

## NEWS

# Millbury, Spencer parents sue schools over alleged harm to children from mask mandates

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A group of Central Massachusetts parents is suing school officials over alleged physical and emotional injuries to their children caused by school mask mandates.

"Most of the children have been unable to safely wear masks due to medical and behavioral disabilities and have suffered very serious physical and emotional injuries as a result of the defendants' conduct," said Ilya Feoktistov, the attorney representing the four parents and their 15 children.

The parents — including Michelle Frigon and Ashley Kavanagh-Russo from Millbury, Kristen Herholz from Spencer and Nichole Gustafson, who previously lived in Spencer but now lives in Texas, according to court documents — are suing 22 defendants for \$24 million.

The defendants are grouped together from three separate Central Massachusetts school districts, state-level education agencies, two medical practices and an unknown local public health agency.

The case is being tried in Suffolk County Superior Civil Court rather than in Worcester because the lawsuit includes state-level educational agencies, such as the state Department of Elementary and Secondary Education (DESE), Feoktistov said.

Frigon and Russo are suing Millbury School Committee Chairperson Jennifer Nietupski, member Julia Lagerholm, Superintendent Greg Myers, his executive assistant Kerri Sundeen and Keith Gasco, the school resource officer at Millbury High School.

"The Millbury defendants being sued for money damages comprise the town itself and four individual Millbury government officials, who are being sued in their individual capacities for their own intentional wrongful conduct," Feoktistov said.

Feoktistov said the town is liable for compensatory damages that stem from "any recognized constitutional violations committed by the individual town government official defendants.

"The town is not liable for any intentional wrongful acts committed by the individual defendants that are not constitutional violations," Feoktistov said. "The same situation applies to the other school districts — they have been sued as entities and some of their individual district officials have been sued personally."

He said that the town, as well as its school system, are immune from damages liability for that conduct.

"It is too early to speculate on what the damages award may turn out to be and how it may be apportioned ... the Millbury public school system's share of the total \$24 million claims would be a few percent," Feoktistov said. "I have also estimated that the total personal net worth of the numerous defendants being sued in their individual capacities is sufficient to cover the damages without resort to government treasuries, should the defendants so choose."

Nietupski, Lagerholm and Myers are all being sued in their individual and official capacity.

The reason the lawsuit included only two School Committee members is that they "exceeded their official authority," and are being sued for those acts individually, Feoktistov said.

## The complaint

The initial complaint, filed in February of this year, alleges that Nietupski would not allow Frigon, Russo and "several" other parents to speak at a School Committee in August of last year.

The complaint also alleges that when Frigon tried to present a petition with the name of 223 parents supporting voluntary masking, Nietupski cut the feed to the School Committee meeting and called the Millbury Police Department to escort the parents off of the premises.

After Russo was removed by police from the meeting, Lagerholm voiced her support for vaccines and wearing masks and that "anybody that says different, shame on you," the complaint said.

Nietupski and Lagerholm could not be reached for comment.

Frigon and Russo are also suing Sundeen, not individually but in her official capacity because "as well as being the superintendent's executive assistant, she is the Millbury Public Schools' designated records access officer for the purposes of the Massachusetts Public Records Law. She violated that law in responding to plaintiffs' public records requests," Feoktistov said.

He said that she is not being sued for monetary damages but rather "for an order compelling her to produce the requested records that she failed to produce."

The complaint said the plaintiffs had requested "public records containing any text, audio, and/or visual information, transmitted through any medium or service, whether digital or hard copy, whether in the direct custody of Millbury Public Schools or not, and including any metadata associated with this information.

The requests specified that responsive records should be produced, "in their native electronic form," and if the records existed only in hard copy, then "scanned from hard copy form to individual machine-readable .pdf files," the complaint said.

However, the requested records were not in their native form, the complaint says, did not contain any other communications other than email and were missing their file attachments as well as "large portions of email conversation strings that should have been contained in the records had been hidden from view."

The complaint also alleges that records contained, "unexplained and undeclared redactions" and that when Sundeen sent the unredacted versions, the documents were "corrupted" in some way, such as her email being difficult to read in one of the records.

Sundeen could not be reached for comment.

Frigon and Russo are also suing Gasco in an individual capacity because he "acted outside his authority," Feoktistov said.

The complaint alleges that Gasco removed Frigon from a School Committee meeting in September of last year for not wearing a mask and prevented Russo from entering the same meeting.

## **Millbury Police Chief Lewos' alleged role**

The complaint also alleges that Russo complained about the incident to Myers who forwarded the complaint to Millbury Police Chief Brian Lewos.

Lewos allegedly said that he did not want Gasco to be "put in the middle of this and being the 'mask police' for the school committee," and that a person should be able to attend these public meetings without a mask if they have a medical condition.

Lewos confirmed that he said this and that his stance continues to remain for the department.

"If you have some sort of medical condition and you're not able to wear one for whatever reason, and we can't ask about it because of HIPAA, then so be it," Lewos said.

He declined to comment further on the lawsuit.

## **Superintendents' alleged roles**

Two superintendents — Myers and Kyle Brenner — are also being sued in an official and individual capacity.

Gustafson is suing the Southern Worcester Regional Vocational School District (SWRVSD) and its superintendent, Brenner, for "refusing to honor medical exemptions from their masking mandate for students with disabilities."

He said Myers was being sued for the same reason and that they are also being sued for "instituting and enforcing disciplinary measures against students caught wearing their face masks improperly or sneaking breaths."

Feoktistov said these measures included up to 40% deductions from final grades, suspension, as well as expulsion from school.

Myers is also being sued, "for having town police officers bounce mothers critical of the face mask mandate out of school board meetings under threat of arrest."

Tim D. Norris and Ian C. Keefe, the lawyers representing SWRVSD and Brenner could not be reached for comment.

Herholz is suing Old Sturbridge Academy, OSA President and Executive Director James Donahue, principal Lisa DeTora, Director of Special Education and Student Support Services Melissa Hogan and nurse Jaquelyn Marinelli, who are all being sued in an official and individual capacity.

The complaint alleges that despite having medical exemptions for her students, the defendants forced the students to continue wearing masks.

Thomas J. Conte and Alexandra N. Mansfield, the lawyers representing the OSA defendants, could not be reached for comment.

The plaintiffs are also suing DESE Commissioner Jeff C. Riley, and the Massachusetts Association of School Superintendents, as well as Reliant Medical Group and its employee, pediatrician Lindsay Oliver, Child Health Associates and its employee, pediatrician Sarah McGowan.

Two unknown defendants, John Doe and Jane Roe, are also listed in the complaint as having, "entered into an agreement with McGowan, Child Health Associates, P.C. ... to deny medical mask exemptions to all patients at Child Health Associates, P.C."

Feoktistov said that the parents are not only looking for compensatory damages but, "are also seeking an injunction against any current or future mask requirements, whether on the state or on the local level."

He said thus far they have filed a motion for a preliminary injunction.

"There has been some back-and-forth motion practice by the parties but the motion has not yet been heard by the court," he said.

The case is also waiting for a third judge to be appointed to the case after the first judge recused herself and the second disqualified himself.

Feoktistov said the second judge disqualified himself "after DESE's attorney, an assistant attorney general, disclosed that he is representing the judge, in his official capacity, in an unrelated lawsuit."

A date has not been set for a hearing as the court is still searching for a judge to hear the case, he said.

"Such a hearing would probably be a status conference to prepare for the hearing on the plaintiffs' motion for a preliminary injunction against the enforcement of face mask mandates," Feoktistov said.

He said that after the injunction hearing, the court will expedite a decision on whether to grant the injunction while the main trial proceeds.

"The injunction is being sought under the Massachusetts Civil Rights Act," Feoktistov said. "Which means that, if the injunction is granted, violating it would be a criminal offense."