

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

LIVINGSTON EDUCATIONAL  
SERVICE AGENCY; SAGINAW  
INTERMEDIATE SCHOOL  
DISTRICT; WALLED LAKE  
CONSOLIDATED SCHOOL  
DISTRICT; and WAYNE-  
WESTLAND COMMUNITY  
SCHOOLS,

Plaintiffs,

Case No. 2:22-cv-10127

vs.

Hon.

XAVIER BECERRA, in his official  
capacity as Secretary of Health and  
Human Services; UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; JOOYEUN  
CHANG, in her official capacity as  
Assistant Secretary and Principal  
Deputy Assistant Secretary of the  
Administration for Children and  
Families; ADMINISTRATION FOR  
CHILDREN AND FAMILIES; and  
BERNADINE FUTRELL, in her  
official capacity as the Director of the  
Office of Head Start,

Defendants.

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Robert T. Schindler (P70925)  
Rebecca L. Strauss (P64796)  
Breanne N. Gilliam (P85611)  
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## **VERIFIED COMPLAINT**

Plaintiffs comprise Head Start grantees and Head Start contractors throughout the State. They file this Complaint for declaratory judgment, injunctive relief, and other relief to vindicate their rights and to preserve their ability to provide necessary services to children and families who participate in Head Start programs, as detailed below:

### **Introduction**

1. Plaintiffs bring this action to challenge Defendants' Interim Final Rule, 86 Fed. Reg. 68,052 (Nov. 30, 2021) (to be codified at 45 C.F.R. pt. 1302), entitled "Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs" (hereinafter "Head Start Mandate" or "Mandate").

2. The Head Start Mandate unlawfully imposes a mandatory vaccination requirement on all staff and certain contractors and volunteers. Those subject to the Mandate must be fully vaccinated against COVID-19 by January 31, 2022.

3. The Head Start Mandate, if enforced, will cause irreparable harm to Plaintiffs and the children and families whom Head Start was created to serve.

Plaintiffs will lose staff, which will result in classroom and program closures. Head Start children and families, a majority of whom live below the poverty line, will lose access to the Head Start services that they rely on for high quality early childhood education, food, and childcare.

**Jurisdictional Allegations**

4. Plaintiff Livingston Educational Service Agency (“Livingston ESA”) is a Michigan intermediate school district, headquartered at 1425 W. Grand River Road, Howell, Michigan 48843.

5. Plaintiff Saginaw Intermediate School District (“Saginaw ISD”) is a Michigan intermediate school district, headquartered at 3933 Barnard Road, Saginaw, Michigan 48603.

6. Plaintiff Walled Lake Consolidated School District (“Walled Lake”) is a Michigan General Powers school district, headquartered at 850 Ladd Road, Building D., Walled Lake, Michigan 48390.

7. Plaintiff Wayne-Westland Community Schools (“Wayne-Westland”) is a Michigan General Powers school district that provides educational opportunities for students from Westland, Wayne, Canton, Dearborn Heights, Inkster, and Romulus. Wayne-Westland is headquartered at 36745 Marquette, Westland, Michigan 48185.

8. Defendant Xavier Becerra is the Secretary of Health and Human Services. He is being sued in his official capacity.

9. Defendant United States Department of Health and Human Services (HHS) is an executive department of the United States government.

10. Defendant JooYeun Chang is the acting Assistant Secretary and Principal Deputy Assistant of the Administration for Children and Families. She is being sued in her official capacity.

11. Defendant Administration for Children and Families is an agency within HHS.

12. Defendant Bernadine Futrell is the director of the Office of Head Start. She is being sued in her official capacity.

13. The Court has original jurisdiction under 28 U.S.C. § 1331.

14. This Court has authority to award the requested injunctive relief under Federal Rule of Civil Procedure 65 and the requested declaratory relief under 28 U.S.C. §§ 2201-2202 and Federal Rule of Civil Procedure 57.

15. Venue in this district is proper because a substantial part of the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391(b)(2).

## **General Allegations**

### **The Head Start Program**

16. Head Start is a federal program governed by statute and created “to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development.” 42 U.S.C. § 9831.

17. Head Start provides educational, nutritional, social, health and other services to low-income children and their families. 42 U.S.C. § 9831(2).

18. Early Head Start programs provide comprehensive child development and family support services to low-income infants and toddlers under the age of three and their families and to pregnant women and their families.

19. With limited exceptions, children are not eligible to participate in Head Start programs unless their families’ incomes fall below the poverty line. 42 U.S.C. § 9840.

20. Head Start programs have strict child-to-teacher ratios that must be followed in the classrooms.

21. A class that serves children under 36 months old is required to have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher in the class must have primary responsibility for no more than four children. 42 C.F.R. § 1302.21(b)(2).

22. A class with a majority of children who are three years old must have no more than 17 children with one teacher plus a teaching assistant or two teachers. 42 C.F.R. § 1302.21(b)(3).

23. A class with a majority of children who are four and five years old must have no more than 20 children with one teacher plus a teaching assistant or two teachers. 42 C.F.R. § 1302.21(b)(4).

24. These ratio restrictions make the risk of classroom or program closures significant. The loss of one teacher can mean the closure of a full classroom and the forced withdrawal of the children in that classroom from the program.

25. A single classroom closure has a devastating impact on children enrolled in the Head Start program who depend on that program for quality early childhood education.

26. A closure of a single classroom also deprives the families of enrolled children from Head Start's services and makes it difficult for the parents of enrolled children to maintain employment.

27. As Defendants state, “[f]amilies rely on Head Start programs to provide stable and reliable early care and education services to their children, and the effects of intermittent closures are significant.” 86 Fed. Reg. at 68,057.

### **The Head Start Mandate**

28. On September 9, 2021, President Joe Biden announced several federal vaccine mandates, including one for the Head Start program.<sup>1</sup>

29. On November 30, 2021, the Secretary issued the Head Start Mandate imposing a COVID-19 vaccination mandate in Head Start programs. 86 Fed. Reg. at 68,052.

30. The Mandate requires “all Head Start staff, contractors whose activities involve contact with or providing direct services to children and families, and volunteers working in classrooms or directly with children to be vaccinated for COVID-19 by January 31, 2022.” *Id.* at 68,052.

31. The Mandate applies to “all staff who work with enrolled children and families in any capacity regardless of funding source.” *Id.* at 68,060.

32. Contractors include outside service providers, bus drivers, and any other contractors who contact or provide direct service to children and families.

33. “[A]ll volunteers [must] adhere to these requirements not just those who regularly volunteer.” *Id.* at 68,061. Even someone who volunteers on a

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<sup>1</sup> White House, Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/> (last visited Jan. 20, 2022) (**Exhibit 1**).

single occasion in a Head Start classroom is mandated by HHS to be fully vaccinated against COVID-19.

34. “Fully vaccinated,” for purposes of the Mandate, means two weeks following receipt of (i) the single dose of an approved single-dose vaccine or (ii) the second dose of an approved two-dose vaccine. *Id.* at 68,060.

35. The Office of Head Start has advised Head Start programs that those subject to the Mandate must have their second dose in a two-dose series or their first dose in a single-dose series by January 31, 2022.

36. There is no testing option as an alternative to the vaccine requirement.

37. Instead, a weekly testing option is available only to those (i) for whom a vaccine is medically contraindicated; (ii) for whom medical necessity requires a delay in vaccination; or (iii) who are entitled to an accommodation under applicable Federal law. *Id.* at 68,061-62.

38. The Mandate also requires “universal masking, with some noted exceptions, for all individuals two years of age and older when there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program; when they are indoors in a setting where Head Start services are provided; and, for those not fully vaccinated, outdoors in crowded settings or during activities that involve close contact with other people.” *Id.* at 68,053.

39. The masking requirement, which went into effect immediately, is not the subject of this challenge.

40. If a Head Start program does not comply with the Mandate, the Secretary must take certain corrective action, including initiating proceedings to terminate the program's funding. 42 U.S.C. § 9836a(e)(1)(C).

41. Defendants assert that they have authority to issue the Head Start Mandate under 42 U.S.C. § 9836a(a)(1)(C)-(E), which provides that “[t]he Secretary shall modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter, including—...(C) administrative and financial management standards; (D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies and programs... [and] (E) such other standards as the Secretary finds to be appropriate.”

42. The Head Start Mandate is not a modification of a program performance standard.

43. HHS has never before mandated vaccination for Head Start staff, contractors, or volunteers—and not even for children enrolled in a Head Start program.

44. A vaccine mandate is simply not within the Secretary's delegated authority.

45. The Mandate is otherwise invalid under federal statutory and constitutional law.

46. The Secretary is currently enjoined from enforcing the Head Start Mandate in 25 states (but not in Michigan). *See Texas v. Becerra*, No. 5:21-CV-300-H, 2021 WL 6198102 (N.D. Tex. Dec. 31, 2021); *Louisiana v. Becerra*, No. 3:21-CV-04370, 2022 WL 16571 (W.D. La. Jan. 1, 2022).

### **The Irreparable Harm to Plaintiffs**

47. The Mandate will cause devastating and irreparable harm to Plaintiffs and to the children and families whom Head Start was created to serve.

48. Plaintiffs are Head Start grantees and contractors who serve children and families throughout the State of Michigan.

49. Under a threat of terminated funding, Head Start programs are forced to comply with a mandate that means terminating or losing staff and relevant contractors and volunteers who are not vaccinated. This will result in a reduction of Head Start services provided to qualifying children and families. Head Start programs and Head Start children and families will suffer a grave and irreparable harm.

50. Plaintiff Livingston ESA is a Head Start grant recipient and has 60 classroom staff members, 29 special education staff members, 24 transportation

staff members, 14 office/leadership staff members, and 10 substitutes who all either are Head Start staff or provide services to Head Start classrooms and students.

51. Livingston ESA currently serves 167 Head Start students, with a maximum capacity of 174.

52. Livingston ESA provides a wide variety of essential services to Head Start students. Some of the services include high quality education, meals, speech therapy, occupational therapy, social work services, transportation, parent engagement hours, translation services, and nutrition/dietician services. Livingston ESA also provides meals to Head Start students who are quarantining at home.

53. Livingston ESA takes several precautionary measures to mitigate the spread of COVID-19 including requiring classroom staff to wear a mask and students to wear a mask while in class.

54. If a student or staff tests positive for COVID-19, they must quarantine for ten days. If there is a close contact with someone in the student's household, the student must stay at home through the quarantine period plus an additional ten days of isolation.

55. Since December 1, 2021, 73.3% of Livingston ESA employees who have tested positive for COVID-19 are vaccinated.

56. At least 37 staff members at Livingston ESA remain unvaccinated. If Livingston ESA is forced to fire unvaccinated staff members,

multiple classroom closures will occur. For every classroom that is closed, 16 students would no longer be able to participate in Head Start.

57. Plaintiff Saginaw ISD is also a Head Start grant recipient and currently has about 180 staff members and serves 859 Head Start students plus another 156 Early Head Start students.

58. Saginaw ISD provides Head Start students with high quality education, special education services, occupational therapy, physical therapy, and speech therapy.

59. About 8% of Saginaw ISD staff is unvaccinated.

60. Saginaw ISD enforces masking as a way to mitigate the spread of COVID-19.

61. Losing staff, which is very likely as a result of the Head Start Mandate, would force Saginaw ISD to close multiple Head Start classrooms.

62. Plaintiff Walled Lake is a Head Start contractor that currently serves 48 Head Start students.

63. It employs seven teachers/assistants, two office staff, seven special education staff, and six custodians who provide services or come in contact with Head Start classrooms and students.

64. Walled Lake provides special education services and daily meals to Head Start students.

65. If staff members quit or are terminated because of the Head Start Mandate, Walled Lake would be faced with significant harm. The loss of one special education staff would result in a reallocation of service models and potentially a program closure. The loss of one teacher or assistant would result in a program closure.

66. Plaintiff Wayne-Westland is a Head Start grant recipient and operates eleven Head Start classrooms that currently serve 213 students with a maximum capacity of 224 students. Head Start funding pays for 32 Wayne-Westland staff members. Wayne-Westland also staffs 16 Head Start contractors who serve as custodians, social workers, kitchen staff, and speech teachers. An additional 26-30 non-Head Start funded staff members have interaction with Head Start students when multiple classrooms share the gymnasium for indoor play time.

67. The Head Start classrooms at Wayne-Westland provide a mix of full-day and half-day programming. Each full-day class is served breakfast, lunch and a snack. Each half-day program is served either breakfast and lunch or lunch and a snack.

68. Wayne-Westland also provides family service workers for each family enrolled in Head Start. The family service workers help coordinate support services to the whole family, not just the children, by connecting families to resources and supporting them throughout the educational process.

69. Wayne-Westland currently uses a number of COVID-19 mitigation strategies to keep children, staff, and visitors safe. All toys and flat surfaces are cleaned regularly. Current health department recommendations, including wearing masks and practicing hand washing, are strictly followed. Wayne-Westland engages in contact tracing and has procedures in place to offer virtual learning if the report of a positive COVID-19 test requires a classroom to close for quarantine. Additionally, staff and families engage in daily wellness checks to ensure they are not sick when coming to class.

70. The Head Start Mandate would have devastating impacts on Wayne-Westland. Every classroom must have two adults in it at all times, with a ratio of about one adult for every eight students. Currently, one classroom is already closed because Wayne-Westland has not been able to secure a qualified teacher.

71. At least four unvaccinated staff, including the cook, have expressed their intention to leave their positions if required to get the vaccine, which would result in at least one classroom closure and the inability to provide meals to the students.

72. With already one classroom closed as a result of the tight labor market and national teacher shortage, the threat posed by the Head Start Mandate is even more imminent.

73. Yasmina Vinci, Executive Director of the National Head Start Association (NHSA), authored a December 15, 2021 letter to Defendant Becerra detailing “the potential devastating effects the new rule on vaccines and masking will have on the children and families [Head Start] serves.” (**Exhibit 2**).

74. According to the letter, a survey of Head Start grantees conducted by the NHSA to understand the potential impact of the Mandate showed that the Mandate can lead to Head Start programs losing between 46,614 and 72,422 staff, or 18% to 26% of all staff, resulting in the closure of over 1,300 classrooms.

75. According to the letter, comments shared during a December 10, 2021 NHSA webinar with over 520 grantees and program administrators reveals that “[v]ital elements of the Head Start model—developmentally appropriate educational experiences, qualified and dedicated staff who have the children’s best interest at heart, and the opportunity for parents to be involved in their child’s education—will not be available for the children if classrooms are unable to operate because of the imposition of the new rule.”

76. According to the letter, many programs are also at risk of closing because the children they serve rely on the school districts for bus transportation to and from the program, but transportation personnel is the least vaccinated group.

**Causes of Action**

**Count I – The Head Start Mandate Exceeds Statutory Authority  
and Is Contrary to Law  
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

77. Plaintiffs incorporate all preceding allegations.

78. HHS is a creature of statute.

79. Defendants assert that the Head Start Mandate is statutorily authorized under 42 U.S.C. § 9836a(a)(1). *See* 86 Fed. Reg. at 68,052.

80. Congress delegated to the Secretary the authority to “modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter, including—...(C) administrative and financial management standards; (D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies and programs... [and] (E) such other standards as the Secretary finds to be appropriate.” 42 U.S.C. § 9836a(a)(1)(C)-(E).

81. The Head Start Mandate is not a modification of a performance standard.

82. It is not related to administrative and financial management standards nor is it related to standards involving the condition and location of facilities.

83. Likewise, Defendants’ authority under subsection (E) does not justify a mask and vaccination mandate because “‘such other’ standards fall under the banner of ‘performance standards’ and must be defined in relation to subsections (A)-(D).” *Texas v. Becerra*, 2021 WL 6198109, at \*7.

84. Agency action that is found to be “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(C).

85. Because Congress did not delegate to Defendants the authority to impose the vaccination requirement in the Head Start Mandate, the Mandate exceeds the Secretary’s statutory authority and must be held unlawful.

**Count II – The Head Start Mandate Exceeds Statutory Authority  
and Is Contrary to Law  
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

86. Plaintiffs incorporate all preceding allegations.

87. The Mandate also exceeds the statutory authority because Defendants did not consult with the required experts.

88. Prior to modifying a performance standard, the Secretary must “consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English speaking children and their families), administration, and

financial management, and with persons with experience in the operation of Head Start programs.” 42 U.S.C. § 9836a(a)(2)(A).

89. The Secretary failed to consult with all of the required experts and instead only “consulted with experts in child health, including pediatricians, a pediatric infectious disease specialist, and the recommendations of the CDC and FDA.” 86 Fed. Reg. at 68,054.

90. The Secretary must also take into consideration many factors prior to modifying a performance standard including the unique challenges faced by individual programs. 42 U.S.C. § 9836a(a)(2)(B)(x).

91. Instead of considering the unique challenges faced by individual programs, the Secretary issued a nationwide, one-size-fits-all mandate.

92. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A),(C).

93. Because Defendants failed to consult with the required experts and consider the unique challenges faced by individual programs, the Head Start Mandate exceeds the Secretary’s statutory authority, is not in accordance with the law, and must be held unlawful.

**Count III – The Head Start Mandate Exceeds Statutory Authority  
and Is Contrary to Law  
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

94. Plaintiffs incorporate all preceding allegations.

95. The Secretary is required to ensure that any revisions of standards will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other required services provided under the standards. 42 U.S.C. § 9836a(a)(2)(C).

96. Enforcement of the Head Start Mandate will result in program and classroom closures due to staff shortages, thus reducing, and in some instances eliminating, services—the very thing that the Secretary is required to ensure does not occur.

97. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A),(C).

98. Because the Head Start Mandate will result in an elimination or reduction of services, the Head Start Mandate exceeds the Secretary’s statutory authority, is not in accordance with the law, and must be held unlawful.

**Count IV – The Head Start Mandate Violates the  
APA’s Notice-and-Comment Requirement  
5 U.S.C. § 553; 5 U.S.C. § 706**

99. Plaintiffs incorporate all preceding allegations.

100. Under the APA, an agency must publish notice of a proposed rule in the Federal Register and give the public an opportunity to comment at least thirty days before the rule goes into effect. 5 U.S.C. § 553(b)-(d).

101. A good cause exception exists if the agency finds that the notice-and-comment procedure is impracticable, unnecessary, or contrary to public interest. 5 U.S.C. § 553(b)(B).

102. The agency’s “burden to show that good cause exists is a heavy one.” *Texas v. Becerra*, 2021 WL 6198109, at \*13 (citing *United States v. Cain*, 583 F.3d 408, 420 (6th Cir. 2009)).

103. Defendants did not satisfy their heavy burden.

104. Defendants claim that they have good cause to waive the notice-and-comment requirement because “a vaccine requirement for Head Start staff, certain contractors, and volunteers is an essential component of the nation’s COVID-19 response” and “it would be impracticable and contrary to the public interest for [them] to undertake normal notice and comment procedures and to thereby delay the effective date of [the Mandate]. 86 Fed. Reg. at 68059.

105. The Mandate was issued on November 30, 2021, which is 82 days after President Biden’s September 9 announcement.

106. The vaccination compliance deadline is set for January 31, 2022, 62 days after the Mandate was issued.

107. COVID-19 vaccines have been available for more than a year.

108. Defendants had more than enough time to give the public an opportunity to comment before the Mandate went into effect.

109. If Defendants had complied with that notice-and-comment procedure, they would have had to consider and address the irreparable harm claimed by Plaintiffs and other Head Start programs and the risk of widespread closures of Head Start classrooms that provide critical services to underprivileged children and their families.

110. Defendants cannot satisfy their burden of showing good cause for violating the APA’s notice-and-comment requirements.

**Count V – The Head Start Mandate is Arbitrary and Capricious  
5 U.S.C. § 706(2)(A)**

111. Plaintiffs incorporate all preceding allegations.

112. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A).

113. Defendants have not articulated a reasonable explanation for the Head Start Mandate.

114. Defendants acted arbitrarily and capriciously by failing to consider a testing alternative to the vaccination requirement.

115. Defendants also acted arbitrarily and capriciously because there is no evidence proving that “[e]nsuring Head Start staff are fully vaccinated significantly reduces the possibility of the program playing an unwitting part in community spread of SARS-CoV-2.” 86 Fed. Reg. at 68059.

116. The evidence shows that being fully vaccinated against COVID-19 reduces the chance of hospitalization and death, but it does not prevent infection. Fully vaccinated people can and do get infected with COVID-19 and are capable of spreading it to others.

117. Defendants ignored the CDC’s recommendation to consider other prevention strategies. According to the CDC, early childhood education and child care programs should consider multiple factors when making decisions about COVID-19 prevention strategies including the level of community transmission; COVID-19 vaccination coverage in the community and among children and staff; COVID-19 outbreaks or trends within the program and surrounding community;

strain on the community's healthcare system; and the ages of the children and the feasibility of different prevention strategies.<sup>2</sup>

118. According to the CDC, using multiple prevention strategies is the effective way to protect children and staff. Some prevention strategies include promoting vaccination, consistent mask use, physical distancing, COVID-19 testing, ventilation, handwashing, contact tracing, staying home when sick, cleaning, and disinfecting.<sup>3</sup>

119. Defendants acted arbitrarily and capriciously by skipping over all other prevention strategies and instead imposing mandatory vaccination.

120. Defendants acted arbitrarily and capriciously by creating a nationwide mandate instead of taking into account community-specific considerations.

121. Defendants acted arbitrarily and capriciously by not considering a testing option in lieu of vaccination.

122. Because HHS's action in imposing the Head Start Mandate is arbitrary and capricious, the Mandate must be held unlawful and set aside.

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<sup>2</sup> Centers for Disease Control and Prevention, *COVID-19 Guidance for Operating Early Care and Education/Child Care Programs*, (Nov. 10, 2022), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html>.

<sup>3</sup> *Id.*

**Count VI – The Head Start Mandate Violates the Congressional Review Act  
5 U.S.C. § 801; 5 U.S.C. § 808**

123. Plaintiffs incorporate all preceding allegations.

124. The Head Start Mandate is a major rule that is subject to the Congressional Review Act.

125. The Congressional Review Act defines a major rules as one that “is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C. § 804 (2)(A)-(C).

126. “The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this [Mandate] is a major rule because it will have an annual effect on the economy of \$100 million or more.” 86 Fed. Reg. at 68,063.

127. Under the Congressional Review Act, a major rule shall be submitted to and reviewed by Congress before the rule can take effect. 5 U.S.C. § 801(a).

128. The Mandate was not submitted to Congress prior to it going into effect because the Agency relied on a good cause exception for the same reasons it did not follow the APA's notice-and-comment requirements. 86 Fed. Reg. at 68,059.

129. Defendants have failed to articulate a legitimate reason why it was impracticable and contrary to the public interest to submit the Mandate to be reviewed by Congress as required by the Congressional Review Act.

**Count VII – The Head Start Mandate Violates the Tenth Amendment  
U.S. Const. amend. X**

130. Plaintiffs incorporate all preceding allegations.

131. The federal government does not have unlimited powers. States and the people retain all powers that are not delegated to the federal government by the Constitution. U.S. Const. amend. X.

132. It is long settled that public health and safety regulation belongs to the States and, with narrow exceptions, that compulsory vaccination falls within the police power of the States. *Jacobson v. Massachusetts*, 197 U.S. 11, 25, 38 (1905); *Zucht v. King*, 260 U.S. 174, 176 (1922).

133. The Head Start Mandate intrudes upon the States police power in violation of the Tenth Amendment.

**Count VIII – The Head Start Mandate Violates the Separation of Powers  
U.S. Const. art. 1, § 1**

134. Plaintiffs incorporate all preceding allegations.

135. The Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const. art. 1, § 1.

136. Under the separation of powers principle, Congress must “speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” *National Federation of Independent Business v. OSHA*, 595 U.S. \_\_\_, \_\_\_ (2022) (per curiam opinion), slip op. at 6 (quoting *Alabama Association of Realtors v. Department of Health and Human Servs.*, 141 S. Ct. 2485, 2489 (2022)).

137. Compulsory vaccination by the federal government is an issue of vast economic and political significance.

138. Because Defendants cannot trace their alleged power to impose a vaccine mandate to a clear grant of authority from Congress, the Head Start Mandate violates the separation of powers.

**Count IX – The Head Start Mandate Violates the Spending Clause Power  
U.S. Const. art. 1, § 8, cl. 1**

139. Plaintiffs incorporate all preceding allegations.

140. Congress has the power to “lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.” U.S. Const. art. 1, § 8, cl. 1.

141. Congress may attach conditions on the receipt of federal funds. *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). However, Congress must state

those conditions unambiguously in the text of the statute so States can knowingly exercise their choice. *Id.* (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

142. Congress did not unambiguously attach to the receipt of Head Start funding the condition of compliance with a vaccine mandate applying to all Head Start staff, contractors whose activities involve contact with or provide services to Head Start children and families, and volunteers who work in classrooms or work directly with Head Start children.

143. Therefore, the Head Start Mandate is an unconstitutional violation of the spending power.

### **Prayer for Relief**

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a judgment that holds unlawful and sets aside the Head Start Mandate and specifically award Plaintiffs the following relief:

- a. Enter a declaratory judgment that the Head Start Mandate exceeds statutory authority and is contrary to law;
- b. Enter a declaratory judgment that the Head Start Mandate violates the Administrative Procedure Act, the Congressional Review Act, and the United States Constitution;

- c. Preliminary and permanent injunctive relief prohibiting Defendants from enforcing the Head Start Mandate;
- d. In the alternative to immediate relief that enjoins or sets aside the Head Start Mandate, a postponement of the effective date of enforcement of the Head Start Mandate, under 5 U.S.C. § 705, to preserve the rights of the parties pending this Court's full review.
- e. Any further relief that the Court deems appropriate.

MILLER JOHNSON  
Counsel for Plaintiffs

Dated: January 20, 2022

By /s/ Amy E. Murphy

Amy E. Murphy (P82369)  
Robert T. Schindler (P70925)  
Rebecca L. Strauss (P64796)  
Breanne N. Gilliam (P85611)  
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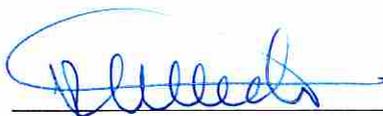
[swearingenb@millerjohnson.com](mailto:swearingenb@millerjohnson.com)

**VERIFICATION**

I, DR. RICHARD MICHAEL HUBERT, declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the SUPERINTENDENT of Livingston Educational Service Agency, and in that capacity, I am familiar with the business of Livingston Educational Service Agency, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Executed on:

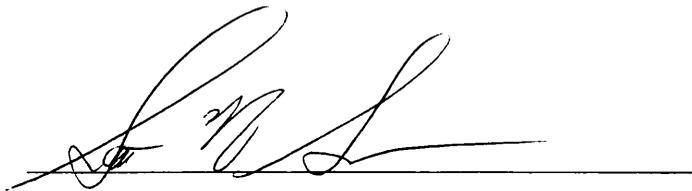
1/20/2022

**VERIFICATION**

I, Scott N. Sawyer, declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the Deputy Superintendent of Saginaw Intermediate School District, and in that capacity, I am familiar with the business of Saginaw Intermediate School District, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Executed on:

1-20-2022



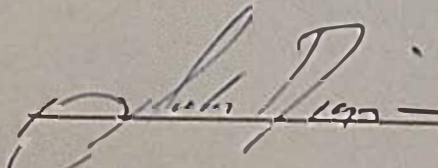
VERIFICATION

I, JOHN DIGNAN, declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the SUPERINTENDENT of Wayne-Westland Community Schools, and in that capacity, I am familiar with the business of Wayne-Westland Community Schools, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

on:



Exe

JANUARY 20, 2022

**Index of Exhibits**

<b>Exhibit</b>	<b>Description</b>
1	Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021)
2	December 15, 2021 Letter from Yasmina Vinci, Executive Director of the National Head Start Association, to Secretary Xavier Becerra

# **EXHIBIT 1**

BRIEFING ROOM

# Remarks by President Biden on Fighting the COVID-19 Pandemic

SEPTEMBER 09, 2021 • SPEECHES AND REMARKS

5:02 P.M. EDT

THE PRESIDENT: Good evening, my fellow Americans. I want to talk to you about where we are in the battle against COVID-19, the progress we've made, and the work we have left to do.

And it starts with understanding this: Even as the Delta variant 19 [sic] has — COVID-19 — has been hitting this country hard, we have the tools to combat the virus, if we can come together as a country and use those tools.

If we raise our vaccination rate, protect ourselves and others with masking and expanded testing, and identify people who are infected, we can and we will turn the tide on COVID-19.

It will take a lot of hard work, and it's going to take some time. Many of us are frustrated with the nearly 80 million Americans who are still not vaccinated, even though the vaccine is safe, effective, and free.

You might be confused about what is true and what is false about COVID-19. So before I outline the new steps to fight COVID-19 that I'm going to be announcing tonight, let me give you some clear information about where we stand.

First, we have cons- — we have made considerable progress in battling COVID-19. When I became President, about 2 million Americans were fully vaccinated. Today, over 175 million Americans have that protection.

Before I took office, we hadn't ordered enough vaccine for every American. Just weeks in office, we did. The week before I took office, on January 20th of this year, over 25,000 Americans died that week from COVID-19. Last week, that grim weekly toll was down 70 percent.

And in the three months before I took office, our economy was faltering, creating just 50,000 jobs a month. We're now averaging 700,000 new jobs a month in the past three months.

This progress is real. But while America is in much better shape than it was seven months ago when I took office, I need to tell you a second fact.

We're in a tough stretch, and it could last for a while. The highly contagious Delta variant that I began to warn America about back in July spread in late summer like it did in other countries before us.

While the vaccines provide strong protections for the vaccinated, we read about, we hear about, and we see the stories of hospitalized people, people on their death beds, among the unvaccinated over these past few weeks.

This is a pandemic of the unvaccinated. And it's caused by the fact that despite America having an unprecedented and successful vaccination program, despite the fact that for almost five months free vaccines have been available in 80,000 different locations, we still have nearly 80 million Americans who have failed to get the shot.

And to make matters worse, there are elected officials actively working to undermine the fight against COVID-19. Instead of encouraging people to get vaccinated and mask up, they're ordering mobile morgues for the unvaccinated dying from COVID in their communities. This is totally unacceptable.

Third, if you wonder how all this adds up, here's the math: The vast majority of Americans are doing the right thing. Nearly three quarters of the eligible have gotten at least one shot, but one quarter has not gotten any. That's nearly 80 million Americans not vaccinated. And in a country as large as ours, that's 25 percent minority. That 25 percent can cause a lot of damage – and they are.

The unvaccinated overcrowd our hospitals, are overrunning the emergency rooms and intensive care units, leaving no room for someone with a heart attack, or pancreatitis [pancreatitis], or cancer.

And fourth, I want to emphasize that the vaccines provide very strong protection from severe illness from COVID-19. I know there's a lot of confusion and misinformation. But the world's

leading scientists confirm that if you are fully vaccinated, your risk of severe illness from COVID-19 is very low.

In fact, based on available data from the summer, only one of out of every 160,000 fully vaccinated Americans was hospitalized for COVID per day.

These are the facts.

So here's where we stand: The path ahead, even with the Delta variant, is not nearly as bad as last winter. But what makes it incredibly more frustrating is that we have the tools to combat COVID-19, and a distinct minority of Americans –supported by a distinct minority of elected officials – are keeping us from turning the corner. These pandemic politics, as I refer to, are making people sick, causing unvaccinated people to die.

We cannot allow these actions to stand in the way of protecting the large majority of Americans who have done their part and want to get back to life as normal.

As your President, I'm announcing tonight a new plan to require more Americans to be vaccinated, to combat those blocking public health.

My plan also increases testing, protects our economy, and will make our kids safer in schools. It consists of six broad areas of action and many specific measures in each that – and each of those actions that you can read more about at [WhiteHouse.gov](https://www.whitehouse.gov). [WhiteHouse.gov](https://www.whitehouse.gov).

The measures – these are going to take time to have full impact. But if we implement them, I believe and the scientists indicate, that in the months ahead we can reduce the number of unvaccinated Americans, decrease hospitalizations and deaths, and allow our children to go to school safely and keep our economy strong by keeping businesses open.

First, we must increase vaccinations among the unvaccinated with new vaccination requirements. Of the nearly 80 million eligible Americans who have not gotten vaccinated, many said they were waiting for approval from the Food and Drug Administration – the FDA. Well, last month, the FDA granted that approval.

So, the time for waiting is over. This summer, we made progress through the combination of vaccine requirements and incentives, as well as the FDA approval. Four million more people got their first shot in August than they did in July.

But we need to do more. This is not about freedom or personal choice. It's about protecting yourself and those around you – the people you work with, the people you care about, the people you love.

My job as President is to protect all Americans.

So, tonight, I'm announcing that the Department of Labor is developing an emergency rule to require all employers with 100 or more employees, that together employ over 80 million workers, to ensure their workforces are fully vaccinated or show a negative test at least once a week.

Some of the biggest companies are already requiring this: United Airlines, Disney, Tysons Food, and even Fox News.

The bottom line: We're going to protect vaccinated workers from unvaccinated co-workers. We're going to reduce the spread of COVID-19 by increasing the share of the workforce that is vaccinated in businesses all across America.

My plan will extend the vaccination requirements that I previously issued in the healthcare field. Already, I've announced, we'll be requiring vaccinations that all nursing home workers who treat patients on Medicare and Medicaid, because I have that federal authority.

Tonight, I'm using that same authority to expand that to cover those who work in hospitals, home healthcare facilities, or other medical facilities -- a total of 17 million healthcare workers.

If you're seeking care at a health facility, you should be able to know that the people treating you are vaccinated. Simple. Straightforward. Period.

Next, I will sign an executive order that will now require all executive branch federal employees to be vaccinated – all. And I've signed another executive order that will require federal contractors to do the same.

If you want to work with the federal government and do business with us, get vaccinated. If you want to do business with the federal government, vaccinate your workforce.

And tonight, I'm removing one of the last remaining obstacles that make it difficult for you to get vaccinated.

The Department of Labor will require employers with 100 or more workers to give those workers paid time off to get vaccinated. No one should lose pay in order to get vaccinated or take a loved one to get vaccinated.

Today, in total, the vaccine requirements in my plan will affect about 100 million Americans -- two thirds of all workers.

And for other sectors, I issue this appeal: To those of you running large entertainment venues -- from sports arenas to concert venues to movie theaters -- please require folks to get vaccinated or show a negative test as a condition of entry.

And to the nation's family physicians, pediatricians, GPs -- general practitioners -- you're the most trusted medical voice to your patients. You may be the one person who can get someone to change their mind about being vaccinated.

Tonight, I'm asking each of you to reach out to your unvaccinated patients over the next two weeks and make a personal appeal to them to get the shot. America needs your personal involvement in this critical effort.

And my message to unvaccinated Americans is this: What more is there to wait for? What more do you need to see? We've made vaccinations free, safe, and convenient.

The vaccine has FDA approval. Over 200 million Americans have gotten at least one shot.

We've been patient, but our patience is wearing thin. And your refusal has cost all of us. So, please, do the right thing. But just don't take it from me; listen to the voices of unvaccinated Americans who are lying in hospital beds, taking their final breaths, saying, "If only I had gotten vaccinated." "If only."

It's a tragedy. Please don't let it become yours.

The second piece of my plan is continuing to protect the vaccinated.

For the vast majority of you who have gotten vaccinated, I understand your anger at those who haven't gotten vaccinated. I understand the anxiety about getting a "breakthrough" case.

But as the science makes clear, if you're fully vaccinated, you're highly protected from severe

illness, even if you get COVID-19.

In fact, recent data indicates there is only one confirmed positive case per 5,000 fully vaccinated Americans per day.

You're as safe as possible, and we're doing everything we can to keep it that way — keep it that way, keep you safe.

That's where boosters come in — the shots that give you even more protection than after your second shot.

Now, I know there's been some confusion about boosters. So, let me be clear: Last month, our top government doctors announced an initial plan for booster shots for vaccinated Americans. They believe that a booster is likely to provide the highest level of protection yet.

Of course, the decision of which booster shots to give, when to start them, and who will give them, will be left completely to the scientists at the FDA and the Centers for Disease Control.

But while we wait, we've done our part. We've bought enough boosters — enough booster shots — and the distribution system is ready to administer them.

As soon as they are authorized, those eligible will be able to get a booster right away in tens of thousands of sites across the — sites across the country for most Americans, at your nearby drug store, and for free.

The third piece of my plan is keeping — and maybe the most important — is keeping our children safe and our schools open. For any parent, it doesn't matter how low the risk of any illness or accident is when it comes to your child or grandchild. Trust me, I know.

So, let me speak to you directly. Let me speak to you directly to help ease some of your worries.

It comes down to two separate categories: children ages 12 and older who are eligible for a vaccine now, and children ages 11 and under who are not yet eligible.

The safest thing for your child 12 and older is to get them vaccinated. They get vaccinated for a lot of things. That's it. Get them vaccinated.

As with adults, almost all the serious COVID-19 cases we're seeing among adolescents are in

unvaccinated 12- to 17-year-olds — an age group that lags behind in vaccination rates.

So, parents, please get your teenager vaccinated.

What about children under the age of 12 who can't get vaccinated yet? Well, the best way for a parent to protect their child under the age of 12 starts at home. Every parent, every teen sibling, every caregiver around them should be vaccinated.

Children have four times higher chance of getting hospitalized if they live in a state with low vaccination rates rather than the states with high vaccination rates.

Now, if you're a parent of a young child, you're wondering when will it be — when will it be — the vaccine available for them. I strongly support an independent scientific review for vaccine uses for children under 12. We can't take shortcuts with that scientific work.

But I've made it clear I will do everything within my power to support the FDA with any resource it needs to continue to do this as safely and as quickly as possible, and our nation's top doctors are committed to keeping the public at large updated on the process so parents can plan.

Now to the schools. We know that if schools follow the science and implement the safety measures — like testing, masking, adequate ventilation systems that we provided the money for, social distancing, and vaccinations — then children can be safe from COVID-19 in schools.

Today, about 90 percent of school staff and teachers are vaccinated. We should get that to 100 percent. My administration has already acquired teachers at the schools run by the Defense Department — because I have the authority as President in the federal system — the Defense Department and the Interior Department — to get vaccinated. That's authority I possess.

Tonight, I'm announcing that we'll require all of nearly 300,000 educators in the federal paid program, Head Start program, must be vaccinated as well to protect your youngest — our youngest — most precious Americans and give parents the comfort.

And tonight, I'm calling on all governors to require vaccination for all teachers and staff. Some already have done so, but we need more to step up.

Vaccination requirements in schools are nothing new. They work. They're overwhelmingly supported by educators and their unions. And to all school officials trying to do the right thing

by our children: I'll always be on your side.

Let me be blunt. My plan also takes on elected officials and states that are undermining you and these lifesaving actions. Right now, local school officials are trying to keep children safe in a pandemic while their governor picks a fight with them and even threatens their salaries or their jobs. Talk about bullying in schools. If they'll not help — if these governors won't help us beat the pandemic, I'll use my power as President to get them out of the way.

The Department of Education has already begun to take legal action against states undermining protection that local school officials have ordered. Any teacher or school official whose pay is withheld for doing the right thing, we will have that pay restored by the federal government 100 percent. I promise you I will have your back.

The fourth piece of my plan is increasing testing and masking. From the start, America has failed to do enough COVID-19 testing. In order to better detect and control the Delta variant, I'm taking steps tonight to make testing more available, more affordable, and more convenient. I'll use the Defense Production Act to increase production of rapid tests, including those that you can use at home.

While that production is ramping up, my administration has worked with top retailers, like Walmart, Amazon, and Kroger's, and tonight we're announcing that, no later than next week, each of these outlets will start to sell at-home rapid test kits at cost for the next three months. This is an immediate price reduction for at-home test kits for up to 35 percent reduction.

We'll also expand — expand free testing at 10,000 pharmacies around the country. And we'll commit — we're committing \$2 billion to purchase nearly 300 million rapid tests for distribution to community health centers, food banks, schools, so that every American, no matter their income, can access free and convenient tests. This is important to everyone, particularly for a parent or a child — with a child not old enough to be vaccinated. You'll be able to test them at home and test those around them.

In addition to testing, we know masking helps stop the spread of COVID-19. That's why when I came into office, I required masks for all federal buildings and on federal lands, on airlines, and other modes of transportation.

Today — tonight, I'm announcing that the Transportation Safety Administration — the TSA — will double the fines on travelers that refuse to mask. If you break the rules, be prepared to pay.

And, by the way, show some respect. The anger you see on television toward flight attendants and others doing their job is wrong; it's ugly.

The fifth piece of my plan is protecting our economic recovery. Because of our vaccination program and the American Rescue Plan, which we passed early in my administration, we've had record job creation for a new administration, economic growth unmatched in 40 years. We cannot let unvaccinated do this progress — undo it, turn it back.

So tonight, I'm announcing additional steps to strengthen our economic recovery. We'll be expanding COVID-19 Economic Injury Disaster Loan programs. That's a program that's going to allow small businesses to borrow up to \$2 million from the current \$500,000 to keep going if COVID-19 impacts on their sales.

These low-interest, long-term loans require no repayment for two years and be can used to hire and retain workers, purchase inventory, or even pay down higher cost debt racked up since the pandemic began. I'll also be taking additional steps to help small businesses stay afloat during the pandemic.

Sixth, we're going to continue to improve the care of those who do get COVID-19. In early July, I announced the deployment of surge response teams. These are teams comprised of experts from the Department of Health and Human Services, the CDC, the Defense Department, and the Federal Emergency Management Agency — FEMA — to areas in the country that need help to stem the spread of COVID-19.

Since then, the federal government has deployed nearly 1,000 staff, including doctors, nurses, paramedics, into 18 states. Today, I'm announcing that the Defense Department will double the number of military health teams that they'll deploy to help their fellow Americans in hospitals around the country.

Additionally, we're increasing the availability of new medicines recommended by real doctors, not conspir- — conspiracy theorists. The monoclonal antibody treatments have been shown to reduce the risk of hospitalization by up to 70 percent for unvaccinated people at risk of developing sefe- — severe disease.

We've already distributed 1.4 million courses of these treatments to save lives and reduce the strain on hospitals. Tonight, I'm announcing we will increase the average pace of shipment across the country of free monoclonal antibody treatments by another 50 percent.

Before I close, let me say this: Communities of color are disproportionately impacted by this virus. And as we continue to battle COVID-19, we will ensure that equity continues to be at the center of our response. We'll ensure that everyone is reached. My first responsibility as President is to protect the American people and make sure we have enough vaccine for every American, including enough boosters for every American who's approved to get one.

We also know this virus transcends borders. That's why, even as we execute this plan at home, we need to continue fighting the virus overseas, continue to be the arsenal of vaccines.

We're proud to have donated nearly 140 million vaccines over 90 countries, more than all other countries combined, including Europe, China, and Russia combined. That's American leadership on a global stage, and that's just the beginning.

We've also now started to ship another 500 million COVID vaccines — Pfizer vaccines — purchased to donate to 100 lower-income countries in need of vaccines. And I'll be announcing additional steps to help the rest of the world later this month.

As I recently released the key parts of my pandemic preparedness plan so that America isn't caught flat-footed when a new pandemic comes again — as it will — next month, I'm also going to release the plan in greater detail.

So let me close with this: We have so- — we've made so much progress during the past seven months of this pandemic. The recent increases in vaccinations in August already are having an impact in some states where case counts are dropping in recent days. Even so, we remain at a critical moment, a critical time. We have the tools. Now we just have to finish the job with truth, with science, with confidence, and together as one nation.

Look, we're the United States of America. There's nothing — not a single thing — we're unable to do if we do it together. So let's stay together.

God bless you all and all those who continue to serve on the frontlines of this pandemic. And may God protect our troops.

Get vaccinated.

5:28 P.M. EDT

## **EXHIBIT 2**



Our mission is to coalesce, inspire, and support the Head Start field as a leader in early childhood development and education.

December 15, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**RE: Head Start Vaccine and Masking Rule (Docket No. ACF-2021-0003)**

Dear Secretary Becerra:

Working in concert with regional and state Head Start associations nationwide, the National Head Start Association (NHSA) is preparing detailed comments regarding the Interim Final Rule that will add new provisions to the Head Start Program Performance Standards to mitigate the spread of COVID-19. Even before the pandemic's unfortunate toll, we have shared a common goal with HHS—a strong commitment to child and family health and safety—which is why Head Start has been a leader in teaching basic hygiene; performing medical and dental screenings; helping parents end chemical dependencies; and supporting children with physical disabilities.

While we are completing our formal comments, and while we continue our shared commitment to the health and safety of children and families, we are compelled to share with you directly the results of our field survey and extensive engagement. The results indicate the potential devastating effects the new rule on vaccines and masking will have on the children and families we serve.

As you know, Head Start's strength has come from the flexibility of local practices that enables programs to meet community and family needs. We must move forward in a way that maintains this proven precedent. The approach outlined in the rule does not accurately reflect the diversity of local situations encountered by Head Start in communities across the country. In fact, the Centers for Disease Control and Prevention (CDC) understands the need for and benefits from flexibility in Head Start classrooms in dealing with COVID-19. According to a December 11, 2020, CDC [Morbidity and Mortality Weekly Report](#):

*"Head Start and Early Head Start programs successfully implemented CDC-recommended mitigation strategies and applied other innovative approaches to limit SARS-CoV-2 transmission among children, teachers, and other staff members by allowing maximum program flexibility..."*

NHSA surveyed Head Start grantees to understand the potential impact of the new rule on their ability to staff centers and serve the children, families, and communities that depend on them. The results (attached) are troubling. If accurate, the new rule could lead to Head Start programs losing between 46,614 and 72,422 staff, or 18% to 26% of all staff. This could result in the closing of over 1,300 Head Start classrooms.

On December 10, 2021, NHSA also hosted a webinar with over 520 grantees and program administrators. The comments shared by participants were heartbreaking and difficult to address. Vital elements of the Head Start model—developmentally appropriate educational experiences, qualified and dedicated staff who have the children's best interest at heart, and the opportunity for parents to be involved in their child's education—will not be available for the children if classrooms are unable to operate because of the imposition of the new rule.



Our mission is to coalesce, inspire, and support the Head Start field as a leader in early childhood development and education.

For example, programs in several localities are already wrestling with how to comply with differing and conflicting state and federal mandates. In the turmoil, Head Start programs are losing valuable collaboration agreements with school districts. In situations like these, it is the children who suffer. One director told us that they stand to drop 75% of their Head Start slots due to school districts refusing to require the vaccine. We heard the same thing from another program in a different state where 80% of the slots are school partner slots, which would have to stop immediately once the vaccine mandate goes into effect.

Similarly, many programs depend on the school districts for busing. Because transportation personnel appear to be the least vaccinated group, many programs are at risk of closing because the children they serve will lose the transportation on which they rely to get to and from their program.

Again, the health and safety of children, families, staff, and communities is our top priority. The qualified and dedicated staff who have their children's best interest at heart, and the opportunity for parents to be involved in their child's education, all benefit from the strength of Head Start's local flexibility. We strongly urge you to consider this fact in making critical modifications to this new rule and allowing for that important local flexibility. As the CDC has stated, that flexibility works.

Thank you for your consideration and your prompt action. We stand ready to work with you to ensure Head Start can continue to be the lifeline to success in school and in life for generations to come.

Sincerely,

A handwritten signature in cursive script that reads "Yasmina Vinci".

Yasmina Vinci  
Executive Director  
National Head Start Association

cc: The Honorable Nancy Pelosi  
The Honorable Steny Hoyer  
The Honorable Charles Schumer  
The Honorable Kevin McCarthy  
The Honorable Mitch McConnell  
The Honorable Patty Murray  
The Honorable Richard Burr  
The Honorable Robert C. "Bobby" Scott  
The Honorable Virginia Foxx  
Cedric Richmond, Director, White House Office of Public Engagement  
Carmel Martin, Deputy Director for Economic Mobility, Domestic Policy Council  
Katie Hamm, Deputy Assistant Secretary for Early Childhood Development,  
Administration for Children and Families  
Shawna Pinckney, Director, Grants Division, Administration for Children and Families  
Colleen Rathgeb, Director of Policy and Planning, Office of Head Start