IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

Brian Shellem, et. al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.: CJ-2021-3883
	)	
Angela Grunewald, et al.	)	
	)	
Defendants.	)	
	)	

ORDER ON TEMPORARY INJUNCTION

THIS MATTER came on for hearing on September 29, 2021, and September 30, 2021, upon Plaintiffs' request for a temporary injunction. The Plaintiffs, Brian and Janelle Shellem, Brett and Emilie Garrelts, and Grady and Theresa Epperly (hereinafter referred to as the "PLAINTIFFS"), appeared in person and/or by and through their counsel, Richard C. Labarthe and Alexey V. Tarasov of the law firm of LABARTHE & TARASOV, P.C., and Stanley Ward, and the Defendants, Angela Grunewald, Superintendent of Edmond Public Schools, and Edmond Board of Education members, Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman and Meredith Exline, in their official and individual capacities, appeared in person and/or by and through their counsel, F. Andrew Fuggit and Justin C. Cliburn of THE CENTER FOR EDUCATION LAW, P.C. The Court, having reviewed the file herein, having heard testimony from the witnesses sworn, and having heard argument presented by counsel, FINDS and ORDERS as follows:

FINDINGS OF FACTS

1. Plaintiffs are the parents of students who attend Independent School District No. 12 of Oklahoma County, Oklahoma, also known as Edmond Public Schools ("District");[1] that none of Plaintiffs' children have been vaccinated against COVID-19.

2. Defendant Angela Grunewald is the District's Superintendent.

3. Defendants Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman, and Meredith Exline are members of the District Board of Education.

4. During the summer of 2021, in response to the COVID-19 pandemic, the District consulted with the Oklahoma City-County Health Department ("OCCHD").

5. The District received recommendations from the OCCHD that included quarantining individuals who (A) had been exposed to a positive COVID-19 case;[2] (B) were not vaccinated against COVID-19; and (C) had not tested positive for COVID-19 in the previous 90 days.

6. Beginning August 18, 2021, the District instituted its COVID-19 quarantine protocols ("policy" or "protocol") that required unvaccinated students who were identified as "close contacts" of individuals positive for COVID-19, and who had not tested positive for COVID-19 in the previous 90 days, to quarantine at home for between seven-to-ten days. Even if an unvaccinated student did not display signs or symptoms commonly associated with COVID-19, the District's policy required the student to self-isolate at home.[3]

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[1]Plaintiffs Brian and Janelle Shellem have two children: C.S. and M.S., who are in the 9th grade. Plaintiffs Brett and Emilie Garrelts have two children: B.G. is in the 9th grade and J.G. is in the 4th grade. Plaintiffs Grady and Theresa Epperly have 4 children: O.E, who is in kindergarten; C.E., who is in 3rd grade; M.E., who is in 5th grade, and L.E., who is in 7th grade.
[2]Defined as being within six feet of a positive individual for a period of 15 minutes or more or within three feet if both parties are masked.
[3]Trial Transcript at Page 306-07; Defendant's Exhibit #3.

7. After completing a quarantine, an unvaccinated student was permitted to return to in-person learning at the District without receiving, or providing proof of receiving, a COVID-19 vaccine.

8. The District counted all Plaintiffs' children as being in attendance for any day they quarantined as a result of being a close contact of a positive case of COVID-19;[4] Plaintiffs' children received full credit for any instruction they completed during quarantine.

9. Plaintiffs' children experienced a wide range of negative psychological and physical effects as a result of being quarantined by the District,[5] to-wit:

A. That quarantining devastated Plaintiff, Brenna Harris, and her autistic child; that her child suffers severe behavioral problems, including anxiety, self-harm, and regression, and the quarantine caused her child to become extremely violent. Additionally, her child was quarantined for ten days, and at no time did any official from the District provide aid or assistance regarding her child's behavioral issues.[6]

B. One of Joy Tisdale's three children, who is disabled and has special needs, has been quarantined two times. While quarantined, Tisdale's child received a mere 160 minutes of instruction, compared to 1,200 minutes of in-person instruction normally received. Tisdale's child's special needs make remote learning especially difficult, and her child has fallen behind in studies.[7]

C. Theresa Epperly testified that her child's math grades dropped significantly while isolated in quarantine. Epperly was forced to teach school subjects to her child using YouTube videos.[8]

D. Lindsay Frace testified that the District's quarantine grossly exacerbated her child's underlying anxiety, which has led to suicidal tendencies.[9]

E. Brian Shellem's child experienced psychosomatic effects of isolation and lost the ability to absorb nutrients, losing weight while quarantined.[10]

F. Rebekah Graham's child's grades suffered, and the child exhibited signs of anxiety while quarantined.[11]

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[4]Trial Transcript at Page 315, Line 3 – Page 316, Line 6.
[5]Plaintiffs proffered affidavits of additional parents, whose children attend school within the District, which were admitted as evidence by the Court.
[6]Trial Transcript at Page 34, Line 17 – Page 40, Line 14. .
[7]Trial Transcript at Page 58, Line 6 – Page 60, Line 11; and Page 62, Line 22 – Page 63, Line 8.
[8]Trial Transcript at Page 75, Line 1 – Page 76, Line 6.
[9]Trial Transcript at Page 147, Line 23 – Page 149, Line 3; Page 150, Line 16 – Page 151, Line 9; and Page 156, Line 15 – Page 160, Line 8.
[10]Trial Transcript at Page 176, Line 22 – Page 177 Line 22.
[11]Trial Transcript at Page 211, Line 19 – Page 213, Line 10; and Page 214, Line 17 – Page 215, Line 15.

G. Emelie Garrelts' child, who has been diagnosed with an adjustment disorder, began talking about death much more frequently while quarantined.[12]

10. The District's quarantine protocols impacted Plaintiffs' unvaccinated students in two ways: (1) the policy frustrated the ability of Plaintiffs' students to learn; and (2) the policy inflicted negative psychological and physical effects on Plaintiffs' students, especially those children with special needs.

11. Children and adolescents experience high rates of depression and anxiety during and after being quarantined.[13]

12. The policy of sending heathy students into quarantine has shown little effectiveness over time;[14] that quarantining apparently healthy students leads to higher rates of depression and anxiety among those students.[15]

13. None of the Plaintiffs' students who were quarantined pursuant to the District's policy displayed symptoms associated with COVID-19 while isolated at home, nor did they test positive for COVID-19 while quarantined pursuant to the District's policy.[16]

14. That fully vaccinated individuals can become infected with COVID-19 and can transmit the disease.[17]

15. The number of COVID-19 positive cases within the District followed a similar trend and pattern as those districts without a close-contact policy solely for unvaccinated children.[18]

[12]Trial Transcript at Page 226, Line 6 – Page 227, Line 10.
[13]Trial Transcript at Page 99, Lines 14.
[14]Trial Transcript at Page 127, Lines 14-22.
[15]Trial Transcript at Page 127 Line 12 – Page 128, Line 2.
[16]Trial Transcript at Pages 15, 24, 29-30, 36, 40, 78, 93, 180 and 211.
[17]Trial Transcript at Page 141, Lines 7-11.
[18]Trial Transcript at Page 234, Lines 6-22; Defendants' Exhibit #38.

CONCLUSIONS OF LAW

Temporary Injunction Standard

The decision to grant or deny injunctive relief rests within the sound discretion of the trial court.[19] An injunction is an extraordinary remedy and should not be granted lightly. The discretion of the court must be exercised within sound equitable principles, taking in all the facts and circumstances of the case.[20]

To obtain a temporary injunction, a plaintiff must show that four factors weigh in his favor: (1) the likelihood of success on the merits; (2) irreparable harm to the party seeking injunctive relief if the injunction is denied; (3) his threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest.[21]

Senate Bill 658

Plaintiffs, including the Attorney General, contend that under Senate Bill 658, codified as 70 O.S. Supp. 2021 § 1210.189(A)(1) (emerg. eff. July 1, 2021), the District cannot impose a quarantine policy. Plaintiffs' posit the word "attendance" within Senate Bill 658 means physical, in-person attendance. The Court respectfully disagrees.

"The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent and purpose as expressed by the statutory language."[22] A court's primary goal is to determine legislative intent through the "plain and ordinary meaning" of the statutory language.[23] The court should only employ rules of statutory construction when legislative intent cannot be ascertained

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[19] *Johnson v. Ward*, 541 P.2d 182, 188, 1975 OK 129.
[20] *Amoco Production Co. v. Lindley*, 609 P.2d 733, 745, 1980 OK 6; *Dowell v. Pletcher*, 2013 OK 50, ¶ 5, 304 P.3d 457, 460 (The "grant or denial of injunctive relief are of equitable concern").
[21] *Dowell v. Pletcher*, 2013 OK 50, ¶ 7, 304 P.3d 457, 460 (citing *Daffin v. State ex rel. Okla. Dept. of Mines*, 2011 OK 22, 251 P.3d 741); *see also*, 12 O.S. § 1382, 1383.
[22] *Am. Airlines, Inc., v. State Tax Comm'n.*, 2014 OK 95, ¶33, 431 P.3d 56.
[23] *Kohler v. Chambers*, 2019 OK 2, ¶ 6, 435 P.3d 109, 111.

(e.g., in cases of ambiguity).[24] The test for determining the ambiguity of a statute depends on whether its language is susceptible to more than one meaning.[25]

Senate Bill 658 prohibits school districts from requiring a COVID-19 vaccination (or proof of a COVID-19 vaccination) as a condition of enrollment and *attendance* or imposing a mask mandate on students who have not been vaccinated against COVID-19. The word "attendance" is not defined within Senate Bill 658. Perhaps more importantly though, Senate Bill 658 does not address whether a school district may impose a quarantine.

The plain text of Senate Bill 658 does not limit a school district's authority to quarantine. If Plaintiffs' reading of Senate Bill 658 is correct, the law would also prohibit a school district from placing an unvaccinated student into quarantine, even if that student was symptomatic and/or tested positive for COVID-19. A school that takes protective action to isolate a student known to be carrying a highly contagious disease is acting upon its clear statutory and administrative authority to keep fellow students and staff safe as required under 40 O.S. § 403(A).

Moreover, in response to COVID-19, the State Board of Education amended certain rules governing alternative instructional delivery systems.[26] These rules require local districts to implement written policies regarding remote learning and provide districts with discretion to implement virtual learning protocols in the event of a national, state, or local emergency. Here, Edmond Public Schools implemented such virtual learning protocols; that the District counted all Plaintiffs' children as being in attendance for any day they quarantined. Moreover, Plaintiffs' children received full credit for any instruction they completed for any day they quarantined.

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[24]*Christian v. Christian*, 2018 OK 91, ¶ 5, 434 P.3d 941, 942.
[25]*Christian v. Christian*, 2018 OK 91, ¶ 5, 434 P.3d 941, 942-43.
[26]O.C.A. 210:35-1-2(c).

Senate Bill 658 is not ambiguous. If the law was intended to limit a school district's authority to quarantine students, the legislature could have easily addressed that issue within the text of the statute. Instead, the law is silent and makes no mention of a school district's authority to quarantine students, nor does it address whether virtual learning protocols suffice as "attendance" during a quarantine. In sum, the Court finds Plaintiffs are unlikely to succeed on the merits of their claim under Senate Bill 658.

Plaintiffs' Constitutional Rights Claims

Plaintiffs make three constitutional claims: First, they assert the District's policy infringed upon their children's First Amendment rights under the United States Constitution. Second, they urge the policy violated their students' Due Process rights enshrined in the Fourteenth Amendment to the United States Constitution. Third, Plaintiffs allege the District's COVID-19 protocols violate the Equal Protection clause of the United States Fourteenth Amendment.

i. Plaintiffs' First Amendment Claim

Plaintiffs' First Amendment arguments are unpersuasive. The right to freely assemble pertains to the rights of citizens to meet peaceably for consultation in respect to public affairs and to petition their elected officials for redress of grievances.[27]

Plaintiffs contend the District's policy prohibited their children from engaging in social interactions at school, but the Supreme Court has held the right to expressive association under the First Amendment requires a showing of "intimate association" or "expressive association extending to groups organized to engage in speech that does not pertain directly to politics "[28]

[27] *De Jong v. Oregon*, 299 U.S. 353, 364 (1937); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 678 (2000); *see also, McCook v. Springer Sch. Dist.*, 44 Fed. Appx. 896, 910 (10th Cir. 2002).
[28] *City of Dallas v. Stanglin*, 490 U.S. 19, 35 109 S. Ct. 1591, 104 Ed. 2d. 18 (1989); *see also, Roberts v. U.S. Jaycees*, 468 U.S. 409, 617018, 104 S.Ct. 3244, 3249, 82 L.Ed.2d 462 (1984); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 658 (10th Cir. 2006).

While it is true that children quarantined pursuant to the District's policy were prevented from assembling with other students at school, no evidence was presented that Plaintiffs' children sought access to the District's property for the purpose of engaging in private associations or expressive associations. Instead, Plaintiffs point to a generalized association—the right of their students to interact with other students during the school day. While such social interactions may be important in the development of children, Plaintiffs cite no cases that held students have a right to socialize generally within schools.

Because Plaintiffs fail to identify the kind of expressive association or intimate association that their students were denied, the Court finds Plaintiffs' First Amendment claims are unlikely to succeed on the merits.

ii. Plaintiffs' Due Process Claim

Plaintiffs' Due Process claim is unconvincing. "The fundamental requisite of due process of law is the opportunity to be heard."[29]

In *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975), the Supreme Court held that compulsory attendance laws may provide students a property interest in public education that is protected by the Due Process Clause. But the due process rights recognized in *Goss* are infringed when students are suspended or dismissed for misconduct without notice and a hearing.[30] The objective in providing students with Due Process under the law is to ensure that in the context of discipline, there is a "balancing of the students' interest in unfair or mistaken exclusion from the educational process and the school's interest in discipline and order."[31]

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[29] *Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914).
[30] *Goss v. Lopez*, 419 U.S. 565, 574, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975)
[31] *Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1240 (10th Cir. 2001).*

Here, the evidence shows that Plaintiffs' children were not disciplined nor alleged to have engaged in any misconduct. District's policy was not punitive in nature. The students were not suspended nor disenrolled from school. Instead, students were allowed to attended classes virtually with instructions. On basis of facts and the law, the Court find the Plaintiffs are unlikely to succeed on the merits of their Due Process claim.

iii. Plaintiffs' Equal Protection Claim

The Court now turns to the issue of whether the District's policy infringed on Plaintiffs' students' right to equal protection under the law. In short, the Court finds Plaintiffs' are likely to succeed on the merits as it relates to their claims under the Fourteenth Amendment of the United States Constitution.

At the onset, the Court notes that we are admittedly in uncharted waters. The advent of the pandemic has created new, highly unusual factual situations that make applying our pre-pandemic caselaw exceptionally challenging. Nevertheless, we start with the Equal Protection Clause itself, which commands that no government shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike.[32]

The default rule is that a government policy is *presumed* to be valid and will be *sustained* if the classification drawn by the policy is rationally related to a legitimate governmental interest.[33] Violations of the Fourteenth Amendment are made actionable under 42 U.S.C § 1983. Generally, the challenger bears the burden of proving the irrationality of the challenged policy.[34]

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[32]*Plyler* v. *Doe*, 457 U.S. 202, 216 (1982); U.S. CONST. amend. XIV, § 1.
[33]*Schweiker* v. *Wilson*, 450 U.S. 221, 230 (1981). "The legislation may draw certain classifications among individuals or groups of individuals, if those classifications are not arbitrary and capricious and bear some reasonable or rational relationship to a permissible public policy or goal." *Rivas v. Parkland Manor*, 2000 OK 68, ¶8, 12 P.3d. 452.
[34]*City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (*per curiam*).

The default rule gives way when a policy classifies individuals by race, alienage, or national origin. In such case, a heightened standard of review is used by the courts.[35] To date, the United States Supreme Court has not declared that vaccination status establishes a suspect class or quasi-suspect class that would trigger strict review by the courts.

The District correctly points out that the United States Supreme Court has declined to provide a strict standard of review when the policy impacts a person who is intellectually challenged or physically infirmed, unless there is a corresponding federal statute.[36] Nevertheless, in the case the District cites, the United States Supreme Court found the city's applied zoning ordinance which prevented an entity from building a facility for intellectually challenged individuals violated the Equal Protection clause because the record revealed there was no "rational basis for believing that the . . . . home would pose any special threat."[37]

When a particular policy touches upon an immutability or an important right, the United States Supreme Court has, even when applying rational basis review, thoughtfully examined the law's rationality, questioning whether animus or fear were a motivating factor in the law's enactment.[38] As Circuit Judge Holmes has noted, this line of United States Supreme Court cases falls on a continuum, and an irrational classification "may be present where the lawmaking authority is motivated solely by the urge to call one group 'other,' to separate those persons from the rest of the community (i.e., an 'us versus them' legal construct)."[39]

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[35]*See e.g., McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964); *Graham* v. *Richardson*, 403 U.S. 365 (1971); *Mississippi University for Women* v. *Hogan*, 458 U.S. 718 (1982); *Craig* v. *Boren*, 429 U.S. 190 (1976).

[36]*City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 442, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985). The *Individuals with Disabilities Education Act of 2004* (IDEA) requires that, *to the maximum extent appropriate*, special education students are not to be removed from regular classes, even with supplemental aids and services, unless education in regular classes cannot be achieved satisfactorily. 20 U.S.C. §1412 (a)(5)(A). Whether the IDEA may apply to this case is unclear at this juncture. *See Cudjoe v. Indep. Sch. Dist. No. 12*, 297 F.3d 1058, 1064-1066 (10th Cir. 2002) (finding parents must exhaust administrative procedures before seeking civil action).

[37]*City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985). The Supreme Court noted that persons with intellectual challenges have historically been subject to a "history of unfair and often grotesque mistreatment." *Id* at 473.

[38]*See e.g., Romer v. Evans*, 517 U.S. 620, 632, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

[39]*Bishop v. Smith*, 760 F.3d 1070, 1100 (10th Cir. 2014) (concurring opinion); *see also, Bowers v. NCAA*, 475 F.3d 524, 554 (3d Cir. 2007) (examining whether NCAA's rules created a "caste system" for student-athletes with learning disabilities).

The United States Supreme Court has found that while education is not a fundamental right, it "is perhaps the most important function of state and local governments."[40] When examining a government policy under rational basis review that touches upon an important right, the United States Supreme Court has sometimes inspected means the government has selected to achieve its purpose and weighed the benefits and harms of the challenged policy. In *Romer v. Evans*, 517 U.S. 620, 635 (1996), the Supreme Court found Colorado's enactment inflicted "immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it." Likewise, the Supreme Court has also examined whether the challenged policy overly burdens one group while ignoring other groups.[41] *Cleburne*, at 458; *see also*, *U.S. States Dept. Agric. V. Moreno,* 413 U.S. 528 (1974).

Ultimately, even under the most deferential standard of review, the court must still "insist on knowing the relation between the classification adopted and the object to be obtained."[42] Simply put, under rational basis review, courts look to see whether there is "any reasonably conceivable state of facts" that could justify the differential treatment.[43]

For the reasons set forth above, the Court will analyze the District's policy under rational basis review. As a threshold matter, the Tenth Circuit has stated that "an equal protection violation occurs when the government treats someone differently than another who is similarly situated."[44] To be "similarly situated" the individuals "must be prima facie identical in all relevant respects or directly comparable in all material respects; although this is not a precise formula, it is

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[40] *Plyler,* at 222, (quoting *Brown* v. *Board of Education,* 347 U.S. 483, 493 (1954)).The Oklahoma Supreme Court has likewise recognized the great importance of education. *Miller v. Childers*, 1924 OK 675, 238 P. 204, 206 (1924); *Fair Sch. Fin. Council of Okla., Inc. v. State*, 1987 OK 114, 746 P.2d 1135, 1149 (declaring students have a right to "a basic, adequate education according to the standards that may be established by the State Board of Education").

[41] *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 458, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985).

[42] *Romer v. Evans*, 517 U.S. 620, 632, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

[43] *City of Herriman v. Bell*, 590 F.3d 1176, 1194 (10th Cir. 2010).

[44] *Penrod v. Zavaras*, 94 F.3d 1399, 1406 (10th Cir. 1996).

nonetheless clear that similarly situated individuals must be very similar indeed."[45] Here, the Court finds Plaintiffs' have established that unvaccinated children are prima facie identical in all relevant respects to those students who are fully vaccinated. The evidence presented during the Evidentiary Hearing established fully vaccinated students are capable of transmitting COVID-19 too.

The next inquiry entails examining the differential treatment. Here, all sides agree that remote learning is inferior to in-person instruction. Moreover, as the record demonstrates, for many of the special needs students, consistency in instruction is critically important to their academic success and mental health. Thus, while students without special needs may be capable of quickly and successfully adjusting between classroom instruction and remote learning, Plaintiffs' students often cannot. The disruption caused by the District's quarantine policy creates significant, detrimental impacts on students with special needs, often leaving them emotionally distressed.

Importantly, the evidence presented reveals that distance learning for many of the Plaintiffs' children is exceptionally inferior because their unique challenges subject them to an elevated risk of falling significantly behind their non-quarantined peers in their studies. Thus, for many of the Plaintiffs' students, the combined impact of self-isolation and remote learning exacerbates their underlying special needs while significantly frustrating their ability to learn. Because of these facts, the Court finds the District's policy has a disproportionate impact on students with special needs. Specifically, the evidence shows the District's one-size-fits-all policy of removing unvaccinated students from the classroom grossly burdens students with special needs, imposing uniquely harsh consequences upon them.

Further, the evidence presented demonstrates that isolating unvaccinated children provided no measurable benefit in combating the spread of COVID-19. During the Evidentiary Hearing,

[45] *U.S. v. Moore*, 543 F.3d 891 (7th Cir. 2008).

there was little or no evidence showing that quarantining unvaccinated children produced any demonstrated decrease in the transmission of COVID-19 within the District. Additionally, Plaintiffs' evidence showed the District's policy for unvaccinated students did nothing to stop the spread of COVID-19. Dr. Stephens, M.D., testified that in his professional opinion, the policy of sending heathy students into quarantine has over time proven largely useless. Plaintiffs also showed that fully vaccinated children are capable of spreading the virus too, yet those students are not subject to the District's close-contact protocols. Plaintiffs firmly established the District's policy overly burdened and irreparably harmed their children, subjecting them to significant mental and physical distress while frustrating their ability to learn. Likewise, Plaintiffs showed that absent an injunction, their unvaccinated children with special needs will likely suffer further irreparable harm.

To be clear, this is not to suggest that the detrimental impact of the District's policy was intentional. Quite the contrary, the Court finds District administrators relied in good faith on guidance from county health officials.[46] Additionally, controlling the spread of COVID-19 is certainly a legitimate, if not highly compelling, governmental interest. But the record demonstrates that not one child quarantined by the District could be classified as "asymptomatic" because (1) no evidence was presented which showed any of the unvaccinated quarantined children tested positive for COVID-19; (2) none of the unvaccinated children were suspected of having been infected while quarantined; (3) no evidence was offered to show any unvaccinated child transmitted the virus to anyone while quarantined.

The District quarantined unvaccinated-yet-healthy children based on concern that some of those students could become asymptomatic transmitters of COVID-19. But evidence before the

[46]There is no question the District has a duty to keep its students, teachers, and staff safe. 40 O.S. § 403(A); Oklahoma Administrative Code 210: 35-3-186(e).

Court shows that in practice, the policy of removing unvaccinated-yet-healthy children from the classroom provided no benefit in slowing the spread of COVID-19. The policy did, however, inflict tremendous harm on some of those students, pushing some to the brink of suicide, while causing others to fall significantly behind in their studies. The District's policy is irrational and fails to balance any of the known dangers associated with quarantining children against the fear of asymptomatic spread among unvaccinated students.

For these reasons, the Court finds there is no reasonably conceivable state of facts that can justify the differential treatment between vaccinated and unvaccinated students at issue here. Therefore, the Court finds that even under a differential standard of review, Plaintiffs are likely to establish that the District's policy violates the Equal Protection Clause of the Fourteenth Amendment.

The Court recognizes that in times of emergency, government officials, like school administrators, are often called upon to make difficult decisions during rapidly evolving situations. When the pandemic began nearly two years ago, perhaps not enough was known about the virus to second-guess the actions of officials who were acting in good-faith to combat the spread. But as more has become known about the virus and targeted ways to respond to it, heavy burdens on constitutional liberties, especially those which overburden vulnerable children, warrant thoughtful judicial review. While school officials can and should consult with public health authorities regarding proper ways to respond to the virus, school administrators are still bound by the constraints of the Constitution. This means school administrators must take the guidance they receive from health officials and craft protocols for their students that avoid offending the Constitution.

Based on the findings of facts and conclusions of law above, the Court **FINDS** the following regarding Plaintiffs' request for a temporary injunction:

1. Plaintiffs are likely to succeed on the merits of their Fourteenth Amendment claim against the Edmond Public School District's COVID-19 protocols at issue here.

2. Absent a temporary injunction, the Edmond Public School District's COVID-19 protocols for unvaccinated students will continue to do irreparable harm to Plaintiffs' children.

3. The threatened injury to the Plaintiffs' children outweighs the injury the Edmond Public School District will suffer under a temporary injunction.

4. Requiring the Edmond Public School District to comply with the Fourteenth Amendment and preventing further harm to Plaintiffs' students is in the public interest.

Plaintiffs' request for temporary injunctive relief is therefore **ORDERED** and **GRANTED** as follows:

1. The Edmond Public School District is temporarily ENJOINED from implementing or enforcing its COVID-19 protocols for unvaccinated students because Plaintiffs have established the protocols likely violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. IT IS FURTHER ORDERED the Edmond Public School District is enjoined from implementing its COVID-19 protocols for unvaccinated students until further Order of the Court.

IT IS SO ORDERED this 7th day of December, 2021.

JUDGE OF THE DISTRICT COURT

Certificate of Mailing

This is to certify that on the 7th day of December, 2021, a copy of the above Order was mailed, postage pre-paid, to:

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