contagious medical condition which poses a threat to others if that person has been medically diagnosed to have that communicable disease and exhibits one of the various behaviors listed.¹

¹ (a) A behavior which has been demonstrated epidemiologically to transmit the disease to others or which evidences a careless disregard for the transmission of the disease to others.

(b) Past behavior that evidences a substantial likelihood that the person will transmit the disease to others or statements of the person that are credible indicators of the person's intent to transmit the disease to others.

(c) Refusal to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious.

(d) A demonstrated inability to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious, as evidenced by any of the following:

1. A diminished capacity by reason of use of mood-altering chemicals, including alcohol.
2. A diagnosis as having significantly below average intellectual functioning.
3. An organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation or memory.

41. DHS may also deem an individual as being suspected of harboring a contagious medical condition which poses a threat to others if that person exhibits any of the factors listed in footnote 1, and, in addition, demonstrates any of the following without medical evidence which refute it:

(a) Has been linked epidemiologically to exposure to a known case of communicable disease.

(b) Has clinical laboratory findings indicative of a communicable disease.

(c) Exhibits symptoms that are medically consistent with the presence of a communicable disease.

DHS § 145.06(3)

42. A DHS official, when he or she comes to know or suspects that an individual has a contagious medical condition that poses a threat to others, may, among other things, direct that individual to reside part-time or full-time in an isolated or segregated setting. DHS § 145.06(4).

43. DHS has likewise authorized teachers, principals, directors, and nurses serving a school to send home, for the purpose of diagnosis and treatment, any student suspected of having a communicable disease or of having any other disease or condition having the potential to affect the health of other students and staff.

DHS § 145.07.

4. Being a minor, or having a guardian appointed under ch. 54, Stats., following documentation by a court that the person is incompetent.

(e) Misrepresentation by the person of substantial facts regarding the person's medical history or behavior, which can be demonstrated epidemiologically to increase the threat of transmission of disease.

(f) Any other willful act or pattern of acts or omission or course of conduct by the person which can be demonstrated epidemiologically to increase the threat of transmission of disease to others.

DHS § 145.06(2)(a)-(f)

44. As such, teachers, principals, directors, and nurses serving a school district are not authorized to quarantine students who do not appear to have a communicable disease.
45. Yet, USDD maintains, implements, and enforces its USDD COVID-19 Exposure Protocols, which by their own words, includes mandatory quarantine.
46. Pursuant to those Protocols, which were in place as of the date of filing this Complaint, fully vaccinated students who have had known or possible exposure to a COVID-19 positive individual do not have to quarantine.
47. Meanwhile, for non-vaccinated students who have had known or possible exposure to a COVID-19 positive individual, those students must stay home and begin to quarantine from the last known contact even if those students have tested negative and do not exhibit symptoms.
48. For non-vaccinated students, the quarantine's duration is ten days from the student's last known contact with the COVID-19 positive individual if that student does not exhibit symptoms and has not received testing.
49. For non-vaccinated students, the quarantine's duration is seven days the student's last known contact with the COVID-19 positive individual if that student does not exhibit symptoms and has received a negative Polymerase Chain Reaction ("PCR") test.
50. Students are able to return to school when their isolation times are complete, and those students are fever free and any symptoms that they did have are improving.
51. USDD's COVID-19 Exposure Protocols were not promulgated pursuant to any statute, regulation, or other similar statutory schemes.

52. Rather, USDD's enactment of its COVID-19 Exposure Protocols was an impermissible overstep of the authority granted to Public Instruction institutions in Wis. Stats. §§ 115-121.

53. Unless USDD is enjoined from implementing and enforcing its unauthorized quarantine policy, Plaintiff will continue to suffer great and irreparable harm.

Count II – For a Declaration that Defendants' Policy Violates the Wisconsin Constitution

54. Plaintiff incorporates herein by reference the allegations made above.

55. Article X Section 3 of the Wisconsin Constitution provides for the establishment of district schools and mandates that those schools be uniform and free of charge for its students.

56. "[C]hildren of identical age should have an equal opportunity to enter the public schools of Wisconsin." *Pacyna v. Bd. Of Ed.*, 57 Wis. 2d 562, 566, 204 N.W.2d 671 (Wis. 1973).

57. Defendants' policy denies children of identical age an equal opportunity to enter the public school system in Wisconsin.

58. Defendants' policy segregates and divides vaccinated and non-vaccinated students into separate camps.

59. Vaccinated students are allowed to enter the public school system despite close contact with someone with a confirmed case of COVID-19.

60. Meanwhile, non-vaccinated students are not allowed to enter the public school system when they have had close contact with someone with a confirmed case of COVID-19.

61. Instead, non-vaccinated students are instructed to quarantine for seven days from the student's last known contact with the COVID-19 positive individual, despite that student not exhibiting symptoms and having received a negative COVID-19 test.

62. Due to Defendants' policy, non-vaccinated students do not have equal access to the Wisconsin public school system.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Invalidate Defendants' Quarantine Policy as it exceeds Defendants' statutory authority and is therefore unlawful;
- B. Immediately and Permanently Enjoin Defendants from implementing or enforcing their Quarantine Policy against their students;
- C. Award Plaintiffs their reasonable costs and attorneys' fees; and
- D. Provide such other relief as authorized by law and which the Court determines to be just and appropriate.

Dated October 20, 2021.

Respectfully submitted,

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