

What happened to the COVID-19 cases about immunocompromised children with disabilities in public schools in Florida?

On May 16, 2022, the parents who were plaintiffs in the *Hayes v. DeSantis* case were required to dismiss their case because the science has advanced to the point where it was clear that any court would not require the state or a school district to require other children to be masked, or teachers to be immunized. Due to the existence of vaccines, boosters and the use of masks, the risk of contracting COVID-19 is minimized, and if one of these children did contract COVID-19, the risk of death or serious injury is rare.

However, in August of 2021, parents with children who were immunocompromised were placed in a dilemma because of political dogma. They were advised that they would be required to place their children in public school and because of other's convenience, they would be subject to a virus that would likely be fatal to each of the children. This was not an acceptable risk for any parent of a child who has a disability.

Because of this choice between attendance at school and safety, nine parents decided to sue on behalf of their children who were between 5 and 11 years old and had disabilities that caused them to be immunocompromised. Under the Americans with Disabilities Act, all persons with disabilities are entitled to the equal use and enjoyment of all programs and services of governmental entities, unless inclusion would result in an undue administrative or financial burden. The convenience of others would never qualify as an undue burden.

These parents have consistently ensured that their children were protected to the utmost, from using masks, social distancing, proper ventilation, and now that vaccines are available, all have been vaccinated, and, due to their immunocompromised state, are eligible for an additional dose 28 days after their second dose. As such, nine months following the filing of the suit and advances in protection, the question is what the risk of is becoming ill with a COVID-19 variant if these children continue with all of these methods of protection.

On March 30, the New England Journal of Medicine published an article that contained a study¹ of the vaccine's effectiveness for children from 5 to 11 years old in January and February 2022, and for adolescents between 12 to 18 from July 1, 2021, to February 17, 2022. The study included 1185 hospitalized case patients with Covid-19 and 1627 controls without Covid-19 at 31 hospitals in 23 states. Approximately 75% of the participants in this study had at least one underlying medical condition.

In the study, children 5-11 had only recently been authorized to receive the vaccine and on average had been vaccinated one month earlier, and in this one-month span, the risk of hospitalization for Covid-19 during the period of Omicron decreased by 68% in comparison to children not vaccinated. For adolescents, a booster increases the effectiveness against hospitalization, and children under 12 should have that same effect. Pfizer contents that the booster for children 5 to

¹ (2022) BNT162b2 Protection against the Omicron Variant in Children and Adolescents. N Engl J Med DOI: 10.1056/NEJMc2205107, found at https://www.nejm.org/doi/full/10.1056/NEJMoa2202826?query=recirc_curatedRelated_article

11 leads to a sixfold increase in antibodies, and in a smaller sub-analysis demonstrated a 36-fold increase in antibodies against the Omicron strain.² While the vaccine is far from a magic bullet for these children that guarantees safety, the combination of the vaccine, booster, and other precautions minimizes possible risks.

For children who are unvaccinated, the situation continues to be dire. In the New England Journal of Medicine report, 90% of the children from 5 to 11 with critical Covid 19 in the hospital were unvaccinated.

The American Association of Pediatrics, Florida Chapter, Lisa Gwynn, DO, MBA, MSPH, FAAP said that the vaccine “has been proven to prevent serious illness, hospitalizations and long-term symptoms from COVID-19 in children and adolescents, including those who are otherwise healthy. The evidence is clear that when people are vaccinated, they are significantly less likely to get very sick and need hospital care. There is widespread consensus among medical and public health experts about the life-saving benefits of this vaccine.”³

The risk of the children in this case has been lessened because of vaccination and the continued use of protective devices and practices. On the same day that the Federal District Court in Miami dismissed this case, the Eight District Court of Appeals vacated their stay on a similar ban against mask mandates in Iowa, again because of the change in circumstances.⁴

They will continue to take every precaution that is in their power to do. However, no parent should be put in a position where they need to sue their schools because of a blatant disregard for their child’s health solely because of the direction of the political winds. Most of the school districts that were defendants in this case initially ensured that these vulnerable children would be safe, but each eventually followed the State of Florida’s political mandate. Each of these school districts disregarded the science and potential danger to these children. Each of these school districts maintained that the parents had no right under the law to assert their rights. Each of these school districts failed to implement appropriate safeguards, so these children were adequately protected.

In this matter, the development of vaccines and boosters are winning the race against the mutations of the COVID-19 pandemic. However, next time, science may lose to the application of bleach, horse medicine, and ultraviolet light treatments, and our schools and state would be willing to sacrifice children and persons with disabilities in a pyrrhic victory for parental rights to avoid inconvenience for their child.

² April 14, 2022 <https://www.nbcnews.com/health/health-news/pfizer-says-covid-booster-kids-5-11-ups-antibodies-omicron-rcna24332>

³ <https://www.fcaap.org/posts/news/press-releases/fcaap-statement-regarding-the-covid-19-vaccine-and-floridas-children/>

⁴ Arc of Iowa v. Reynolds, 21-3268, 2022 WL 1529614 (8th Cir. May 16, 2022)