

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

P.O. Box 30736
LANSING, MICHIGAN 48909

March 4, 2022

Clerk of the Court
Michigan Supreme Court
925 W. Ottawa St.
Lansing, MI 48913

Re: *Moore Murphy Hospitality, LLC d/b/a Iron Pig Smokehouse v
Mich Dep't of Health and Human Services* (MSC No. 164039)

Dear Clerk:

The purpose of this filing is to notify the Court of supplemental authority pursuant to MCR 7.312(I). In its Bypass Application, the Michigan Department of Health and Human Services identified several existing lawsuits implicating *In re Certified Questions*, 506 Mich 332 (2020). Those suits seek to invoke the nondelegation doctrine to invalidate both the Department's and local health departments' respective, statutorily provided epidemic-response authority.

Since that filing, the following additional cases have been identified, which challenge on nondelegation grounds both this epidemic-response authority as well as other statutes, including school districts' fundamental power and duty to provide for the safety and welfare of students in their care. See MCL 380.11a(3)(b), MCL 380.601a(1)(b). These cases only further illustrate the ongoing and rapidly broadening impact of *In re Certified Questions* and the circuit court's ruling in this case:

- *Phares v Comstock Public Schools*, No. 22-0077-CZ (Kalamazoo CC, Judge Lipsey) (Ex 1, Complaint.) Count III challenges the constitutionality of MCL 380.11a(3)(b) under the nondelegation doctrine. The allegations invoke both *Certified Questions* and the circuit court's opinion here. (Compl ¶¶ 15-17, 72-76.) One circuit-court judge granted a temporary restraining order on nondelegation grounds, but another judge subsequently set the order aside for further proceedings. (Ex 2, 2/23/22 Judge Lightvoet Order Granting TRO, Preliminary Injunction, and Declaratory Relief; Ex 3, 2/25/22 Judge Lipsey Order Setting Aside.)

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March 4, 2022

- *Baker v Watervliet Public Schools*, No. 22-0014-CZ-H (Berrien CC, Judge Wiley) (Ex 4, Complaint.) Count X appears to ask the court to declare MCL 380.11a(3)(b), MCL 380.601a(1)(b), MCL 333.2451, MCL 333.2453 and any other statutes giving rise to school's mask mandate violate the nondelegation doctrine. The *In re Certified Questions* opinion is specifically alleged, and the circuit court's ruling here is discussed and attached to the complaint. (Compl ¶¶ 30, 36.)
- *A.A. v Stafford*, No. 22-192416-CZ (Oakland CC, Judge Sosnick) (Ex 5, Complaint.) Count IV alleges MCL 333.2453 violates the nondelegation doctrine.
- *Blackmon v Lenawee County Health Dept*, No. 4:22-cv-10364 (ED Mich, Judge Davis) (Ex 6, Complaint.) Count VI seeks to have MCL 333.2453 declared unconstitutional under the nondelegation doctrine. Both *In re Certified Questions* and the circuit court's ruling here are specifically alleged. (Compl ¶¶ 108-109, 113.)

Thank you for considering these additional materials.

Sincerely,



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DFF/cms

Cc: David Delaney (dmdlawyer@gmail.com)

EXHIBIT 1

***Phares v Comstock Public Schools, No. 22-0077-CZ
(Kalamazoo CC, Judge Lipsey)***

Complaint

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 2022-0077 CZ
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Court address

150 E Crosstown Parkway, Kalamazoo, MI 49001

Court telephone no.

269-383-8837

Plaintiff's name(s), address(es), and telephone no(s).
 Eric Phares, on behalf of his minor child [D.P]
 Cassie Guess, on behalf of her minor child [M.B]
 Melissa Carlson, on behalf of her minor child [I.C]
 Brooke Ward, on behalf of her minor child [K.W]

v

Defendant's name(s), address(es), and telephone no(s).
 Comstock Public Schools - 269-250-8900
 3010 Gull Road, Kalamazoo, MI 49048

In their official capacity

Jeff Thoenes, Pamela Dickinson, Matthew Schreiner, Paul
 Lamphear, Dorinda Scholly, Saralyn Brown, Karen Howes,
 Kayleen O'Donnell.

Plaintiff's attorney, bar no., address, and telephone no.
 DAVID DELANEY (P43485)
 Attorney for Plaintiffs
 113 N Illinois, Ave., PO Box 1771
 Gaylord, MI 49734
 989.731.1508

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where


it was given case number _____ and assigned to Judge _____

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 02/23/2022	Expiration date* 05/25/2022	Court clerk 
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

FILED

Feb 23, 2022

 9TH JUDICIAL CIRCUIT
 COUNTY OF KALAMAZOO
 KALAMAZOO, MICHIGAN


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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

ERIC PHARES, ON BEHALF OF HIS MINOR CHILD [D.P]
CASSIE GUESS, ON BEHALF OF HER MINOR CHILD [M.B]
MELISSA CARLSON, ON BEHALF OF HER MINOR CHILD [I.C]
BROOKE WARD, ON BEHALF OF HER MINOR CHILD [K.W]

Circuit Court
Case No: 2022-0077 CZ
Honorable ALEXANDER C LIPSEY

Plaintiffs,

V

COMSTOCK PUBLIC SCHOOLS

(IN THEIR OFFICIAL CAPACITY) JEFF THOENES, PAMELA
DICKINSON, MATTHEW SCHREINER, PAUL LAMPHEAR,
DORINDA SCHOLLY, SARALYN BROWN, KAREN HOWES,
KAYLEEN O'DONNELL

Defendants,

DAVID M. DELANEY, PLC
DAVID M. DELANEY (P43485)
Attorney for Plaintiffs
113 N. Illinois, Ave., PO Box 1771
Gaylord, MI 49734
989.731.1508

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

380.10 Rights of parents and legal guardians; duties of public schools.

It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment.

LIBERTY AND TYRANNY

The framers of Michigan's Constitution understood well the importance of separating the powers of government. The doctrine of separation of powers rests on the notion that the accumulation of too much power in one governmental entity presents a threat to liberty. James Madison expressed this sentiment more than 200 years ago when he wrote, "[T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.' " *46 th Circuit Trial Court v Crawford Co*, 476 Mich 131 (2002), "[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty. *Baron de Montesquieu, The Spirit of the Laws*

INTRODUCTION

This case is about...

Whether Comstock Public Schools, which is part of the executive branch, can create and enforce “Public Health Laws” absent any statutory authority from the Michigan Legislature.

PARTIES

1. Plaintiffs are parents of minor children who attend Comstock Public schools.
2. Defendant Comstock Public Schools is a Michigan general powers school district as provided in the Michigan Revised School Code MCL 380.1, *et seq.*
3. Individual defendants are the superintendent [Jeff Thoenes] of Comstock Public Schools and School Board Members
 - a. Pamela Dickinson
 - b. Matthew Schreine
 - c. Paul Lamphear
 - d. Dorinda Scholly
 - e. Karen Howes
 - f. Kayleen O'Donnel
 - g. Saralyn Brown

JURISDICTION AND VENUE

4. Venue is proper in this Court pursuant to MCL 600.1615, which provides that “[a]ny county in which any governmental unit...exercises or may exercise its governmental authority is the proper county in which to commence and try actions against such governmental units...” Under MCR 2.201(C)(5), actions against an officer of a governmental unit in that officer's official capacity are deemed to be actions against the governmental unit itself. Therefore, because the governmental unit being sued in this action exercise-and have, in fact, exercised—their governmental authority in Kalamazoo County, said county is the proper venue for this action. Further, all actions complained of in this suit occurred in Kalamazoo County. Venue is also proper in Kalamazoo County pursuant to MCL 600.1629(1)(a)(i) by way of MCL 600.1641(2).

BACKGROUND

5. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.
6. Comstock Public Schools created a mandatory mask policy for all students effective December 18th, 2021 after the Kalamazoo County Health Department Mask Order was rescinded.
7. The policy fails to cite any statutory authority for such a mandate of students.
8. The School Code MCL 380.1, *et seq.* does not provide any statutory authority for such a mandate of students.

9. The school mandate does not permit the school to enforce the Michigan Public Health Code MCL 333.1101 et. seq.
10. The Health Department has jurisdiction for the public health, an epidemic or infection pursuant to MCL 333.2237; MCL 333.5201 and R 325.174.
11. On June 18, 2020, Governor Whitmer issued Executive Order 2020-127, “again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.” (*Executive Order 2020-142*)
12. Governor Whitmer stated that “The Emergency Powers of the Governor Act” provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1). (*Executive Order 2020-142*)
13. After issuing Executive Order 2020-127 (State of Emergency Declaration under the Emergency Powers of the Governor Act of 1945). Governor Whitmer then issued Executive Order 2020-142 which was titled “Provision of pre K–12 education for the 2020–2021 school year.”

14. EO 2020-142 – Required the wearing of face coverings in schools
15. On October 2, 2020, the Michigan Supreme Court issued a landmark opinion, limiting Governor Gretchen Whitmer’s authority to issue and renew executive orders relating to the COVID-19 pandemic.
16. The court concluded that Governor Whitmer did not have authority to issue or renew any executive orders related to the COVID-19 pandemic under the Emergency Management Act of 1976 (“EMA”) (MCL § 30.401, *et seq.*) after April 30, 2020 –
17. The court also concluded that Governor Whitmer did not possess authority to exercise emergency powers under the Emergency Powers of the Governor Act of 1945 (“EPGA”) because the EPGA unlawfully delegates legislative power to the executive branch in violation of the Michigan Constitution.
18. After Governor Whitmer’s “Emergency Powers” in relation to issuing orders regarding Covid-19 were taken away by the Michigan Supreme Court, Michigan Department Of Health and Human Services issued an “emergency order” on October 5th 2020 which stated; “The order also requires the wearing of masks at schools.”
19. On June 17th, 2021 Michigan Department of Health and Human Services rescinded their “emergency order” that required masks to be worn by students while in school.
20. During the 2020/2021 school year Comstock Public Schools required mask under the legal authority of either the Governors Executive Orders or Emergency Orders from MDHHS.
21. During the beginning of the 2021 school year, Comstock Public Schools was under the Kalamazoo County Health Department health order that mandated masks inside of school buildings.

22. There are ZERO State or County Health Department Health Orders that mandate mask wearing amongst students in Comstock Public Schools.
23. After the Governor's Emergency Powers were limited by the Supreme Court on October 2nd 2020; the “mask mandate” was then issued by a MDHHS “Emergency Order” on October 5th 2020 that was then rescinded June 17th, 2021. The mask mandate was then passed onto the Kalamazoo County Health Department in August of 2021 until it was rescinded December 17th, 2021. We are now here in February of 2022, where Comstock Public Schools Schools has exercised unfettered power to make and enforce “Public Health Law” and violate multiple statutes in the School Code ACT 451 Of 1976.

STATUS QUO

On February 16th, 2022 The Michigan Department of Health and Human Services released new guidance to schools in Michigan. The new guidance states that masks worn in schools is no longer recommended by MDHHS. Comstock Public Schools claims they are listening to the state health experts, yet they still continue to mandate masks when the state health department is no longer recommending masks to be worn inside of schools.

Comstock Public Schools is no longer just “following the guidance” they are actually defying the guidance of the state health department and acting way out of their jurisdiction as a school. Yet Comstock Public Schools continue to mandate masks onto thousands of students everyday against the “status quo.”

As of Feb 21, 2022 Comstock Public Schools is just one of two schools in Kalamazoo County with a mask mandate. Other schools in the county have sent out communication to their parents in their district informing them of the recent change to mask optional per guidance from MDHHS and the Kalamazoo County Health Department.

Although “guidance” does not allow delegation of legal authority, it was already in question if a school has legal authority to promulgate a mask order absent of a “public health order” from a local health department and only “guidance.” Now Comstock Public Schools is acting absent of “guidance” to do so as well...

Comstock Public Schools has claimed they have the lowest covid cases of any school in Kalamazoo County and that’s because of their mask mandate. Although until January 3rd all schools in Kalamazoo County had a mask mandate and until February 21st the majority of schools in the county had a mask mandate. Plaintiffs dispute the comparison as it is unknown if Comstock Public Schools is counting positive covid cases that are deemed “not transmitted” at school the same as other schools in the county. There are also discrepancies between Comstock Public Schools and other schools in the county on how they conduct contact tracing, quarantining, and test to stay.

COMMON ALLEGATIONS

24. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.

25. Plaintiffs have a special injury or right or substantial interest that will be

detrimentally affected in a manner different from the citizenry at large *Lansing School v Lansing Board 487 Mich 349 (2000)*.

26. The Revised School Code ACT 451 Of 1976 does not expressly grant the school to implement a policy to require students to use a “medical device” that is regulated by the Federal Drug & Food Administration.
27. The Revised School Code ACT 451 Of 1976 does expressly prohibit Comstock Public Schools from issuing a mask mandate through express language in MCL 380.1504 which ***prohibits compulsory medical treatment***, the mandating of wearing a medical device.
28. Comstock Public Schools must allow for non discretionary parental opt out of the mask mandate in order to comply with MCL 380.1504.
29. During the fall of 2021 Comstock Public Schools was following the Kalamazoo County Health Department Mask Order.
30. The Kalamazoo County Health Department health order that required masks in K-6th educational settings was rescinded December 17th, 2021 and was announced November 3rd, 2021..33 days after ACT 87 was passed by the Michigan Legislature and signed into law by Governor Whitmer.
31. ACT 87 Sec 250 states : “The director or a local health officer shall not issue or enforce any orders or other directives that require an individual in this state who is under the age of 18 to wear a face mask or face covering.”
32. The Health Department has jurisdiction for the public health, an epidemic or infection pursuant to MCL 333.2237; MCL 333.5201.
33. Comstock Public Schools has no authority expressly granted to them in any statute in the State Of Michigan to promulgate and enforce a “mask mandate”.

34. The only statute in the Revised School Code Act 451 Of 1976 that the school could even argue that gives them authority for a mask mandate is 380.11a(3)(b). The terms health, communicable disease, prevention, mask, medical device, are not present in the express language of the statute.

COUNT I
COMSTOCK PUBLIC SCHOOLS EXCEEDING
ITS STATUTORY AUTHORITY BY PROMULGATING
AND ENFORCING A MASK MANDATE

35. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.

36. The Kalamazoo County Health Department issued a Public Health Order on 08-18-2021 requiring masking of students (K-6th) while inside an educational setting. The Health Order referenced MCL 333.2451 as one of its authority to issue the order.

37. MCL 333.2451 provides “upon a determination that an imminent danger to the health or lives of individuals exists in the **area served by the local health department**, the local health officer immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger.”

38. The Kalamazoo County Health Department’s rescission of their “Public Health Order” on December 17th, 2021 requiring masking, **implies** that there is no longer an “imminent danger” inside of educational settings in Kalamzoo County.

39. The fact that the Kalamazoo County Health Department does not have a mask mandate for schools implies there isn't an imminent danger present inside of schools located in Kalamazoo County.
40. A school is not **authorized** to enforce a "Public Health Order" that is no longer valid.
41. MCL 333.2451 does not state that a School Superintendent or School Board can create or enforce its own internal "imminent danger order" or a Public Health Order that has legal effect under the Michigan Public Health Code.
42. There are currently no "Governor Emergency Orders" "Michigan Department Of Health Order" or "Kalamazoo County Health Department Order" requiring masks to be worn by students in a school setting.
43. Comstock Public Schools is acting outside of its legal authority outlined by the Michigan Legislature.
44. In relation to "communicable diseases" the legislature has granted the Michigan Department Of Health and Local Health Departments with powers and limitations to communicable disease..
45. Comstock Public Schools is violating the express provisions of section 2451 of the Michigan Health Code and acting outside of its legal authority by creating "public health policy" and operating as if they are the Local Health Department.
46. There are no statutes in the Revised School Code that grant through express language a schools authority to promulgate and enforce a mask mandate.

47. There are no statutes in the State Of Michigan through express language that grants legal authority to a Public School to force students to wear a mask for a medical purpose.
48. The State Of Michigan's Board Of Education has stated several times in public meetings that they (the state board of education) do not have legal authority to implement a mask mandate. If the State Board Of Education (elected officials) unanimously admit that they do not possess legal statutory authority to implement a mask mandate there is absolutely no legal authority for a local school board/superintendent to exercise that same authority.
49. Comstock Public Schools issuing a mask mandate essentially avoids judicial review regarding due process outlined in the Public Health Code afforded to individuals.

COUNT II
VIOLATION OF MCL 380.1307 (b) OF THE
MICHIGAN SCHOOL CODE

50. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.
51. MCL 380.1307b of the School Code provides that "Any restraint that negatively impacts breathing" is prohibited under all circumstances, including emergency situations.
52. MCL 380.1307h of the School Code provides a "restraint that negatively impacts breathing" means *any* restraint that inhibits breathing.

53. The Policy for Emergency Use of Seclusion and Restraint, approved by the State Board of Education on March 17, 2017, provides a “Mechanical restraint” is the use of **any device**, article, garment, or **material** attached to a pupil’s body.
54. MCL 380.1307h(j) "Mechanical restraint" means the use of any device, article, garment, or material attached to or adjacent to a pupil's body to perform restraint.”
55. 380.1307(2) “Sections 1307 to 1307h do not limit any right or remedy of an individual under state or federal law.”
56. The School Code of Conduct provides that a student shall not commit or participate in any conduct or act defined as a crime by State law or ordinance.
57. The school mask mandate is not a State law or ordinance.
58. The board of a school district may dismiss from employment and cancel the contract of a superintendent, principal, or teacher who neglects or refuses to comply with the School Code MCL 380.1806.
59. A school official or member of a school board or other person who neglects or knowingly violates or knowingly permits or consents to a violation of the School Code is guilty of a misdemeanor MCL 380.1804.
60. Comstock Public Schools is violating the express provisions of MCL 380.1307b.

COUNT III
CONSTITUTIONAL NONDELEGATION CLAUSE
MCL. 380 11a(3)(b)

61. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.

62. Comstock Public Schools is a general powers school district in the executive branch of the government..
63. Comstock Public Schools provides educational services to approximately 1,800 students. The school's policies and rules have a large impact not just on its students but on the parents as well.
64. The Michigan Constitution of 1963 article 3, section 2 provides for the separation of powers among the three branches of state government, legislative, executive, and judicial.
65. The nondelegation clause ensures democratic accountability by preventing Congress from intentionally delegating its legislative powers to unelected officials. Sometimes lawmakers may be tempted to delegate power to agencies to “reduc[e] the degree to which they will be held accountable for unpopular actions.” R. Cass, *Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State*, 40 *Harv. J. L. Pub. Pol’y* 147, 154 (2017).
66. [T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.’ ” 46 *th Circuit Trial Court v Crawford Co*, 476 *Mich* 131 (2002),
67. [C]hallenges of unconstitutional delegation of legislative power are generally framed in terms of the adequacy of the standards fashioned by the Legislature to channel the agency’s or individual’s exercise of the delegated power. *Blue Cross & Blue Shield of Mich v Milliken*, 422 *Mich* 1, (1985).
68. “[T]he constitutional question is whether Congress has supplied an intelligible

- principle to guide the delegatee's use of discretion.” *Gundy v United States*, 139 S Ct 2116 (2019).
69. When broad power is delegated with few or no constraints, the risk of an unconstitutional delegation is at its peak. Therefore, whether a delegation is unconstitutional depends on two factors—the amount of discretion and the scope of authority.
70. The durational scope of the delegated power also has some relevant bearing, on whether the statute violates the nondelegation clause.. Of course, an unconstitutional delegation is no less unconstitutional because it last for only two days. But it is also true, as common sense would suggest, that the conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority.
71. The principal function of the separation of powers...is...to protect individual liberty. *Clinton V City Of New York*, 254 US 417 (1998) (Breyer, J.,dissenting).
72. Recently an Otsego County Court ruled that a statute in the Michigan Public Health Code did not pass constitutional muster and was in violation of the non delegation clause of the Michigan Constitution Of 1963. (*Moore Murphy Hospitality, LLC v MDHHS*, 46th Circuit Court decided January 13th, 2022. *Otsego County Court Case No. 21-18522-AE*).
73. Before 46th Circuit Court Judge Colin G. Hunter ruled that MCL 333.2253 was unconstitutional as it violated the non delegation clause as it is clearly an unconstitutional delegation of power from the legislative to the executive branch.

74. The key words in MCL 333.2253 that resulted in this judgment that was under review of the court were **necessary** and **prohibit**. As there were no standards, the statute provided no intelligible principles to guide the director. *Moore Murphy*.
75. MCL 333.2253 was used by MDHHS to implement a statewide mask mandate on students during the 2020/2021 school year.
76. MCL 333.2253 was severed from the Michigan Public Health Code on January 14, 2022. Judge Colin G. Hunter in his opinion and order regarding petitioners appeal. *Moore Murphy*
77. Recently the United States Supreme Court put a stay in place of the OSHA vaccine and mask/test mandate. *National Federation of Independent Business v Department of Labor, Occupational Safety And Health Administration* 595 U. S. __ (2022) (Gorsuch, J., concurring)
78. The central legal question of the OSHA vaccine/mask and test policy was did the agency have express authority granted to them through congress to enact such a mandate.
79. On the one hand, OSHA claims the power to issue a nationwide mandate on a major question but cannot trace its authority to do so to any clear congressional mandate. *National Federation*
80. In order to have the full force of law and effect the schools mask mandate must draw its authority from a lawful delegation of power.
81. 380.11a(3)(b) of the Revised School Code Act 451 Of 1976 states the following; (b) **Providing** for the **safety** and **welfare** of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity.

82. 380.11a(3)(b) provides no standards, the statute provides no intelligible principles to guide the schools use of authority.
83. The term “providing” is not properly prescribed with any sufficient limits or standards to it’s express authority in the statute.
84. When viewing the statute as whole no part of the statutory scheme provides any definitions of “providing” “safety” or “welfare”.
85. There is no definition of what the important words “providing” “safety” or “welfare” mean or how its definitions are in any way limited or channeled by the Legislature.
86. Without any sufficient limits or standards the school alone is left with unfettered discretion on what rules to promulgate under the safety and welfare statute.
87. When the statute is read as a whole, the statute fails to include any meaningful standards that channel either the scope of the schools exercise of sweepingly broad authority, or the duration of that authority, in any material way.
88. That implied authority can, as the Comstock Public Schools mask mandate has, lead to the threat of suspension, kids being unenrolled from school, parents not being able to choose the best health practices for their children, and used as a legislative workaround to create and enforce an area that is precedently governed by Health Departments through the Michigan Public Health Code.
89. The standards prescribed for guidance must be as reasonably precise as the subject matter requires or permits. *Osius v St. Clair Shores* 344 Mich 693 (1956)
90. Comstock Public Schools issuing a mask mandate is a legislative ““work-around.””
91. The Michigan Legislature has not through any express language given a Public School the authority to create and enact Public Health Law.

92. The School arguably is not even the agency most associated with public health regulation. *National Federation*
93. The Michigan Constitution of 1963 Art. IV, § 51 outlines Public Health and General Welfare. It states “ The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.” Section 51 expressly states it is the **Legislature** who makes laws in regards to public health, not a public school.
94. The Michigan Legislature to date has not passed any laws granting a school authority to promulgate and enforce public health rules as if they are a local health department through express language.
95. In contrast the Michigan Legislature passed Public Act 87 and was signed into law by Governor Whitmer on September 29,2021.
96. Public Act 87 sec 250 expressly states “The director or a local health officer shall not issue or enforce any orders or other directives that require an individual in this state who is under the age of 18 to wear a face mask or face covering.”
97. The school issuing a mask mandate is a clear legislative work around.
98. By trying to fit a mask mandate which requires the use of a medical device into the statutory authority of 380.11a(3)(b) is like trying to hide an elephant in a mouse hole. *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001).
99. The nondelegation doctrine ensures democratic accountability by preventing the Legislature from intentionally delegating its legislative powers to others.

100. Comstock Public Schools assumed broad authority granted under 380.11a(3)(b) allows a Public School to enact any law/rule they deem falls into “safety and welfare” without any meaningful standards that channel either the scope of the schools exercise of sweepingly broad authority, or the duration of that authority, in any material way.
101. As such, the delegation of power contained within MCL 380.11a(3)(b) violates the Michigan Constitutions non delegation doctrine.
102. MCL 380.11a(3)(b) constitutes an unlawful delegation of legislative power to an executive agency under Const 1963 art 3 section 2 which prohibits exercise of the legislative power by the executive branch.

COUNT IV
RIGHTS OF PARENTS; DUTIES OF PUBLIC SCHOOLS
MCL 380.10

103. Plaintiffs hereby incorporates by reference all preceding paragraphs herein.
104. MCL 380.10 of the Revised School Code states;

It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children.

The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment

105. The Michigan Legislature passed MCL 380.10 in 1996 after the landmark Michigan Supreme Court decision in *People v. DeJonge*, 442 Mich. 266 (1993)
106. The U.S Supreme Court has affirmed the parents rights between them and their children. “[T]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)
107. It’s without a doubt that making the decision of wearing a medical mask or not wearing one is a form of making a “medical decision”.
108. Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, and assuming that a person has a protectable interest in not being erroneously labeled as mentally ill, parents -- who have traditional interests in and responsibility for the upbringing of their child -- retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. *Parham v. J.R.*, 442 U.S. 584 (1979)
109. Through the Revised School Code Act Parents have a right to opt their child out of curriculum materials and mandatory vaccines.
110. 380.10 reaffirms the Legislature's intent to grant authority over medical decisions (“care”) inside of schools to the parent; not the school.
111. A school has zero statutory authority to make medical decisions for someone else's child. “[T]he child is not the mere creature of the State. *pierce*
112. Comstock Public Schools is in violation of express statutory language of 380.10. by not allowing parents to **direct** the care of their children.

Dated: February 22, 2022

/s/ David Delaney

DAVID DELANEY (P43485)

Attorney for Plaintiffs

113 N Illinois, Ave., PO Box 1771

Gaylord, MI 49734

989.731.1508

dmdlawyer@gmail.com

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EXHIBIT 2

**2/23/22 Judge Lightvoet Order Granting TRO,
Preliminary Injunction, and Declaratory Relief**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

ERIC PHARES, ON BEHALF OF HIS MINOR CHILD [D.P]
CASSIE GUESS, ON BEHALF OF HER MINOR CHILD [M.B]
MELISSA CARLSON, ON BEHALF OF HER MINOR CHILD [I.C]
BROOKE WARD, ON BEHALF OF HER MINOR CHILD [K.W]

Circuit Court
Case No: 2022-0077 CZ
Honorable ALEXANDER C LIPSEY

Plaintiffs,

V

COMSTOCK PUBLIC SCHOOLS

(IN THEIR OFFICIAL CAPACITY) JEFF THOENES, PAMELA
DICKINSON, MATTHEW SCHREINER, PAUL LAMPHEAR,
DORINDA SCHOLLY, SARALYN BROWN, KAREN HOWES,
KAYLEEN O'DONNELL.



Defendants,

DAVID M. DELANEY, PLC
DAVID M. DELANEY (P43485)
Attorney for Plaintiffs
113 N. Illinois, Ave., PO Box 1771
Gaylord, MI 49734
989.731.1508

ORDER GRANTING TEMPORARY
RESTRAINING ORDER; PRELIMINARY INJUNCTION AND DECLARATORY
RELIEF

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At a session of said Court, held in the
Courthouse in the County of Kalamazoo on
the 13 day of February 2022

PRESENT: HONORABLE
Circuit Court Judge

This cause coming to be heard on Plaintiffs' Motion for Temporary Restraining Order;
Preliminary Injunction, Declaratory Relief, and the court having considered the motion:

IT IS HEREBY ORDERED that MCL 380.11a(3)(b) violates the nondelegation clause of
the Michigan Constitution.

This Order shall remain in full force and effect for (until 4/1/23) days from the date hereof or
until 4/1/23 2022, unless sooner modified or dissolved by this court.

Violations are punishable as contempt of Court.

A hearing is set for Thurs 3/10 2022, at 4:00 pm via Zoom (4277239751)

This order is entered 2/23/22 2022 at 2:30 p m. PW: 056913

**THIS ORDER IS NOT A FINAL ORDER, DOES NOT RESOLVE ALL CLAIMS AND
DOES NOT CLOSE THE CASE**

IT IS SO ORDERED.


247677

Circuit Court Judge

EXHIBIT 3

2/25/22 Judge Lipsey Order Setting Aside

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

ERIC PHARES obo his minor child
[D.P.], CASSIE GUESS obo
her minor child [M.B.], MELISSA
CARLSON, obo her minor child [I.C.],
BROOKE WARD, obo her minor child [K.W.],

Plaintiffs,

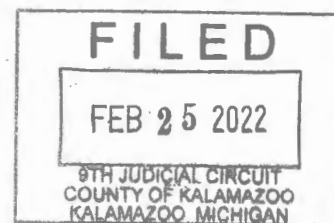
Judge Alexander C. Lipsey

v

No. 22-0077-CZ

COMSTOCK PUBLIC SCHOOLS,
[SUPERINTENDENT] JEFF THOENES,
PAMELA DICKINSON, MATTHEW SCHREINER,
PAUL LAMPHEAR, DORINDA SCHOLLY,
SARALYN BROWN, KAREN HOWES,
and KAYLEEN O'DONNELL,

Defendants.



DAVID M. DELANEY (P43485)
DAVID M. DELANEY, PLC
Attorney for Plaintiffs
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PO Box 1771
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TIMOTHY J. MULLINS (P28021)
TRAVIS COMSTOCK (P72025)
GIARMARCO, MULLINS & HORTON, P.C.
Attorneys for Defendants
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020
tmullins@gmhlaw.com
tcomstock@gmhlaw.com

**ORDER GRANTING DEFENDANTS' MOTION FOR TO SET ASIDE ORDERS OR, IN
THE ALTERNATIVE, FOR RECONSIDERATION OF THE ENTRY OF TEMPORARY
RESTRAINING ORDERS**

At a session of said Court held in
the Courthouse, City of Kalamazoo,
County of Kalamazoo, State of Michigan,
on February 25 2022;

PRESENT:

Alexander C. Lipsey

Circuit Court Judge

THE MATTER coming before the Court on the Defendants' Motion to Set Aside Orders or, in the Alternative, For Reconsideration of the February 23, 2022 Temporary Restraining Orders, the Court having read the brief(s), having heard argument on the Defendants' motion, and being fully apprised in the premises,

IT IS ORDERED that the February 23, 2022 Orders – (1) a form Order and (2) the Plaintiffs' proposed Order attached to their prior motion – are hereby VACATED;

IT IS FURTHER ORDERED that a hearing on Plaintiffs' previously filed motion that substantively seeks only declaratory relief on Count III of their Complainant is set for a hearing on _____ at _____ am/pm. The Defendants' brief in response to that motion is due on or before _____.

*Emergency Hg: Monday, February 28, 2022 @ 3:30pm
via Zoom*

This is not a final order and does not close the case.

*427-723-9751
PW # 056913*

2/25/2022
Date:

Alexander C. Lipsey
Hon. Alexander C. Lipsey
Circuit Court Judge

EXHIBIT 4

*Baker v Watervliet Public Schools, No. 22-0014-CZ-H
(Berrien CC, Judge Wiley)*

Complaint

STATE OF MICHIGAN		SUMMONS	CASE NO.
JUDICIAL DISTRICT			2022-004-001
2nd JUDICIAL CIRCUIT			
COUNTY PROBATE			

Court address

811 Port St., St. Joseph, MI 49085

Court telephone no.

(239) 983-7111

Plaintiff's name(s), address(es), and telephone no(s)

Emma Lynn Baker by next friend Stacy Nicole Baker
1927 Nash Dr., St. Joseph, MI 49085, Jordan Brule
by his next friend Stefanie Brule, 7604 Red Arrow
Highway, Lot #13, Watervliet, MI 49098, Noah Brule
by his next friend Stefanie Brule, 7604 Red Arrow
Highway Lot #13, Watervliet, MI 49098 (269) 335-4788
Tallen James Roberts by his next friend Angela Roberts 449
E. Saint Joseph St., Watervliet, MI 49098 269-323-7748

Plaintiff's attorney, bar no., address, and telephone no.

James A. Thomas Esq. P80931
1925 Breton Rd. Suite 250
Grand Rapids, MI 49506
616-747-1188
jimmy@jimmythomaslaw.com

Elizabeth Straub by her next friend
Karen Gubler 1211 Seneca Rd., Spring
Harbor, MI 49782 269-730-2908

Defendant's name(s), address(es), and telephone no(s)

Watervliet Public Schools, 4505 Red Arrow Hwy.
Watervliet, MI 49098 269-463-0300, Superintendent
Phillip "Ric" Seager, AKA Phillip Seager, AKA Ric Seager
269-462-0300 Watervliet Board of Education
Lakeshore Public Schools 5771 Cleveland
Ave., Stevensville, MI 49127 (269) 428-1400
Superintendent Greg Edling (269) 428-1400
Lakeshore Public School Board of Education
St. Josephs public schools 2580 S.
Cleveland Avenue, St. Joseph, MI 49085
(269) 926-3100, Superintendent Jenny Lee
St. Joseph Public Schools Board of Education

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 01/21/2022	Expiration date* 04/22/2022	Court clerk SHARON J. TYLER
---------------------------------	---------------------------------------	---------------------------------------

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS

Case No. 2021-0-14 -CZ-14

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with

List all documents served with the summons and complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Date Signature: _____
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
 Day, date, time

Signature _____ on behalf of _____

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DUPLICATE ORIGINAL

STATE OF MICHIGAN
IN THE 2nd CIRCUIT COURT FOR THE COUNTY OF BERRIEN
CIVIL DIVISION

EMMA LYNN BAKER By Her Next Friend STACEY NICOLE BAKER also as an individual plaintiff,
JORDAN BRULE By His Next Friend STEFANIE BRULE also as an individual plaintiff,
NOAH BRULE By His Next Friend STEFANIE BRULE
TALLEN JAMES ROBERTS By His Next Friend ANGELA ROBERTS also as an individual plaintiff,
ELIZABETH STRAUB By Her Next Friend KAREN GARLANGER also as an individual plaintiff
Plaintiffs,

CASE NO.:

2022-0014-CZ-H
2021 -EZ

v.

DIVISION:

Hon. Judge

DONNA B. HOWARD

WATERVLIET PUBLIC SCHOOLS,
SUPERINTENDENT RIC SEAGER,
WATERVLIET BOARD OF EDUCATION,
LAKESHORE PUBLIC SCHOOLS,
SUPERINTENDENT GREG EDING,
LAKESHORE PUBLIC SCHOOL BOARD OF EDUCATION,
ST JOSEPH PUBLIC SCHOOLS,
SUPERINTENDENT JENNY FEE,
ST JOSEPH PUBLIC SCHOOLS BOARD OF EDUCATION
Defendants.

Attorney for Plaintiff
James A. Thomas, Esq. P80931
1925 Breton Rd. Suite 250
Grand Rapids, Michigan 49506
(616) 747-1188
jimmy@jimmythomaslaw.com

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND IMMEDIATE
DECLARATORY RELIEF**

There is no other pending or received civil action arising out of the transaction or occurrence alleged in the complaint filed by the Plaintiffs. Plaintiffs state as their complaint the following:

JURISDICTION OF THE PARTIES

1. Plaintiff Emma Lynn Baker (hereafter "Emma") is a resident of Berrien County, Michigan and is an 11 year old in 6th grade at Lakeshore Middle School that is part of Lakeshore Public Schools.

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2. Stacey Nicole Baker (hereafter “Emma’s Mom”) is the mother of Emma and her next friend. She is also an individual plaintiff who has attached an affidavit for verification.
3. Plaintiff Jordan Brule (hereafter “Jordan”) is a resident of Berrien County, Michigan and is a 14 year old in 9th grade at Watervliet High School that is part of Watervliet Public Schools.
4. Stefanie Brule (hereafter “SB”) is the mother of Jordan and his next friend. She is also an individual plaintiff who has attached an affidavit for verification.
5. Plaintiff Noah Brule (hereafter “Noah”) is a resident of Berrien County, Michigan and is a 16 year old in 11th grade at Watervliet High School that is part of Watervliet Public Schools.
6. SB is also the mother of Noah and his next friend. She is also an individual plaintiff who has attached an affidavit for verification.
7. Plaintiff Tallen James Roberts (hereafter “TJ”) is a resident of Berrien County, Michigan and is a 5 year old in Kindergarten at Watervliet South Elementary School that is part of Watervliet Public Schools.
8. Angela Roberts (hereafter “AR”) is the mother of TJ and his next friend. She is also an individual plaintiff who has attached an affidavit for verification.
9. Plaintiff Elizabeth Straub (hereafter “Elizabeth”) is a resident of Berrien County, Michigan and is 13 years of age at Upton Middle School that is part of St Josephs Public Schools.
10. Karen Garlanger (hereafter “KG”) is the mother and next friend of Elizabeth Straub. She is also an individual plaintiff who has attached an affidavit for verification.
11. Defendant Watervliet Public Schools (hereafter “WPS”) is the local school district for Jordan, Noah, and TJ that is mandating mask wearing through the superintendent which this lawsuit is based.
12. Defendant Ric Seager (hereafter “RS”) is the Superintendent for WPS and is enforcing mandates on the students to wear masks and quarantining in his school district.

13. Defendant Watervliet Board of Education (hereafter “WBOE”) has voted to enforce a mask mandate on all of the students enrolled at WPS and enforced by its superintendent RS. See Exhibit F Watervliet mask protocol.
14. Defendant Lakeshore Public Schools (hereafter “LPS”) is the school district that Emma attends and is mandating masks through its superintendent which this lawsuit is based. See Exhibit G Lakeshore mask mandate
15. Defendant Greg Eding (hereafter “GE”) is the superintendent for LPS and is enforcing mandates on the students to wear masks in his school district.
16. Defendant Lakeshore Public School Board of Education (hereafter “LSBOE”) has voted to enforce a mask mandate on all of the students enrolled at LPS and enforced by its superintendent GE.
17. Defendant St. Joseph Public Schools (hereafter “SJPS”) is the school district that Elizabeth attends and is mandating masks through its superintendent which this lawsuit is based. See Exhibit E SJBOE statement on masks
18. Defendant Jenny Fee (hereafter “JF”) is the superintendent for SJPS and is enforcing mandates on the students to wear masks in her school district.
19. St. Joseph Public Schools Board of Education (hereafter SJPSBOE) voted to enforce a mask mandate on all of the students enrolled at SJPS and enforced by its superintendent JF.
20. This Court has the jurisdiction to grant equitable relief being requested by the Plaintiffs. The Plaintiffs will be submitting affidavits.
21. The facts presented in this matter all occurred in Berrien County and all parties relevant to this complaint are located in Berrien County. Venue is proper in Berrien County.

GENERAL ALLEGATIONS

22. The Berrien County Health Department currently has no public health order or emergency mandates for the county nor does the Michigan Department of Health and Human Services.
23. The board members from WBOE, LSBOE and SJPSOE allegedly voted or implemented by proxy mask mandates on all school children enrolled in the prospective district schools covered by these boards.
24. The superintendents who work for each of the named school boards in paragraph 23 are enforcing the unlawful mask mandates.
25. Upon information and belief the vote and decisions of the boards were passed to the respective superintendents, GE, JF and RS, of the school districts followed and enforced mask mandates upon the schools that they oversee and continue to mandate unlawful mandates upon the students of the districts. Plaintiffs also believe the respective superintendents collaborated with the boards to help initiate the decisions to enforce masking and quarantining.
26. The Defendants in this case are forcing school age children to wear medical devices on their faces. Each board, superintendent and school district have violated the Michigan constitution separation of powers Article 3 section 2, non-delegation doctrine.

FURTHER BACKGROUND

27. Governor Whitmer issued Executive Order 2020-127 on June 18, 2020, “again finding that the Covid-19 pandemic constitutes a disaster and emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension

request, that order also constituted a state of emergency and state of disaster declaration under that act.” (*Executive Order 2020-142*)

28. Under the emergency powers of the Governor Act, it provided that after declaring a state of emergency, the governor may promulgate reasonable orders, rules and regulations as necessary to protect life and property or to bring the emergency situation within the affected area under control. MCLM 10.31(1) (*Executive Order 2020-142*)

29. After the issuance of Executive Order 2020-127 which fell under the Governor Act of 1945, she issued Executive Order 2020-142 which was titled “Provision of pre K-12 education for the 2020-2021 school year. This order required face coverings in schools.

30. The Michigan Supreme Court issued a landmark opinion on October 2, 2020 limiting the governor’s authority to issue and renew executive orders relating to the Covid-19 pandemic. The Court held that the governor did not have the authority to issue or renew any executive orders related to the Covid-19 pandemic under the Emergency Management Act of 1976 (EMA) (MCL 30.401, *et seq.*) after April 30, 2020. The court also concluded that the governor did not possess authority to exercise emergency powers under the Emergency Powers Act of 1945 (EPGA) because the EPGA unlawfully delegates legislative power to the executive branch in violation of the Michigan Constitution.

31. After the governor’s powers were taken by the Supreme Court of Michigan in regard to Covid-19, the Michigan Department of Health and Human Services (MDHHS) issued an emergency order on October 5, 2020 which stated that this order requires the wearing of masks in schools. On June 17, 2021, MDHHS rescinded their emergency order that required school kids to wear masks.

32. On September 1, 2021 the Berrien County Health Department (BCHD) issued a public health order requiring children to wear masks in school. On September 29, 2021, the BCHD rescinded their public health order.

33. As of the date of January 18, 2022, there are at least three school boards and three school superintendents using unbridled and unfettered power to create and enforce public health law contrary to multiple statutes in the School Code Act 451 of 1976, contrary to separation of powers and non-delegation law violating the Michigan Constitution and the United States Constitution.

COMMON ALLEGATIONS

34. Plaintiffs hereby incorporate by reference all preceding paragraphs herein.

35. Plaintiffs have a special injury or substantial interest that will be detrimentally affected in a manner different from the rest of the citizenry of Berrien County.

36. The BCHD public health order requiring the masking of students pre K-12 in an educational setting was rescinded on September 29, 2021 at midnight. That order was issued under MCL 333.2451 (imminent danger) and MCL 333.2453 (prohibit the gathering of people). A recent order out of the 46th Circuit Court for Ostego County written by the Honorable Colin G. Hunter consisting of 31 pages is attached as persuasive authority. The dicta in that order is relevant to the separation of powers/non-delegation doctrine count within this complaint and will be used as persuasive authority. See Judge Hunter's Order Attached as Exhibit C.

37. The Revised School Code Act 451 of 1976 (RSCA) does not expressly grant the school to implement a policy to require students to use a medical device that is regulated by the Federal Drug and Food Administration. (FDA).

38. The RSCA prohibits these defendants from issuing a mask mandate through express language in MCL 380.1504 which prohibits compulsory medical treatment.

39. Each Defendant superintendent notified parents via email that the school districts that each superintendent oversees will be requiring students to wear a mask while attending school after the BCHD rescinded the their public health order.

40. The plaintiffs' irreparable damages also include violation of their due process rights, a mandated quarantine by being forced to wear a mask when they are all asymptomatic and being forced into masks by an entity that has no lawful grounds to implement a mask mandate. The school boards have no lawful grounds to enforce a mask mandate under the health statutes, school administrative rules, the CDC or world health organization guidelines.

41. At least three separate school boards in Berrien County have promulgated a law to enforce a mask mandate and then instituted executive authority over them in violation of separation of powers by removing students from classroom and school property who do not comply with wearing the masks.

42. The school board policies and orders require every educational institution affected and overseen by these particular boards insure that masking and quarantining will occur on school property based on the subjective and unlawful analysis of the school board members listed as defendants in this action. Under information and belief, there was no medical expertise used to enact their vote, which is a requirement for local health departments to implement health orders. Each board invoked mask mandates upon the students by simply casting the majority vote to do so by each school board defendant in this cause.

43. The Michigan Department of Health and Human Services along with any local county health departments across the state must use the input of a medical doctor to implement a public

health order. “Factual determinations” and “findings” related to Covid-19 and the efficacy of mask wearing as a mitigation to Covid-19 must be approved by a licensed doctor before any health order is signed and promulgated under the statutes and authority allegedly conferred by MCL 333.2451, MCL 333.2453, and Mich Admin code R. 325.175(4).

44. The County Commission constitutes a local governing entity under Michigan’s Public Health code. Under Michigan law, a local health department is created by a local governing entity MCL 333.2413. This means that the County Commission has primacy over and is statutorily obligated to oversee the local health department. The Public Health Code’s plain language supports this conclusion by providing that when a local health department adopts a regulation it shall be approved or disapproved by the local governing entity. MCL 333.2441. Those regulations only become effective after the County Commissioners approve of them. Otherwise there are no checks and balances on the unelected bureaucrats that have seemingly unfettered and unbridled power to continue a perpetual emergency unilaterally.

45. In this scenario, the school boards of Berrien County have ignored lawful protocol and procedures needed to determine whether the necessary factual findings were made that a local health agency would have to state in the public health order to justify a mandate on the county. This is power that the local County Commission confers to a “health officer” who then has a power to declare an emergency pursuant to the public health code. But even in this scenario, the health statutes noted above MCL 333.2451, MCL 333.2453 and Mich Admin Code R. 325.175(4) do not authorize mask mandates. There is no administrative rule or school code that allows for masking students. There is no statute, administrative code or rule, no school code or policy that has a triggering effect to implement a mask mandate, let alone, give that authority to a school board, school district or superintendent to implement. Moreover, there is no authority

that could be given to any of the defendants in this cause that would harness the unbridled power that was unilaterally given to itself to continue such a mandate upon the students and staff.

Another words, how long is the authority to continue the implementation, under what circumstance and who is justified in making the orders to follow. These issues are tantamount to a violation of the non-delegation of the Michigan Constitution.

46. The school boards mask mandate does not contain specific factual determinations and findings necessary to support a mask mandate. For example, there were no actual or suspected cases of Covid-19 among a student, a teacher or other person in any of the schools that these school boards voted to mask as required under Mich Admin Code R 325.175(4). Even if there was at one time, the fact of the matter is that this mandate is in perpetuity until the person(s) in charge say there is no longer a mandate. Under information and belief, the school boards did not find that Covid-19 poses an imminent danger to the health or lives of the people in the schools. In this scenario MCL 333.2451 would state in the county. The last example is a mask mandate is necessary to ensure a continuation of essential public health services and enforcement of health laws required by MCL 333.2453. Being that the mask mandates are in place by the authority of the school board, the plaintiffs state that there is no authority that the school board has to use as authority to mandate mask wearing.

47. It is the Plaintiffs' position that health departments' orders for a mask mandate would be considered a regulation within the plain meaning of MCL 333.2441. The school board has no authority under any of the health care statutes to promulgate and order a regulation to mandate a mask to every asymptomatic child enrolled in the schools that they oversee. The school boards are implementing mask mandates on healthy children who are not "carriers" of an illness yet they are required to wear a respirator on their face.

48. The Defendant school boards and the superintendents of each school district have taken on the role of a health care proxy by promulgating a rule and enforcing the same in breach of separation of powers and in violation of the law.

49. The defendant school boards and superintendents have violated every student's Privacy rights, bodily autonomy rights and Constitutional rights of Due Process by forcing masks in the schools they oversee.

50. The due process rights and statutory rights of the plaintiffs were violated by the Defendants' collectively as it pertains to the schools' districts' mask wearing, the lack of a study to implement and the fact that there is no statutory authority to do so. This is a clear violation of due process and federal and state law.

51. Plaintiffs' would all be sent home or have the police called on them if they failed to comply with the unlawful mandate from the school boards and superintendents which violates their fundamental rights as parents under 380.10.

52. The plaintiffs' request emergency relief in this matter. Without the intervention of the Court, all plaintiffs will suffer irreparable harm by deprivation of their education, their fundamental rights under 380.10 of the school code, the Constitution of the United States and Michigan, their liberty rights and due process rights.

IMMEDIATE DECLARATORY RELIEF UNDER MCR 2.605 IS APPROPRIATE

53. Under Michigan law, "whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment." *League of Women Voters v. Secretary of State*, 506 Mich 561, 585-586; 957 NW2d 731 (2020).

54. MCR 2.605(A)(1) states that, “in a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.”

55. To show an actual controversy, the plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing School Educational Association v. Lansing board of Education*, 487 Mich at 372 n.20; 792 NW2d 686 (2010).

56. Michigan’s appellate courts have consistently found that a plaintiff pleads an actual controversy where they allege that an invalid rule or illegal action jeopardizes their rights or interests. See *Lash v. Traverse City*, 479 Mich 180, 196-197; 735 NW2d 628 (2007) *UAW v. Central Michigan University Trustees*, 295 Mich App 486, 496-497; 815 Nw2d 132 (2012).

57. The plaintiffs allege that the three school boards being sued in this complaint and the school district superintendents have promulgated and enforced mask mandates on their own accord without legal authority and in violation of the state constitution. Each plaintiff has a constitutionally protected interest that was effectuated by the mask mandates imposed upon them. The plaintiffs are all susceptible to penalties for non-compliance pursuant to the school and superintendent rules for removing students from school property who refuse to comply by not wearing a mask. The plaintiffs allege this mask mandate is invalid. A declaratory judgment is necessary to question the issues raised and to clarify that the masks are an invalid and unlawful exercise of the governmental authority being implemented by school administrators and school boards.

58. MCR 2.605(D) states that a court may order a speedy hearing of an action for declaratory relief and otherwise advance it on the calendar. Because of the legal nature of the issues

presented and the fundamental rights being deprived, the plaintiffs are seeking an expedited hearing on these issues based on the allegations in the complaint.

59. For the reasons stated above, the plaintiffs are seeking a declaratory judgment under MCR 2.605. Judicial Review for the authority the school board is using to create the mask mandate under MCR 2.605 is needed. This mandate not only effects the students and staff of the schools, but of the whole citizenry of Berrien County if they have to enter a school for any reason whether it be a parent picking up or dropping a kid, a person who has contracted to work for the schools for maintenance or food service or people from other schools who come to visit the school for sports or other reasons. Every citizen is affected by this unlawful order who enters upon school property where these unlawful mask mandates exist.

COUNT I

**JUDICIAL DECLARATION: THE SCHOOL BOARDS AND SUPERINTENDENTS DO
NOT HAVE AUTHORITY TO PROMULGATE AND ENFORCE MASK MANDATES
UNDER RECOMMENDED GUIDELINES FROM CENTER FOR DISEASE CONTROL
AND PREVENTIONS, WORLD HEALTH ORGANIZATION OR ANY SCHOOL
ADMINISTRATIVE CODES OR STATUTES**

60. Plaintiffs incorporate by reference paragraphs 1-59 as if fully stated herein.

61. The Defendant school boards do not have authority to promulgate and create a mask mandate and then enforce the same as both a legislative and executive authority under separation of powers.

62. The Defendant school boards do not have the authority under any of the recommended guidelines of the CDC or WHO or school administrative codes to promulgate a vote and enforce the same on the student bodies that they oversee. The Plaintiffs seek for this Court to declare

that guidance from the CDC or WHO does not give the school boards or superintendents' legal authority to create a mandate from a mask recommendation. The Plaintiffs further seek and request this court to declare that no administrative code exists that would authorize school boards to implement mask mandates. 325.175(2) states, "When a school official reasonably suspects that a student has a communicable disease except for AIDS, HIV infection, and non-communicable diseases, the official may exclude the student for a period sufficient to obtain a determination by a physician or local health officer as to the presence of a communicable disease." This administrative code at best authorizes a school official only to exclude a student to obtain a determination by a doctor or health officer whether the student may have a communicable disease under a reasonable standard. This code in no way authorizes a mask mandate.

63. The superintendents of the school districts that had school boards vote a mask mandate have no authority to enforce mask mandates in their respective school districts based on guidance from the CDC, WHO or administrative codes.

64. For the reasons stated above, Defendants have exceeded their statutory authority by mandating masks to the plaintiffs.

65. For the reasons stated above, the plaintiffs are seeking a declaratory judgment under MCR 2.605.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the defendants' mask mandates are unlawful and not enforceable for the above stated reasons.

B. Grant a declaratory judgment that Defendants' violated Plaintiffs' Constitutional rights and statutory rights.

C. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

D. Grant any other relief this Court deems just and proper.

COUNT II

JUDICIAL DECLARATION MCL 333.2451 DOES NOT AUTHORIZE THE MASK

MANDATE BY AN ELECTED SCHOOL BOARD OR SUPERINTENDENT

66. Plaintiffs incorporate by reference paragraphs 1-65 as if fully stated herein.

67. MCL 333.2451(1) states that "[u]pon a determination that imminent danger to the health or lives of individuals exists in the area served by the local health department, the local health officer immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger." It further states,

"The order shall incorporate the findings of the local health department and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger."

68. The authority granted by MCL 333.2451(1) is only triggered "[u]pon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department." Without that determination the health department has no authority to issue an order under the statute. A healthy child attending school with a mask is deemed asymptomatic and therefore cannot be an imminent danger by definition under this statute. The power under MCL 333.2451 is limited to avoid, correct, or remove the imminent danger. Universal masking is not included as a power under MCL 333.2451 because universal masking does not avoid, correct, or remove the imminent danger. First, only diagnosed students may be

statutorily considered as an imminent danger, otherwise due process fails. Second, requiring a mask on a child diagnosed with Covid-19 does not avoid, correct, or remove the danger. The only means of avoiding, correcting, or removing the danger is to quarantine until the diagnosed child is no longer contagious. A universal masking policy does none of these things.

69. Based on the language of the statute, the school boards cannot stand in as a proxy for the health department under this statute to issue a mask mandate. Because no authority has been given by the school boards to justify or implement the mask mandate, plaintiffs are seeking declaratory relief to eliminate this statute as grounds for the school board to justify its mask mandate.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the defendants' mask mandates would not be enforceable under MCL 333.2451(1) for the above stated reasons.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

C. Grant any other relief this Court deems just and proper.

COUNT III

JUDICIAL DECLARATION MCL 333.2453 DOES NOT AUTHORIZE THE MASK

MANDATE BY AN ELECTED SCHOOL BOARD

70. Plaintiffs incorporate by reference paragraphs 1-69 as if fully stated herein.

71. MCL 333.2453 states:

“If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to ensure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. MCL 333.2453(1)

72. The authority triggered by the statute requires a determination that control of an epidemic is necessary to protect the public health. Once triggered, MCL 333.2453(1) authorizes a local health department to issue “emergency” orders. The BCHD rescinded their emergency order on September 29, 2021 requiring masks and that rescission implies that there is no longer an “imminent danger” inside the educational settings in Berrien County. This statute does not authorize a school board or superintendent can create or enforce its own internal imminent danger order or a public health order for the school districts. The school district, the school board and the superintendent are not authorized to enforce a Public Health Order if one does not exist in their county. In this scenario, the school boards have conjured up a public health order internally to enforce in the schools. The express purpose of the universal mask mandate by each of the school boards is to avoid quarantines which was published by several letters to the district parents.

73. Because no authority has been given by the school boards to justify the mask mandate, plaintiffs are seeking declaratory relief to eliminate this statute as grounds for the school board to justify its mask mandate.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the defendants’ mask mandates would not be enforceable under MCL 333.2453(1) for the above stated reasons.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs’ rights.

C. Grant any other relief this Court deems just and proper.

COUNT IV

JUDICIAL DECLARATION MICH ADMIN CODE 325.175(2) AND (4) DOES NOT
AUTHORIZE THE MASK MANDATE BY AN ELECTED SCHOOL BOARD

74. Plaintiffs incorporate by reference paragraphs 1-73 as if fully stated herein.
75. Mich Admin Code R 325.175(2) states:
- “When a school official reasonably suspects that a student has a communicable disease except for AIDS, HIV infection, and non-communicable diseases, the official may exclude the student for a period sufficient to obtain a determination by a physician or local health officer as to the presence of a communicable disease.”
76. Mich Admin Code R 325.175(4) states:
- “When a local health officer confirms or reasonably suspects that a student or individual attending school or a group program has a communicable disease, the health officer may, as a disease control measure, exclude from attendance any individuals lacking documentation of immunity or otherwise considered susceptible to the disease until such time as the health officer deems there to be no likely further risk of disease spread.”
77. Under Mich Admin Code R 325.175(2) and (4) a school official under 325.175(2) and a health officer under 325.175(4) is triggered when a communicable disease is confirmed or suspected. These rules would only apply to exclude from attendance and would not invoke a mask mandate upon anyone.
78. Because no authority has been given by the school boards to justify the mask mandate, plaintiffs are seeking declaratory relief to eliminate these Michigan Administrative Codes as grounds for the school board to justify its mask mandate.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the defendants’ mask mandates would not be enforceable under Mich Admin Code R 325.175(2) r (4) for the above stated reasons.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs’ rights.

C. Grant any other relief this Court deems just and proper.

COUNT V

VIOLATION OF REVISED SCHOOL CODE ACT 451 OF 1976 380.1504

COMPULSORY PHYSICAL EXAMINATION OR MEDICAL TREATMENT NOT

AUTHORIZED

79. Plaintiffs incorporate by reference paragraphs 1-78 as if fully stated herein.

80. The Revised Michigan School Code Act is an Act to provide a system of public instruction and elementary and secondary education; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities. (Revised School Code Act 451 of 1976).

81. Sec. 1504 of the Revised School Code Act states; “This act shall not be construed to authorize compulsory physical examination or compulsory medical treatment of pupils.”

82. “Shall” as a legal term means the following...”Shall is an imperative command, usually indicating that certain actions are mandatory, and not permissive. This contrasts with the word “may” which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion.”

82. Construed “interpret a word or action in a particular way.”

83. Compulsory “required by law or a rule; obligatory.”

84. Michigan Health Code States; practice of medicine means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or

mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts. MCL 333.17001(j).

85. A medical device is used to diagnose, prevent, or treat a medical disease or condition without having any chemical action on any part of the body. (JAMA 2014; 311(4):435. Doi:10.1001/jama.2013.286274).

86. FDA states “The FDA regulates face masks, including cloth face coverings, barrier face coverings, and surgical masks as medical devices when they are intended for a medical purpose. Medical purposes include uses related to helping prevent the spread of Covid-19. Exhibit A

87. A face mask is a device, with or without a face shield, that covers the user’s nose and mouth and may or may not meet fluid barrier or filtration efficiency levels. It includes cloth face coverings as a subset. It may be for single or multiple uses, and if for multiple uses it may be laundered or cleaned. There are many products marketed in the United States as “face masks” that offer a range of protection against potential health hazards. Face masks are regulated by FDA when they meet the definition of a “device” under section 201(h) of the Act. Generally, face masks fall within this definition when they are intended for a medical purpose. Exhibit B

88. A “face mask” is a form of medical treatment as it is a medical device being used for medical purposes.

89. The Michigan Legislature through the Revised School Code Act 451 of 1976 expressly stated that schools do not have the authority to require a “medical treatment” of a student.

90. The school districts can provide medical treatment to students within the statutory requirements outlined in MCL 380.16215, which limits the type of treatment, also requires

parents' written permission, and supervision from a licensed physician. Michigan Attorney General's Opinion #5679.

91. Each school board and school districts mask policy is unlawful as it clearly violates MCL 380.1504 as the wearing of a device is mandatory, and plaintiffs have not given the school permission.

92. As the statute says "shall not be construed"...meaning other language in the Revised School Code Act 451 of 1976 cannot be used "to authorize compulsory physical examination or compulsory medical treatment of pupils.

93. The school boards, districts and superintendents will claim that they have unfettered powers to implement these mandates under 380.601a(b) and 380.11.

94. 380.601a(b) states,... "Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity."

95. 380.11a(b) also states,... "Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity."

96. 380.1504 expressly states "shall not construe".

97. Defendants could claim there is a *pari material* conflict between the two statutes 380.1504 and 380.601a(b) or 380.11a(b).

98. Conflicting statutes should be construed, if possible, to give each full force and effect. *Mich Good roads Federation v. State Bd of Canvassers*, 333 Mich 352, 361; 53 NW2d 481 (1952).

99. In re *Kostin Estate*, 278 Mich App at 57, citing *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007). “In other words, statutes that are in pari material must be read together, as a whole, to fully reveal the legislature’s intent.”

100. To the extent the two statutes at issue are in actual conflict, and are in pari material, the more specific statute controls. In re *Kostin Estate*, 278 Mich App at 57, citing *People v. Buehler*, 477 Mich 18, 26; 727 NW2d 127 (2007).

101. 380.1504 is specific in its intent, to restrict a school from taking an action. The words shall, construed, medical treatment, and pupils are present.

102. 380.601(b) and 380.11a are broad and vague statutes. There are no specifics outlined in the statute regarding these mask mandate issues.

103. 380.1504 is the more specific statute out of the three listed.

104. Courts should use “common sense” when interpreting a statute, *Diallo v. Larrochelle*, 310 Mich App 411, 418; 871 NW2d 724 (2015); accord *Marquis v. Hartford ACC & Indem*, 444 Mich 638, 644; 513 22 NW2d 799 (1994), and should avoid absurd results, *People v. Pinkney*, 501 Mich 259, 266; 912 NW2d 535 (2018).

105. To interpret “Safety and Welfare” as giving unbridled and unfettered powers to a school, school board and school district to implement any policy they deem just, including the mandatory use of a medical device would give an “absurd result.”

106. There are no other statutes in the Revised School Code Act 451 of 1976 that could be raised as in conflict with 380.1504 that could become the controlling statute.

107. MCL 380.1307 (b) does not conflict with MCL 380.1504 as both imply that requiring a “face mask” is unlawful according to both statutes as they are written.

108. The defendant school boards, districts and superintendents are in violation of MCL 380.1504 as it requires all students to use a medical device for a medical purpose which is a compulsory medical treatment.

109. 380.10 states, "It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment." The fundamental rights of the parents of the pupils in school are being violated by the school board, the school district and superintendents who have ignored the pleas of the parents to remove the masks from their children. And moreover, to the degree that, in the case of our plaintiffs, (who are representative of hundreds of other parents of Berrien country school children), it clear that the legislature intended for 380.10 to be the controlling section when in conflict with 380.11a because the legislature included the phrasing 'except as otherwise provided by law' in 380.11a as a means by which 380.10 and 380.11a may be always reconciled and free from conflict.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the defendants' mask mandates would not be enforceable under the 380 of the Michigan School Code for the above stated reasons.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

C. Grant any other relief this Court deems just and proper.

COUNT VI

**JUDICIAL DECLARATION 380.10 GIVES PARENTS A FUNDAMENTAL RIGHT TO
DETERMINE WHETHER THEIR CHILDRENS' CARE WHILE IN SCHOOL
INCLUDES THE UNLAWFUL MASK MANDATE BY A SCHOOL BOARD, A
SCHOOL DISTRICT OR A SUPERINTENDENT**

110. Plaintiffs incorporate by reference paragraphs 1-109 as if fully stated herein.

111. 380.10 states, "It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment."

112. Parents have fundamental rights to determine and direct the care of their children in school.

113. Parents in this complaint object to masks on their children. The care of their children would incorporate a medical device, in this instance a mask.

114. The parents seek declaratory relief by this court to recognize that the parents can opt out of their children wearing masks in school based on the plain language of 380.10.

115. By removing the parents' input of mask usage either way, is a violation of the parents' due process rights. The board has ignored the statute because it has not allowed the parents to direct the care of their children. This is in direct violation of 380.10.

WHEREFORE, plaintiffs respectfully requests this Court

A. Grant a declaratory judgment that the plaintiffs' have fundamental rights in determining the care of their children in school and it includes their input of participating with the mask mandates.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

C. Grant any other relief this Court deems just and proper.

COUNT VII

JUDICIAL DECLARATION 380.1307 (b) OF THE MICHIGAN SCHOOL CODE

116. Plaintiffs incorporate by reference paragraphs 1-115 as if fully stated herein.

117. MCL 380.1307(b) of the School Code provides that "Any restraint that negatively impacts breathing is prohibited under all circumstances, including emergency situations.

118. MCL 380.1307h of the School Code provides a restraint that negatively impacts breathing means any restraint that inhibits breathing. The Court may look at a mask as a restraint under 380.1307h(p) or under 380.1307h(q). 380.1307h(q) uses the definition as a 'restraint that negatively impacts breathing' which is a separate narrower embodiment of the term restraint and is therefore not limited by the definition under 380.1307h(p).

Moreover in (q) the term 'any restraint' is a different term that the restraint of (p) in that the use of the word 'any' is meant to expand the set of articles or devices beyond what is defined for (p).

In other words the legislature used the term 'any restraint' so that any device or article that did not qualify under (p) yet had the effect of negatively impacting breathing including 'face down positions'. For example, 'a facedown position' does not inhibit movement, but it does inhibit breathing and is therefore considered a restraint that negatively impacts breathing.

The legislature intended the restraint of (q) to not be limited by (p).

119. The policy for emergency use of seclusion and restraint, approved by the state Board of Education on March 17, 2017, provides a Mechanical restraint is the use of any device, article, garment, or material attached to a pupil's body.

120. The school code of conduct provides that a student shall not commit or participate in any conduct or act defined as a crime by State law or ordinance.

121. The school mask mandate is not a State law or ordinance.

122. The board of a school district may dismiss from employment and cancel the contract of a superintendent, principal, or a teacher who neglects or refuses to comply with the School Code MCL 380.1806. In this scenario, you have a school board violating the school code and administrators going along with the unlawfulness.

123. A school official or member of a school board or other person who neglects or knowingly violates or permits or consents to a violation of the school code is guilty of a misdemeanor MCL 380.1804.

124. The Defendants in this case are violating the express provisions of MCL 380.1307b.

A. Grant a declaratory judgment that the defendants are in violation of the count above.

B. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

C. Grant any other relief this Court deems just and proper.

COUNT VIII

STATUTORY

125. Plaintiffs incorporate by reference paragraphs 1-124 as if fully stated herein.

126. The plaintiffs will suffer irreparable harm if this restraining order is not granted.

127. Equitable relief is the only way to force the Defendants to cease and desist their unlawful mask mandates of the plaintiffs. Allow the parents to direct the care of their children in school by having them participate without unfettered issues with a mask that inhibits learning and treating them as quarantined symptomatic Covid carriers. The fundamental rights of the parents of the plaintiffs have been irreparably harmed by not allowing them to direct the care of their children.

128. The defendants should be enjoined through this temporary restraining order request from enforcing their unlawful mask mandate and allow the plaintiffs to attend school without masks.

129. The plaintiffs are requesting this Court to have the defendants be ordered to show cause for their unlawful Mask mandate, the authority that they are using to impose such a mandate and an order why equitable relief should not be issued. See Exhibit D April 24, 2020 letter and attached affidavits.

COUNT IX

DUE PROCESS

130. Plaintiffs incorporate by reference paragraphs 1-129 as if fully stated herein.

131. Plaintiffs are entitled to the basic protections of due process even in a pandemic. *See Friends of DeVito v. Wolf*, A.3d, 2020 WL 1847100, at 19-21 (Pa.Apr. 13, 2020). “The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action.” *Id.* at 19-20 (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164-65 (1963)).

132. The Defendants have unlawfully restrained the plaintiffs of constitutionally protected activities through their unlawful mask mandate under both Michigan Law and Federal Law or lack thereof and have afforded no due process for the mask mandate which acts as a quarantine of asymptomatic school kids and has stripped the parents of directing the care of their children pursuant to Michigan Code 380.10 by not allowing them to direct the school board, the school district and superintendents that they do not want their children masked in school.

133. The school children and plaintiffs in this case have to comply with a school board vote and an order from the superintendents that masks will be worn at all times regardless of vaccine status without any written notice, without a hearing or any appellate remedy in all education buildings which affects every citizen of the county that comes into contact with any of the schools that have voted for a mask mandate.

134. The plaintiffs' due process rights were violated by the Defendants.

135. Defendants unlawful actions have violated the plaintiffs' rights pursuant to the Michigan Constitution of 1963, Article I, Section 17, and the 14th Amendment to the United States Constitution and Michigan Code 380.10.

136. The defendants should be enjoined, through a temporary restraining order from enforcing its mandatory mask mandate which is a medical device, a restraint, and a quarantine order for asymptomatic minor students and allow the plaintiffs' to attend school mask-less until such time an authorized authority such as the health department decides that there is an emergency to order such a mandate.

137. The defendants must be ordered to show cause why equitable relief should not issue ordering it to cease enforcing its mask mandate, which is also a medical device and a restraint and works as a quarantine order to asymptomatic children.

138. For the reasons stated above, the plaintiffs are seeking a restraining order to remove the mask mandate and a declaratory judgment under MCR 2.605 for the violations.

WHEREFORE, Plaintiffs' respectfully requests this Court

A. Order "a speedy hearing" of this action and "advance it on the calendar" of the docket under MCR 2.605(D).

B. Issue a judgment providing the declaratory relief articulated in each of the counts above.

C. Grant equitable relief that the defendants' mask mandate is unlawful and not enforceable for the above stated reasons.

D. Grant a declaratory judgment that Defendants violated Plaintiff's Constitutional rights and statutory rights and due process rights and a violation of Michigan Code 380.10.

E. Grant a temporary restraining order against the defendants to prevent them from enforcing their unlawful mask mandate.

F. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.

G. Grant any other relief this Court deems just and proper.

COUNT X

JUDICIAL DECLARATION VIOLATION OF NON-DELEGATION CLAUSE OF THE

MICHIGAN CONSTITUTION ARTICLE 3 SECTION 2

139. Plaintiffs incorporate by reference paragraphs 1-138 as if fully stated herein.

140. To have the full force and effect of law, the Board of Education and Superintendents named in this complaint must draw its authority from a lawful delegation of power. These executive bodies named in this complaint do not have the authority to lawfully make rules

without violating the separation of powers or non-delegation doctrines of the Michigan Constitution.

141. The Michigan Constitution of 1963 provides for the separation of powers among three branches of state government in Article 3 section 2:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch.

The principal function of the separation of powers...is to...protect individual liberty. *Clinton v. City of New York*, 524 US 417 (1998) (Breyer, J., dissenting). The legislative power has been defined as the power to regulate public concerns, and to make law for the benefit and welfare of the state. *46th Circuit Trial Court v Crawford Co.*, 476 Mich 131, 141 (2006). The Michigan Supreme Court case of *In re Certified Questions from United States Circuit Court, Western District of Michigan, Southern Division*, 5006 Mich 332 (2020) noted

Strictly speaking, there is no acceptable delegation of legislative power. The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made. A certain degree of discretion. And thus of lawmaking, *inheres* in most executive or judicial action. The focus of controversy has been whether the degree of generality contained in the authorization for exercise of executive or judicial powers in a particular field is so unacceptably high as to amount to a delegation of legislative powers.

142. Plaintiffs challenge the unconstitutional delegation of legislative power left unprotected from the uncontrolled, arbitrary power left in the hands of administrative officials. In this case, the school boards and superintendents that are forcing mask mandates on school age children, staff and any citizen who enters school property. This rule was conjured, promulgated and now enforced by the executive branch of government contrary to Michigan's Constitution.

143. The Constitutional question is whether the legislature has supplied intelligible principles to guide the delegee's exercise of discretion and requires the construing of each statute, administrative code, school code or any other authority the defendants in this cause will claim or have used, that they wrongly believe, gives them the authority to implement mask mandates and to have the court scrutinize the challenged statutes/school codes/administrative codes to examine what if anything their legal authority delegates and what instructions it provides to order a mask mandate. *Gundy v. United States*, 139 S.Ct. 2116 (2019).

144. Plaintiffs allege that the scope of the delegation of any statute or code defendants are using to implement the unlawful mask mandate plus the specificity of those standards governing its exercise do not exist to implement a mask mandate in any capacity.

145. The authority being used by the defendants affects thousands of children on a daily basis by forcing asymptomatic people to wear a cloth mask over their mouth and nose up to 7-8 hours a day on the average of 5 days a week. This mandate allows for teachers, administrators or anyone in an authoritative position to enforce the mask mandate by chastising the student(s) not wearing the mask properly, remove them from the classroom, or even remove them from school property if they do not comply with the order.

146. These orders are carried out regardless of whether the student(s) are not sick or showing symptoms. Healthy children have no choice but to be burdened with a face mask based on the unilateral decision of the board of education of the district where they attend school and the orders of their respective superintendents and contrary to the separation of powers and non-delegation doctrine.

147. Plaintiffs' challenge each school board, school district and superintendent of each that there are no statutes, school codes, administrative codes, policies or any other authority that

triggers a mask mandate. There are no statutes, school codes, administrative codes, policies or any other authority that authorize a mask mandate, put time parameters for the continued usage of masks, allow the enforcement of masks by removing a student or staff member for their refusal of wearing a mask while on school property.

148. A declaration to order a mask mandate was not created lawfully and violates the separation of powers or non-delegation doctrine of the Michigan Constitution. The displayed unbridled power of the administrations of each of the school boards and districts, leave the people unprotected from uncontrolled and arbitrary power given to the superintendents who can continue enforcing mask mandates for however long they deem sufficient leaving no checks and balances in place. The Plaintiffs challenge the authority of the power given to the superintendents who have created mask mandates by figuring out what task the authority delegates and what instructions the authority provides to implement mask mandates. The Plaintiffs in this case seek the Court's power of declaratory relief to answer these questions.

WHEREFORE, Plaintiffs' respectfully request this Court,

- A. Order "a speedy hearing" of this action and "advance it on the calendar" of the docket under MCR 2.605(D).
- B. Issue a judgment providing the declaratory relief articulated in each of the counts above.
- C. Grant equitable relief that the defendants' mask mandate is unlawful and not enforceable for the above stated reasons.
- D. Grant a declaratory judgment that Defendants violated Plaintiff's Constitutional rights under the Michigan Constitution Article 3 Section 2.

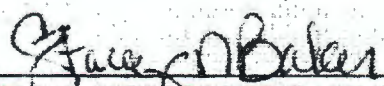
E. Grant a temporary restraining order against the defendants to prevent them from enforcing their unlawful mask mandate.

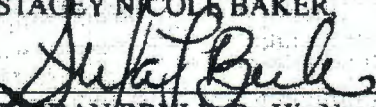
F. Grant Plaintiff costs, expenses and attorney fees incurred for having to bring this action to protect the plaintiffs' rights.


G. Grant any other relief this Court deems just and proper.

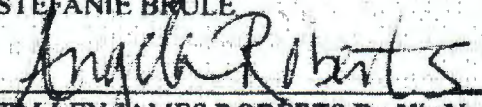
I HEREBY STATE AND AFFIRM THAT I HAVE READ THE FOREGOING COMPLAINT AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF UNDER THE PENALTY OF PERJURY.

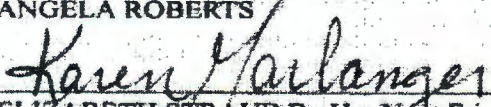
DATED January ²¹~~10~~, 2022


EMMA LYNN BAKER By Her Next Friend
STACEY NICOLE BAKER


JORDAN BRULE By His Next Friend
STEFANIE BRULE


NOAH BRULE By His Next Friend
STEFANIE BRULE


TALLEN JAMES ROBERTS By His Next Friend
ANGELA ROBERTS


ELIZABETH STRAUB By Her Next Friend
KAREN GARLANGER

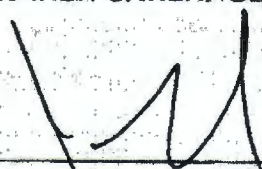

JAMES A. THOMAS, ESQUIRE
1925 Breton Rd. SE Suite 250
Grand Rapids, Michigan 49506
MBN P80931
(616)747-1188
Attorney for Plaintiffs

EXHIBIT 5

A.A. v Stafford, No. 22-192416-CZ (Oakland CC,
Judge Sosnick)

Complaint

STATE OF MICHIGAN
IN THE 6th CIRCUIT COURT FOR THE COUNTY OF OAKLAND

**A.A. and A.B., individually and as Next Friends
on behalf of their minor children, A.C. and A.D.;
B.A. and B.B., individually and as Next Friends
on behalf of their minor children, B.C. and B.D.;
and C.A., individually and as Next Friend on
behalf of her minor children, C.B., C.C., and C.D.,**

Plaintiffs,

-VS-

**LEIGH-ANNE STAFFORD, in her official
capacity as the Health Officer of Oakland
County; HURON VALLEY SCHOOLS and
its Superintendent, DR. PAUL SALAH;
WATERFORD SCHOOL DISTRICT and
its Superintendent, SCOTT LINDBERG;
and TROY SCHOOL DISTRICT and its
Superintendent, RICHARD MACHESKY,**

Defendants.

David A. Kallman (P34200)
KALLMAN LEGAL GROUP, PLLC
Attorney for Plaintiffs
5600 West Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207

**There is no other pending or resolved civil action arising out of the
same transaction or occurrence as alleged in this Verified Complaint**

NOW COME the above-named Plaintiffs, by and through their attorneys, Kallman Legal Group, PLLC, and for their Verified Complaint against Defendants hereby state as follows:

PARTIES

1. Plaintiffs A.A. and A.B. are property taxpayers and individuals who reside in Oakland County. They are next friends for their children, A.C. and A.D., who attend school in the Huron Valley School District.

2. Plaintiffs B.A. and B.B. are property taxpayers and individuals who reside in Oakland County. They are next friends for their children, B.C. and B.D., who attend school in the Waterford School District.

3. Plaintiff C.A. is a property taxpayer and an individual who resides in Oakland County. She is next friend for her children C.B., C.C., and C.D., who attend school in the Troy School District.

4. All Plaintiffs request they be allowed to file this case with pseudonyms in order to challenge government action and to avoid expected retaliation and harassment given the volatile issues raised herein.

5. Defendant Leigh-Anne Stafford is the Health Officer for Oakland County who issued the county mask order at issue in this case, and she is sued in her official capacity.

6. Defendant Huron Valley Schools is a Michigan School District located in Oakland County and is enforcing the mask order issued by Defendant Stafford.

7. Defendant Dr. Paul Salah is the Superintendent of Huron Valley Schools, is enforcing the mask order issued by Defendant Stafford, and is being sued in his official capacity.

8. Defendant Waterford School District is a Michigan School District located in Oakland County and is enforcing the mask order issued by Defendant Stafford.

9. Defendant Scott Lindberg is the Superintendent of the Waterford School District, is enforcing the mask order issued by Defendant Stafford, and is being sued in his official capacity.

10. Defendant Troy School District is a Michigan School District located in Oakland County and is enforcing the mask order issued by Defendant Stafford.

11. Defendant Richard Machesky is the Superintendent of the Troy School District, is

enforcing the mask order issued by Defendant Stafford, and is being sued in his official capacity.

VENUE AND JURISDICTION

12. Venue is proper in this Court as all parties are located in Oakland County, Michigan.

13. This Court has jurisdiction to hear this matter pursuant to MCL 600.601 and 605, and MCR 2.605.

GENERAL ALLEGATIONS

14. Plaintiffs' love and care deeply for their children—their physical health, their educational and physical development, their spiritual health, and their growth in virtue and knowledge of the Christian faith.

15. As such, Plaintiff parents desire to achieve these aims and to integrate their Christian faith into all aspects of their children's lives, including during the school day.

16. Since the beginning of the COVID-19 pandemic, Plaintiffs have taken health precautions seriously and closely followed the developing science regarding COVID-19 and effective safety measures.

17. Plaintiffs have complied with reasonable comprehensive health protocols so that their children would be able to attend in-person schooling this year.

18. However, in recognition of the difficulties that wearing masks present for the spiritual, emotional, educational, and physical development of their children, Plaintiffs contend that the risks and problems from the county mask mandate outweigh any claimed or perceived benefits of wearing masks all day in a school setting.

19. Neither the CDC nor the Michigan Department of Health and Human Services have issued any mask mandates requiring children to wear masks during the school day.

20. Defendant Stafford issued an Emergency Order (EO)(2021-01) on August 24, 2021, mandating that all school children wear masks while at school (Exhibit A).

21. The EO requires all schools and educational institutions in Oakland County mandate children from pre-kindergarten through twelfth grade wear facial coverings.

22. Defendant's order only cites national and state-wide information which is insufficient to justify that an emergency specifically exists in Oakland County justifying this mask order.

23. There is no emergency exclusive to school buildings. There is no mask mandate in place for all buildings in Oakland County.

24. Schools present no higher risk to spread Covid-19 than any other buildings in Oakland County.

25. Moreover, Defendant's order violates Senate Bill 82 (2021), Sec. 250, signed by Governor Whitmer on September 29, 2021, which prohibits a local county health director from issuing and/or enforcing this mask order.

26. Plaintiffs contend there is no sound basis for the K-12 mask mandate: cases, hospitalizations, and deaths in Michigan among school aged children do not justify this mandate; and according to the state's own data, only 0.01% of Michigan students have been infected with COVID-19, meaning that it was not significantly contributing to community spread. This is particularly so with students in the younger grades.

27. Recent science and data show that the mandated cloth masks provide little to no effective protection from the COVID-19 virus.

28. Plaintiffs have suffered injuries in fact by Defendants' actions and affirmative statements that Plaintiffs' children will be disciplined and/or removed from school and will be denied their constitutional and statutory right to a free public education if they fail to wear a mask.

29. The relief Plaintiffs seek in this Complaint is narrow: an order providing that K-12 students may engage in education without being forced to wear a mask, that the Oakland County public health mask mandate order for educational institutions (2021-01) be rescinded, and allow parents to choose the appropriate Covid-19 mitigation strategies for their children.

30. Plaintiffs further seek a declaration that the enactment and enforcement of the challenged order violates their fundamental rights secured by the United States and Michigan Constitutions and an order enjoining the same.

31. Plaintiffs also seek an award of attorneys' fees and costs pursuant to applicable law.

32. Plaintiffs' students have engaged in in-person classroom education since August of 2021, with extensive health and safety protocols in place.

33. Citing emergency authority, Defendant is requiring the in-class student-masking requirement regardless of whether the children are safely distanced from one another, regardless of their vaccination status, regardless of the presence of natural immunity, and regardless of how the mandate affects the children's ability to learn or fully engage in education.

34. Additionally, Defendant is requiring masks without citing any evidence that children in grades K-12 were spreading COVID in the schools or that masking is effective on children, especially in the younger grades.

35. In fact, the state's own data shows only .01% of all Michigan students were infected with COVID at the time of the mask mandate.

36. This action is brought under the First Amendment to the United States Constitution, and the Michigan Constitution and state law, challenging Defendants' orders mandating the wearing of masks, as set forth in this Complaint.

37. Plaintiffs sincerely believe that every human has dignity and is made in God's image and likeness. As the Christian faith teaches, humans are relational beings called to love God and neighbor.

38. The face is the way we best recognize others. It reveals the distinctiveness of our person and personality. Facial expressions convey thoughts and emotions such as joy, fear, hopes, anxiety. Facial expressions also provide cues to levels of disengagement or engagement, understanding or lack of understanding.

39. Wearing masks makes it significantly more difficult to see the countenance of others, to detect their emotions, their engagement, understanding, interest, puzzlement and/or concerns.

40. Masks also make it more difficult to hear others' voices, which is another fundamental way that intellectual, emotional and/or spiritual concerns are expressed.

41. As such, masks are disruptive of the essential, relational aspects of human interaction. They make it more difficult to "see" and "hear" the other in his or her emotional and affective state. In these ways, masks make it more difficult to freely and effectively see, know, and love others, thereby inhibiting the exercise of their sincerely held religious beliefs as Christians.

42. Plaintiffs seek to impart the Christian virtue of mercy to their children through actions of forgiveness. For example, when a student has wronged or hurt another student, a teacher guides the student through the reconciliation process and facilitates a face-to-face apology with

the student who was harmed. A mask interferes with this important human interaction—an interaction that is essential to the spiritual and emotional well-being of the students.

43. Additionally, masks interfere with a student's ability to know that he has wronged a fellow student, as it is often the other's facial expression that best communicates a student's hurt feelings or injury.

44. Plaintiffs desire to instill the love of their Christian faith in their children in a multi-disciplinary approach that infuses their faith into as many facets of their children's day as possible. Mandating the wearing of masks inhibits this goal.

45. Defendant's mask mandate deters Plaintiffs' children from beginning to engage in fellowship with their classmates and form relationships with other children based upon the teachings and example of Jesus Christ. Mandating Plaintiff's young children to wear facial coverings is hindering the formation of these bonds and prevents the children from freely associating.

46. MCL 380.10 requires all public schools to cooperate with the students' parents who are the first educators of their children according to their Christian faith. Accordingly, Defendant schools must listen to parents in its school community and strive to give voice and the appropriate authority to them in the education of their children.

47. Plaintiffs object to Defendant's order that requires their children to cover their faces while engaged in the process of learning, because it violates their sincerely held religious beliefs.

48. Defendants' mandates have significantly harmed the physical and mental health and well-being of Plaintiffs' children.

49. Defendants' mandates have significantly harmed the education received by Plaintiffs' children.

50. The Defendant's order is improper and unlawful in that it provides for no religious exemptions while it does provide for secular exemptions.

51. Religious exemptions must be provided in order to comply with Constitutional protections and state statutes.

52. Wearing a mask in the classroom makes it impossible for Plaintiff's children to receive a full and proper education.

53. The challenged order singles out children who cannot tolerate wearing masks, making them unable to participate in the full educational process.

54. The Defendant's mask mandate inhibits Plaintiffs' ability to engage in fellowship with their classmates and form relationships with other children based upon the teachings and example of Jesus Christ. Mandating Plaintiff's young children to wear facial coverings is hindering the formation of these bonds and prevents the children from freely associating.

55. Many younger children do not possess the fine motor skills necessary to handle a facial covering properly due to their age. It is difficult for children to keep a facial covering clean or even from falling onto the floor.

56. Plaintiff children's inability to properly handle a facial covering creates an increased likelihood that bacteria and viruses could present on the facial covering or on their hands and skin.

57. Many children have difficulty with speech and trouble pronouncing certain letters correctly. Wearing a facial covering exacerbates their struggles with speech and impedes a

teacher's ability to see her mouth to determine if her mouth is in the proper position to say letters and sounds correctly.

58. Many children struggle with focus. Facial coverings cause distraction, further causing children to touch their faces and their facial coverings frequently. It causes them to lose attention and focus on what is around them. Indeed, the facial coverings make it practically impossible for them to do so in the classroom. Wearing a mask diverts children's attention away from the lesson taught in class.

59. Facial coverings negatively affect Plaintiff children's ability to breathe effectively.

60. Upon information and belief, the state lacks any data to support its extension of the mask mandate to grades K-12, i.e., the state lacks any evidence that the lack of masks in grades K-12 were contributing to the spread of COVID-19.

61. There are known inter-personal, cognitive developmental, and pedagogical benefits to seeing a person's face and not having a student's face covered, especially while learning and communicating in a classroom setting.

62. Methods that claim to promote safety but have a deleterious effect on a child's social and emotional development do not promote the health and well-being of the whole child as Christian teaching strives to do.

63. The mask mandate communicates that K-12 children, even when over six feet away, seated, and learning, are constantly at risk and potentially pose a threat to one another. The mask mandate contributes to a sense of insecurity by communicating that all people are potentially dangerous because they could well be carrying a disease. This affects the operation and comfort

level of the classroom. The mask mandate negatively affects young children who are still forming their impressions of the world.

64. A mask is required for everyone at school, even though the vast majority of individuals required to wear one are healthy or are not in a group with a high risk of contracting COVID-19, such as kindergarten through twelfth grade students.

65. Facial masks present challenges, particularly for younger students in early elementary school and students with special healthcare or educational needs, developmental or emotional disabilities, mental health conditions, or sensory concerns or tactile sensitivity.

66. According to the CDC, the risk of COVID hospitalization for those aged 5-17 is 9x lower than those aged 18-29; in contrast, for those aged 85 and up, the risk of hospitalization is 13x higher than those aged 18-29. Likewise, the risk of COVID death for those aged 5-17 is **16x lower** than those aged 18-29; for those aged 85 and up, the risk of death is **630x higher** than those aged 18-29. <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>. Last updated November 2021.

67. Science and data do not support a universal K - 12 mask mandate.

68. The CDC conceded that cloth face coverings do not provide effective protection against Omicron. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

69. Defendant Stafford has no legal authority to mandate children wear masks in school.

70. On August 20, 2020, the Michigan Legislature passed, and the Governor signed, Michigan's Return to Learn law that states:

A requirement that the district, in consultation with a local health department, as that term is defined in section 1105 of the public health

code, MCL 333.1105, and district employees, develop districtwide guidelines concerning methods for delivering pupil instruction for the 2020-21 school year that are based on local data that are based on key metrics. However, regardless of the guidelines developed under this subdivision, a determination concerning the method for delivering pupil instruction remains with the district. As used in this subdivision, “key metrics” means, at a minimum, all of the following:

The trend of COVID-19 cases or positive COVID-19 tests, hospitalizations due to COVID-19, and the number of deaths resulting from COVID-19 over a 14-day period.

COVID-19 cases for each day for every 1 million individuals.

The percentage of positive COVID-19 tests over a 4-week period.

Health care capacity strength.

Testing, tracing, and containment infrastructure with regard to COVID-19. P.A. 149, § 98a(1)(g) (Mich. 2020).

71. Upon information and belief, Defendants have not complied with the Michigan Return to Learn law.

72. Defendants’ are denying in-person learning and entry to school buildings if children do not comply with the mask mandate order.

73. Defendants’ have threatened punitive actions against Plaintiffs for noncompliance with the mask mandate order, including denial of education, school discipline, and financial penalties.

74. The challenged order requires Plaintiffs to either violate their sincerely held religious beliefs or forgo their children’s constitutionally guaranteed right to a public education.

75. Defendant asserts that a present emergency necessitates students must wear masks at all times, no matter how the masks effect the children’s ability to engage in education. This assertion is not based on facts or scientific data.

76. There is no emergency within this age group, kindergarten through twelfth grade, that justifies the Defendant’s order.

77. There is no significant spread of Covid-19 within the kindergarten through twelfth

grade age group in the school setting.

78. The average daily mortality rate for deaths associated with COVID-19 in the State of Michigan the week immediately prior to Defendants' orders was 11 per an estimated 9,986,857, or 0.01 per 10,000.

79. Furthermore, the mortality rate was zero for children in the age range of kindergarten through fifth grade. The mortality rate in Michigan for children ages five to fourteen since the beginning of January 1, 2020, until today is 0.008 per 10,000. *See* https://www.mdch.state.mi.us/osr/Provisional/CvdTable2.asp?fbclid=IwAR35plM6oxH3Cg6Tnwp_9uLKn82gHyfsgnNR7TMbIuMv-09uJdund7DVaNQ.

80. There are zero pediatric Covid-19 deaths in Oakland County since March 2020.

81. The K-5 mask mandate is arbitrary and capricious and is causing Plaintiffs irreparable harm.

COUNT I
(Illegal Expenditure of State Funds: MCL 600.2041)

82. Plaintiffs hereby incorporate by reference all the above-stated paragraphs.

83. Defendant's order violates MCL 600.2041 as an illegal expenditure of state funds.

84. Senate Bill 82 (2021), signed by Governor Whitmer on September 29, 2021, prohibits a local county health director from issuing a mask order. Section 250 states:

The director or a local health officer shall not issue or enforce any orders or other directives that require an individual in this state who is under the age of 18 to wear a face mask or face covering.

85. Defendant Stafford has no authority to issue this mask order or enforce it. Four counties in Michigan rescinded their mask mandate orders in compliance with this new law.

86. Defendants' have injured and threatened Plaintiff children that if they come to school maskless they will be isolated, turned away, sent home, and denied a public education.

87. Defendants' have injured Plaintiffs and clearly violated MCL 600.2041 by illegally expending funds to create and enforce this mask mandate in violation of Senate Bill 82.

88. All Defendant school districts continue to improperly enforce the unlawful mask mandate order.

89. As a direct and proximate result of Defendants' violation of Plaintiffs' statutory rights as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their statutory rights, entitling them to declaratory and injunctive relief, and to an order rescinding this unlawful mask order.

COUNT II

(Freedom of Religious Exercise – First Amendment & Mich. Const. Art. I, § 4)

90. Plaintiffs hereby incorporate by reference all the above-stated paragraphs.

91. By reason of the aforementioned orders, acts, policies, practices, customs and/or procedures created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to free exercise of religion in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and the Michigan Constitution, Article I, § 4 (1963).

92. The challenged order alters the ability for Plaintiff children to receive a full and appropriate education in the classroom; and the order punishes and imposes discipline on students for exercising their religious beliefs.

93. Defendants' actions injure Plaintiffs by chilling their religious activity through the threat of discipline and sanctions for failure to comply with the challenged order.

94. Defendants' order requires that Plaintiffs ignore the well-being of the whole child and diminishes their parental authority and contravening their Christian faith, or face sanctions and penalties for failure to comply with the challenged order.

95. The challenged order violates their rights to the free exercise of religion protected by the United States and Michigan Constitutions.

96. Because the challenged order provides for certain secular exemptions, it is not a neutral law of general applicability, and the order does not satisfy strict scrutiny.

97. Alternatively, the order is unreasonable, arbitrary, and capricious and fails rational basis review.

98. The order provides exceptions for secular activities and conduct that are similar in their risk, impact, and effect, but not for Plaintiffs' constitutionally protected activities.

99. The challenged order has no real or substantial relation to the objectives of the order and is a palpable invasion of Plaintiffs' constitutional rights.

100. When the government treats an individual disparately as compared to similarly situated persons and that disparate treatment burdens a fundamental right, such treatment violates Plaintiffs' constitutional rights.

101. As a direct and proximate result of Defendants' violation of the First Amendment and Article I, § 4 of the Michigan Constitution, Plaintiffs have suffered, and will continue to suffer, irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

COUNT III
(Unlawful Exercise of Authority under Michigan Law)

102. Plaintiffs hereby incorporate by reference all the above-stated paragraphs.

103. The challenged orders are unenforceable because Defendants lack the authority to issue them under the Michigan Public Health Code.

104. MCL 333.2453 authorizes a local health officer to issue an emergency order only upon finding that doing so is necessary.

105. MCL 333.2453 provides a local health officer with authority to (1) prohibit a public gathering or (2) establish procedures “to insure continuation of essential public health services and enforcement of public health laws.”

106. Defendants’ orders requiring masks for young children in kindergarten through twelfth grade are unauthorized by state law.

107. Defendants’ orders are not orders prohibiting gatherings nor are they procedures to insure public health services.

108. Instead, the challenged order requires the students to wear masks or face disciplinary action or a denial of an education.

109. Defendants are not authorized to issue orders for this purpose or condition public life to the wearing of facial coverings or determine how instruction must be delivered and received within the classrooms of public schools.

110. Michigan Public Health Laws “shall not be construed to vest authority in the department for programs or activities otherwise delegated by state or federal law or rules to another department of state government.” MCL 333.1114.

111. Return to Learn legislation, passed by both houses and signed by the Governor, set forth a requirement for schools to submit its learning plan for the 2020-21 school year that included its safety protocols and methods for in person instruction.

112. The Return to Learn legislation delegates the ultimate decision for how instruction will be received with the school districts, not the county health department.

113. Defendants have failed to comply with the Return to Learn legislation and the Michigan Public Health Code.

114. Defendants’ orders constitute an attempt to undo and negate the Legislature’s

delegation of authority to the educators over how safety protocols will be observed and implemented while achieving the pedagogical goals of the school.

115. This authority was not delegated to health department officials. Defendants' order has no legal force or effect and cannot void the Return to Learn legislation or any school plans submitted and approved under this legislation.

116. There is no longer any emergency upon which Defendants may act to enforce their orders, and the Defendants' orders do not comport with and are not authorized under the Michigan Public Health Code.

117. Defendants' orders are unreasonable and arbitrary.

118. Plaintiffs have no adequate remedy at law for the continuing unlawful action by the Defendants.

119. As a direct and proximate result of Defendants' violation of the above-cited statutes, Plaintiffs have suffered, and will continue to suffer, irreparable harm, including the loss of their fundamental statutory and constitutional rights, entitling them to declaratory and injunctive relief.

COUNT IV

(Separation of Powers & Non-delegation Clauses – Mich. Const. Art. III, § 2 & Art. IV, § 1)

120. Plaintiffs hereby incorporate by reference all the above-stated paragraphs.

121. Defendants' orders are unconstitutional and unenforceable against Plaintiffs because they are based on impermissible delegations of legislative authority in violation of the Michigan Constitution.

122. The Separation of Powers Clause in the Michigan Constitution provides that "[t]he powers of the government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another

branch except as expressly provided in this constitution.” Mich. Const. art. III, § 2 (1963).

123. Article IV § 1 of the Michigan Constitution prohibits delegation of legislative power to protect the public from the misuse of power ostensibly delegated under a Michigan statute.

124. A delegation of power through legislation cannot be lawful if it permits executive lawmaking.

125. If a delegation of authority to the executive branch is not sufficiently specific or fails to establish prescribed boundaries, or if the executive branch acts beyond specific boundaries in the legislation, the executive’s actions are constitutionally invalid.

126. Defendants’ orders violate the Separation of Powers and the non-delegation clauses of the Michigan Constitution.

127. The provisions of the Michigan Public Health Code that Defendants rely upon to issue their emergency orders fail to provide proper standards to guide or allow a proper delegation of legislative authority to the executive branch.

128. This delegation of authority is completely open-ended and overly broad; it permits unbridled law making by the executive branch. The statute has no temporal, durational, substantive, or legislative checks.

129. As interpreted by Defendants in the challenged orders, the Michigan Public Health Code gives them cart blanche authority to regulate, condition, and restrict all manners of interactions in the public classroom, all methods and modes of education, and all human interaction between students. Accordingly, Defendants’ orders are overbroad, an impermissible delegation of authority, and are unenforceable.

130. Defendants’ order is also unreasonable and arbitrary and violates the Separation of

Powers Clause as applied to Plaintiffs.

131. Plaintiffs have no adequate remedy at law for this continuing unlawful action by Defendants, and they have suffered, and will continue to suffer, irreparable harm, including the loss of their fundamental statutory and constitutional rights, entitling them to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Honorable Court to:

A) declare that Defendant Stafford has violated state law and illegally expended state funds by creating and enforcing the mask order in this case and order Defendant Stafford to comply with state law and rescind the order;

B) declare, pursuant to MCR 2.605, that Defendants' mask order violates Plaintiffs' fundamental constitutional rights and Michigan law as set forth in this Complaint;

C) enjoin, both through a preliminary injunction and a permanent injunction, pursuant to MCR 3.310, Defendants' enforcement of the challenged mask order for all the reasons set forth in this Complaint;

D) award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to applicable law; and

E) grant such other and further relief as this Court should find just and appropriate.

WE HEREBY STATE AND AFFIRM THAT WE HAVE HAD READ THE ABOVE VERIFIED COMPLAINT AND THAT IT IS TRUE AND ACCURATE TO THE BEST OF OUR INFORMATION, KNOWLEDGE AND BELIEF.

DATED: February 5, 2022. /s/ A.A.
A.A., Plaintiff individually
and on behalf of A.C. and A.D.

DATED: February 5, 2022. /s/ A.B.
A.B., Plaintiff individually
and on behalf of A.C. and A.D.

DATED: February 5, 2022. /s/ B.A.
B.A., Plaintiff individually
and on behalf of B.C. and B.D.

DATED: February 5, 2022. /s/ B.B.
B.B., Plaintiff individually
and on behalf of B.C. and B.D.

DATED: February 5, 2022. /s/ C.A.
C.A., Plaintiff individually
and on behalf of C.B., C.C., and C.D.

Subscribed and sworn to before me this
5th day of February, 2022, by A.A., A.B.,
B.A., B.B., and C.A.

/s/ Christa Dietrich
Christa Dietrich
Notary Public, Oakland County, MI.
My Commission Expires: January 7, 2023.

Prepared By:

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Plaintiffs

EXHIBIT A

EMERGENCY ORDER (2021-01) FOR CONTROL OF PANDEMIC
Educational Institutions - Daycares and Schools (elementary, middle, high and vocational)

The Health Officer of Oakland County Health Division makes the following factual determinations and issues this Order pursuant to the Michigan Public Health Code MCL 333.2453. Factual findings include:

The virus (SARS-CoV-2) that causes COVID-19 spreads mainly from person-to-person, primarily through respiratory droplets produced when an infected person or carrier coughs, sneezes, or talks. These droplets can enter the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely to occur when people are in close contact with one another (within about 6 feet).

The Delta variant of the SARS-CoV-2 virus is the dominant variant in Michigan and is significantly more contagious than the original form that entered the United States in winter 2020. Current research indicates the Delta variant may cause more serious illness in persons of all ages, including children.

Studies of COVID-19 incidence in school districts during the 2020-2021 school year demonstrate that proper masking is the most effective mitigation strategy to prevent transmission in schools when COVID-19 is circulating and where there is insufficient uptake of vaccination.

According to American Academy of Pediatrics (AAP), Center for Disease Control and Prevention (CDC), and Michigan Department of Health and Human Services (MDHHS), the universal use of masks in schools is an essential, and proven strategy to reduce the spread of COVID-19 in schools.

Masks are primarily intended to reduce the emission of virus-laden droplets and aerosols, which is especially relevant for asymptomatic or pre-symptomatic infected wearers who feel well and may be unaware of how infectious they are to others, and who are estimated to account for more than 50% of transmissions. Masks also help reduce inhalation of these droplets by the wearer. The community benefit of masking for SARS-CoV-2 control is due to the combination of these effects; the individual prevention benefit increases with increasing numbers of people using masks consistently and correctly.

Scientific Studies show that consistent mask use can reduce risk in the school setting. The MI COVID response Data and Modeling Updates indicates that back-to-school saw case rate increases for all ages. Increases were highest for counties without school masking. The data also shows 50% of children hospitalized in Michigan have no underlying health conditions.

Per CDC, Oakland County, Michigan remains at a high community transmission rate for COVID and everyone in the county should continue to wear a mask in public, indoor settings.

NOW, THEREFORE, IT IS HEREBY ORDERED that all Educational Institutions and all Persons in Educational Settings must adhere to the following rules:

- a. The Educational Institutions shall ensure that people in pre-kindergarten through grade twelve, regardless of vaccination status, consistently and properly wear a facial covering while inside any enclosed building or structure of the institution.
- b. The Educational Institutions shall ensure that all persons, regardless of vaccination status, providing service to any persons in pre-kindergarten through grade twelve properly and consistently wear a facial covering while inside any enclosed building or structure of the institution.

IT IS FURTHER ORDERED that the following terms shall have the following definitions for purposes of this ORDER:

- “Educational Institutions” or “Educational Settings” includes daycares and schools (elementary, middle, high and vocational).
- “Fully vaccinated persons” means persons for whom at least two weeks has passed after receiving the final dose of the primary vaccine series (2 doses of Pfizer or Moderna and 1 dose of Johnson & Johnson’s Janssen).
- “Persons in Educational Settings” means students, teachers, administrative staff, attendees, volunteers, and other employees or volunteers of Educational Institutions.

IT IS FURTHER ORDERED that this ORDER shall not apply to the following Persons:

- a. Persons in the act of eating or drinking.
- b. Persons under the age of four years; however, supervised masking is recommended for children who are at least two years of age.
- c. Persons with developmental conditions of any age attending school for whom it has been demonstrated that the use of a face covering would inhibit the person's access to education. These are limited to persons with an Individualized Education Plan, Section 504 Plan, Individualized Healthcare Plan or equivalent.
- d. Vaccinated teachers who are working with infants younger than 12 months, children who are hard of hearing or students with developmental conditions who benefit from facial cues.
- e. Persons who have a medical reason confirmed in writing from a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO) currently licensed to practice medicine in the State of Michigan.
- f. Students while participating in indoor sports and performing arts according to school policy/rules who are following the school testing plan.

IT IS FURTHER REMINDED that:

- a. On January 29, 2021, the CDC issued an ORDER that required face masks to be worn by all people while on public transportation (which included all passengers and all personnel operating conveyances) traveling into, within, or out of the United States and U.S. territories. The CDC ORDER includes school buses, both public and private.

- b. On July 27, 2021, the CDC issued recommendations calling for universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status. On August 13, 2021, MDHHS issued updated guidance stating that all schools should require universal indoor masking. The Local Health Departments remind Educational Institutions of these recommendations and encourage them to enact policies to this effect.
- c. This order does not repeat, supersede, or rely on any current MDHHS or Federal Epidemic 5 Orders, which are incorporated by reference herein.

THIS ORDER is effective immediately and remains in effect until community transmission for Oakland County is categorized as "Moderate" by the CDC for at least fourteen consecutive days, or until further notice from the Oakland County Health Officer.

This order may be revised as well as supplemented with specific procedures and orders in accordance with the Michigan Public Health Code.

Dated: November 22, 2021



Oakland County, Michigan
Local Health Officer



Oakland County, Michigan
Local Medical Officer

EXHIBIT 6

*Blackmon v Lenawee County Health Dept, No.
4:22-cv-10364 (ED Mich, Judge Davis)*

Complaint

RECEIVED by MSC 3/4/2022 5:02:01 PM

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LENAWEЕ

KIMBERLY BLACKMON, Next Friend of
ZO and ZI,

Plaintiffs,

Hon. Michael R. Olsaver

v

No. 22- 6845-CZ

LENAWEE COUNTY HEALTH DEPARTMENT,
MARTHA HALL, BLISSFIELD COMMUNITY
SCHOOLS and SCOTT RILEY,

Defendants.

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NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE that Defendants LENAWEЕ COUNTY HEALTH DEPARTMENT, MARTHA HALL, BLISSFIELD COMMUNITY SCHOOLS and SCOTT RILEY have removed this cause to the United States District Court for the Eastern District of Michigan (the "District Court"). A copy of the Notice of Removal with the pleadings filed with

the District Court are attached hereto as *Exhibit 1*.

GIARMARCO, MULLINS & HORTON, P.C.

By: 

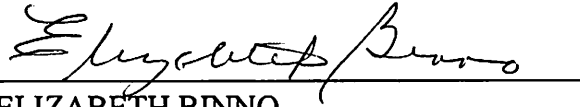
TRAVIS M. COMSTOCK (P72025)

Attorneys for Defendants, Blissfield
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(248) 457-7036

DATED: February 18, 2022

PROOF OF SERVICE

ELIZABETH BINNO states that on February 18, 2022, she served a copy of the **Notice of Removal to Federal Court** upon Daren A. Wiseley and Andrew Brege by email and by placing same in a sealed envelope, properly addressed, with sufficient first class postage affixed thereon, in a United States Mail receptacle on the aforementioned date.


ELIZABETH BINNO

RECEIVED by MSC 3/4/2022 5:02:01 PM

**STATE OF MICHIGAN
IN THE 39TH CIRCUIT COURT FOR THE COUNTY OF LENAWE**

KIMBERLY BLACKMON, *next friend of*
ZO, and ZI,

Plaintiffs,

v.

LENAWEE COUNTY HEALTH
DEPARTMENT; MARTHA HALL,
Health Officer; BLISSFIELD
COMMUNITY SCHOOLS; and SCOTT
RILEY, *Superintendent*,

Defendants.

Case No:

HON.

VERIFIED COMPLAINT;
MOTION FOR EX PARTE
TEMPORARY RESTRAINING
ORDER; AND BRIEF IN SUPPORT

Daren A. Wiseley (P85220)
WISELEY LAW, PLLC
Attorney for Plaintiffs
41 ½ E. Bacon St.
Hillsdale, MI 49242
517-234-4020

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. Plaintiffs state in support of this complaint as follows:

INTRODUCTION

Leaders were forced to make difficult decisions in response to COVID-19. While many were well-intentioned, some chose to go beyond their lawfully delegated authority, circumventing the law in an ends-justify-the-means-approach. Emergencies require nimble responses, no doubt, but “The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances.” *Ex Parte Milligan* (citation omitted). The entire purpose of constitutions and the rule of law is for emergencies, like these.

Children have suffered more than any other group from the unintended consequences of COVID-19 responses and yet they are in the safest category of persons. These children will

never get the opportunities back to spend lost time with friends, learn in the classroom, or play in missed sporting events and concerts. The mental, social, and physical effects of quarantine are severe on children that are still developing these capabilities. Plaintiffs merely ask that healthy students are not punished in one-size-fits-all responses that provide little, if any, verifiable increase in safety to the very children they are purported to protect.¹

In a constitutional framework, courts are not entrusted with resolving policy debates, but upholding the law. Plaintiffs bring this action to respectfully request that this court do just that – provide relief to children from the continued irreparable harm that will be done to them, and restore their constitutionally and statutorily guaranteed rights, by merely requiring Defendants to follow the law.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Kimberly Blackmon is the mother and next friend of ZO and ZI, minor children.
2. ZI² is an 8th grade student at Blissfield Community Schools (hereinafter, “BCS”).
3. ZO is a 6th grade student at BCS.
4. Defendant Lenawee County Health Department (hereinafter, “LCHD”) is the health department for Lenawee County, and a “local health department” as that term is used in MCL 333.2401, *et seq.*
5. Defendant Martha Hall (hereinafter, “HO”) is the appointed health officer for LCHD. She constitutes a “local health officer” as that term is used in MCL 333.2428.

¹ Plaintiffs find it obvious that *sick* children be sent home from school, arguing only in opposition to healthy children being quarantined.

² ZI and ZO are abbreviated to protect the identities of the minor children.

6. Defendant BCS is a public school district in Blissfield, Lenawee County, Michigan.

7. Defendant Scott Riley (hereinafter, “SR”) is the superintendent of BCS.

8. This Court has jurisdiction over this dispute by virtue of MCL 600.605.

9. Venue is proper in this Court under MCL 600.1615 because Defendants’ exercise governmental authority in Lenawee County. Furthermore, all relevant events to this action transpired in Lenawee County.

10. Finally, under MCR 2.605, an action for declaratory judgement is considered “within the jurisdiction of a court if a court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.”

STATEMENT OF FACTS

11. Plaintiff incorporates by reference all preceding paragraphs.

12. On May 11, 2021, HO, on behalf of LCHD, issued Public Health Order 2021-1 (hereinafter, “Order”) (**Ex. 1**). The Order provided for quarantine in public settings and purported to get its authority pursuant to MCL 333.2451 and 333.2453 and administrative rule 325.175(4).³

13. The Order was rescinded in its entirety on August 17, 2021. (**Ex. 2**). Since that time, no further emergency order has been enacted by LCHD.

14. Even though the Order was rescinded, LCHD still issued quarantine orders on the same day, stating, “The local public health order 2021-01 Quarantine Order in Educational

³ Governor Whitmer later signed the 2022 budget bill, containing language that any health officer that has an emergency order under MCL 333.2453, in effect as of October 1, 2021, will lose funding.

Settings has been rescinded. Instead, quarantine will be based on the attached school guidance document.” (Ex. 3).

15. After the Order was rescinded, LCHD continued mandating quarantine requirements even though no emergency order was in place. These included: “There is no requirement to quarantine entire classrooms, *unless the entire classroom meets the definition of a close contact.*” [Emphasis added] (Ex. 4), masking, avoidance of social gatherings, and participation in sports and extracurricular activities. (Ex. 5).

16. BCS sent student contact tracing lists (Ex. 6), via spreadsheet or electronically, to LCHD. (Ex. 5). In return HO would send BCS quarantine lists. *Id.* This occurred absent an emergency order.

17. ZO has been placed in quarantine twice during the Fall 2021 semester, 10/15 to 10/25 and 11/23 to 12/4. At neither time was she sick, did she test positive for COVID-19, another illness, or otherwise exhibit symptoms of illness.

18. On or about October 15, 2021, Ms. Blackmon received the following email correspondence⁴ regarding her daughter ZO from HO on behalf of LCHD, stating:

[I]n accordance with Michigan Department of Health and Human Services and the Center for Disease Control, the Lenawee County Health Department (LCHD) has determined that you have been exposed to COVID-19. You are hereby *required to cooperate* [emphasis added] with the LCHD under Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4), in the department’s efforts to prevent or control the transmission of this disease.

19. The correspondence from HO stated that ZO is required to quarantine for 10 days, stating explicitly “**May not** attend school.”

⁴ All correspondence referenced in the complaint occurred via email.

20. The purported reason to quarantine ZO was “close contact.” However, ZO did not have COVID-19, did not test positive, and exhibited no symptoms of illness; she was, in fact, completely healthy.

21. HO issued this edict to ZO unlawfully as there was no emergency order in place by which she could issue a quarantine under the purported authority.

22. Ms. Blackmon, perplexed by the fact that her daughter was placed in quarantine even though she was healthy, followed up with BCS to get an explanation.

On 10/18/21 she asked:

[H]ow did you all determine [ZO] was a close contact of [M]⁵[classmate] the seating chart should show that she has her in vip BUT they [don’t] even sit next to each other they are over a desk away. That is more then 3ft which should mean [ZO] doesn't need to [quarantine]. Can u please go back and check and then let the health dept know (**Ex. 7**).

23. BCS clearly had no answer as to how ZO was a close contact, or why she was placed in quarantine, and responded the same day with the following:

I did quite a bit of contact tracing today, so I don't recall her specific details. If you have been contacted by the health department, please follow their quarantine expectations or requirements of [ZO]. I can review her location proximity of the positive case, but for your information, I have to contact trace to 6 feet, not 3 feet as you mentioned. Once I review it tomorrow, I'll email you my findings. If I made a mistake, I can then contact the health department. ***Id.***

24. Ms. Blackmon never received an answer regarding the quarantine of ZO.

⁵ Abbreviation of minor’s name.

25. On November 30, 2021, HO ordered its second quarantine of ZO in just over a month, via a similar correspondence to that on 10/15/21, stating that “[L]CHD has determined that you [ZO] have been exposed to COVID-19.” (Ex. 8).

26. Just as the previous quarantine, ZO did not test positive for COVID-19, or exhibit symptoms of illness. Once again, she was completely healthy.

27. HO used the same boilerplate language as the first quarantine ordered on ZO, stating she was:

[H]ereby **required** [emphasis added] to cooperate with the LCHD under Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4) **Id.**

28. The correspondence further stated that ZO’s “[C]ooperation be **required** [emphasis added] in the manner below:

1. Your last date of close contact was 11/23. For quarantine calculations, this date is considered day 0. The following day is day 1, the day after that is day 2, day 3, etc.
2. To protect yourself and others, quarantine for at least 10 days. You may return to normal activities on 12/04.” **Id.**

29. ZO was further ordered she:

- a) **May not** attend school.
- b) Has the option to return early by testing on day 6 or 7 and then returning on day 8.
- c) The tests must be performed by trained school staff or by a provider such as a pharmacy on day 6 or day 7 of her quarantine period.
- d) Must mask and social distance while in school and while participating in other activities on days 8-10. **Id.**

30. HO ordered ZO to quarantine on two separate occasions, alleging “close contact” as the reason, even though LCHD did not provide a single shred of evidence to justify ripping ZO out of school. Thus, ZO was *forced to quarantine twice without any evidence, and despite the fact that she was completely healthy.*

31. ZI has also been forced into quarantine twice during the Fall 2021 semester. In both instances, ZI received the same boilerplate correspondence as ZO from HO, purporting to be issued under the same authority: Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4). (Ex. 9).

32. ZI was first forced into quarantine from 10/26/21 to 11/26/21, even though she did not test positive for COVID-19, exhibit any symptoms of illness, and was completely healthy. *Id.*

33. ZI has an IEP⁶, rendering school absences and being forced into quarantine especially difficult for her.

34. On January 10, 2021, Ms. Blackmon received correspondence from HO, again forcing ZI to quarantine, stating:

[Y]our cooperation is ***required*** [emphasis added] in the manner below:

1. Your last date of close contact was 01/06/2022...
2. To protect yourself and others, quarantine for at least 10 days,
You ***may*** [emphasis added] return to normal activities on
01/17/2022. (Ex. 10).

⁶ An Individualized Education Program (IEP) “is a written document for students with disabilities ages 3 through 25 that outlines the student’s educational needs and goals and any programs and services the intermediate school district (ISD) and/ or its member district will provide to help the student make educational progress.” Quoting, *Special education evaluations and IEPS Individualized Education Programs (IEPS)*, MDE - Individualized Education Programs (IEPs), Retrieved Jan 13 2022, from: https://www.michigan.gov/mde/0,4615,7-140-6598_88186_88204---,00.html

35. Even though the purported “close contact” (the stated rationale behind ZI’s quarantine) was dated 1/6/21, the quarantine order wasn’t issued until 1/10/21. Despite the allegation that ZI had been exposed to a “close contact” for four days already, HO still found it necessary to quarantine ZI until 1/17/21. ***Id.*** This policy is arbitrary and doesn’t appear to serve any public health interest.

36. Both ZO and ZI never received the opportunity to challenge the quarantine, have a hearing, appeal, or otherwise receive any type of basic due process.

37. Both ZO and ZI’s rights under the state and federal constitution have been compromised and she has been stripped of due process rights by being quarantined without HO or SR having any authority to do so. They have been forced to stay home by Defendants, away from school, friends, activities outside of school or any other type of gathering. Furthermore, ZI missed extracurricular activities, such as the school dance she missed when she was quarantined even though she was healthy.

38. ZO and ZI has lost valuable educational time, mental and emotional distress from being separated from peers and education, loss of hands-on instructions, and added pressure and anxiety to complete assignments without face-to-face instruction. In ZI’s case, this is multiplied by the fact that she is on an IEP.

39. SR asserts BCS has “no choice” as it pertains to contact tracing and sharing medical, epidemiologic, and other information, stating this was verified by HO. (**Ex. 11**). SR also asserts that BCS is not quarantining students, LCHD is. ***Id.***

40. BCS purports that it abides by the LCHD 2020-2021 COVID-19⁷ School Guidance Document, 12/2/2021 (hereinafter, “Document”).

41. The Document issues several mandates related to COVID, including: “Schools ***must*** report all close contacts...” [emphasis added], isolation and quarantine requirements, and other rules.

42. The Document also discriminates between vaccinated and unvaccinated individuals as it relates to quarantine in that, “**Individuals who are fully vaccinated*** and **do not** have symptoms, do not need to quarantine.” It is notable that LCHD has no issue placing children with no symptoms that are not “fully vaccinated” in quarantine. The Document cites absolutely zero scientific evidence for its rationale for this discrimination.

43. On January 13, 2021, Ms. Blackmon received correspondence that “She [ZI] is eligible to return to school tomorrow” from BCS on the grounds that “We [BCS] have migrated to the new requirement of 5 days.” ZI returned to school the following day.

44. The “new requirement” BCS had referenced to Ms. Blackmon is the LCHD “School Isolation and Quarantine Protocol Overview” (Hereinafter, “Protocol”), dated 1/12/2022. (Ex. 13).

45. The Protocol provides for Isolation and Quarantine as follows:

Quarantine Protocol – A non-household contact that is exposed to COVID-19:

- Parents shall notify the school if their child becomes COVID-19 positive
- Positive case (regardless of vaccination status) is required to isolate for a minimum of 5 days before returning to school. Individuals must have improving symptoms and be fever free for 24 hours without fever-reducing medication prior to returning to school on the 6th day. **Strict mask usage is required by individuals on days 6-10.**

⁷ The document states, “Fully vaccinated means that over two weeks have passed since either receipt of the Johnson and Johnson vaccine, or from receipt of the second dose of Moderna or Pfizer vaccines.”

- If the individual is unwilling/unable to wear a mask for days 6-10 they are to isolate at home for those days.
- Taking a rapid antigen test on day 5 of isolation is highly recommended to reduce the risk of spreading COVID-19 to others.
 - o If negative, end isolation on day 6 and wear a well fitted mask for days 6-10.
 - o If positive, continue to isolate through day 10 or until you get a negative rapid antigen test result, if you wish to continue testing. If a negative rapid antigen result is received before day 10, the individual must continue to remain masked in school through day 10.
- If the individual is without symptoms at the time of the test, and later develops symptoms, isolation restarts as day 1. Schools should be notified so they may update their records.

Extracurricular Activities

Positive individuals whose symptoms have improved and are returning to school for day 6-10, may participate in extracurricular activities, such as sports, as long as they wear a well fitted mask at all times (except when eating) including any indoor or outdoor practices or games.

It is strongly recommended that positive individuals take a rapid antigen test on day 5 before returning to school or any other activities even while masked.

Isolation Protocol – Lunch

Individuals returning on day 6-10 after a positive test should eat lunch in a separated area from other students.

Quarantine Protocol – A non-household contact that is exposed to COVID-19:

- A fully vaccinated individual (age 5-17) OR an up-to-date individual (18+) without symptoms is recommended to:
 - o Wear a well fitted mask for 10 days
 - KN95, N95, or surgical masks are preferred to cloth masks if possible.
 - o Get a COVID-19 test on day 5, if possible
 - Stay home if symptoms develop and get tested
 - If test comes back positive, isolate for 5 days and wear a mask for an additional 5 days.
 - If test comes back negative, the individual may return to school once symptoms have improved (no fever, vomiting, diarrhea for at least 24 hours).
- An unvaccinated, not-fully vaccinated (age 5-17), or not up-to-date (age 18+) individual without symptoms is expected to:
 - o Option 1 - Test to Stay: Individual will be tested for COVID-19 over a 6-day period. Individual is required to wear a well fitted mask during the testing period.

After testing for 6 days with negative results, the individual will continue to wear a well fitted mask for an additional 4 days for a total of 10 days.

- **Positive test result:** Individual begins isolation period from positive test date.

- **Negative test result:** Individual continues attending school in a well fitted mask.

- o Option 2 - Stay at home and quarantine for 5 days. After 5 days, an individual may

return to school if they are not showing any signs or symptoms of COVID-19. Individual is required to wear a well fitted mask for 5 additional days.

- Get a COVID-19 test on day 5, if possible.

- Stay home if symptoms develop and get tested.

- KN95, N95, or surgical masks are preferred to cloth masks if possible.

- o Option 3: Stay at home for 10 days. If the individual is unwilling or unable to wear a mask for days 6-10 after exposure. They are to quarantine at home for a total of 10 days.

- Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.

- If an individual has a documented positive case of COVID-19 within the last 90 days, this individual does not have to quarantine. Individual is recommended to wear a well fitted mask for 10 days.

- o Documentation must be provided to the health department.

- o KN95, N95, or surgical masks are preferred to cloth masks if possible.

Quarantine Protocol – A household contact to someone who has tested positive for COVID-19:

- A fully vaccinated (age 5-17) or up-to-date (age 18+) individual without symptoms is recommended to:

- o Wear a well fitted mask for 10 days

- o Get a COVID-19 test on day 5, if possible

- o Stay home if symptoms develop and get tested

- An unvaccinated, not-fully vaccinated (age 5-17), or not up-to-date (age 18+) individual is required to:

- o Option A: Stay away – If the close contact can completely stay away from the positive individual, the close contact is to quarantine for 5 days. After 5 days, if the close contact remains without symptoms, they may return to school in a well fitted mask for 5 days.

- Staying away includes being in a separate room than the positive individual, using a separate bathroom if possible, not sharing personal household items, and wearing a well fitted mask when they need to be around others.

- Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.
 - o Option B: Cannot stay away – If the positive individual and the close contact are unable to stay away from one another during the positive person’s isolation period, the close contact will quarantine for a total of 10 days. They may return to school on days 11-15 while wearing a well fitted mask.
- Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.
- If an individual has a documented positive case of COVID-19 within the last 90 days, this individual does not have to quarantine. Individual is recommended to wear a mask for 10 days.
 - o Documentation must be provided to the health department.
 - o KN95, N95, or surgical masks are preferred to cloth masks if possible.

Quarantine Protocol – Extracurricular Activities

Students participating in extracurricular activities such as drama, sports, etc. must wear a well fitted mask at all times (except when eating) including any indoor or outdoor practices or games. This applies to all times individuals are required to wear a mask in school including: individuals participating in Option 1: Test to Stay, individuals in day 6-10 of Option 2 and household contacts in day 6-10 of Option A, and household contacts in day 11-15 of Option B. *Id.*

46. Notably absent from this exhaustive list of requirements, is LCHD asserting *any* legal authority to mandate such a blanket protocol on every school throughout Lenawee County.

47. Per LCHD’s statistics, only 3.5% of “close contacts” identified result as positive for COVID-19. (**Ex. 12**).

48. At the time of this filing, there are only *four* students confirmed positive in the entire district BCS. This includes the elementary, middle, and high school combined.⁸

⁸ Covid-19 dashboard 2021-2022. Blissfield Community Schools. (2022, January 7). Retrieved January 8, 2022, from <https://www.blissfieldschools.us/district/covid-19-dashboard-2021-2022>

49. Data from COVID-19 studies strongly indicates significant emotional and behavioral changes during quarantine as to children and adolescents.^{9 10}

50. Common adverse side effects for younger children in quarantine include substantially “clingier” and regressive behaviors, whereas older children frequently become more anxious, angry, restless, and withdrawn when placed in quarantine.¹¹

51. Children, such as Plaintiffs, are suffering severe irreparable harm from the arbitrary quarantining of healthy students. The severe adverse effects of these measures on children are well documented; yet Defendants don’t take any precautions into account to protect the mental and social well-being of the children.

IMMEDIATE DECLARATORY RELIEF UNDER MCR 2.605 IS APPROPRIATE

52. Plaintiffs incorporate by reference all preceding paragraphs.

53. Under Michigan law, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgement.” *League of Women Voters v. Secretary of State*, 506 Mich 561, 585-586; 957 NW2d 731 (2020).

⁹ Pisano, L., & Galimi, D. (2020). *A qualitative report on exploratory data on the possible emotional/behavioral correlates of Covid-19 lockdown in 4-10 years children in Italy*. Psyarxiv.com. Retrieved January 8, 2022, from <https://psyarxiv.com/stwbn/>

¹⁰ Preliminary data suggests that during the first month of quarantine, the pandemic had an important effect on children's emotions and behavior. One in four children (26.48%) showed the regressive symptom of the demand for physical proximity to their parents during the night and almost one in five (18.17%) manifested fears that they never had before. Half of the children (53.53%) showed increased irritability, intolerance to rules, whims and excessive demands, and one in five presented mood changes (21.17%) and sleep problems including difficulty falling asleep, agitation, and frequent waking up (19.99%).

¹¹ Imran, N., Zeshan, M., & Pervaiz, Z. (2020, May). *Mental Health Considerations for Children & Adolescents in COVID-19 pandemic*. Pakistan journal of medical sciences. Retrieved January 8, 2022, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7306970/>

54. MCR 2.605(A)(1) states that, “in a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking declaratory judgment.”

55. To show an actual controversy, Plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing School Educational Association v. Lansing Board of Education*, 487 Mich at 372 n. 20; 792 NW2d 686 (2010).

56. Michigan’s appellate courts have consistently found that a plaintiff pleads an actual controversy where they allege that an invalid rule or illegal action jeopardizes their rights or interests. *See, Lash v. Traverse City*, 479 Mich 180, 196-197; 735 NW2d 628 (2007).

57. The quarantine mandates issued by HO absent an emergency order violate the Michigan Public Code’s statutory framework. Moreover, a constitutionally protected interest is affected by the unlawful quarantine. So, the quarantine orders jeopardize Plaintiff’s well-established rights or interests. A declaratory judgment is therefore necessary to sharpen the issues raised, and to clarify that LCHD’s *ultra vires* quarantine is an invalid and unlawful exercise of government authority.

58. MCR 2.605(D) states that a court may order a speedy hearing of an action for declaratory relief and otherwise advance it on the calendar. Because of the legal nature of the issues presented and the fundamental rights being deprived the plaintiffs are seeking an expedited hearing based on the allegations in the complaint.

59. An actual controversy exists based on the language and application of MCL 333.2453 and Mich Admin Code R. 325.175(4). Without a current directive from the Health

Director, County Health Officers are now beginning to develop and communicate localized mandates; inconsistent application at the local level, county by county, is occurring.

60. At the present, a state-wide emergency order has not been issued by the Director pursuant to MCL 333.2253. Based on the past practice of the Director, an emergency order can be declared multiple times, at any time, and at any time in the near future.

61. As demonstrated over the past year-and-a-half, the Director can exercise authority to issue an emergency order, soon after rescinding it. The pattern of governance demonstrates the need for a declaratory judgment now to guide Plaintiff's actions. Based on the overreaching authority of any Health Officer in the State of Michigan, specific emergency orders may evade judicial review. There is no protection from individual, protected rights being infringed without judicial review.

THE CONTROVERSY IS ALIVE AND JUSTICIBLE

62. Plaintiffs incorporate by reference all preceding paragraphs.

63. Courts generally do not decide moot questions, such as where a remedy is no longer needed.

64. Perhaps, Defendants would contend that Plaintiff has moot claims, since ZO and ZI are not currently in quarantine.

65. In cases of public importance, an issue will be resolved when it is capable of repetition but evading review. *Turumen v. Director of the Dep't of Natural Resources*, _ Mich App _ (Docket No. 350913, issued March 18, 2021), slip op at 5. This is especially true "where the remedy requested would be impossible to award because of the passage of time." *Id.*

66. Here, requiring a person unlawfully ordered to be quarantined in their home to gather information, seek counsel, and file a lawsuit with a request for a temporary restraining order, to obtain some measure of relief during a 5 or 10-day quarantine, leaves them with little

meaningful remedy. Plaintiffs, along with the rest of students in Lenawee County, are also subject to the threat of quarantine, and the Protocol, both unlawful. Furthermore, Plaintiffs, seek declaratory relief in addition to injunctive relief. So, the controversy is still alive and justiciable.

COUNT I
BECAUSE NO EMERGENCY ORDER IS IN EFFECT, MCL 333.2453 DOES NOT
AUTHORIZE THE HEALTH OFFICER TO QUARANTINE

67. Plaintiffs incorporate by reference all preceding paragraphs.

68. A governmental entity's *ultra vires* action is "void for all purposes." *Vill of Reed City v Reed City Veneer & Panel Works*, 165 Mich 599, 603; 131 NW 385 (1911).

69. HO claimed to have authority to issue quarantine orders pursuant to MCL 333.2453. However, MCL 333.2453(1) provides:

If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

70. An emergency order being in effect is a prerequisite for a health officer to have the authority under this statute to mandate quarantine orders in response to an epidemic.

71. The Order was rescinded August 17, 2021, and for all relevant times to this complaint, no emergency order was in place. Without an emergency order in place, HO had and has no authority to force students into quarantine, as she claims, pursuant to MCL 333.2453.

72. HO is attempting to end-run a formal emergency order, by issuing *de facto* quarantine order, contrary to Michigan law.^{12 13}

73. Therefore, both the 10/23 and 11/30 and the 10/28 and 1/6 quarantines HO mandated to ZO and ZI, respectively, were as *ultra vires* exercises of power.

74. In short, since no emergency order is in place, HO had and has no authority pursuant to MCL 333.2453, to issue quarantine orders.

COUNT II

BECAUSE THERE WAS NO CONFIRMED OR REASONABLY SUSPECTED COMMUNICABLE DISEASE, PLAINTIFFS COULD NOT BE QUARANTINED PURSUANT TO MICH. ADMIN CODE R. 325.175(4).

75. Plaintiffs incorporate by reference all preceding paragraphs.

76. HO claimed to have authority to issue quarantine orders pursuant to Mich. Admin Code R. 325.175(4), which provides:

When a local health officer confirms or reasonably suspects that a student or individual attending school or a group program has a communicable disease, the health officer may, as a disease control measure, exclude from attendance any individuals lacking documentation of immunity or otherwise considered susceptible to the disease until such time as the health officer deems there to be no likely further risk of disease spread.

¹² Since Governor Whitmer signed the 2022 budget (*see*, footnote 1), many health departments have rescinded emergency orders to avoid losing funding. *See, Branch-hillsdale-st. joseph community health agency forced to rescind public health quarantine order or face defunding*: Branch Hillsdale St. Joseph Community Health Agency, Bhsj (2021), Retrieved Jan 13, 2022 from <https://bhsj.org/events/440>

¹³ “The Branch-Hillsdale-St. Joseph Community Health Agency is being forced to rescind the September 22nd public health order requiring that employers, educational institutions, and persons in Branch, Hillsdale, and St. Joseph Counties quarantine after a close contact exposure with a person infected with COVID-19 – or face a loss of approximately \$1 million in state budget funding.” *Id.*

77. Neither ZO nor ZI had a COVID-19 positive test. Likewise, neither exhibited symptoms that would lead one to reasonably suspect they had COVID in any of the instances they were forced into quarantine, since they had been healthy the whole time.

78. Therefore, the Rule did not authorize the quarantines as HO had asserted; all quarantines issued to Plaintiffs purporting to be under this rule were unlawful.

79. Because neither ZO nor ZI could not be confirmed nor reasonably suspected to have a communicable¹⁴ disease, HO had absolutely no basis under Mich. Admin Code R. 325.175(4) to force them into quarantine. Therefore, the orders issued to Plaintiffs purporting to be under this Rule were unlawful and invalid.

COUNT III

LCHD HAS NO AUTHORITY TO IMPOSE THE QUARANTINE PROTOCOL

80. Plaintiffs incorporate by reference all preceding paragraphs.

81. LCHD *failed to cite any legal authority* to issue the Protocol.

82. Notwithstanding that, LCHD has no legal authority to do so, for the same reasons it cannot issue quarantine stated in Counts I, II, V, and VI of this Complaint.

83. Since LCHD has no lawful authority to impose such a mandate across all students in Lenawee County, the Protocol is invalid and enforceable.

COUNT IV

BECAUSE THE NOTICES FAILED TO COMPLY WITH THE PROCEDURE SET FORTH IN MCL 333.5203, THEY WERE VOID *AB INITIO*.

84. Plaintiffs incorporate by reference all preceding paragraphs.

85. MCL 333.5302(2) provides:

¹⁴ "Communicable" means capable of being transmitted from individual to individual, from animal to individual, or from an inanimate reservoir to an individual. R. 325.171(c).

A warning notice issued under subsection (1) shall be in writing, except that in urgent circumstances, the warning notice may be an oral statement, followed by a written statement within 3 days. A warning notice shall be individual and specific and shall not be issued to a class of persons. *A written warning notice shall be served either by registered mail, return receipt requested, or personally by an individual who is employed by, or under contract to, the department or a local health department.* [Emphasis added].

86. All four of the quarantine warning notices HO sent Plaintiffs were via email.

Therefore, the notices did not comply with Michigan Law as set forth by the plain language of MCL 333.5302(2).

87. MCL 333.5302(3) provides:

A warning notice issued under subsection (1) *shall include a statement* that unless the individual takes the action requested in the warning notice, the department representative or local health officer shall seek an order from the probate court, pursuant to this part. The warning notice *shall also state* that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights provided in this part before the probate court issues an order. [Emphasis added].

88. The notices from HO all failed to include *either* statement required pursuant to MCL 333.5302(3), rendering them noncompliant with Michigan law under the plain language of the statute.

89. All of HO's quarantine notices to Plaintiffs failed to be issued pursuant to Michigan law in the manner set forth in MCL 333.5302. Therefore, HO's unlawful quarantine notices render the orders issued invalid.

COUNT V
THE HEALTH OFFICER'S ORDERS VIOLATE THE SEPARATION OF POWERS

90. Plaintiffs incorporate by reference all preceding paragraphs.

91. The Michigan Supreme Court has recognized the liberty-preserving nature of the separation of powers. *See Dearborn Tp v Dail*, 334 Mich 673, 682–83; 55 NW2d 201, 41 205 (1952) (“In many decisions this court has upheld and jealously guarded the right to keep distinctly separate one department from another.”). “When the legislative and executive powers are united in the same person or body . . . there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.” *Soap and Detergent Ass’n v Nat Resources Comm’n*, 415 Mich 728, 751; 330 NW2d 346 (1982), quoting *The Federalist* No. 47 (Madison).

92. MCL 333.2453 provides in part, “[t]he local health officer... may establish procedures... to insure **continuation** of essential public health **services**.”

93. The Court’s “primary goal when interpreting statutes is to discern the intent of the Legislature. To do so, [the Court] focus[es] on the best indicator of that intent, the language of the statute itself.” *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 205– 06; 815 NW2d 412 (2012).

94. The plain language makes it clear that the order is limited to insuring that *already established health services are continued*. Despite the clear limitation by the word, “continuation”, HO has expanded her authority illegally by mandating newly established requirements under the guise of an emergency pandemic, i.e., students can be removed from school due to contact tracing and placed in quarantine even though they are otherwise healthy.

95. Thus, the language of MCL 333.2435 itself make it clear that orders are limited to insuring already established health services are continued, not brand-new ones created.

96. As an unelected, health officer, HO issuing quarantine orders unilaterally outside the scope of any statutory authority and forcing the public to comply with them is a complete violation of separation of powers.

97. The role of the health officer is not to make law, but HO has engaged in exercising standardless lawmaking authority. In this broad usurpation of legislative power, HO has clearly violated the separation of powers.

98. The overreach of HO should be resolved in favor of traditional separation of powers. “If there is any ambiguity, the doubt should be resolved in favor of the traditional separation of governmental powers.” *Civil Serv Comm’n of Michigan v Auditor Gen*, 302 Mich 673, 683; 5 NW2d 536 (1942).

99. Because the separation of powers is a bedrock of our form of government, and because it is the foundational structural protection against the abuse of our liberties, the courts must resist all temptations to sacrifice it for expediency. The separation of powers is not diminished by crises. As the United States Supreme Court said, “Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved.” *Home Bldg & L Ass’n*, 290 US at 425.

100. Because HO’s quarantine orders violated separation of powers, these *ultra vires* acts in mandating them are null and void.

COUNT VI
THE STATUTORY LANGUAGE OF MCL 333.2453 RENDERS IT AN
UNCONSTITUTIONAL DELEGATION OF AUTHORITY

101. Plaintiffs incorporate by reference all preceding paragraphs.

102. Const 1963, art 3, § 2 summarizes the separation-of-powers principle in Michigan:

The powers of government are divided into three branches: legislative, executive, and judicial. No person exercising power of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.¹⁵

103. “[T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” *46th Circuit Trial Court v Crawford Co*, 476 Mich 131 (2002).

104. MCL 333.2453 is an unconstitutional delegation of authority, due to the: (1) scope; (2) duration; and (3) lack of intelligible standards, conferred upon one person, the local health officer.¹⁶

105. The police power is legislative in nature. "The power we allude to is rather the police power, the power vested in the legislature by the constitution, to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth." *Bolden v Grand Rapids Operating Corp*, 239 Mich 318 (1927), quoting, (Haw, C.J.), *Commonwealth v. Alger*, 7 Cush. (Mass.) 53, 85.

106. The language of MCL 333.2453 gives the local health officer extremely broad power. See, *In re Certified Questions From United States District Court, Western District of*

¹⁵ Michigan's foremost constitutional law expert, Justice Cooley, considered it a "settled maxim[] in constitutional law" that "the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." 1 Cooley, *Constitutional Limitations* (2ded), p 116 ("Where the sovereign power of the State has located the authority, there it must remain[.]").

¹⁶ The separation of powers is not diminished by crises. As the United States Supreme Court said, "Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved." *Home Bldg & L Ass'n*, 290 US at 425.

Michigan, Southern Division, 506 Mich 332 (2020) (hereinafter, *In Re Certified Questions*).¹⁷

The officer has the sole discretion to: “**determine** that control of an epidemic is necessary”, and “**issue an emergency order** to prohibit the gathering of people **for any purpose...**” [emphasis added]. The legislature has thus vested unrestrained autocratic police power in the health officer to: (1) determine the emergency exists; (2) issue the emergency order; and (3) prohibit the gathering for any purpose.

107. MCL 333.2453, while comprehensively broad, provides little durational limitations either. The only language that can be construed to limit the health officer’s duration of authority is that of controlling an epidemic.

108. Recently, Michigan’s 46th Circuit Court, on appeal, considered the constitutionality of similar language¹⁸ as it pertained to the State Health Director. *Moore Murphy Hospitality, LLC v. Michigan Dep’t. of Health and Human Services*, case no: 21-18522-AE (2022). In *Moore*, the same durational language (controlling an epidemic) was the only limitation. “Another statutory problem arises when viewing the statute as a whole: no statutory scheme provides any definition of the triggering event for the exercise of that extensive authority: “epidemic... [t]here is no definition of what that important word means – or how its definition is. In any way limited or channeled by the Legislature – within any of the entire statutory scheme.” *Id.* at 17. The court also pointed out that gatherings could be prohibited for any purpose, the indefinite nature of an epidemic, and sole discretion in the Director to

¹⁷ The Michigan Supreme Court recently addressed delegation of legislative power. The focus of which was the degree of generality contained in the authorization for exercise of executive or juridical powers in a particular field as so unacceptably high as to amount to a delegation of legislative powers.

¹⁸ MCL 333.2253

determine if an epidemic exists.¹⁹ *Id.* at 18-19. These facts are analogous to the case here. (With the local health officer in lieu of the State Director).

109. Just as the Court found in *Moore*, the same applies here – the Legislature gave the local health officer almost unlimited durational exercise of power.

110. [C]hallenges of unconstitutional delegation of legislative power are generally framed in terms of the adequacy of the standards fashioned by the Legislature to channel the agency’s or individual’s exercise of the delegated power. *Blue Cross & Blue Shield of Mich v Milliken*, 422 Mich 1, (1985). [T]he constitutional question is whether Congress has supplied an intelligible principle to guide the delegee’s use of discretion.” *Gundy v United States*, 139 S Ct 2116 (2019).

111. The intelligible principles guiding the health officer’s discretion are woefully inadequate, far “beyond the legitimate bounds of delegation of legislative power.” *Michigan State Hwy Comm v Vanderkloot*, 43 Mich App 56, 62; 204 NW2d 22 (1972).²⁰

112. It is obvious from the language of the statute - “If a local health officer determines that control of an epidemic is necessary to protect the public health...” – that no intelligible standards to guide the officer exist.²¹ The health officer has free reign to exercise significant legislative authority and police powers unilaterally over the local county for an indefinite amount of time.

¹⁹ “... what channeling of that exercise of discretion is found within the statutory text related to such a declaration? What if the Director finds that Michigan is in the grips of an ‘obesity epidemic’? An ‘opiate epidemic’? The prospective list goes on.” *Id.* at 19.

²⁰ “[A] statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative agency ... pass[es] beyond the legitimate bounds of delegation of legislative power.” *Id.*

²¹ “[A] complete lack of standards is constitutionally impermissible.” *Oshtemo Charter Tp v Kalamazoo Co Rd Com’n*, 302 Mich App 574, 592; 841 NW2d 135 (2013).

113. MCL 333.2453 is an unconstitutional delegation of legislative power because of the: (1) breadth of scope; (2) unlimited duration; and (3) lack of intelligible standards. Allowing this delegation of exceedingly broad power without any real check on the exercise of such authority would allow the Legislature to pass off its responsibility for legislating, thereby endangering the liberty of the people - according should be struck down. See, *In re Certified Questions, supra*²²; *Moore Murphy Hospitality, LLC, supra*.

COUNT VII
VIOLATION OF PROCEDURAL DUE PROCESS
1963 CONST. ART 1, § 17; U.S. CONST. AMEND. XIV

114. Plaintiffs incorporate by reference all proceeding paragraphs.

115. “No state... shall deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

116. “The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action.” *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164-165 (1963).

117. The Defendants have unlawfully restrained Plaintiffs of constitutionally protected activities through their unlawful application of Michigan Law or lack thereof and have afforded no due process for quarantines.

118. Defendants issued quarantines without any hearing or opportunity to appeal. No Defendant or agent thereof can coherently argue there was legitimate contact trace or otherwise valid reason to quarantine ZO or ZI in *any* of the instances.

²² Our high court struck down the delegation as unlawful due to lack of guiding principles. Here, MCL 333.2453 provides even fewer guiding principles.

119. Defendants have violated every student's Constitutional right to Due Process by forcing a quarantine order unilaterally.

120. The Due Process and statutory rights of Plaintiffs were violated by Defendants' collectively as it pertains to BCS contact tracing investigation and lack thereof, as well as HO's quarantine orders. This is a clear violation of Due Process.

COUNT VIII
VIOLATION OF EQUAL PROTECTION
U.S. CONST. AMEND. XIV

121. Plaintiffs incorporate by reference all preceding paragraphs.

122. "No state... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. At the heart of the Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

123. When a particular policy touches upon an immutability or important right, the United States Supreme Court has, even when applying rational basis review, thoughtfully examined the law's rationality, questioning whether animus or fear were a motivating factor in the law's enactment. *See, Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134. L. Ed 2d855 (1996).

124. The U.S. Supreme Court has found that while education is not a fundamental right, it "is perhaps the most important function of state and local governments." *Plyler*, at 222. When examining a government policy under rational basis review that touches upon an important right, the U.S. Supreme Court has sometimes inspected the means the government has selected to achieve its purpose and weighted the benefits and harms of the challenged policy. In *Romer*, the U.S. Supreme Court found Colorado's enactment inflicted "immediate, continuing,

and real injuries that outrun and belie any legitimate justifications that may be claimed for it.”

Likewise, the Supreme Court has also examined whether the challenged policy overly burdens one group while ignoring other groups. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 3132 (1985).

125. Even under the most deferential standard of review, the court must still “insist on knowing the relation between the classification adopted and the object to be obtained.” *Romer v. Evans*, *supra*. Stated otherwise, under rational basis review, courts look to see whether there is any reasonable conceivable state of facts that could justify the differential treatment.

126. Controlling the spread of COVID-19 is a legitimate government interest, however, there is no evidence presented by Defendants that *one* child quarantined could be classified as “asymptomatic.”

127. Unvaccinated children are identical in all relevant respects to students who are “fully vaccinated.” Vaccinated students are capable of transmitting COVID-19 too, yet they are not subject to the same “close contact” protocols.

128. Remote learning is inferior to in-person instruction, especially as the effect is seen on academic success and mental health. Distance learning is inferior as it puts students at an elevated risk of falling significantly behind their non-quarantined peers.

129. The one-size-fits-all policy of removing unvaccinated students from the classroom grossly burdens these students.

130. Isolating unvaccinated children provides no measurable benefit in combatting the spread of COVID-19. Defendants have shown no evidence that quarantining unvaccinated children produces any demonstrated decrease in the transmission of COVID-19 in the district.

The policy of quarantining healthy students has been largely useless at fighting the spread of the virus, however it has inflicted tremendous harm on some of those students.

131. Defendant's policies, as outlined in the Document and the Protocol, as well as evidenced in action by their quarantine orders, are overly burdening and irreparably harming the children, subjecting them to significant mental and physical distress while frustrating their ability to learn.

132. The policies are irrational and fail to balance any of the known dangers associated with quarantining children against the fear of asymptomatic spread among unvaccinated students. Even under a deferential state of review, there is no reasonable state of facts that can justify the differential treatment between vaccinated and unvaccinated students here. According, these policies violate the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

HO's unilateral and autocratic quarantine orders, issued by administrative fiat, failed to comply with *any* legal authority provided by Michigan law. These actions are completely contrary to the separation of powers that is core to a republican form of government. These *ultra vires* actions have violated Plaintiffs' and those similarly situated constitutional and statutory rights. Furthermore, MCL 333.2453 is an unconstitutional delegation of authority that is a threat to the liberty of every Michigan resident, and as such should be struck down.

For the reasons stated in each of the counts, Defendants should be enjoined through a temporary restraining order from enforcing their unlawful quarantine orders and Protocol, as Plaintiffs will suffer further irreparable harm if it is not granted. As there is no other adequate remedy at law, equitable relief is the only way to force Defendants to cease and desist their unlawful quarantines of Plaintiffs from participating in school and other activities they would


like to participate. Plaintiffs request this Court have Defendants be ordered to show cause for their unlawful quarantine orders and Protocol and why equitable relief should not be issued.

WHEREFORE, Plaintiffs respectfully request this Court:

- a) Grant equitable relief and a declaratory judgement that Defendant's quarantine orders and Protocol are unlawful and not enforceable for the above stated reasons;
- b) Grant equitable relief and declaratory judgement that MCL 333.2453 is an unconstitutional delegation of legislative authority for the above stated reasons;
- c) Grant a declaratory judgement that Defendants violated Plaintiff's Constitutional and statutory rights;
- d) Grant a temporary restraining order against Defendants to prevent them from enforcing their unlawful quarantine order and requiring them to permit Plaintiffs to
- e) Grant Plaintiffs costs, expenses, and attorney fees incurred for having to bring this action to protect Plaintiffs rights; and,
- f) Grant any other relief this Court deems just and proper.

Respectfully submitted,

Dated: January 18, 2021


Daren A. Wiseley (P85220)
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Hillsdale, MI 49242
517-234-4020
dwise@defendyourrights.law

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO.
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Court address

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name(s), address(es), and telephone no(s).
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Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

**LENAWEE COUNTY
HEALTH DEPARTMENT**

1040 S. Winter Street, Suite 2328
Adrian, MI 49221

Phone | 517-264-5226
Fax | 517-264-0790
LenaweeHealthDepartment.org



**PUBLIC HEALTH ORDER (2021-1)
FOR CONTROL OF PANDEMIC
QUARANTINE ORDER IN EDUCATIONAL SETTINGS**

Matters of concern to the health of Lenawee County citizens having been brought to the attention of the Health Officer of the Lenawee County Health Department, and the Health Officer having made the following determinations, issues this Order pursuant to the Michigan Public Health Code, MCL 333.2451 and 333.2453, as well as R. 325.175(4), which is an administrative rule promulgated by the Michigan Department of Health and Human Services pursuant to MCL 333.2226(d).

1. On October 5, 2020 and as recently as April 16, 2021, the Michigan Department of Health and Human Services ("MDHHS") through its Directors have declared an Emergency Order to address threats to the public health posed by the COVID-19 pandemic.
2. The virus that causes COVID-19 is thought to spread mainly from person-to-person, primarily through respiratory droplets produced when an infected person or carrier coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely to occur when people are in close contact with one another.
3. Although vaccinations in the County are proceeding at a positive level and the hope is that continued vaccination will lead to reduced community transmission, COVID-19 remains a public health issue that impacts local institutions such as educational settings.
4. Household transmission of COVID-19 is common, with one study finding that transmission rates were as high as 53%. Because risk of transmission is high among households, household members who are not sick but have been exposed to COVID-19, pose a higher risk to educational settings if they return before a quarantine period has been completed.
5. It has been observed in educational settings that when prevention strategies such as masking, distancing, and handwashing are applied consistently that school-associated transmission of COVID-19 may be reduced.
6. As of May 5, 2021, the Michigan Department of Health and Human Services ("MDHHS") has advised that enforcement of MDHHS' school quarantine guidelines must be now by local health department order.

NOW, THEREFORE, IT IS HEREBY ORDERED that all Educational Institutions and all Persons in Educational Settings must adhere to the following rules:

- a. Household close contacts of COVID-19 cases are required to quarantine for at least 10 days after last exposure to a COVID-19 case.

The mission of the Lenawee County Health Department is to promote a safe and healthy environment.

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- b. All Persons in Educational Settings in Close contact with a COVID-19 case involved in an Outbreak are required to quarantine for at least 10 days after last exposure to a COVID-19 case.
- c. As soon as possible, persons identified as close contacts in an educational setting should be notified of their potential exposure.

IT IS FURTHER ORDERED that the following terms shall have the following definitions for purposes of this ORDER:

- a. "COVID-19 case" is defined by the August 2020 interim position statement published by the Council for State and Territorial Epidemiologists (CSTE) Executive Board and referenced in the Michigan State and Local Public Health Standard Operating Procedures. For the purposes of this order, a person must meet the confirmed or probable case definition as defined by CSTE and be documented in the Michigan Disease Surveillance System as a COVID-19 case. The CSTE definition can be found at the following site:
https://cdn.ymaws.com/www.cste.org/resource/resmgr/ps/positionstatement2020/Interim-20-ID-02_COVID-19.pdf
- b. "Close contact" means being within 6 feet of someone who is a COVID-19 case for a total of 15 minutes or more over a 24-hour period.
- c. "Educational Institutions" or "Educational Settings" is broadly defined and includes but is not limited to, youth camps, youth programs, childcare centers, preschools, primary through secondary schools, vocational schools, colleges, and universities. This definition includes educationally affiliated extracurricular activities such as school athletics.
- d. "Fully vaccinated persons" means persons for whom at least two weeks has passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.
- e. "Household close contact" means a close contact that lives with a COVID-19 case in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- f. "Outbreak" in an educational setting is generally defined by the CSTE as two or more laboratory-confirmed COVID-19 cases among students or staff with onsets within a 14-day period, who are epidemiologically linked, do not share a household, and were not identified as close contacts of each other in another setting during standard case investigation or contact tracing, as determined by the Lenawee County Health Department.
- g. "Persons in Educational Settings" means students, teachers, administrative staff, attendees, volunteers, coaches, camp leaders, and other employees or volunteers of Educational Institutions.

The mission of the Lenawee County Health Department is to promote a safe and healthy environment.

IT IS FURTHER ORDERED that this ORDER shall not apply to the following Persons in Educational Settings:

- a. Persons who were a confirmed or probable COVID-19 case in the past 90 days and recovered.
- b. Fully vaccinated persons.

IT IS FURTHER REMINDED that:

- a. In alignment with MDHHS guidance, the Lenawee County Health Department recommends at least a 10-day quarantine for all close contacts of COVID-19 cases.
- b. Contact tracing in educational settings remains a mandate outlined in current MDHHS Epidemic Orders. Per the May 6, 2021 Gatherings and Facemask Order issued by MDHHS, "Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts".
- c. This order does not supersede current MDHHS Epidemic Orders. Current MDHHS mask mandates, including those relevant to Educational Institutions still apply.

THIS ORDER is effective immediately and remains in effect until further order of the health officer.

May 11, 2021



Martha Hall, MPH, REHS
Lenawee County Health Officer

EXHIBIT 2

LENAWEE COUNTY HEALTH DEPARTMENT

1040 S. Winter Street, Suite 2328
Adrian, MI 49221

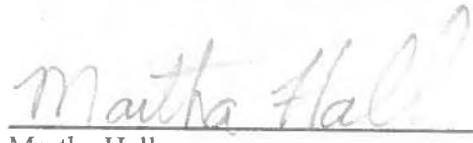
Phone | 517-264-5226
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LenaweeHealthDepartment.org



Lifting of Lenawee County Public Health Order 2021-01

The Lenawee County Health Department has rescinded local Public Health Order 2021-01.

Dated: August 17, 2021



Martha Hall
Local Health Officer

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EXHIBIT 3

RECEIVED by MSC 3/4/2022 5:02:01 PM

RE: Update for schools

2 messages

Susie Dice <Susie.Dice@lenawee.mi.us> Fri, Aug 20, 2021 at 1:41 PM
 To: "bbetnik@adrian.k12.mi.us" <bbetnik@adrian.k12.mi.us>, "head.s@constedschools.us" <head.s@constedschools.us>,
 "jim.crcraft@clinton.k12.mi.us" <jim.crcraft@clinton.k12.mi.us>, "mark.haag@isd.us" <mark.haag@isd.us>,
 "mcaran@morencibulldogs.org" <mcaran@morencibulldogs.org>, "mosborne@hudson.k12.mi.us" <mosborne@hudson.k12.mi.us>,
 "nick.steinmetz@madisonk12.us" <nick.steinmetz@madisonk12.us>,
 "riderley@tps.k12.mi.us" <riderley@tps.k12.mi.us>, "riley@blissfieldschools.us" <riley@blissfieldschools.us>,
 "sharon.smith@sc-aggies.us" <sharon.smith@sc-aggies.us>, "Stacy.Johnson@bdschools.us" <Stacy.Johnson@bdschools.us>,
 "Stacy.Johnson@bdschools.us" <Stacy.Johnson@bdschools.us>, "guerras@addison.k12.mi.us" <guerras@addison.k12.mi.us>,
 "tdurbin@lenawee.org" <tdurbin@lenawee.org>, "aalkin@sacredheartshudson.com" <aalkin@sacredheartshudson.com>, "nanemuminn@hotmail.com" <nanemuminn@hotmail.com>,
 "jake3026@yahoo.com" <jake3026@yahoo.com>, "horri@adrian.k12.mi.us" <horri@adrian.k12.mi.us>,
 "mpreston@blissfieldschools.us" <mpreston@blissfieldschools.us>,
 "kristi.cymes@clinton.k12.mi.us" <kristi.cymes@clinton.k12.mi.us>, "mary.mahle@isd.us" <mary.mahle@isd.us>,
 "erin.lepinske@madisonk12.us" <erin.lepinske@madisonk12.us>, "brown.m@constedschools.us" <brown.m@constedschools.us>,
 "brown.n@constedschools.us" <brown.n@constedschools.us>, "dosworth@tps.k12.mi.us" <dosworth@tps.k12.mi.us>,
 "smcabe@hudson.k12.mi.us" <smcabe@hudson.k12.mi.us>
 Cc: Allison Johnson <Allison.Johnson@lenawee.mi.us>, Andrea Coffman <Andrea.Coffman@lenawee.mi.us>, Angel Strong <Angel.Strong@lenawee.mi.us>,
 Destany Wells <Destany.Wells@lenawee.mi.us>, Lorie Lane <Lorie.Lane@lenawee.mi.us>,
 Margaret Amory <Margaret.Amory@lenawee.mi.us>, Mari Reko <Marianne.Reko@lenawee.mi.us>, Nancy Snider <Nancy.Snyder@lenawee.mi.us>,
 Nicole Hanna <Nicole.Hanna@lenawee.mi.us>, Paula Ulrich <Paula.Ulrich@lenawee.mi.us>,
 Theresa Enriquez <Theresa.Enriquez@lenawee.mi.us>, Meredith Mackey <Meredith.Mackey@lenawee.mi.us>,
 Angie Carlton <Angie.Carlton@lenawee.mi.us>, Cindy Merritt <Cindy.Merritt@lenawee.mi.us>,
 Kasee Johnson <Kasee.Johnson@lenawee.mi.us>, Martha Hall <Martha.Hall@lenawee.mi.us>,
 Monica Hunt <Monica.Hunt@lenawee.mi.us>, Natalie Johnson <Natalie.Johnson@lenawee.mi.us>,
 Rebecca Selenko <Rebecca.Selenko@lenawee.mi.us>, Todd Ashworth <Todd.Ashworth@lenawee.mi.us>,
 Jaime Greenwald <Jaime.Greenwald@lenawee.mi.us>, Karen Finn <Karen.Finn@lenawee.mi.us>,
 Mary Streamer <Mary.Streamer@lenawee.mi.us>, Brandy Urbe <Brandy.Urbe@lenawee.mi.us>,
 Kelli Creedon <Kelli.Creedon@lenawee.mi.us>, Kimberly R. Gunn <Kimberly.R.Gunn@lenawee.mi.us>,
 Rachel Coulter <Rachel.Coulter@lenawee.mi.us>

The update to the KKZO communicable disease reporting software for schools has not yet been completed. Until it is ready, please use the attached Contact Tracing Form to report close contacts. The password will be sent in the next email.

Susie Dice, MPH

Lenawee County Health Department

517-264-5209

From: Susie Dice
Sent: Tuesday, August 17, 2021 5:03 PM
Subject: Update for schools

School Superintendents, Nurses, and Private School Directors-

11/1/21, 3:13 PM

Blissfield Community Schools Mail - RE: Update for schools

Guidance for Schools

We have attached 2021-2022 Guidance for Schools which includes information on quarantine. If you have questions about this document, please email lenaweehd@lenawee.mi.us or call 517-264-5226 option 5.

COVID Case and Contact Reporting

The communicable disease reporting software (KKZO), is the system that is currently in place for schools to report communicable diseases to the Lenawee County Health Department. A module has been added for reporting COVID-19 cases and close contacts. Final revisions are being made and the link should be available to users by the end of the week. If schools need to have additional users added, please call Meredith Mackey at 517-264-5243. As soon as the updates are made, the link will be sent out to all users with a cc to everyone receiving this email.

Rescinding of Previous Quarantine Order

The local public health order 2021-01 Quarantine Order in Educational Settings has been rescinded. Instead, quarantine will be issued based on the attached school guidance document.

Follow up items from Superintendents' Meeting on August 13:**Testing Information:**

- Antigen testing is being coordinated by MDHHS through the ISDs
- PCR pooled testing – offered through the Midwest Coordination Center – is NOT being coordinated through the ISDs.

Myocarditis and Multisystem inflammatory syndrome in children (MIS-C) information – see attached document

Martha and Susie


 School Contact Tracing Form.xlsx
 286K

EXHIBIT 4

RECEIVED by MSC 3/4/2022 5:02:01 PM

Scott Riley <sriley@blissfieldschools.us>

Update
1 message

Susie Dice <Susie.Dice@lenawee.mi.us> Fri, Sep 24, 2021 at 4:25 PM
To: "bbehnke@adrian.k12.mi.us" <bbehnke@adrian.k12.mi.us>, "head.s@onstedschools.us" <head.s@onstedschools.us>, "jim.cracroft@clinton.k12.mi.us" <jim.cracroft@clinton.k12.mi.us>, "mark.haag@lled.us" <mark.haag@lled.us>, "mcaran@morenobulldogs.org" <mcaran@morenobulldogs.org>, "mosborne@hudson.k12.mi.us" <mosborne@hudson.k12.mi.us>, "nick.steinmetz@madisonk12.us" <nick.steinmetz@madisonk12.us>, "nilderley@tps.k12.mi.us" <nilderley@tps.k12.mi.us>, "sriley@blissfieldschools.us" <sriley@blissfieldschools.us>, "sharon.smith@sc-aggies.us" <sharon.smith@sc-aggies.us>, "Stacy.Johnson@bdschools.us" <Stacy.Johnson@bdschools.us>, "slacy.johnson@bdschools.us" <slacy.johnson@bdschools.us>, "guerras@addison.k12.mi.us" <guerras@addison.k12.mi.us>, "tdurbin@lenawee.org" <tdurbin@lenawee.org>, "aalkin@sacredheart-hudson.com" <aalkin@sacredheart-hudson.com>, "naneumann@hotmail.com" <naneumann@hotmail.com>, "jake3026@yahoo.com" <jake3026@yahoo.com>, "hor@adrian.k12.mi.us" <hor@adrian.k12.mi.us>, "mpreston@blissfieldschools.us" <mpreston@blissfieldschools.us>, "kristi.cymes@clinton.k12.mi.us" <kristi.cymes@clinton.k12.mi.us>, "mary.markle@lled.us" <mary.markle@lled.us>, "erin.lapinske@madisonk12.us" <erin.lapinske@madisonk12.us>, "brown.n@onstedschools.us" <brown.n@onstedschools.us>, "dosworth@tps.k12.mi.us" <dosworth@tps.k12.mi.us>, "smccabe@hudson.k12.mi.us" <smccabe@hudson.k12.mi.us>

Cc: Allison Johnson <Allison.Johnson@lenawee.mi.us>, Andrea Coffman <Andrea.Coffman@lenawee.mi.us>, Angel Strong <Angel.Strong@lenawee.mi.us>, Destany Wells <Destany.Wells@lenawee.mi.us>, Lorie Lane <Lorie.Lane@lenawee.mi.us>, Margaret Amory <Margaret.Amory@lenawee.mi.us>, Mari Reko <Marianne.Reko@lenawee.mi.us>, Nancy Snider <Nancy.Snider@lenawee.mi.us>, Nicole Hanna <Nicole.Hanna@lenawee.mi.us>, Paula Ulrich <Paula.Ulrich@lenawee.mi.us>, Theresa Enriquez <Theresa.Enriquez@lenawee.mi.us>, Meredith Mackey <Meredith.Mackey@lenawee.mi.us>, Angie Carlton <Angie.Carlton@lenawee.mi.us>, Cindy Merrill <Cindy.Merritt@lenawee.mi.us>, Kasee Johnson <Kasee.Johnson@lenawee.mi.us>, Martha Hall <Martha.Hall@lenawee.mi.us>, Monica Hunt <Monica.Hunt@lenawee.mi.us>, Natalie Johnson <Natalie.Johnson@lenawee.mi.us>, Rebecca Solonko <Rebecca.Solonko@lenawee.mi.us>, Todd Ashworth <Todd.Ashworth@lenawee.mi.us>, Jaime Greenwald <Jaime.Greenwald@lenawee.mi.us>, Karen Finn <Karen.Finn@lenawee.mi.us>, Mary Streamer <Mary.Streamer@lenawee.mi.us>, Brandy Uribe <Brandy.Uribe@lenawee.mi.us>, Kelli Crendon <Kelli.Crendon@lenawee.mi.us>, "Kimberly R. Gunn" <Kimberly.Gunn@lenawee.mi.us>, Rachel Coulter <Rachel.Coulter@lenawee.mi.us>, Lucy Thompson <Lucy.Thompson@lenawee.mi.us>, Amada Burgard <Amada.Burgard@lenawee.mi.us>, Taylor Jones <Taylor.Jones@lenawee.mi.us>

Good Afternoon,

The school tool kit has been updated and is attached. The changes are documented in the updates section on page 1.

I also want to bring forward a couple of items that have come up this week that I want to be sure that everyone has the information.

1. There is not a requirement to quarantine entire classrooms, unless the entire classroom meets the definition of a close contact. A close contact is defined as someone who has been within 6 feet of a COVID positive individual for a cumulative total of 15 minutes or more over a 24-hour period.
2. I have had some great conversations with several of you in the last few days regarding use of layered prevention strategies to prevent the spread of COVID within your schools and limit the number of close contacts when COVID positive cases are identified. Some great reminders that have come from those conversations:
 - Strong messaging to parents to keep children home if they have symptoms of COVID or have been exposed outside of school to someone who is COVID positive is very important. We also need to encourage early testing when children have symptoms or are exposed.
 - Strongly encourage mask wearing and make masks available in school.
 - Maintain 6 feet of distance between everyone in any situation where it is feasible.

11/1/21, 3:12 PM Bliss Community Schools Mail - Update

- Utilize assigned seats in classrooms, buses and lunch rooms to minimize the number of individuals students come in contact with on a daily basis.
- Cohort students to minimize the number of individuals that students come in contact with on a daily basis.
- Keep elementary students in their classrooms and have special teachers go to them. This cuts down on the number of contacts as they are always seated next to the same students.
- Consider regular rapid antigen testing of athletes to identify cases sooner, this helps to reduce the number of contacts.
- Consider pooled serial testing to identify cases sooner and minimize the number of close contacts.

The KKO communicable disease reporting software has been updated to request additional information. Please provide the information to the best of your ability.

Martha Hall
Health Officer
Lenawee County Health Department
(517) 264-5205

EXHIBIT 5

Susie Dice

From: Susie Dice
Sent: Friday, August 27, 2021 8:52 AM
To: 'Tom Durbin'
Subject: RE: Close contact/quarantine question
Attachments: School Contact Tracing Form.xlsx

As I read the materials closer, could you clarify something for me please.

1. IF a student is within 3' of a student who tests positive, and the close contact student is not fully vaccinated, then it is an automatic quarantine. Right? Yes.
 - a. If a student is outside of 3' then is quarantine necessary for a close contact? From 3' and up to 6', students can attend school, if all of the following apply:
 - i. The exposure occurred in a classroom or on a bus AND,
 - ii. Both the COVID positive individual and the close contact were wearing masks.

If they meet these requirements, students can attend school but must adhere to masking, social distancing, and avoidance of gatherings outside of school for 10-days post exposure. Students may not participate in sports, extracurricular activities, or activities that require face cover removal without social distancing during this period.

2. What are processes for any close contacts? Do we send a list to the HD and you contact families or is it like last year, where we inform the families that a quarantine is to take place?
 - a. You send a list to the health department, via the attached spreadsheet, or once the KKZoo School Reporting Software once updated, through that platform. We then contact the parents of the students who are close contacts. If you wish, you may also contact the students as well.

Susie Dice, MPH
Lenawee County Health Department
517-264-5209

10-Day Quarantine Period. Quarantine period ends at the end of the 10th day from the last Exposure Date to the case as long as they do not develop symptoms; Last exposure date equals Day 0. They may return to activities on Day 11. They must continue monitoring for symptoms through Day 14. Note: Fully vaccinated individuals without symptoms are exempt from quarantine.

Full mitigation includes social distancing (23 feet) and mask used at all times while in the classroom.

[illegible]

EXHIBIT 7

RECEIVED by MSC 3/4/2022 5:02:01 PM

----- Original message -----

From: Cris Rupp <crupp@blissfieldschools.us>

Date: 10/18/21 10:03 PM (GMT-05:00)

To: KIM blackmon <glitergirl88@hotmail.com>

Subject: Re:

Hello,

I did quite a bit of contact tracing today, so I don't recall her specific details. If you have been contacted by the health department, please follow their quarantine expectations or requirements of Zoelle. I can review her location proximity of the positive case, but for your information, I have to contact trace to 6 feet, not 3 feet as you mentioned. Once I review it tomorrow, I'll email you my findings. If I made a mistake, I can then contact the health department.

Cris Rupp

Blissfield Community Schools

Middle School Principal

crupp@blissfieldschools.us

(517) 486-4420

On Mon, Oct 18, 2021 at 8:10 PM KIM blackmon <glitergirl88@hotmail.com> wrote:

Hey there. How did you all determine Zoelle was a close contact of Mariah .. the seating chart should show that she has her in vip BUT they dnt even sit next to eachother they are over a desk away. That is more then 3ft which should mean Zoelle doesn't need to quarantine. Can u please go back and check and then let the health dept know?

Sent from my Galaxy

LENAWEE COUNTY HEALTH DEPARTMENT

1040 S. Winter Street, Suite 2328
Adrian, MI 49221

Phone | 517-264-5226 Fax |
517-264-0790

LenaweeHealthDepartment.org



Date: 11/30/21

Dear: Zoelle Blackmon

In accordance with Michigan Department of Health and Human Services and the Center for Disease Control, the Lenawee County Health Department (LCHD) has determined that you have been exposed to COVID-19. You are hereby required to cooperate with the LCHD under Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4), in the department's efforts to prevent or control the transmission of this disease.

Your cooperation is required in the manner below:

1. Your last date of close contact was 11/23. For quarantine calculations, this date is considered day 0. The following day is day 1, the day after that is day 2, etc.
2. To protect yourself and others, quarantine for at least 10 days. You may return to normal activities on 12/04.

You:

<u>X</u>	May not attend school.	<ul style="list-style-type: none"> You have the option to return early by testing on day 6 or 7 and then returning on day 8. If you remain symptom free the entire time you may return to school and participate in all activities on days 8 - 10 by submitting a negative test result to the school (rapid antigen or PCR). The test must be performed by trained school staff or by a provider such as a pharmacy on day 6 or day 7 of your quarantine period. Results from home test kits will not be accepted. You must mask and social distance while in school and while participating in other activities on days 8-10. You must monitor for symptoms through day 14 as stated below in #3.
	<u>Stay in School (SIS) with Masking</u> You May Attend School With No Testing Required (For Students Only)	<ul style="list-style-type: none"> You may attend school, including riding the bus, but must mask and social distance while in school. You cannot participate in sports, in-person after school activities, or in-person extracurricular activities, through day 10. However, if a negative test is collected on day 6 or 7 and submitted to the school, you may return to all activities on days 8-10 with masking. At-home test results will not be accepted. You must monitor for symptoms through day 14 as stated below in #3. This Stay in School (SIS) option is for students who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Both the positive individual and close contact were masked and at least 3 feet apart. ○ Exposure occurred at school.

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	Test to Stay (TTS)	<ul style="list-style-type: none"> • You may attend school, but must mask and social distance.
	You May Attend School With Masking and Daily Testing (For Students Only)	<ul style="list-style-type: none"> • After the first test is completed, you may ride the bus, attend school and participate in sports and extracurricular activities while wearing a mask. • You must be tested each day before school for 7 days. The test <u>must</u> be performed by trained school staff or by a provider such as a pharmacy. Results from home test kits will not be accepted. • You must monitor for symptoms through day 14 as stated below in #3. • This Test to Stay (TTS) option is for those who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Exposure occurred at school. ○ The school has chosen to offer this option.

3. During the 14-days following close contact, you are asked to monitor for symptoms of COVID-19. If symptoms develop, please notify the LCHD and get tested.

- | | | |
|-----------------------|--------------------|-----------------------|
| • Cough | • Fever | • Shortness of Breath |
| • Loss of taste/smell | • Chills/shivering | • Headache |
| • Sore throat | • Runny nose | • Congestion |
| • Muscle Aches | • Abdominal pain | • Fatigue |
| • Nausea | • Vomiting | • Diarrhea |

4. **If you are fully vaccinated or have had a positive COVID-19 test performed at a pharmacy, doctor's office or a community testing site within 90 days, please contact our office as we may be able to release you from quarantine.**

Together, we can do this. We appreciate you keeping our community safe.

If you have questions, contact 517-264-5226, option 5.

For more information, visit our website.

School guidance information: <http://www.lenawee.mi.us/959/COVID-19---Schools-and-Colleges>

COVID Testing Sites: <http://www.lenawee.mi.us/1020/COVID-19---Testing-Information>

COVID Vaccine Information: <http://www.lenawee.mi.us/983/COVID-19---Vaccine>

Quarantine and Isolation Calculator: <http://www.lenawee.mi.us/981/COVID-19-Quarantine-Isolation-Calculator>

Thank you,



Martha Hall, Health Officer
Lenawee County Health Department

LENAWEE COUNTY HEALTH DEPARTMENT

1040 S. Winter Street, Suite 2328
Adrian, MI 49221

Phone | 517-264-5226
Fax | 517-264-0790
LenaweeHealthDepartment.org



RECEIVED by MSC 3/4/2022 5:02:01 PM

Date: 10/28/2021

Dear: Zia Blackmon

In accordance with Michigan Department of Health and Human Services and the Center for Disease Control, the Lenawee County Health Department (LCHD) has determined that you have been exposed to COVID-19. You are hereby required to cooperate with the LCHD under Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4), in the department's efforts to prevent or control the transmission of this disease.

Your cooperation is required in the manner below:

1. Your last date of close contact was 10/26/2021. For quarantine calculations, this date is considered day 0. The following day is day 1, the day after that is day 2, etc.
2. To protect yourself and others, quarantine for at least 10 days. You may return to normal activities on 11/06/2021.

You:

<u>X</u>	May not attend school.	<ul style="list-style-type: none"> • <u>You have the option to return early by testing on day 6 or 7 and then returning on day 8.</u> • If you remain symptom free the entire time you may return to school and participate in all activities on days 8 - 10 by submitting a negative test result to the school (rapid antigen or PCR). • The test <u>must</u> be performed by trained school staff or by a provider such as a pharmacy on day 6 or day 7 of your quarantine period. Results from home test kits will not be accepted. • You must mask and social distance while in school and while participating in other activities on days 8-10. • You must monitor for symptoms through day 14 as stated below in #3.
	<u>Stay in School (SIS) with Masking</u> You May Attend School With No Testing Required (For Students Only)	<ul style="list-style-type: none"> • You may attend school, including riding the bus, but must mask and social distance while in school. • You <u>cannot</u> participate in sports, in-person after school activities, or in-person extracurricular activities, through day 10. However, if a negative test is collected on day 6 or 7 and submitted to the school, you may return to all activities on days 8-10 with masking. <u>At-home test results will not be accepted.</u> • You must monitor for symptoms through day 14 as stated below in #3. • This Stay in School (SIS) option is for students who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Both the positive individual and close contact were masked and at least 3 feet apart. ○ Exposure occurred at school.

	Test to Stay (TTS) You May Attend School With Masking and Daily Testing (For Students Only)	<ul style="list-style-type: none"> • You may attend school, but must mask and social distance • After the first test is completed and negative, you can ride the bus <u>while wearing a mask and social distancing</u>. • You must be tested each day before entering the building for 7 days. The test <u>must</u> be performed by trained school staff or by a provider such as a pharmacy. Results from home test kits will not be accepted. • You <u>cannot</u> participate in sports, in-person after school activities, or in-person extracurricular activities for days 1-7. • You <u>can</u> return to all activities on day 8-10 while wearing a mask. • You must monitor for symptoms through day 14 as stated below in #3. • This Test to Stay (TTS) option is for those who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Both the positive individual and close contact were masked. ○ Exposure occurred at school. ○ The school has chosen to offer this option.
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3. During the 14-days following close contact, you are asked to monitor for symptoms of COVID-19. If symptoms develop, please notify the LCHD and get tested.

- | | | |
|-----------------------|--------------------|-----------------------|
| • Cough | • Fever | • Shortness of Breath |
| • Loss of taste/smell | • Chills/shivering | • Headache |
| • Sore throat | • Runny nose | • Congestion |
| • Muscle Aches | • Abdominal pain | • Fatigue |
| • Nausea | • Vomiting | • Diarrhea |

4. **If you are fully vaccinated or have had a positive COVID-19 test performed at a pharmacy, doctor's office or a community testing site within 90 days, please contact our office as we may be able to release you from quarantine.**

Together, we can do this. We appreciate you keeping our community safe.

If you have questions, contact 517-264-5226, option 5.

For more information, visit our website.

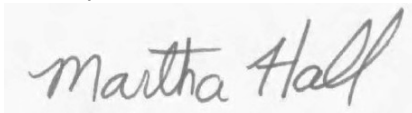
School guidance information: <http://www.lenawee.mi.us/959/COVID-19---Schools-and-Colleges>

COVID Testing Sites: <http://www.lenawee.mi.us/1020/COVID-19---Testing-Information>

COVID Vaccine Information: <http://www.lenawee.mi.us/983/COVID-19---Vaccine>

Quarantine and Isolation Calculator: <http://www.lenawee.mi.us/981/COVID-19-Quarantine-Isolation-Calculator>

Thank you,



Martha Hall, Health Officer
Lenawee County Health Department

**LENAWEE COUNTY
HEALTH DEPARTMENT**1040 S. Winter Street, Suite 2328
Adrian, MI 49221Phone | 517-264-5226 Fax |
517-264-0790LenaweeHealthDepartment.orgDate: 01/10/2022Dear: Zia Blackmon

In accordance with Michigan Department of Health and Human Services and the Center for Disease Control, the Lenawee County Health Department (LCHD) has determined that you have been exposed to COVID-19. You are hereby required to cooperate with the LCHD under Section 2453 of the Michigan Public Health code, Act 368 of 1978 and Michigan Administrative Rule 325.175(4), in the department's efforts to prevent or control the transmission of this disease.

Your cooperation is required in the manner below:

1. Your last date of close contact was 01/06/2022. For quarantine calculations, this date is considered day 0. The following day is day 1, the day after that is day 2, etc.
2. To protect yourself and others, quarantine for at least 10 days. You may return to normal activities on 01/17/2022.

You:

X	May not attend school.	<ul style="list-style-type: none"> • If you are without symptoms, you have the option to return early by testing on day 6 or 7 and then returning on day 8. • If you remain symptom free the entire time you may return to school and participate in all activities on days 8 - 10 by submitting a negative test result to the school (rapid antigen or PCR). • The test must be performed by trained school staff or by a provider such as a pharmacy on day 6 or day 7 of your quarantine period. Results from home test kits will not be accepted. • You must mask and social distance while in school and while participating in other activities on days 8-10. • You must monitor for symptoms through day 14 as stated below in #3.
	<u>Stay in School (SIS) with Masking</u> You May Attend School With No Testing Required	<ul style="list-style-type: none"> • If you are without symptoms, you may attend school, including riding the bus, but must mask and social distance while in school. • You cannot participate in sports, in-person after school activities, or in-person extracurricular activities, through day 10. However, if a negative test is collected on day 6 or 7 and submitted to the school, you may return to all activities on days 8-10 with masking. At-home test results will not be accepted. • You must monitor for symptoms through day 14 as stated below in #3. • This Stay in School (SIS) option is for students and staff who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Both the positive individual and close contact were masked and at least 3 feet apart. ○ Exposure occurred at school.

RECEIVED by MSC 3/4/2022 5:02:01 PM

	Test to Stay (TTS)	<ul style="list-style-type: none"> • If you are without symptoms, you may attend school, but must mask and social distance.
	You May Attend School With Masking and Daily Testing	<ul style="list-style-type: none"> • After the first test is completed, you may ride the bus, attend school and participate in sports and extracurricular activities while wearing a mask. • You must be tested each day before school for 7 days. The test <u>must</u> be performed by trained school staff or by a provider such as a pharmacy. Results from home test kits will not be accepted. • You must monitor for symptoms through day 14 as stated below in #3. • This Test to Stay (TTS) option is for students and staff who meet specific eligibility requirements, including: <ul style="list-style-type: none"> ○ Exposure occurred at school. ○ The school has chosen to offer this option.

3. During the 14-days following close contact, you are asked to monitor for symptoms of COVID-19. If symptoms develop, please notify the LCHD and get tested.

- | | | |
|-----------------------|--------------------|-----------------------|
| • Cough | • Fever | • Shortness of Breath |
| • Loss of taste/smell | • Chills/shivering | • Headache |
| • Sore throat | • Runny nose | • Congestion |
| • Muscle Aches | • Abdominal pain | • Fatigue |
| • Nausea | • Vomiting | • Diarrhea |

4. **If you are fully vaccinated or have had a positive COVID-19 test performed at a pharmacy, doctor's office or a community testing site within 90 days, please contact our office as we may be able to release you from quarantine.**

Together, we can do this. We appreciate you keeping our community safe.

If you have questions, contact 517-264-5226, option 5.

For more information, visit our website.

School guidance information: <http://www.lenawee.mi.us/959/COVID-19---Schools-and-Colleges>

COVID Testing Sites: <http://www.lenawee.mi.us/1020/COVID-19---Testing-Information>

COVID Vaccine Information: <http://www.lenawee.mi.us/983/COVID-19---Vaccine>

Quarantine and Isolation Calculator: <http://www.lenawee.mi.us/981/COVID-19-Quarantine-Isolation-Calculator>

Thank you,



Martha Hall, Health Officer
Lenawee County Health Department

EXHIBIT 11

RECEIVED by MSC 3/4/2022 5:02:01 PM

Forwarded message

From: **Scott Riley** <sriley@blissfieldschools.us>
Date: Tue, Nov 9, 2021 at 12:41 PM
Subject: Re: Bro, it's getting out of control...
To: brittany alcock <Balcock24@gmail.com>

Good afternoon Brittany,

The District is not quarantining students, the Lenawee County Health Department is through the authority granted to them in Administrative Rule 325.174. Thanks!

On Tue, Nov 9, 2021 at 9:22 AM brittany alcock <balcock24@gmail.com> wrote:

I did not say to stop contact tracing. I asked to stop quarantining healthy students or allow parents the choice if they want to quarantine based on the miniscule chance that their child may have covid. Denying the education of 153 students over 12 who have covid seems a bit extreme when you, by law, do not have to quarantine them.

On Tue, Nov 9, 2021 at 7:33 AM Scott Riley <sriley@blissfieldschools.us> wrote:

Good morning Brittany,

The Lenawee County Health Department has made it clear to Blissfield Community Schools and other Lenawee County schools that contact tracing is not optional. This has been verified by Martha Hall (Lenawee County Health Officer). They expect schools to conduct contact tracing and to share medical, epidemiologic, and other information related to individuals who were potentially exposed to COVID-19 with them as required by Administrative Rule 325.174.

Thanks!

EXHIBIT 12

RECEIVED by MSC 3/4/2022 5:02:01 PM

Martha Hall

From: Martha Hall
Sent: Sunday, October 17, 2021 8:28 PM
To: Haag, Mark; Susie Dice
Subject: RE: School Update

Mark,

Thank you for your feedback. See my responses below in blue.

Martha

From: Haag, Mark <mark.haag@lisd.us>
Sent: Thursday, October 14, 2021 7:46 PM
To: Susie Dice <Susie.Dice@lenawee.mi.us>; Martha Hall <Martha.Hall@lenawee.mi.us>
Subject: RE: School Update

Susie and Martha:

I appreciate you sending out this information, with the biggest change being the addition of the **Alternate School Quarantine: Stay in School (SIS)— No Testing Required** option. In case no other school leaders have reached out to you, I don't believe there are any or many that find this addition to be of great value or will have much impact – as you are both well aware of the frequency and popularity of masking among many of our school families.

We appreciate the data around close contacts identified who end up positive (3.5%), as this is a number many have sought. Hopefully you understand that many will use this number to support their argument that given it is relatively low, perhaps close contact quarantining is not necessary. I am sure health experts would argue anything other than 0% makes it a good strategy. Though you stated that the actual positive rate is actually higher, I don't feel like this data point is going to help those who oppose some of the current practices/procedures.

I have a couple of questions/comments related to this specific addition, as I did a couple of weeks ago when I was first asked to provide feedback on this option.

I don't feel like my question(s) were really addressed at that time specific to this option.

1. If an individual is asymptomatic (and likely unvaccinated based on our data around Lenawee County vaccination rates for youth), this seems to assume that a mask alone (regardless of type, quality and care in wearing the mask in intended fashion consistently) alone makes it "Safe" to be in school. What is the research or science behind this?

The test to stay option is used in other states, mostly where there are requirements in place for universal masking. There was a study done earlier this year in the U.K. that compared a test to stay option to regular quarantine with good results [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01908-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01908-5/fulltext)

2. Are there other counties in Michigan following this specific option?

There are other counties in Michigan using the test to stay option when both the COVID positive individual and the contact were both masked during school exposure. Washtenaw announced they were making the option available recently and Livingston is doing this also.

3. The reality that a student, family or adult who promotes the mitigation measure of wearing a mask or practice of personally wearing a mask will not be helped in any way with this option if another individual, student or



LENAWEE COUNTY

HEALTH DEPARTMENT

School Isolation and Quarantine Protocol Overview

As of 1/12/2022

Protocol is subject to change at any time.

Definitions:

- **Isolation**: Separates a person known or reasonably believed to be sick with COVID-19 and infectious, from others who are not infected. Individuals who are COVID-19 positive must isolate.
- **Quarantine**: Staying home after exposure to someone who has been diagnosed with COVID-19. An individual who has been infected with the virus that causes COVID-19 may not show symptoms for up to 14 days. Some individuals may never show symptoms but are COVID-19 positive and can still spread the virus.
- **Fully Vaccinated**: Someone who:
 - Is 5-17 years old and has completed a primary COVID-19 vaccination series **more than 2 weeks ago** (Pfizer or Moderna)
 - A primary vaccination series is 2 doses of either Pfizer or Moderna
- **Up-to-date on Vaccination**: Someone who:
 - Is 18+ years old and has completed a primary COVID-19 vaccination series **within 5 months** (Pfizer or Moderna) or **within 2 months** (J&J) **OR**
 - Is 18+ years old and has received all recommended vaccine doses, including boosters and additional primary shots for some immunocompromised people
 - The CDC recommends that individuals stay up to date by receiving any additional doses they are eligible for to ensure they have the optimal protection against COVID-19.
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>
- **Not-Fully Vaccinated**: Someone who:
 - Is 5-17 years old and has not completed a COVID-19 vaccination series of Pfizer or Moderna (only received one dose)
 - Is 18+ years old and has been vaccinated **more than 5 months ago** (Pfizer or Moderna) or **more than 2 months ago** (J&J) without receiving a booster dose
 - Completed a COVID-19 vaccination series **less than 2 weeks ago**
- **Unvaccinated**: Someone who has not received a COVID-19 vaccine.
- **Close Contact**: Someone who was less than 6 feet away from the infected person for a cumulative total of 15 minutes or more over a 24-hour period.
- **Improving symptoms**: Symptoms such as cough, runny nose, and congestion have gotten noticeably better. No fever for at least 24 hours without the use of fever-reducing medication. Some symptoms like fatigue, loss of taste and smell may last for a longer period of time.

Isolation Protocol - Someone who has tested positive for COVID-19:

- Parents shall notify the school if their child becomes COVID-19 positive
- Positive case (regardless of vaccination status) is required to isolate for a minimum of 5 days before returning to school. Individuals must have improving symptoms and be fever free for 24 hours without fever-reducing medication prior to returning to school on the 6th day. **Strict mask usage is required by individuals on days 6-10.** KN95, N95, or surgical masks are preferred to cloth masks if possible.
- If the individual is unwilling/unable to wear a mask for days 6-10 they are to isolate at home for those days.
- Taking a rapid antigen test on day 5 of isolation is highly recommended to reduce the risk of spreading COVID-19 to others.
 - If negative, end isolation on day 6 and wear a well fitted mask for days 6-10.
 - If positive, continue to isolate through day 10 or until you get a negative rapid antigen test result, if you wish to continue testing. If a negative rapid antigen result is received before day 10, the individual must continue to remain masked in school through day 10.
- If the individual is without symptoms at the time of the test, and later develops symptoms, isolation restarts as day 1. Schools should be notified so they may update their records.

Isolation Protocol – Extracurricular Activities

Positive individuals whose symptoms have improved and are returning to school for day 6-10, may participate in extracurricular activities, such as sports, as long as they wear a well fitted mask at all times (except when eating) including any indoor or outdoor practices or games.

It is strongly recommended that positive individuals take a rapid antigen test on day 5 before returning to school or any other activities even while masked.

Isolation Protocol – Lunch

Individuals returning on day 6-10 after a positive test should eat lunch in a separated area from other students.

Quarantine Protocol – A non-household contact that is exposed to COVID-19:

- A fully vaccinated individual (age 5-17) OR an up-to-date individual (18+) without symptoms is recommended to:
 - Wear a well fitted mask for 10 days
 - KN95, N95, or surgical masks are preferred to cloth masks if possible.
 - Get a COVID-19 test on day 5, if possible
 - Stay home if symptoms develop and get tested
 - If test comes back positive, isolate for 5 days and wear a mask for an additional 5 days.
 - If test comes back negative, the individual may return to school once symptoms have improved (no fever, vomiting, diarrhea for at least 24 hours).

- An unvaccinated, not-fully vaccinated (age 5-17), or not up-to-date (age 18+) individual without symptoms is expected to:
 - *Option 1 - Test to Stay:* Individual will be tested for COVID-19 over a 6-day period. Individual is required to wear a well fitted mask during the testing period. After testing for 6 days with negative results, the individual will continue to wear a well fitted mask for an additional 4 days for a total of 10 days.
 - **Positive test result:** Individual begins isolation period from positive test date.
 - **Negative test result:** Individual continues attending school in a well fitted mask.
 - *Option 2 - Stay at home and quarantine for 5 days.* After 5 days, an individual may return to school if they are not showing any signs or symptoms of COVID-19. Individual is required to wear a well fitted mask for 5 additional days.
 - Get a COVID-19 test on day 5, if possible.
 - Stay home if symptoms develop and get tested.
 - KN95, N95, or surgical masks are preferred to cloth masks if possible.
 - *Option 3: Stay at home for 10 days.* If the individual is unwilling or unable to wear a mask for days 6-10 after exposure. They are to quarantine at home for a total of 10 days.
 - Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.
- If an individual has a documented positive case of COVID-19 within the last 90 days, this individual does not have to quarantine. Individual is recommended to wear a well fitted mask for 10 days.
 - Documentation must be provided to the health department.
 - KN95, N95, or surgical masks are preferred to cloth masks if possible.

Quarantine Protocol – A household contact to someone who has tested positive for COVID-19:

- A fully vaccinated (age 5-17) or up-to-date (age 18+) individual without symptoms is recommended to:
 - Wear a well fitted mask for 10 days
 - Get a COVID-19 test on day 5, if possible
 - Stay home if symptoms develop and get tested
- An unvaccinated, not-fully vaccinated (age 5-17), or not up-to-date (age 18+) individual is required to:
 - *Option A: Stay away* – If the close contact can completely stay away from the positive individual, the close contact is to quarantine for 5 days. After 5 days, if the close contact remains without symptoms, they may return to school in a well fitted mask for 5 days.
 - Staying away includes being in a separate room than the positive individual, using a separate bathroom if possible, not sharing personal household items, and wearing a well fitted mask when they need to be around others.
 - Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.
 - *Option B: Cannot stay away* – If the positive individual and the close contact are unable to stay away from one another during the positive person's isolation period, the close contact will quarantine for a total of 10 days. They may return to school on days 11-15 while wearing a well fitted mask.

- Monitor for symptoms of COVID-19. If symptoms develop, isolate immediately and get tested for COVID-19.
- If an individual has a documented positive case of COVID-19 within the last 90 days, this individual does not have to quarantine. Individual is recommended to wear a mask for 10 days.
 - Documentation must be provided to the health department.
 - KN95, N95, or surgical masks are preferred to cloth masks if possible.

Quarantine Protocol – Extracurricular Activities

Students participating in extracurricular activities such as drama, sports, etc. must wear a well fitted mask at all times (except when eating) including any indoor or outdoor practices or games. This applies to all times individuals are required to wear a mask in school including: individuals participating in *Option 1: Test to Stay*, individuals in day 6-10 of *Option 2* and household contacts in day 6-10 of *Option A*, and household contacts in day 11-15 of *Option B*.