

I ask you to publicly join me in demanding the LCPS School Board call the LCPS Superintendent's student and staff COVID vaccination mandate to a full board vote. If the School Board does not call the mandate to a full board vote, they have willfully and knowingly performed the most severe dereliction of duty to date, have willfully and knowingly not only been the direct cause of but active participants in child abuse and neglect and have willfully and knowingly violated LCPS employee civil rights.

I respectfully submit the following evidence for your review and consideration. I encourage you to view the hyperlinked sources and documents. My demand is not based on vaccinated versus unvaccinated. My demand is based on lawful and ethical decision making.

- What legal authority does LCPS cite to require staff and students to receive the COVID-19 vaccination?
  - It is unlawful for an employer or public school system to assume any staff member or student is a threat to the health and safety of others without proof from a licensed medical doctor or an order from the court.
    - This is very clear for LCPS students is LCPS School Board [Policy 8415](#)
    - This is very clear for LCPS staff in LCPS School Board [Policy 7320](#)
- The [Center for Disease Control \(CDC\) defines child abuse and neglect](#) as "any act of series of acts of commission or omission by a parent, caregiver or another person in a custodial role that results in harm, potential harm or threat of harm to a child. A preventable act."
  - The LCPS Superintendent appears to be guilty of child abuse and neglect by mandating 16 year old children receive an emergency use authorization medical intervention, the manufacturer even states is a personal choice.
  - The LCPS School Board potentially will be guilty of child abuse and neglect with the act of omission should they chose not to take action.
- LCPS School Board [Policy 2010](#) states, "the LCPS School Board has the Constitutional power and duty of supervision of the schools in Loudoun County and derives its authority from the Constitution of Virginia, the Code of Virginia, and the regulations of the State Board of Education"
- LCPS School Board [Policy 3010](#) states, "the Division Superintendent is responsible for the day-to-day operations of the school system, including the direction, leadership, and coordination of students and staff in their efforts to reach **educational goals** adopted by the School Board."
  - It appears the student and staff COVID-19 vaccination mandate is outside the scope of the LCPS Superintendent.
- LCPS School Board [Policy 3020](#) states, "the LCPS School Board directs the Division Superintendent to implement all School Board policies and to develop regulations that specify the practices needed to carry out policies.

- There is no LCPS school board policy requiring the COVID-19 vaccination mandate. Therefore it appears the student and staff COVID-19 vaccination mandate is outside the scope of the LCPS Superintendent.
- LCPS School Board [Policy 7320](#) (Staff Health) requires, as a condition of employment, a tuberculous test. There is no LCPS School Board policy requiring the COVID-19 vaccination as a condition of employment.
  - Section D Enhanced Health Screening states, "During an epidemic, pandemic or period of increased public health risk, and in compliance with recommendations from the Loudoun County Health Department, the U.S. Centers for Disease Control, or the Commonwealth of Virginia employees may be required to submit to enhanced health screening protocols for the legitimate business need to maintain a safe learning and working environment."
    - Weekly COVID-19 testing not fully approved by the FDA is significantly more than a health screening
  - Section F High-Risk Employees states, "During an epidemic, pandemic or period of increased public health risk, high-risk employees as defined by the Loudoun County Health Department, The U.S. Centers for Disease Control, the Commonwealth of Virginia, or POLICY: 7320 Page 3 STAFF HEALTH the employee's health care provider may request the use of sick leave, annual leave, personal reasons leave or a combination of leave as provided by School Board Policy, the Family and Medical Leave Act, and the Americans with Disabilities Act (ADA) but will not be required to do so.
    - Why are unvaccinated employees who do not wish to submit to weekly COVID-19 testing not fully approved by the FDA being forced to take leave without pay?
- LCPS School Board [Policy 3120](#) directs the LCPS Superintendent to perform duties prescribed by law and is charged with seeing that the actions and intentions of the School Board are carried out.
  - The LCPS School Board has not issued a policy requiring employees to be COVID-19 vaccinated or submit to weekly COVID-19 testing.
  - The LCPS School Board has not publicly shared their intentions therefore the student/staff COVID-19 vaccination mandate is outside the scope of the LCPS Superintendent's responsibility.
- [Virginia Code 22.1-79](#) – a Virginia school board's power and duties include "take care that (public schools) are conducted according to law and with the utmost efficiency
  - Why is LCPS requiring employees to upload a copy of their CDC COVID-19 vaccination card. This document contains medical information. Furthermore

the burden this has placed on the LCPS Human Resources department is not conducting "with the utmost efficiency".

- Virginia Law, [16VAC25-220-40B1](#) states employers are not required to ask for vaccination proof.
- The [CDC](#) states if the employer chooses to require proof of vaccination, "the employer cannot mandate that the employee provide any medical information as part of the proof." A CDC COVID-19 vaccination card contains medical information (vaccine manufacturer, lot number, etc)
- In September 2021, LCPS Supervisor for Leave and Disability, [Jeanette Evans](#), [answered an employee's question](#) of what specific information is needed to meet the LCPS's employee COVID vaccination documentation requirement with "A copy of the vaccination card or a certificate from the health department confirming the vaccination is what is required to meet the requirement for documentation" and has failed to reply to when challenged the LCPS specific information requirement is for documentation as the current "upload your vaccination card" possibly contains more information than what is legally required.
  - I have [confirmed the health department does not provide certificates](#) "confirming the vaccination" and only refers individuals to the State of Virginia's self-serve COVID-19 vaccination record request portal. Information printed/displayed from this portal displays "medical information" and thus is not a usable document for employees to upload.
    - The LCPS Supervisor for Leave and Disability is not providing employees accurate and lawful information
- Page 5 of the Food and Drug Administration's (FDA) [Vaccine Information Fact Sheet for both Pfizer BioNTech and Pfizer Comirnaty vaccination](#) says, "WHAT IF I DECIDE NOT TO GET COMIRNATY (COVID-19 VACCINE, mRNA) OR THE PFIZER-BIONTECH COVID-19 VACCINE?  
Under the EUA, **it is your choice to receive or not receive the vaccine.** Should you decide not to receive it, it will not change your standard medical care"
  - Why is LCPS forcing both employees and students to receive something the manufacturer and FDA paperwork declare is a choice?
  - Even the Secretary of Defense's [Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members](#) memorandum states, "Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the FDA, in accordance with FDA-approved labeling and guidance"
- I'm concerned with the spread of misinformation to the LCPS community and how this misinformation impacts staff and students:
  - In the LCPS email to all LCPS staff and families (dated 9/21/2021, subject line: Reminder to Winter/Spring Families of Athletes on Submitting

Vaccination Information) the [FAQ document states](#), "Can you please let me know where Comirnaty will be available in Loudoun County? Comirnaty is the new name for the Pfizer-BioNTech COVID-19 vaccine. It is the same vaccine as the one that was first authorized for use in December 2020. Over 200 million people in the U.S. have received the Pfizer (brand name Comirnaty) vaccine. Please contact your medical provider or health department for information on where to obtain the Comirnaty vaccine." The information contained in this email is inaccurate and misleading.

- Over 200 million people in the U.S have NOT received the brand name Pfizer Comirnaty vaccination. LCPS may be referring to the Pfizer BioNTech vaccination, but NOT the Pfizer Comirnaty vaccination. The two are not the same.
  - The BioNTech vaccine is authorized under an Emergency Use Authorization (EUA) use and the Comirnaty is the only vaccine with full FDA approval.
  - The FDA admits in the footnote on page 1 of the Pfizer vaccine [Fact Sheet](#), FDA approval letter for COMIRNATY®, the FDA alleges COMIRNATY® and BioNTech "share the same formulation" yet concede that "the products are legally distinct with *certain differences*."
  - The FDA fully approved Comirnaty vaccine is not available, per footnote 12 on page 6 of the [FDA's Sept. 22 letter to Pfizer](#) "Although Comirnaty is approved ... there is not sufficient approved vaccine available for distribution."
  - If Comirnaty were widely available, or if Comirnaty is the "same" as BioNTech, it appears legally the FDA is required to revoke the EUA for both the Moderna and Johnson & Johnson vaccines. Per the [FDA's MCM Legal, Regulatory and Policy Framework Emergency Use Authorization](#) website, "The FDA may authorize unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by CBRN threat agents when certain criteria are met, including there are no adequate, approved, and available alternatives."
  - The FDA reissued an EUA for Biontech on the same day it approved Comirnaty.
    - The Childrens Health Defense currently has filed a lawsuit alleging , "the FDA violated federal law when it simultaneously licensed Pfizer's "Comirnaty" vaccine and extended Pfizer's EUA for its vaccine that has the "same formulation" and that "can be used interchangeably,"

The [LCPS vaccination mandate FAQ document](#) (dated 9/22/2021) informs employees "there is no need for a religious exemption form at this time. If you are unable to be vaccinated, you will be required to provide weekly test results .... If you do not wish to submit weekly

testing due to a religious exemption, you are eligible for voluntary leave without pay which can be reevaluated periodically and is available through June 30, 2022.” The document also states, “There is no need for a medical exemption form at this time. If you are unable to be vaccinated, you will be required to provide weekly test results to the Leave and Disability Programs Office. If you do not wish to submit to weekly testing due to a medical exemption, you are eligible for voluntary leave without pay which can be reevaluated periodically and is available through June 30, 2022”.

- [Title VII of the Civil Rights Act of 1964](#) prohibits employment discrimination based on race, color, religion, sex and national origin. The term "religion" includes all aspects of religious observance and practice, as well as belief. Title VII of the Civil Rights Act of 1964 requires employers to provide employee’s reasonable accommodations unless the employer can prove the accommodation provides an undue hardship on the employer’s business. Title VII provides a path for religious exemptions for all LCPS employees for both the mandated COVID vaccination and the LCPS unvaccinated required weekly COVID testing. Title VII does not dictate the employer provide a one size fits all approach to the “reasonable accommodation”, but rather provides for the employer to consider each individual employee’s circumstances, the employer's mission and develop a reasonable accommodation.
  - LCPS’s religious exemption “reasonable accommodation” for the mandated COVID vaccination is weekly testing
    - LCPS’s religious exemption “reasonable accommodation” for the unvaccinated weekly COVID testing is voluntary leave without pay
    - By design LCPS is self-inducing an undue hardship on their mission and remaining employees
- [The Americans with Disabilities Act](#) (ADA) of 1990 is a civil rights law that prohibits discrimination against individuals with disabilities and exists to help people with disabilities access the same employment opportunities and benefits available to people without disabilities. The Americans with Disabilities Act of 1990 requires employers to provide reasonable accommodations to employees and a “reasonable accommodation” is a change that accommodates employees with disabilities so they can do the job without causing the employers “undue hardship”. The Americans with Disabilities Act of 1990 also does not dictate the employer provide a one size fits all approach to determining an appropriate “reasonable accommodation”, but rather provides for the employer to consider each individual employee’s circumstances, the employer's mission and develop a reasonable accommodation.
  - LCPS’s medical exemption “reasonable accommodation” for the mandated COVID vaccination is weekly testing
    - LCPS’s medical exemption “reasonable accommodation” for the unvaccinated weekly COVID testing is voluntary leave without pay

- By design LCPS is self-inducing an undue hardship on their mission and remaining employees
- An undue hardship is considered "too much difficulty or expense".
  - Per the September 23, 2021 LCPS Human Resources and Talent Development Committee Agenda Item 4.03 Substitute Update some [LCPS schools currently have a 40-50% "unable to fill" substitute rate](#), while the district average is 30%! These classes are being "covered" by our already overworked LCPS teachers. Redirecting these already overworked staff to "cover" a class exponentially increases the number of students impacted as now teachers are losing their instructional planning and grading time.
  - LCPS's current "religious and medical exemption reasonable accommodation" to offer staff "voluntary leave without pay ... through June 30, 2022" will only further amplify the "unable to fill" substitute rate and thus LCPS's "one size fits all" accommodation, by design, is CREATING AN UNDUE HARDSHIP! Again, this exponentially increases the number of students impacted as now teachers are losing their instructional planning and grading time.
    - LCPS Superintendent [Scott Zieler's September 30, 2021 email to staff](#) states, "I need your help to minimize the impact that teacher absences coupled with a limited number of substitutes is having on school operations", "I have asked principals to limit leave", "our frontline employees - are under a great deal of stress and could likely use a mental health day"

It is unconscionable for LCPS to divert from their mission of academically educating children by sending their licensed and support staff on leave without pay. Simply put, parents do not send their children to LCPS schools for unlicensed every changing daily substitutes to provide the foundational education and content. This role is defined for a constant and licensed teacher and support staff.

I ask you to publicly join me in demanding the LCPS School Board call the LCPS Superintendent's student and staff COVID vaccination mandate to a full board vote. If the School Board does not call the mandate to a vote, they have willfully and knowingly performed the most severe dereliction of duty to date, have willfully and knowingly not only been the direct cause of but active participants in child abuse and neglect and have willfully and knowingly violated LCPS employee civil rights.

Respectfully,  
John Q. Public