

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

L.E., by and through their parent and next friend,  
SARA CAVORLEY; B.B., a minor, by and  
through their parent and next friend, ELIZABETH

CHRIS RAGSDALE, in his official capacity as  
Superintendent of Cobb County School District;  
RANDY SCAMIHORN, in his official capacity as  
a member of the Cobb County Board of Education;  
DAVID BANKS, in his official capacity as  
member of the Cobb County School Board;  
DAVID CHASTAIN, in his official capacity as  
member of the Cobb County School Board; BRAD



4. The District previously endorsed and implemented protocols consistent with CDC guidelines to prevent COVID-19 transmission in schools, even arguing the importance of these protocols before this very Court in late April 2021.<sup>1</sup>

5. In

8. Ignoring students, parents, and hundreds of medical professionals and public health experts, the District has refused to modify its current policies and practices to provide a safe in-person learning environment for Plaintiffs and other students like them.

9. Because of the significant risks to Plaintiffs' health and safety created by the District's ineffective COVID-19 response, Plaintiffs can no longer attend school in-person.

10. The District has the resources, research, and experience to create a safe and accessible in-person learning environment for Plaintiffs and other students with disabilities that make them vulnerable to COVID-19.

11. Plaintiffs could attend school in-person if Defendants reasonably modified their policies and practices to create a safe in-person learning environment.

12. Rather than using the known and available tools to mitigate the threat of COVID-19 and protect Plaintiffs' access to school servi-3.2(s)5.4(i)g496 1(ho)8.3(2.1(r

Act (“Section 504”), and Plaintiffs seek relief from this Court to ensure they receive the educational services, programs, and benefits to which they are legally entitled.

### **JURISDICTION and VENUE**

14. This action arises under Title II of the ADA, 42 U.S.C. §§ 12101 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Plaintiffs’ claims are authorized by 42 U.S.C. § 12133 and 29 U.S.C. § 794(a).

15. Jurisdiction in this Court is proper under 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343 (civil rights jurisdiction). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, as an actual controversy exists within



as a student with a disability eligible for services and accommodations. A.Z. brings this action, by and through her parent and next friend, Jessica Zeigler.

21. **Plaintiff C.S.** is a 14-year-old student enrolled in the ninth grade in the District. C.S. is diagnosed with severe asthma and has a history of pneumonia and upper respiratory infections. The District has identified C.S. as a student with a disability eligible for services and accommodations. C.S. brings this action, by and

24. **Defendant David Banks** is a member of the Board and is responsible for the District's management and control, primarily through establishing policy, such as policies relating to infectious disease in schools, pursuant to Ga. Const. art. 8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a). Defendant Banks is sued in his official capacity.

25. **Defendant David Chastain** is a member of the Board and is responsible for the District's management and control, primarily through establishing policy, such as policies relating to infectious disease in schools, pursuant to Ga. Const. art. 8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a). Defendant Chastain is sued in his official capacity.

26. **Defendant Brad Wheeler** is a member of the Board and is responsible for the District's management and control, primarily through establishing policy, such as policies relating to infectious disease in schools, pursuant to Ga. Const. art. 8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a). Defendant Wheeler is sued in his official capacity.

27. **Defendant Jaha Howard**



8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a).

Defendant Howard is sued in his official capacity.

28. **Defendant Charisse Davis** is a member of the Board and is responsible for the District's management and control, primarily through establishing policy, such as policies relating to infectious disease in schools, pursuant to Ga. Const. art. 8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a).

Defendant Davis is sued in her official capacity.

29. **Defendant Leroy Tre' Hutchins** is a member of the Board and is responsible for the District's management and control, primarily through establishing policy, such as policies relating to infectious disease in schools, pursuant to Ga. Const. art. 8, § 5, ¶ II; O.C.G.A. §§ 20-2-50; 20-2-61; Ga. Comp. R. & Regs. 160-1-3-.03(2)(a). Defendant Hutchins is sued in his official capacity.

30. **Defendant Cobb County School District** ("District") is the public school system of Cobb County, Georgia, under the control and management of the Cobb County Board of Education, pursuant to Ga. Const. art. 8, § 5, ¶ I; O.C.G.A. § 20-2-50. The District meets the definition of a public entity under 42 U.S.C. § 12131, and receives federal financial assistance under 29 U.S.C. § 794.



36. The greatest risk of Delta variant transmission is among unvaccinated people, who are significantly more likely to contract and transmit the virus, including children.

37. Only 54% of Cobb County residents are—as of the date of this filing—vaccinated against COVID-19.

38. As of the date of this filing, Cobb County is considered an area of “high transmission,” the CDC’s most severe category of transmission, and the COVID-19 transmission rate is approximately six times as high as it was in September 2020.

39. Between September 4 and 17, 2021, Cobb County reported 4,544 total positive COVID-19 cases, which is a confirmed new case rate of 600 per 100,000.

40. Due to the Delta variant and the inability of children under twelve to be vaccinated, pediatric cases of COVID-19 have increased.

41. Between September 9 and 16, 2021, 225,978 children contracted COVID-19 in the United States, representing 25.7% of the weekly reported cases.

42. Georgia reported the eleventh highest number of cumulative COVID-19 cases for children in the United States between September 9 and 16, 2021, reporting 8,606 new cases in children.

43. On September 23, 2021, the GPH reported that Cobb County had 1,063 COVID-19 cases among children aged five to seventeen during the prior two

weeks. Compared to approximately the same two-week period in 2020, the fourteen-

48. Since March 2020, approximately one in four hospitalized children and adolescents with COVID-19 has required intensive care.
49. Four children died in Cobb County from COVID-19 in August 2021.

system failure. Some children with COVID-19 have developed other serious problems like intussusception or diabetic ketoacidosis.

54. According to the CDC, underlying disabilities or medical needs that place children at increased risk of “severe illness” from COVID-19 include “medical complexity, with genetic, neurologic, metabolic conditions, or congenital heart disease.” And “children with obesity, diabetes, asthma or chronic lung disease, sickle cell disease, or immunosuppression can be at increased risk for severe illness from COVID-19.” The CDC emphasizes that those who are immunocompromised are more likely to get severely ill from COVID-19 and may not be fully protected even when they are vaccinated.

55. Other types of disabilities can expose some individuals to an increased risk of contracting COVID-19 or having an unrecognized illness, such as people with limited mobility who cannot avoid close contact, people who have trouble understanding information or practicing preventive measures on their own, and people who may not be able to communicate symptoms of illness.<sup>2</sup>

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<sup>2</sup> *People with Disabilities*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated June 21, 2021),

56. Plaintiff children are among those individuals at increased risk of severe illness, hospitalization, or death from COVID-19, and especially the Delta variant.

COVID-19 transmission can be reduced for children in schools by following

Disease Society of America, and the American Academy of Family Physicians all also strongly endorse return to in-person learning. According to the AAP, many families with children with disabilities did not have adequate educational support during remote learning, and educational disparities have worsened for children with disabilities.

61. Public health authorities have been unambiguous and unanimous about the need for implementation of appropriate public health mitigation strategies, including universal indoor masking, to keep students safe during in-person learning.

62. While no single existing mitigation strategy is perfect at preventing COVID-19 illness, the best protection for children in schools requires layered mitigation strategies that include COVID-19 vaccinations, universal and appropriate masking, physical distancing, improved ventilation, surveillance testing, symptom screenings, isolation and effective quarantine measures, and contact tracing.

63. The CDC issued updated Guidance for COVID-19 Prevention in K-12 Schools on August 4, 2021 (“CDC guidelines”).<sup>3</sup> The CDC guidelines recommend:

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<sup>3</sup> *Guidance for COVID-19 Prevention in K-12 Schools*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated Aug. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.



- a. Promoting COVID-19 vaccinations, as “vaccination among all eligible students as well as teachers, staff, and household members is the most critical strategy to help school safely resume full operations.”
- b. Universal indoor masking “for all individuals age 2 years and older including students, teachers, staff, and visitors, regardless of vaccination status.” Further, “[p]assengers and drivers must wear masks on school buses,” pursuant to CDC Order, 86 Fed. Reg. 8025-01.
- c. Distancing of “at least 3 feet of physical distance between students within classrooms, combined with indoor mask wearing to reduce transmission risk,” and “at least 6 feet between students and teachers/staff, and between teachers/staff.”
- d. Screen testing to identify infected people so that measures can be taken to prevent further spread.
- e. Improving ventilation “is an important COVID-19 prevention strategy that can reduce the number of virus particles in the air.”
- f. Teaching and reinforcing handwashing and respiratory etiquette to help keep individuals from getting and spreading COVID-19.

- g. Staying home when sick and getting tested “is essential to keep COVID-19 infections out of school and prevent the spread to others.” Schools should allow flexible, non-punitive, supportive leave policies, and excused absences for sick workers and students.
- h. Contact tracing in combination with isolation and quarantine to report and collaborate with state and local health departments.
- i. Reducing the risk of spread by sufficiently cleaning and disinfecting surfaces.
- j. Given the highly contagious Delta variant, the CDC also recommends “fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 to be tested 3-5 days after exposure, regardless of whether they have symptoms.”
- k. Utilize adaptations and alterations to preventive strategies when serving people with disabilities, while maintaining efforts to protect all children and staff from COVID-19.

64. The CDC guidelines state that federal funds provided through the Elementary and Secondary School Emergency Relief (ESSER) Fund should go towards supporting preventive strategies, such as improvements to ventilation and resources for screen testing programs.

65. The AAP also released guidance that reiterates the CDC guidelines.<sup>4</sup>

66. The AAP has stated that “[s]chools must continue to take a multi-pronged, layered approach to protect students, teachers, and staff (*i.e.*, vaccination, universal mask use, ventilation, testing, quarantining, and cleaning and disinfecting). Combining these layers of protection will make in-person learning safe and possible. Schools should monitor the implementation and effectiveness of these policies.”

67. In an Open Letter to Georgia School Superintendents, the Georgia Chapter of the AAP requested Georgia school districts to implement AAP and CDC guidelines.

68. The GDPH has stated the importance of implementing CDC guidelines to stop the spread of COVID-19 in early childcare and education programs.

69. The Cobb County Board of Health (“CBOH”) has adopted a position statement endorsing CDC and AAP guidelines in all Cobb County schools.

70. Hundreds of doctors and medical professionals have requested the District to implement CDC guidelines to reduce virus transmission.

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<sup>4</sup> *Covid-19 Guidance for Safe Schools*, AMERICAN A

71. On September 24, 2021, the CDC released its first analysis of the



82. During the 2020-

87. L.E. now only receives five hours of instruction per week at home, where he is isolated from his peers. The District offers no flexibility due to the District's short staffed HHB program.

88. On or around August 26, 2021, Ms. Cavorley emailed the assistant principal at L.E.'s school, explaining that he is only using HHB services because the District refuses to implement adequate safety measures like masking and social distancing.

89. When the District sent L.E.'s siblings close contact notifications in two consecutive weeks, Ms. Cavorley stopped her other four children from attending school in-person to protect L.E.

90. The District then sent Ms. Cavorley a notice threatening to disenroll her children which prompted her to send L.E.'s siblings back to school in-person. L.E.'s siblings now attend school fearful of bringing COVID-19 home to L.E.

91. L.E. is being denied access to in-person education opportunities because of his disability.

92. If Defendants implemented CDC guidelines and adequate COVID-19 safety protocols, L.E. could attend school in-person and access an in-person education like his nondisabled peers.

93. Defendants' actions have and continue to irreparably harm L.E.

94.



102. B.B.'s parent, Elizabeth Baird, through many communications, requested that the District accommodate B.B.'s disability by following CDC guidelines to allow him to attend school in-person. The District refused.

103. Ms. Baird then requested HHB services on or around September 8, 2021, as an accommodation.

104. On or around September 13, 2021, the District denied Ms. Baird's request for HHB services, claiming that HHB is "not appropriate for COVID concerns."

105. B.B. is currently not attending school and is not receiving any educational services.

106. B.B. is being denied access to in-person education opportunities because of his disability.

107. If Defendants implemented CDC Guidelines and adequate COVID-19 safety protocols, B.B. could attend school in-person and access an in-person education like his nondisabled peers.

108. Defendants' actions have and continue to irreparably harm B.B.

109. Defendants have caused B.B. educational and actual harm.

110. Due to Defendants' violations, B.B. is entitled to declaratory relief, preliminary and permanent injunctive relief, and actual and nominal damages.



118. Ms. Zeigler requested accommodations to allow A.Z. to safely return to school in-person. The District denied her requests.

119. A.Z. has not attended school in-person since August 13, 2021.

120. A.Z. is being denied access to in-person education opportunities because of her disability.

121. If Defendants implemented CDC guidelines and adequate COVID-19 safety protocols, A.Z. could attend school in-person and access a public education like her nondisabled peers.

122. Defendants' actions have and continue to irreparably harm A.Z.

123. Defendants have caused A.Z. educational and actual harm.

124. Due to Defendants' violations, A.Z. is entitled to declaratory relief, preliminary and permanent injunctive relief, and actual and nominal damages.

128. After learning that the District would not follow CDC guidelines in the 2021-2022 school year, C.S. started the school year in a “hybrid learning” model—two classes of in-person learning at school and three classes of remote learning at home, due to his disability.

129. At the beginning of the school year, when he attended school in-person, few people in C.S.’s school wore masks and participated in physical distancing, particularly during group projects, in crowded hallways, and in the lunchroom.

130. To protect C.S., his mother, Tarasha Shirley, requested a meeting to seek implementation of CDC guidelines and other safety protocols in school. Because of the length of time needed to conduct a meeting and the increasing threat to C.S.’s safety, Ms. Shirley withdrew C.S. from attending school in-person and C.S. now attends school virtually full time.

131. C.S. has not attended school in-person since August 13, 2021.

132. C.S. struggles with virtual learning because he must teach himself the material and he lacks peer interactions.

133. C.S. is unable to participate in critical testing at school because there are no CDC guidelines or other safety protocols at the school testing sites, which will effect C.S.’s secondary educational opportunities.



agenda item for discussion, including COVID-19 safety protocols, without a majority member vote.

142. Defendants Ragsdale, Scamihorn, Chastain, Banks, and Wheeler, the District's superintendent and four majority board members respectively, have abdicated their duty to implement, or even consider and discuss, adequate COVID-19 safety protocols that would allow Plaintiffs and other students with disabilities to safely access an in-person education during the 2021-2022 school year.

143. During the 2020-2021 school year, the District reopened schools for in-person learning after nearly seven months of remote learning.

144. Defendants implemented safety measures to prevent the spread of COVID-19 in the District's 2020-2021 Re-Opening Plan, which included mandatory

147. Between March 22, 2021, and April 1, 2021, middle and high school students could exercise the option for virtual school in the 2021-2022 school year.

152. In its April 29, 2021 filing, the District argued that the plaintiffs bringing the lawsuit “favor their own interests over the public’s wellbeing, [and] ignore recommendations from health experts at every level of government[.]”<sup>5</sup>

153. The plaintiffs dismissed the lawsuit in May 2021 after this Court denied their motion to enjoin the District’s mandatory indoor masking policy.<sup>6</sup>

154. In subsequent months throughout the summer of 2021, as the Delta variant continued to spread, COVID-19 safety and mitigation protocols were not included on the Board’s respective meeting agendas because the majority members refused to discuss them.

155. For example, during the Board’s May 20, 2021, work session, Defendant Howard requested that a future board meeting agenda include a presentation by the CDPH on effective COVID-19 mitigation strategies. This was not the first time Defendant Howard had made this request. However, the majority members, as of the date of this filing, have refused to include the presentation on any subsequent meeting agenda.

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<sup>5</sup> Def.’s Resp. in Opp’n to Pls.’ Mot. For TRO, at 2, *W.S. ex rel. Sonderman v. Ragsdale*, No. 1:21-cv-01560-TWT (N.D. Ga. Apr. 29, 2021) (ECF No. 5).

<sup>6</sup> See *W.S. v. Ragsdale*, No. 1:21-cv-01560-TWT, 2021 WL 2024687 (N.D. Ga. May 12, 2021) (denying request to temporarily restrain the District from enforcing face masks).



156. On May 25, 2021, the District applied for federal funds under the American Rescue Plan (“ARP”) to be used in response to the impact of the COVID-19 pandemic on students.

157. Congress requires that ARP funds be used to reopen schools safely given the risks presented by COVID-19, and to provide students and teachers with

- b. Optional masks for students and staff, although strongly encouraged, in school buildings, on school buses, and at extracurricular activities.
- c. Students who are exposed to COVID-19 but asymptomatic may return to class after three days if they wear a mask for an additional seven days after exposure.
- d. Any student or staff member who tests positive for COVID-19 must isolate in accordance with GDPH guidelines.
- e. Social distancing and limits on large group gatherings will occur “when appropriate and feasible.”
- f. Hand sanitizer, encouragement of frequent handwashing, daily cleaning of high touch surfaces, and disinfecting of school buses will be provided.
- g. The school will contact a student’s parent/guardian if the student is identified as a close contact, and the Cobb COVID-19 website will be updated each Friday with positive/active COVID-19 cases.
- h. If a student exhibits COVID-19 symptoms while in the school clinic, the nurse has the discretion to request that the student wear a mask or isolate in a designated area after being assessed or waiting for parent pick-up.

- i. Non-staff volunteers are limited in their ability to enter school and volunteer in roles that involve proximity to students during school hours. Volunteers are still

166.



178. On September 23, 2021, the Board conducted its monthly meeting, and COVID-19 safety protocols were not on the meeting agenda once again.

179. At the Board's September 23, 2021, work session, prior to the Board's evening meeting, Defendants Scamihorn and Ragsdale did not disclose, even when asked, that Defendant Ragsdale would later present on COVID-19 during his public comments at the evening meeting.

180. Because COVID-19 safety protocols were not on the September 23, 2021, meeting agenda, Defendants Davis, Howard, and Hutchins, the minority Board members, objected to the approval of the meeting agenda at the afternoon work session, but the agenda was approved by the majority members.

181. Then, at the Board's evening meeting on September 23, 2021, Defendant Ragsdale gave an unannounced presentation on COVID-19.

182. Relying on dubious research and cherry-picked data, Defendant Ragsdale attempted to promote the District's COVID-19 response as successful and to undermine the proven positive impact of complying with CDC guidelines.

183. Because the presentation was not on the Board's meeting agenda, Defendant Howard sought to discuss the data and findings with Defendant Ragsdale during the meeting, but Defendant Scamihorn denied Defendant Howard's request.

184.

189. Because of Defendants'



195. Specifically, the ADA provides that “no qualified individual shall, by reason of such disability, be excluded from participation in or denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

196. The ADA’s implementing regulations prohibit public entities from, either directly or through contractual arrangements, utilizing any criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to people with disabilities. 34 § C.F.R. 35.130(b)(3)(i).

197. The ADA imposes an affirmative obligation upon public entities to “make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. . . .” *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 35.130(b)(7).

198. The ADA’s implementing regulations affirmatively obligate public entities to administer their services, programs, and activities in the most integrated

setting appropriate to the needs of qualified students with disabilities. 28 C.F.R. § 35.130(d).

199. The District is a public entity as defined by the ADA.

200. Plaintiffs are people with disabilities and are qualified individuals with

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**LAW OFFICE OF ALLISON B. VROLIJK**

*/s/ Allison B. Vrolijk*

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