

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

Elizabeth Etherton,

Plaintiff,

v.

Biden et. al.,

Defendants.

Case No.

DECLARATION OF ELIZABETH ETHERTON

Pursuant to 28 U.S.C. § 1746, Elizabeth Etherton declares as follows:

1. I am over 18 years old and have personal knowledge of the facts described herein.
2. I am the plaintiff in the above cited case.
3. I reside in Fairfax County, Virginia, and work for Fairfax County Public Schools (“FCPS”) at one of its locations in Alexandria, Virginia. I have worked for FCPS serving its preschool students for 15 years.
4. It is my understanding that FCPS receives Head Start funds.
5. After the U.S. Department of Health and Human Services and the Office of Head Start, Administration for Children and Families published the vaccine mandate for education agencies receiving Head Start funds, FCPS told me that because of the Head Start vaccine mandate, that I would have to get fully vaccinated by January 31, 2022. Alternatively, it told me that I would have to finish the process for having FCPS approve a religious or medical exemption by February 28, 2022. If I did neither of these things, FCPS told me that they would terminate my employment.

6. I requested a medical exemption from the Head Start vaccine mandate on January 31, 2022, and submitted supporting documentation to FCPS.

7. But on February 7, 2022, and February 8, 2022, FCPS told me that I needed to submit further documentation in order to obtain a medical exemption. It also stated that I needed to do this by February 28, 2022. But the extra documentation asked highly intrusive questions about my medical history. I do not wish to disclose more information about my personal medical information to FCPS beyond what I have already revealed. As a result, pursuant to the vaccine mandate, I face termination on February 28, 2022.

8. This is despite the fact that I have served FCPS students for over 15 years. I have worked tirelessly to serve preschoolers. I have accrued 643 hours of leave given that I almost never take time off for vacations or illness.

9. When FCPS switched to virtual learning during the 2020-21 school year in response to COVID-19, I embraced the challenge. I rearranged my home so that it had the space needed to teach children virtually. I learned new technology platforms. I researched ways to bring best educational practices to the virtual classroom. I revamped curriculum so it could be taught virtually. I even held intervention and reading groups after-hours.

10. When FCPS finally resumed in-person learning in the 2021-2022 school year, I again adjusted my curriculum to suit a classroom for in-person teaching but that was different than normal because of the COVID-19 mitigation. During this time, I faced more demanding educational benchmarks with less teaching time due to having to wait with the preschoolers outside during bus driver shortages. I stayed after-hours to clean, prepare, and sanitize my classroom to mitigate preschoolers' possible exposure to COVID-19. I also worked weekends to put together lesson plans.

11. It is unfair that I face termination simply because I will not undergo a certain medical procedure when I have spent my entire career serving preschools and dealt with the challenges of educating very young children virtually and during all the disruptions related to COVID-19. I do not want to lose my career and love helping young children learn. I hope to continue doing so.

12. A true and correct copy of the memo that FCPS sent to me on January 14, 2022, regarding the Head Start vaccine mandate is attached hereto as Exhibit A.

13. A true and correct copy of the emails that I received from FCPS on February 7, 2022, and February 8, 2022, which asked for more documentation to obtain a medical exemption is attached hereto as Exhibit B.

Executed on February 22, 2022.

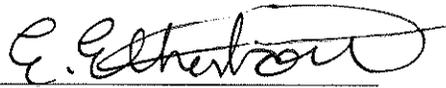

Elizabeth Etherton

EXHIBIT A



Office of the Assistant Superintendent
Instructional Services Department
8270 Willow Oaks Corporate Drive
Fairfax, Virginia 22031

January 14, 2022

MEMORANDUM

TO: PreK & Early Head Start Teaching Teams, Early Childhood Central Office Staff and School Administrators

FROM: Noël Klimenko

SUBJECT: Federal COVID-19 Related Requirements for All Head Start Programs

As you know our youngest learners are currently unable to be vaccinated for COVID-19. Vaccinations are one of the best ways to keep them safe. To that end, the U.S. Department of Health and Human Services has issued new standards outlining health and safety requirements for all Head Start programs throughout the country. **Specifically, the Office of Head Start (OHS) has mandated that all personnel who have contact with Head Start students be fully vaccinated for COVID-19 by January 31, 2022 and wear a mask.**

These requirements are generally consistent with FCPS requirements, with the exception of opting to test weekly, rather than receiving the vaccine. This means that weekly testing in lieu of being vaccinated is not an option unless you have a medical or religious exemption from the vaccine.

FCPS employees, including PreK and Early Head Start (EHS) teachers, instructional assistants, central office staff, school administrators, volunteers and certain contractors who work with Head Start students must be fully vaccinated or have an approved exemption by January 31, 2022.

Fully Vaccinated Staff: If you are already fully vaccinated, you are in compliance with the federal requirement. Please complete the FCPS Head Start COVID Vaccination survey and securely upload your documentation to ensure you meet the OHS requirements by January 28, 2022. If you have not received your booster shot, we encourage you to do so as soon as possible.

Partially Vaccinated Staff: If you are not fully vaccinated, you must become so immediately in order for us to comply with the federal requirements. OHS considers you fully vaccinated if you receive your second dose in a two-dose series or first in a single-dose. If you do not meet this requirement within 30 days of the day of this memo, you may be subject to dismissal. Upon completion of the vaccination, please complete the FCPS Head Start COVID Vaccination survey and securely upload your documentation to ensure you meet the OHS requirements no later than February 28, 2022.

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Vaccine Exemptions: If you have a religious or medical exemption from receiving the vaccine, it must be verified with the Department of Human Resources, Office of Equity & Employee Relations. All employees with a verified exemption will be required to submit to weekly testing. If you do not comply with the weekly testing requirements, you may be subject to dismissal. Upon receiving documentation from the Office of Equity & Employee Relations, immediately complete the FCPS Head Start COVID Vaccination survey and securely upload your documentation to ensure you meet the OHS exemption requirements no later than February 28, 2022.

Please understand that compliance with the federal vaccination requirement for Head Start programs is essential to continue to receive grant funds that allow children to attend a quality program. If you are not vaccinated or do not have the exemption you will not be able to continue to work for FCPS in the PreK and Early Head Start program. We will be reviewing the data to determine who is in compliance with the vaccine mandate.

If you have questions, please talk with your immediate supervisor or email prekvaxmandate@fcps.edu . If you would like more information about the OHS requirements, please [click here](#).

Thank you very much for supporting our youngest learners and keeping them safe.

NK/mb

cc: John E. Foster
Sean McDonald

EXHIBIT B

FW: Head Start - Vaccination

Burke, Maura D. <mdburke@fcps.edu>

Tue 2/8/2022 4:04 PM

To: Etherton, Betsy <EGEtherton@fcps.edu>

Cc: Washington, Lisa (EC Leis Center) <lswashingto1@fcps.edu>

 1 attachments (170 KB)

Memorandum Federal COVID-19 Related Requirements for All Head Start Programs pdf.pdf;

Hi Betsy, Thank you for uploading your medical exemption documentation. Unfortunately, you need to complete one more step before you have complied with the federal mandate. As stated in the memo, you must submit the FCPS exemption approval documentation from Office of Equity & Employee Relations. Please send me and Lisa Washington a copy of the FCPS exemption document no later than February 28, 2022.

Thank you in advance for meeting this federal mandate.

Please let me know if you have questions,

Warm regards,

Maura

Maura Burke

Director, Early Childhood Curriculum and Grant Management
Fairfax County Public Schools
Alan Leis Early Childhood Center
7423 Camp Alger Ave
Falls Church, VA
703 208-7772 (desk)
703 401-0647(cell)

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From: Burke, Maura D.
Sent: Monday, February 7, 2022 7:55 AM
Cc: Burke, Maura D. <mdburke@fcps.edu>
Subject: Head Start - Vaccination
Importance: High

Good morning,

I hope this email finds you well.

I reviewed the vaccination and exemption data and it appears, as of Thursday February 3, 2022 you have not completed the [FCPS COVID Vaccination survey](#) and uploaded your documentation to the secure platform. Please do so as soon as possible but no later than February 28, 2022.

The Head Start requirement is different than the FCPS vaccination survey you may have completed earlier in the school year. To meet the Head Start vaccination standard you must upload a photo of your vaccination card or your approved exemption form. If you want to better understand the requirements I've attached the memo sent to you on January 14 which outlines the expectations and consequences for not complying.

If you have questions, concerns or difficulty meeting the Head Start vaccination standard, please reach out to me immediately.

Regards,

Maura

Maura Burke

Director, Early Childhood Curriculum and Grant Management
Fairfax County Public Schools
Alan Leis Early Childhood Center
7423 Camp Alger Ave
Falls Church, VA
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