

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, JEFF
LANDRY; ET AL,

PLAINTIFFS,

v.

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services; et al.,

DEFENDANTS.

CIVIL ACTION No. 3:21-CV-04370-TAD-
KDM

**PLAINTIFF STATES' RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS
AND STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY
JUDGMENT**

Under Local Rule 56.1, Plaintiff States submit this response to Defendants' Statement of Material Facts (Doc. 63), followed by Plaintiff States' Statement of Material Facts in support of their cross-motion for summary judgment.

1. Head Start is a federal discretionary grant program that promotes school readiness in low-income children up to age five. 42 U.S.C. §9831.

Response: Statement not disputed.

2. Children under age three are eligible for the related Early Head Start program. *Id.* §9840a.

Response: Statement not disputed.

3. The Head Start program began as a summer program and demonstration grant in 1964, and in 1974 the Headstart–Follow Through Act made it a permanent program. Headstart, Economic Opportunity, & Community Partnership Act of 1974, Pub. L. No. 93-644, 88 Stat. 2291.

Response: Statement not disputed.

4. Head Start is a direct federal-to-local grant that does not pass through the state. 42 U.S.C. §§ 9833, 9835.

Response: Statement disputed. Some Head Start funds go to state agencies.

5. On November 30, 2021, the Department of Health and Human Services (HHS) published the Interim Final Rule at issue here. 86 Fed. Reg. 68,052.

Response: Statement not disputed.

6. Plaintiffs are twenty-four states. Compl. ¶¶ 3–26.

Response: Statement not disputed.

7. Southern Utah University, but not the State of Utah, is a Head Start grantee. See Decl. of Stephen Lisonbee ¶¶ 4, 9, Pls.' Ex. O, ECF No. 2-16.

Response: Statement disputed. Southern Utah University is a Head Start grantee and is also a state entity. *See* Utah Code Ann. §53B-1-402.

8. The Georgia Department of Early Care and Learning (“DECAL”) has received a Early Head Start–Childcare Partnership grant. *See* Decl. of Commissioner Amy Jacobs, Pls.’ Ex. B, ECF No. 2-3.

Response: Statement not disputed.

9. The grant that DECAL received was made under the authority of multiple appropriations acts, not the Head Start Act. *See, e.g.,* Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 1583 (2020).

Response: Statement disputed as to relevancy. Given the Mandate’s breadth—it applies to “All staff, and those contractors whose activities involve contact with or providing direct services to children and families,” 45 C.F.R. §1302.93(a)(1)—DECAL’s staff and personnel are subject to the Mandate irrespective of the sources of its grant funds.

10. Unlike the grants provided to local entities to operate Head Start Programs under 42 U.S.C. § 9833, the grant received by DECAL is more administrative in nature. *See* Office of Head Start, Early Head Start Child Care Partnership State Grantee Profile, Georgia (Aug. 2016), https://www.acf.hhs.gov/sites/default/files/documents/ecl/ga_ehsccp_grantee_profile_final.pdf; HHS, Policy and Program Guidance for the Early Head Start– Partnerships (EHS–CCP) ACF-IM-HS-15-03, <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-imhs-15-03-attachment>.

Response: Statement disputed to the extent that it implies that the “administrative” “nature” of a grant is a coherent and understood concept or relevant to this case. Also disputed because DECAL’s staff and personnel are subject to the Mandate for reasons discussed in response to Statement 9 above.

11. Some DECAL staff may on occasion visit a partnership classroom, but it is not part of their day-to-day duties, and they do not provide direct Head Start services. See Decl. of Amy Jacobs ¶¶ 5, 11, Pls.’ Ex. C, ECF No. 2-3.

Response: Statement disputed. Defendants’ cited source states that “DECAL staff frequently visit Head Start programs or meets with Head Start Families, and are thus required to be vaccinated and masked under the mandate.” Doc. 2-3 ¶11. DECAL also would monitor and enforce the Mandate and be required by the Mandate to collect individual health information on staff that are funded through Head Start. *Id.* ¶10.

12. The remaining twenty-two Plaintiffs are also not Head Start grantees. Compl. ¶ 42.

Response: Statement not disputed except insofar as it implies that Plaintiff States are not deeply involved with, directly affected by, and dependent on Head Start Programs. *See* Doc. 1 ¶¶42-56.

13. Plaintiffs filed a lawsuit under the APA challenging the Rule on December 21, 2021. ECF No. 1.

Response: Statement not disputed.

14. The basis for the Rule is set forth in the preamble to the Rule, located in the Federal Register at 86 Fed. Reg. 68,052 and in the administrative record.

Response: Statement not disputed.

PLAINTIFF STATES’ STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT

15. The Georgia Department of Early Care and Learning is a State entity.

16. Southern Utah University is a State entity.

17. State entities are subject to the Mandate.

18. If the Head Start Mandate took effect, State entities would incur costs enforcing and complying with it.

19. Plaintiff States were unable to provide public comment on the Mandate through the APA's notice-and-comment procedures before it went into effect.

20. As a result of the Head Start Mandate, staff and volunteers will likely leave the Head Start program, certain providers will close, and low-income children in affected areas will be denied access to the preschool education that Congress guaranteed them. *See* Docs. 2-2 to 2-15, 2-16 to 2-19.

21. As a result of the Head Start Mandate, some parents would remove their children from Head Start programs. *See* Docs. 2-8, 2-10, 2-16.

22. Widespread closure of Head Start programs would harm the health and well-being of each State's residents. Docs. 2-7, 2-11, 2-12, 2-17.

23. The Mandate may cause Plaintiff States to lose direct federal funding or cause public schools to lose federal funding. *See* Docs. 2-2 to 2-16; *see also* Doc. 2-17 at 2-3.

24. Plaintiff States would have to change their own laws and policies to comply with the Mandate. *See, e.g.*, Doc. 2-1 at 24.

25. The Mandate would force preschool staff to decide to either submit to vaccination or lose their jobs. Docs. 2-13 to 2-16, 2-18.

27. The Mandate will force 29,953 staff to submit to the vaccine and 11,519 staff to lose their jobs. 86 Fed. Reg. at 68077-78.

28. The National Head Start Association surveyed Head Start programs and found that over one-fourth of Head Start programs anticipate losing more than 30% of their staff as a result of the Mandate. Doc. 2-2 at 3.

Dated: August 5, 2022

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