

Federal Court Upholds College Vaccination Requirement

“Reasonable social policy is for the state legislatures and its authorized arms, and for the People to demand through their representatives.”

With those words, a federal judge concluded a 101-page decision rejecting a challenge by eight college and graduate students against a new vaccination policy adopted by Indiana University for the upcoming Fall 2021 semester.

The policy is straightforward enough:

Students must be fully vaccinated against Covid-19 in order to attend IU this Fall. The policy provides for medical and religious exemptions, with exempt, unvaccinated students required to wear masks, but generally speaking students who are neither vaccinated nor exempt will be denied access to campus and to classes.

Eight students challenged the IU policy on a variety of legal grounds. The students ranged from an incoming freshman to a doctoral student, pursuing degrees in areas such as performing arts, business, and law. Some had already received exemptions; some appeared to qualify for exemptions, but had not yet pursued them; some appeared not to qualify for any exemption at all. The diversity of the eight students resulted in a variety of factual scenarios for the judge to consider (the performing arts students, for example, presented unique concerns about complying with mask requirements while performing).





The students' legal arguments drew primarily from the U.S. Constitution, especially their liberty interests (in this case, to be free from unwanted medical procedures) that are protected by the Fourteenth Amendment. IU, on the other hand, had convened a committee full of medical experts who met weekly from December through June to develop their policy (the policy itself had, predictably, been the subject of various legal and political battles over those several months).

The case came before the judge on the students' requests for a "preliminary injunction." A preliminary injunction is not a final decision on the merits of the case, but simply a decision whether to issue a short-term injunction at the outset of a case, to apply while the lawsuit itself is underway. The judge was careful to note that his analysis was preliminary only.

With that caveat, though, the judge's decision is anything but superficial. The decision is 101 pages long, and cites dozens of cases on the various legal issues implicated, with a depth and thoroughness that is rarely seen in a decision issued at this preliminary stage.

Most of the decision is devoted to whether the students were "likely" to win the underlying case, which is part of the

framework used to decide preliminary injunctions. In order to make this decision, the judge worked through all of the various legal issues (remember, the diversity of students involved presented an impressive diversity of issues) to assess how "likely" they were to prevail. The judge ruled in favor of the university, finding that IU has constitutional authority to adopt reasoned and rational measures to protect the health and safety of students and staff on their campuses.

Many of you, of course, are going through a very similar process right now to determine your policies for school this Fall. In many ways, the IU decision is an important precedent, even if it is not from Illinois. (A more direct precedent is likely to come in the future, as the students have vowed to appeal; their appeal would go to the Seventh Circuit, which is the federal appeals court for Illinois, Indiana, and Wisconsin.)

At the same time, there are critical legal distinctions between colleges and K-12 schools. College students are under no compulsion to attend college, and they are old enough to qualify for Covid vaccines; K-12 students have a constitutional right (in Illinois) to attend school, are subject to compulsory attendance laws, and (at the lower grades) are not even old enough to be vaccinated in the first place.



In other words: the fact that a federal judge upheld a vaccine requirement at a public university in Indiana does not mean, by any stretch, that public schools in Illinois can require their students to be vaccinated.

There are two critical points to keep in mind, though, as you make your plans for the upcoming school year.

First is the general principle that public policy decisions should be decided by public officials. From the first days of the pandemic, many of those decisions came from the Centers for Disease Control, the Illinois Department of Public Health, the State Board of Education, and so forth; but at this stage of the pandemic, many of those decisions are falling to local school officials, with a renewed focus upon the importance of accounting for local conditions.

This role is nothing new. As school officials, you have always discharged an important responsibility to protect the health and safety of students and staff in your schools. The public health concerns, the community pressures, and even the political rhetoric might all be higher right now than usual, but none of those realities compromises your authority and ability to develop reasoned, reasonable mitigation plans for your schools. In this respect, the IU decision

is a shining example of a federal judge deferring to local officials.

The second principle is that making reasoned, rational, local decisions - based upon local conditions - is likely to maximize your legal protections if those decisions are ever challenged in court. The most important tort immunities that are implicated in this pandemic are those that provide absolute protection for matters that fall within local policy-making and discretion; and the most important factor in relying upon these immunities is to show that your decisions are, in fact, based upon reasoned analysis and informed judgment. Judges are more likely to interject themselves into decisions that appear to be arbitrary or capricious; the more you can articulate rationales for your decisions, the more likely judges are to defer to your discretion in this regard.

In that vein, we encourage you to take the IU case as an important and timely reminder that the hard work you are putting into your mitigation plans will pay off - not just because they will yield local plans, reflecting your local conditions, to protect your local students and staff, but also because your plans will better withstand the legal challenges that might come.