

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

DUSTIN AND KELLY BROWN, as the)
Parents and guardians of student K.B.,)
TERRY AND REBECCA JUNE as the parents)
And guardians of student J.J., ZACK AND GINA)
HOGAN as the parents and guardians of student)
N.H., CHRIS AND ALICIA HATALLA as the)
parents and guardians of student C.H.,)
)
Plaintiffs,)
vs.)
)
NORTH MAC CUSD #34, a body politic)
and corporate, JAY GOBLE as Superintendent)
of NORTH MAC CUSD #34,)
)
Defendants.)

No. 2021 MR 88

FILED

SEP 01 2021


Clerk of the Circuit Court
Macoupin County, Illinois

ORDER

Re: Verified Emergency Motion for Temporary Restraining Order

This cause coming to be heard on Plaintiffs' Verified Emergency Motion for Temporary Restraining Order, due notice having been given. Plaintiffs appear in person, along with Attorney DeVore. Defendants appear in person, along with Attorney Satterly. Arguments heard. The Court having considered the verified Petition, attached exhibits, Defendants' Response to Plaintiffs' Motion for Temporary Restraining Order, the parties' oral arguments, and the applicable legal and statutory authority finds as follows:

**I.
PRELIMINARY FINDINGS**

1. A Temporary Restraining Order (TRO) is an equitable remedy that is used in emergency/exceptional circumstances when necessary to preserve the status quo until there is a full evidentiary hearing on the merits.
2. Controverted facts or the merits are not to be considered at a TRO hearing.

3. A TRO should only be decided on a summary basis, considering only the verified pleadings and non-evidentiary arguments.
4. Plaintiffs' Emergency Motion for Temporary Restraining Order is verified.
5. Defendants did not file a Verified Answer.
6. Failure to file an Answer deems all well-pled facts as true and unrefuted at the TRO hearing.
7. To qualify for the extraordinary remedy of a Temporary Restraining Order, the moving party must show, by a preponderance of the evidence, the following:
 - a) a clearly ascertainable right in need of protection,
 - b) irreparable injury in the absence of an injunction,
 - c) no adequate remedy at law, and
 - d) a likelihood of success on the merits of the case.
8. Before issuing a Temporary Restraining Order, the Court should also find that the grant of temporary relief outweighs any possible injury to the Defendant resulting from the issuance of the temporary restraining order.
9. "It is well established that the legislatures, not the courts, have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests." *See generally, People v. Kohrig*, 113 Ill. 2d 384, 396-97 (1986) "Recognizing the legislature's broad power to provide for the public health, welfare and safety, the courts are hesitant to second-guess a legislative determination that a law is desirable or necessary. ... To do so would be to place the court in a position of acting as a super-legislature, nullifying laws it does not like. That is not our proper role in a democratic society." *Id.*

II. APPLICABLE LAW, GUIDELINES, ORDERS

The following laws, orders, and guidelines were in effect on August 24 and August 26, 2021:

A. **Illinois State Board of Education's May 2021 Resolution:**

WHEREAS, students and school staff now have meaningful protection from COVID-19 with three highly effective vaccines widely available ... ; and

WHEREAS, our schools have the capability to rapidly identify new cases to prevent COVID-19 outbreaks and reduce the risk of further transmission, thanks to the State of Illinois providing schools free access to Abbott's BinaxNOW rapid test and offering all middle and high schools use of covidSHIELD tests at a reduced or no cost; and

WHEREAS, multiple studies show that - although online classes are a far better option than no classes at all - students, particularly students who struggle academically, still learn better while in-person, along side their teachers; and

WHEREAS, reconnecting with teacher and peers in-person is essential for students' mental health and social-emotional development, especially after prolonged isolation of the pandemic; and

WHEREAS, Illinois schools are receiving 7.8 billion in federal pandemic relief funds for the safe return to in-person learning and to address learning gaps caused by the pandemic through strategies, such as tutoring, summer school, and community partnerships for mental health; and

WHEREAS, nearly all public school districts are offering partial or fully in-person learning; and

WHEREAS, guidance from the Illinois Department of Public Health is forthcoming regarding updated mitigations for schools in Phase 5 of the Restore Illinois Plan;

THEREFORE, BE IT RESOLVED, that the Illinois State Board of Education supports Illinois State Superintendent of Education Dr. Carmen I. Ayala in making the following declaration after the conclusion of the current academic school year, subject to favorable public health conditions at that time: Beginning with the 2021-2022 school year, all schools must resume fully in-person learning for all student attendance days, provided that, pursuant to 105 ILCS 5/10-30 and 105 ILCS 5/34-18.66, remote instruction be made available for students who are not eligible for a COVID 19 vaccine and are under a quarantine order by a local public health department or the Illinois Department of Public Health.

Illinois State Board of Education, *May 2021 Resolution* (emphasis added).

B. State Superintendent of Education, Dr. Carmen I. Ayala's July 9, 2021 statement:

The CDC's guidance recognizes the fundamental importance of in-person learning for the wellbeing of students, families, and communities. These public health experts stress that all schools may not be able to implement all the public health strategies, like social distancing, perfectly, and that's okay. They urge you to prioritize full-time access to in-person learning for all students, while layering the public health requirements to the best of your ability.

Now that we have the public health requirements for this coming school year, I make the following declaration:

“Beginning with the 2021-2022 school year, all schools must resume fully in-person learning for all student attendance days, provided that, pursuant to 105 ILCS 5/10-30 and 105 ILCS 5/34-18.66, remote instruction be made available for students who have not received a COVID-19 vaccine or who are not eligible for a COVID-19 vaccine, only while they are under quarantine consistent with guidance or requirements from a local public health department of the Illinois Department of Public Health.”

We have no doubt that children learn best - and educators teach best - when they're physically present together, in the same space. We want to do everything we can to ensure that happens safely.

C. Illinois Department of Public Health's July 9, 2021 article (attached as Defendant's Exh. B), "*IDPH adopted CDC's updated guidance for COVID-19 Prevention in Kindergarten (K)-12 Schools,*" as follows.

The major areas of guidance include: masks, social distancing, screening, testing, ventilation, hand washing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with quarantine and isolation, and cleaning and disinfection, and implementation of layered prevention strategies (masking, distancing, testing) to protect people who are not fully vaccinated.

D. Governor's Executive Order 2021-18, (COVID-19 Order #85), issued August 9, 2019:

The relevant portions are as follows:

WHEREAS, the CDC has provided guidance for COVID-19 Prevention in K-12 Schools; and,

WHEREAS, the CDC recently updated its COVID-19 guidance for schools, and now indicates that everyone in K-12 schools should wear a mask indoors, including teachers, staff, students, and visitors, regardless of vaccination status; and,

WHEREAS, the American Academy of Pediatrics likewise recommends universal masking in schools of everyone over the age of two, regardless of vaccination status, because a significant portion of the student population is not yet eligible for vaccines, and masking is proven to reduce transmission of the virus and to protect those who are not vaccinated; and,

WHEREAS, the Illinois State Board of Education (ISBE) and the Illinois Department of Public Health (IDPH) are issuing updated joint COVID-19 guidance and recommendations designed to allow schools in Illinois serving pre-kindergarten through 12th grade students to

conduct in-person teaching and learning, while at the same time keeping students, teachers, staff, and visitors safe; and,

Section 1: School Mitigation Measures. All public and nonpublic schools in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE and IDPH and take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to:

- a. Requiring the indoor use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status, consistent with CDC guidance; and,
- b. Implementing other layered prevention strategies (such as physical distancing, screening testing, ventilation, hand washing and respiratory etiquette, advising individuals to stay home when sick and get tested, contact tracing in combination with appropriate quarantine and isolation, and cleaning and disinfection) to the greatest extent possible and taking into consideration factors such as community transmission, vaccination coverage, screening testing, and occurrence of outbreaks, consistent with CDC guidance.

Governor's Executive Order 21-18 (emphasis added).

E. Revised Public Health Guidance for Schools - Part 5 - Supporting the Full Return to In-Person Learning for All Students - August 2021, issued by Illinois State Board of Education and Illinois Department of Public Health:

The applicable, relevant portions to the limited issue before the Court are as follows:

- In-person learning with the appropriate protective measures should be both safe and essential to students' mental health and academic growth.
- With preventative strategies in place, in-person learning was not associated with higher levels of transmission when compared to communities without in-person learning.
- The majority of students need full-time in-person access to their teachers and support network at school to stay engaged, learn effectively, and to maintain social-emotional wellness.
- A recent study from CDC suggests that remote learning can be challenging ... leading not only to learning loss, but also worsening mental health for children and parents.
- Restoring full-time-in-person learning for all students is essential to the State's commitment to educational equity.
- The greatest risk for infection and severe complications is among the non-vaccinated.

- People who are vaccinated are at low risk of symptomatic or severe infection.
- Schools can promote vaccinations among teachers, staff, families, and eligible students by providing information.
- These guidelines incorporate Dr. Ayala’s July 9, 2021 declaration.
- The State of Illinois has adopted the CDC’s updated guidance regarding COVID-19 prevention in K-12 schools. Based on that guidance and related updates on July 27, 2021, ISBE and IDPH have updated public health requirements for schools and associated guidance in these guidelines.
- Public Health Requirements for Schools are as follows:
 - Masks must be worn indoors – regardless of vaccine status.
 - Public and nonpublic schools must comply with contact tracing, in combination with isolation and quarantine, as directed by state and local public health departments.
 - Schools must implement these other layered prevention strategies to the greatest extent possible
 - Promote vaccines
 - Facilitate physical distancing
 - Implement testing for diagnostic testing of suspected cases, close contacts, and during outbreaks, as well as screening unvaccinated staff and students in accordance with CDC’s testing recommendations
 - Improve ventilation
 - Promote and adhere to hand hygiene and respiratory etiquette
 - Encourage individuals who are sick to stay home and get tested
 - Clean and disinfect surfaces in school
- IDPH Health and Safety Requirements require contact tracing in combination with isolation of those with suspected or confirmed COVID-19 and quarantine of close contacts, in collaboration with the local health department.
- **CONTACT TRACING: schools and students must work with local health departments to facilitate contact tracing of infectious students, teachers, and staff, and consistent implementation regarding isolation of cases and quarantine of close contacts.**
 - Contact tracing is used by health departments to prevent spread of infectious diseases.
 - Contact tracing involves identifying people who have a confirmed or probable case of COVID-19 and individuals with whom they came into contact and working with such individuals to interrupt disease spread.

- This means schools are to ask people with COVID to isolate and their contacts to quarantine voluntarily at home.
 - Students/staff who are fully vaccinated with no symptoms do not need to quarantine or be restricted from school/school activities. Fully vaccinated people should get tested 3-5 days after close contact exposure.
 - Schools can provide information of unvaccinated individuals in shared rooms, class schedules, shared meals, or extracurricular activities to the local health department to expedite contact tracing and control the spread of COVID-19.
 - Schools should have a tracking process in place of those excluded from school because they have been exposed to someone with COVID-19 and are in quarantine. This tracking ensures CDC and local health department criteria for discontinuing home isolation or quarantine are met before student/staff return to school.
 - Schools should communicate this process to all members of the school community prior to the resumption of in-person learning.
 - Districts and Schools must be prepared to offer assistance to local health department when contact tracing is needed after a confirmed case, which may include identifying the individual's assigned areas and movement throughout the building.
 - Individuals who show symptoms should be evaluated by medical provider about when they can return.
- **DEFINITION OF A CLOSE CONTACT:** for not fully vaccinated persons, close contact is defined as being within 6 feet of the infected person for total of 15 minutes or more over a 24-hour period. For students in the classroom setting, contacts who were within 3-6 feet of an infected student do not require quarantine as long as both were masked the entire time. If they are not consistently masked, then close contacts are classroom students who were within 6 feet of the infected student for a cumulative total of 15 minutes or more over a 24-hour period. Also – individuals who are solely exposed to a confirmed case while outdoors should not be considered close contacts.
 - Local health departments are the final authority on identifying close contacts.
 - **QUARANTINE PROCEDURES:** local health departments will make final determination on who is to quarantine and for how long.

- The CDC describes three options for quarantine by the local health department.
 - **TEST TO STAY PROTOCOL:** if schools test close contacts on days 1,3,5 and 7 from date of exposure by a PCR or rapid Emergency Use Authorization approved test - close contacts are permitted to remain in the classroom as long as the results are negative. Test to Stay is only applicable when the covid confirmed case and close contact person engaged in consistent and corrected use of well-fitting masks. Students and staff may participate in extracurricular activities.
 - Local health departments will make final determination on who is to be quarantined and for how long under this modified quarantine.
- **Schools are to encourage students and staff who are ill to stay home.**
 - Individuals who have a temperature greater than 100.4 or who currently have known symptoms of COVID-19 may not enter school buildings.

See Revised Public Health Guidance for Schools - Part 5 - Supporting the Full Return to In-Person Learning for All Students - August 2021 (emphasis added).

F. Other relevant/cited legal authority considered by the Court include the following:

- 20 ILCS 2305/2(a)(b)(c)
- 105 ILCS 5/10-19.1
- 105 ILCS 5/10-20
- 105 ILCS 5/10-20.5
- 105 ILCS 5/10-30
- 77 Ill. Adm. Code 690.30(c)
- Executive Order 2021-19 (COVID-19 No. 86)
- Executive Order 2021-15, Sections 5,6,7,8, and 9 (as referenced in 21 EO 19)

**III.
ELEMENTS OF A TEMPORARY RESTRAINING ORDER**

To qualify for the extraordinary remedy of a Temporary Restraining Order, the moving party must show, by a preponderance of the evidence, the following:

- a) a clearly ascertainable right in need of protection,
- b) irreparable injury in the absence of an injunction,
- c) no adequate remedy at law, and
- d) a likelihood of success on the merits of the case

As noted previously, Defendants' failure to file an answer deems all the well-pled allegations in the Emergency Motion for a Temporary Restraining Order (TRO) as being true and uncontested for purposes of this summary proceeding. The following unrefuted facts have been considered by the Court:

1. Plaintiffs' children were informed by a staff member that they were considered a close contact by the school and that the school was quarantining their children.
2. The school did not inform the parents when their children could return to school.
3. The children were never contacted by the local health department as part of any contact tracing, nor were they asked to voluntarily consent to being quarantined.
4. The children are not currently positive for COVID-19.
5. The children are not exhibiting symptoms consistent with a potential COVID-19 infection.
6. One of the children's parents was informed that if the child returned to school, that child would be suspended and the parent would be escorted off the premises by law enforcement and arrested.
7. At no time has the local or state health department sought an order of quarantine against these students nor have the parents been contacted to voluntarily consent on behalf of their children.
8. The Defendants did not implement the compulsory remote learning program which is required for students who have been property quarantined from the school.

A. **Clearly Ascertainable Right(s) in Need of Protection**

To satisfy this element, Plaintiffs are "not required to make out a case which would entitle him to relief on the merits; rather, he need only show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits." See *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 386 (1985)

Here, Plaintiffs argue they have a constitutional and statutory right to an in-person education until such time as the preliminary or permanent injunction is heard and that every day which passes, the children are being denied their education.

It is clear from the Illinois State Board of Education's May 2021 Resolution, State Superintendent Dr. Ayala's July 9, 2021 Declaration, ISBE and IDPH's *Revised Public Health Guidance for Schools - Part 5 - Supporting the Full Return to In-Person Learning for All Students*, August 2021, and the Governor's Executive Order 2021-18 (Covid-19 Order #85), that all schools are required to offer in-person learning given the adverse consequences remote learning had on students during the 2020-2021 school year, including learning loss and worsening mental health. In-person learning also promotes educational equity, helps maintain social-emotional wellness, and provides access to students' teachers and support network. If a student has not received the COVID-19 vaccination and is subject to quarantine or isolation, then the school district must make remote learning available to the student.

Plaintiffs argue remote learning can only be offered if the student is not eligible for the COVID-19 vaccination and is under a quarantine order by a local public health department of the Illinois Department of Public Health. (See ISBE May 2021 *Resolution*) Defendants argue remote learning is to be made available for students who have not received or who are not eligible for a COVID-19 vaccine, only while they are under quarantine consistent with guidance or requirements from a local public health department or the Illinois Department of Public Health, implying a formal quarantine order through the courts is not required. Defendants place a great deal of emphasis on the phrase quarantine "guidance" as found in Dr. Ayala's declaration, but that emphasis is taken out of context when one matches the language of the State Superintendent's

declaration to the CDC language and the *Revised Public Health Guidance for Schools*, issued by IDPH and ISBE. (see pp. 4-5 of the *Joint Guidance*).

Defendants state “[t]he State Superintendent’s declaration pursuant to 10-30 is binding on the question of whether remote learning is mandatory for plaintiffs who meet the guidance for exclusion from school and/or quarantine issued by IDPH/ISBE and the CDC.” Defendants did not attach any Affidavits to support their argument that their “guidance” falls outside of what is specifically stated by CDC, IDPH, and ISBE in the *Joint Guidance*. Defendants further argue the students are not entitled to in-person learning, so long as they are receiving an education.

The Court disagrees. The Court finds that, based on the law that existed on August 24, 26 2021, anyone who has not been diagnosed as COVID-19 positive, and/or who does not meet the definition of a close contact (as defined by CDC and adopted by IDPH and ISBE), subject to isolation or voluntary or mandatory quarantine, is entitled to an in-person education. According to ISBE and IDPH’s *Joint Guidance*, the local health department is the final authority on identifying close contacts, and the local health department makes the final determination on who is to quarantine and for how long. While the *Joint Guidance* requires the schools to assist with contact tracing and to ask people with COVID-19 to isolate and their contacts to quarantine voluntarily at home, this does not give the school district the absolute right to require someone to quarantine at home. When a person is asked to quarantine by the public health department, that agency believes the person has or is suspected of having a dangerously contagious or infectious disease which must be controlled in order to protect others from being infected. If that person disagrees with the public health department’s determination, then the public health may issue an emergency quarantine order for 48 hours but must then file a petition with the Courts seeking a formal quarantine order. See 20 ILCS 2305 (a)(b)(c).

To obtain a court order, the Department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease including non-compliant tuberculosis patients or by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. The Department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. For purposes of this subsection, in determining whether no less restrictive alternative exists, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, quarantine or isolation is the measure provided for in a rule of the Department or in guidelines issued by the Centers for Disease Control and Prevention or the World Health Organization. Persons who are or are about to be ordered to be isolated or quarantined and owners of places that are or are about to be closed and made off limits to the public shall have the right to counsel. If a person or owner is indigent, the court shall appoint counsel for that person or owner. Persons who are ordered to be isolated or quarantined or who are owners of places that are ordered to be closed and made off limits to the public, shall be given a written notice of such order. The written notice shall additionally include the following: (1) notice of the right to counsel; (2) notice that if the person or owner is indigent, the court will appoint counsel for that person or owner; (3) notice of the reason for the order for isolation, quarantine, or closure; (4) notice of whether the order is an immediate order, and if so, the time frame for the Department to seek consent or to file a petition requesting a court order as set out in this subsection; and (5) notice of the anticipated duration of the isolation, quarantine, or closure.

20 ILCS 2305/2(c)(emphasis added). While the majority of people agree to voluntarily quarantine or isolate absent an official finding that the person has or is suspected of having a dangerously contagious or infectious disease, the legislature acknowledged a person's right to due process and implemented a procedure that requires the local public health department to establish when the person must be quarantined or isolated. Thus, the law contemplates people may object to being required to quarantine. In this case, the students were not provided any other recourse to object to the School's determination, other than to file the instant cause of action.

In addition, even if the students were subject to a proper quarantine, Plaintiffs have alleged the District failed to implement the compulsory remote learning program which is required by ISBE under the May 2021 Resolution for students, thus denying them of their right to an education. The allegation was unrefuted at the TRO hearing. Had the Governor, the CDC, the

IDPH, and the ISBE not placed so much emphasis on the importance of in-person learning for 2021-2022 school year, given the adverse effects remote learning had on the children’s learning, their mental and emotional well-being, and the education system as a whole, then Defendants’ arguments might have been more persuasive. Also, had these students met the definition of “close contact” as defined in the *Revised Public Health Guidance for Schools* and had they been properly quarantined and had remote learning been available, then Defendants’ argument would have merit because the law acknowledges remote learning is the appropriate form of learning on a temporary basis for those qualifying students, but those are not the uncontested facts before the Court at this time.

B. *Irreparable Injury in the Absence of an Injunction*

For a party to succeed under this element, the party must show that the injured party cannot be adequately compensated in damages or where damages cannot be measured by any certain pecuniary standard. “Plaintiffs need not show injury that is beyond repair or beyond compensation in damages, but rather, need only show transgressions which are of a continuing nature.” *Bollweg v. Richard v. Marker Assocs., Inc.* 353 Ill. App. 3d 560, 577 (2d Dist. 2004)

As noted above, the students were told by the District that they had to quarantine. They were not given an opportunity to refute the allegations that the district deemed them a “close contact,” subject to a mandatory quarantine for an unspecified period of time. While it is true that properly quarantined/isolated students are to participate in remote learning for a temporary time-period, those who are not identified by the State or local health department as a danger or risk of spreading a contagious disease should not be denied their right to in-person learning. At a minimum, even if the students were inappropriately ordered to quarantine by the school, these students allege they were not offered remote learning, as required. The Defendants have also not

cited to any school code that these students have violated that would require them to be excluded from in-person education. As such, this element has been satisfied.

C. No Adequate Remedy at Law

For Plaintiffs to satisfy this element, they must show their injury cannot be compensated through a monetary award. In other words, “[i]t is only when money is insufficient to compensate the injury, or when the injury cannot be properly quantified in terms of money, that injunctive relief is necessary.” Plaintiffs have satisfied this element.

D. Likelihood of Success on the Merits

To succeed on this element, Plaintiffs need only show there is a genuine question regarding the existence of a claimed right and a fair question that they will be entitled to the relief prayed for if the proof sustains the allegations.

Defendants argue they are required by Executive Order to follow contact tracing and *exclusion* and quarantine procedures recommended by state and local health departments. Defendants cite Executive Order 21-18 and the *Joint Guidance* issued by IDPH and ISBE to support this argument. The Court agrees that the School must assist with contact tracing and is required to *ask* people with COVID-19 to isolate and their contacts to quarantine voluntarily at home. Defendants did not cite to any legal authority regarding “exclusion procedures” in the context of the Governor’s emergency declaration or the IDPH/ISBE *Joint Guidance*.

Regarding Defendants’ reference to the requirement Defendants take “proactive measures to ensure the safety of students, staff, and visitors, which include but are not limited to, contact tracing in combination with appropriate quarantine and isolation...,” (emphasis added) this provision does not grant school districts absolute authority to decide who should or should not be mandated to quarantine. That is the function of the state and local health departments. The law

states so. For Districts to comply with this mandate, they are required to assist the public health department with contact tracing and ask people to voluntarily isolate if they have COVID-19 or to quarantine if they came into contact with the COVID-19 positive individual. Defendant alleges that “following the diagnosis of nine (9) positive COVID cases at the high school, the District conducted contact tracing in conjunction with recommendations from the local health department[, and since ...] the cases were considered an outbreak, ... the District excluded the entire class at the recommendation of the local health department.” (See Def. Exh. K)

While this may be a valid argument and one worth considering, the Court cannot consider it at this stage, given Defendants did not attach any Affidavits from the department of public health or the Superintendent supporting this unverified allegation that the public health department told the school to deny an entire class, including Plaintiffs, of their right to in-person learning.

Defendants also correctly argue that school districts are to follow the recommendations of local health authority with respect to close contacts, but Defendants fail to acknowledge that the applicable law requires the public health department to identify close contacts. (See *Joint Guidance* for definition of “close contact”). The law also requires the public health department to make the final determination on who is to be quarantined and for how long. Again, Defendants did not include any affidavits at this stage supporting their inference that the public health department identified the four named students as “close contacts” and that the health department asked the school to ask the students to voluntarily quarantine - as would be required pursuant to the *Joint Guidance*. Those facts are not before this Court and therefore Defendants arguments cannot be considered at this stage.

Defendants further argue that quarantine powers notwithstanding, Defendants have the right to exclude students based on policies implemented by the school board. The Court agrees

that the school board may implement policies to protect the health and safety of their students. In support of this argument, Defendants cite to Exhibit H, titled “Operational Services” and argue “[p]ursuant to this Policy, and in light of the ease in which COVID-19 may be transmitted to others in close contact, Defendants determined that they would exclude (or ‘quarantine’ as the term has generally become to be known) from in-person learning all students (and staff) who are exposed to an individuals who tests positive for COVID-19 in accordance with CDC, ISBE, and IDPH guidance.” (see p. 11 of Defendants’ Response). First, the Court notes that this Policy (4:170) was adopted in February 2019 - at a time when COVID-19 was not even in existence. A careful review of that Policy does not support Defendants’ broad interpretation at this stage, in the absence of an Affidavit or verified pleading. (This policy makes reference to 4:180 - Pandemic Preparedness, but Defendants did not include that as an Exhibit.)

Finally, Defendants argue they have separate authority to exclude students for safety reasons. In support of this argument, Defendants cite to the 2021-2022 Student and Family handbook, wherein the School District informs students and families:

All decisions regarding changes to the school environment and schedule, including a possible interruption of in-person learning, will be made by the superintendent in consultation with and, if necessary, at the direction of the Governor, Illinois Department of Public Health, local health department, emergency management agencies, and/or Regional Office of Educations.

Again, while this argument appears to have merit on its face, Defendants did not incorporate any Affidavits or verified pleadings establishing the Superintendent consulted with the state or local health departments in order to justify its broadened authority under this provision. As such, the Court cannot consider it at this stage.

Lastly, the Court acknowledges Defendants’ Exhibit K, whereby the Superintendent identifies nine (9) positive COVID-19 cases from 8/17-8/23, resulting in 73 students and 4 staff

members being required to quarantine. It is unclear from that letter whether the public health department identified those 77 individuals as “close contacts” or whether the District made that determination on its own out of an abundance of caution, and if so - what criteria it used in determining who was deemed a close contact and “required to quarantine.” As such, this Exhibit simply establishes the District informed the parents and students of the current situation. Beyond that, the Court cannot make any additional inferences absent an affidavit explaining its context.

E. Balance of Hardships

The Court is to also consider any hardships a TRO may impose on Defendants. Defendants argued that to force or require the District to comply with the *Joint Guidance* by having the local health department conclude who is a close contact and who should be subject to quarantine would cause an enormous burden to the local health department. This argument is a conclusory statement, not supported by Affidavit or a verified pleading, and as such the Court is required to disregard conclusory statements. As noted previously,

[i]t is well established that the legislatures, not the courts, have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests. ... Recognizing the legislature's broad power to provide for the public health, welfare and safety, the courts are hesitant to second-guess a legislative determination that a law is desirable or necessary. ... To do so would be to place the court in a position of acting as a super-legislature, nullifying laws it does not like. That is not our proper role in a democratic society.

See generally, People v. Kohrig, 113 Ill. 2d 384, 396-97 (1986).

Since the students have raised a genuine issue, Defendants will not suffer any hardship by requesting the local health department determine these students are considered a close contact as defined in the *Joint Guidance* and that they should be subject to quarantine, in accordance with IDPH and the local health department standards.

That is the law before the Court as of today, and that is the law this Court will follow. Certainly if Defendants produce evidence at a later hearing to establish the District's actions were justified and in accordance with the law, then the Court will factor that into its additional analysis.

IV. CONCLUSION

At this stage of a Temporary Restraining Order, Courts are prohibited from considering controverted facts or the merits and must base its decision solely on the verified pleading and non-evidentiary arguments. As outlined previously herein, the Court has accepted the following as true (given the absence of Affidavits or verified pleadings by Defendants):

1. Plaintiffs' children were informed by a staff member that they were considered a close contact by the school and that the school was quarantining their children.
2. The school did not inform the parents when their children could return to school.
3. The children were never contacted by the local health department as part of any contact tracing, nor were they asked to voluntarily consent to being quarantined.
4. The children are not currently positive for COVID-19.
5. The children are not exhibiting symptoms consistent with a potential COVID-19 infection.
6. One of the children's parents were informed that if the child returned to school, that child would be suspended and the parent would be escorted off the premises by law enforcement and arrested.
7. At no time has the local or state health department sought an order of quarantine against these students nor have the parents been contacted to voluntarily consent on behalf of their children.
8. The Defendants did not implement the compulsory remote learning program which is required for students who have been property quarantined from the school.

WHEREFORE, IT IS HEREBY ORDERED:

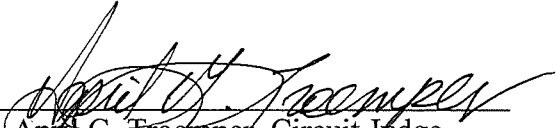
- A. Absent a finding by the local health department that these four students are deemed close contacts and are subject to mandatory quarantine because the

public's health and welfare are significantly endangered and that quarantine is the only least restrictive option, the Defendants are to allow these students to return to in-person learning unless the students voluntarily consent to quarantine or a quarantine order is issued.

- B. This TRO was issued on September 1, 2021 at 3:45 p.m.
- C. It shall remain in effect through September 10, 2021.
- D. A hearing on Plaintiffs' Motion for Preliminary Injunction is set for September 9, 2021 at 1:30 p.m. – 3:30 p.m.
- E. Bond is waived as good cause has been shown.

Dated: September 1, 2021

By: _____


Hon. April G. Troemper, Circuit Judge