

**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.)	No. 2021 MR 89
)	
NORTH MAC CUSD #34, a body politic)	
and corporate, JAY GOBLE as Superintendent)	
of NORTH MAC CUSD #34,)	
)	
Defendants.)	

PARTIAL 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’ Verified Answer and Response to Plaintiffs’ Motion for Temporary Restraining Order, the parties’ affidavits and oral arguments, and the applicable legal and statutory authority finds as follows:

**I.
INTRODUCTION**

As this Court stated in her opening remarks, this case is not about politics or personal beliefs. It is not about masks versus no masks, vaccines versus no vaccines. It is not about feelings or emotions. It is about what the law allows or does not allow. Our democracy consists of three

equal branches of government, and the issue before the Court is a perfect example of how those three branches overlap to ensure there is a check and balance. Courts are required to follow, apply, and interpret the laws, as written. As judges, we put our blinders on; we remove our personal feelings and beliefs, and we let the law lead us to our conclusions – even when those conclusions are against popular opinion.

II. JUDICIAL NOTICE

- 1) 2021 MR 88 – *Brown, June, Hogan, Hatalla v. North Mac CUSD #34 & Jay Goble, Superintendent* - The Court takes judicial notice of 21 MR 88, where this Court issued a Temporary Restraining Order against the North Mac School District and Dr. Goble because they did not have legal authority to order students to quarantine; the law requires the local health department to determine who is a close contact subject to quarantine.
- 2) 2021 MR 90 - *Brown, Hogan, Hatalla v. Macoupin County Public Health Department, & Kent Tarro, as Public Health Administrator* – The Court takes judicial notice of 21 MR 90 whereby the Macoupin County Department of Public Health admits that these 3 named students are not subject to a quarantine order and thus are not considered a significant danger to the public’s health and welfare.
- 3) At the request of counsel, the Court takes judicial notice of Temporary Restraining Orders issued against the school districts in Clinton, Adams, and Montgomery Counties – although counsel acknowledges none of those pertain to the exact issue in this case but are similar to this Court’s previous decision in 21 MR 88.

III. ISSUE

The issue before the Court is whether the School District’s Superintendent had the legal authority to pause in-person learning for the entire North Mac High School and pivot to remote instruction absent a Declaration from the State Superintendent, thus depriving the four named students of their right to an in-person education¹.

Plaintiffs argue the State Superintendent, through the Illinois State Board of Education, is the only entity authorized to implement a full remote learning curriculum and that only in very

¹This case was not filed on behalf of all students or even those students who are vaccinated and not considered to be a close contact, and thus, any decision by this Court will only apply to the four named students.

limited situations may remote learning (as it applies to the pandemic) be used. The limited circumstances, according to *Joint Guidance* from ISBE and IDPH and Dr. Ayala's Declaration, include 1) students who have tested positive for COVID-19 and who are subject to isolation, and 2) students who have been deemed close contacts by the local or state health departments and who are subject to either voluntary or ordered quarantine.

Defendants argue North Mac Superintendent, Dr. Goble, after consultation with the local or state health department, has the sole authority to close the entire school when a COVID-19 outbreak has been declared², even when 70% of its students are not subject to isolation or quarantine and when a similar outbreak broke out in its junior high but still remains open.

Defendants rely on a document from Dr. Ayala dated August 31, 2021, titled "*Current Remote Learning Options Under Illinois Law – Guidance for Schools and Districts*" to support its argument that the North Mac Superintendent may order an "adaptive pause" after consultation with the local health department. [Note: North Mac Superintendent's decision to close the school was a day prior to when Dr. Ayala officially distributed this information to the schools.]

According to page 4, par. 3 of Dr. Ayala's email correspondence and the referenced Frequently Asked Questions (FAQ), "School districts may not enter into an adaptive pause without first consulting with their local health department. If in discussions with local health department, it is determined that an adaptive pause is needed, remote learning days must be offered for the duration of the adaptive pause." Defendants also rely upon School Board Policies 4:170 (Goble

² North Mac's decision to close an entire high school does not prevent those students, teachers, and staff from roaming freely throughout the community and congregating as they see fit. The local health department would have to determine whether any other those individuals should be subject to isolation or quarantine. According to Dr. Goble's affidavit, nine students tested positive and as a result, students within 3 classrooms and 1 bus were deemed close contacts.

Affidavit, Exh. C) and 4:180 (Goble Affidavit, Exh. D) to support Dr. Goble's decision to convert the entire North Mac High School to remote learning.

IV. RELEVANT FACTS

According to **Plaintiffs' verified Petition**,

- 1) On August 30, 2021, Superintendent Goble made the decision to place the North Mac High School on full remote learning indefinitely.
- 2) Superintendent Goble also cancelled all extra-curricular activities for the High School.
- 3) According to Superintendent Goble, 9 students tested positive for COVID-19 which resulted in 118 students being deemed a close contact³ and were prohibited from entering the school.

According to **Superintendent Dr. Jay Goble's Affidavit**,

- 1) During the first week of school, from August 17, 2021 through August 23, 2021, the District experienced 9 positive COVID-19 cases, with 5 of those cases at the high school⁴. (par. 7)
- 2) Between August 24, 2021 and August 30, 2021, the District experienced an additional 17 positive COVID-10 cases, with 8 of those cases at the high school⁵. (par. 8 and attached letter, dated 8/31/21)
- 3) The District, working together with the local health department, conducted contact tracing with respect to positive COVID-19 cases at the high school during the week of August 24. The District, working together with the local health department, determined that those cases affected 3 classrooms and a bus. Approximately 118 high school students were identified as close contacts and were notified they should stay home from school pursuant to MCHD guidelines and instructions resulting in the absence of approximately 30% of the high school student population. [Approximately 388 students currently attend North Mac High School.] (par. 10)
- 4) The decision to quarantine all students in the three affected classrooms and those who rode the affected bus was the result of the Macoupin County Health Department's

³ It is unclear whether the school deemed these students close contacts or whether the local public health department identified these 118 students as close contacts and ordered them to be quarantined.

⁴ This equates to .01% of the high school student population testing positive for COVID-19. Three (3) tested positive at the South Campus.

⁵ This equates to .02% of the high school population testing positive for COVID-19. Seven (7) tested positive at the South Campus.

determination, as explained to the District’s school nurse, Dawn Sanson, that they were classifying the nine (9) COVID-19 positive cases as an “outbreak” because a significant number of the affected students would not divulge to the local health department any places other than school where they had been.

Because the District does not currently have a COVID-19 testing/screening program in place, all students with potential exposure to the outbreak cases were notified that they should stay home from school pursuant to MCHD quarantine guidelines and instructions. (par. 11, emphasis added).

- 5) On August 30, 2021, Christy Blank, Clinical Director at the Macoupin County Health Department, recommended the high school enter into an adaptive pause and pivot to remote learning due to the number of COVID-19 positive cases and the high number of close contacts. (par. 12)
- 6) That same evening and based on the same statistical information, Judy Kauerauf, Communicable Disease Section Chief at the IDPH, recommended the high school enter into an adaptive pause and pivot to remote learning. (par. 13).
- 7) On the evening of August 30, 2021, Superintendent Goble notified the high school parents via a voice message that he decided to take a pause on in-person learning and switch to remote learning indefinitely and at least through Labor Day weekend “due to the large number of positive cases at the high school that has been growing since we returned to school, as well as the extraordinarily high numbers of quarantined students as a result of close exposures.” (par. 16 and Exh. H, emphasis added)
- 8) North Mac High School will remain in an adaptive pause until such time as the District’s positivity rates and/or quarantine percentages decrease, as determined by, and in consultation with, the local health department⁶. (par. 18)

According to **Dawn Sanson**’s Affidavit,

- 1) Ms. Sanson is a registered nurse. She or one of her colleagues assist the MCHD with contact tracing by looking “at class scheduled, class seating charts, attendance records, bus seating charts, and sports rosters to determine students and staff who were less than 3ft from COVID-19 positive students for 15 cumulative minutes or more during a 24-hour period. (par. 9)
- 2) Once the school identifies potential close contacts, they break down the contact further to ensure they are identifying confirmed close contacts. They “consider whether the potential close contact and the COVID-19 positive student were: both in attendance on the relevant tracing days; in an area where masks were removed, such as a cafeteria; less than 3 feet apart if masked or less than 6 feet apart if unmasked.” They “also look

⁶ Despite the high school having 13 positive COVID-19 cases and the South Campus having 10 positive cases, the South Campus did not enter into an adaptive pause and remains open for in-person learning.

at seating charts and the arrangements of classrooms and consider whether there is a classroom overlap where multiple students test positive for COVID-19.” (par. 10)

- 3) If it is confirmed through the parents that an identified close contact has been either vaccinated or has had COVID-19 within 90 days prior to this recent exposure, then that student is allowed to remain in school. (par. 11) If neither is true, that student is asked to stay home per guidance from MCHD.
- 4) The school then provides relevant information to MCHD and the local health department takes over from there.
- 5) MCHD is responsible for reviewing the information provided by the school and then emailing parents with any necessary quarantine letters and education materials. MCHD is responsible for daily monitoring. (par. 13)
- 6) MCHD typically provides the school with a list of names and quarantine dates so they know when to expect students to return to in-person learning. MCHD makes the final decision regarding whether a student is a close contact and whether isolation and quarantine are necessary. (par. 14, emphasis added).
- 7) On August 26, 2021, it was deemed an outbreak had occurred because several high school students in three overlapping classrooms and a bus tested positive for COVID-19. These students were notified that they should stay home from school. This school nurse believes these same students received quarantine letters from MCHD. (par. 16,17)
- 8) By August 30, 2021, 3 more high school students with overlapping classes tested positive for COVID-19. (par. 18)

According to Macoupin County Health Department (MCHD) Clinical Director **Christy Blank**'s Affidavit,

- 1) Christy Blank and her colleagues are in contact with North Mac CUSD No. 34 every school day, and at the end of each day, they send the Superintendent a list of the students who are on quarantine and the dates that those students are expected to return to school⁷. (par. 4)
- 2) Once a close contact has been identified, MCHD generates a quarantine letter and emails it directly to the student's parents at the email address provided by the district. Beginning August 20, 2021, MCHD discontinued its practice of placing a follow-up

⁷ Defendants did not submit any documentation they received from MCHD identifying the 118 students who were ordered to quarantine.

phone call to the parents of the quarantined student and instead only communicates with the families via email⁸. (par. 7)

- 3) On August 26, 2021, it was determined that an outbreak had occurred at North Mac high school and that all unvaccinated students in the affected classroom would be quarantined⁹. (par. 8)
- 4) On August 30, 2021, three additional high school students tested positive for COVID-19. Clinical Director Blank then spoke to Superintendent Goble about the number of positive cases at the high school and the increasing number of high school students quarantining at home. (par. 10)
- 5) After it was determined there was an outbreak, Christy Blank recommended Superintendent Goble contact their section chief at IDPH, Judy Kauerauf, for a recommendation on an adaptive pause for the high school¹⁰. (par. 11)

V. APPLICABLE LAW, GUIDELINES, POLICIES

Governor Pritzker, on August 4, 2021, reissued his Disaster Proclamation based on the ongoing COVID-19 pandemic. According to Executive Order (2021-18), all schools are required to implement mitigation measures. According to this Order,

[a]ll 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 student, 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.

⁸ MCHD did not state that they did indeed send quarantine letters to the 118 North Mac students who were identified as close contacts in this case.

⁹ It is not clear whether the unvaccinated students also fit the definition of a close contact.

¹⁰ Defendants did not submit an Affidavit from Judy Kauerauf regarding her recommendation.

Executive Order 21-18 (emphasis added).

Because of this Disaster Proclamation, North Mac Policy 4:180 applies. According to this policy,

Emergency School Closing

In the case of a pandemic, the Governor may declare a disaster due to a public health emergency that may affect any decision for an emergency school closing. Decisions for an emergency school closing will be made by the Superintendent in consultation with and, if necessary, at the direction of the Governor, Ill. Dept. of Public Health, District's local health department, emergency management agencies, and/or Regional Office of Education.

Suspension of In-Person Instruction; Remote and/or Blended Remote Learning Day Plan(s)

When the Governor declares a disaster due to a public health emergency pursuant to 20 ILCS 3305/7, and the State Superintendent of Education declares a requirement for the District to use *Remote Learning Days* or *Blended Remote Learning Days*, the Superintendent shall approve and present to the Board for adoption a Remote and/or Blended Remote Learning Day Plan (Plan) that:

1. Recommends to the Board for consideration any suspensions or amendments to curriculum-related policies to reduce any Board-required graduation or other instructional requirements in excess of minimum curricular requirements specified in School Code that the District may not be able to provide due to the pandemic;
2. Implements the requirements of 105 ILCS 5/10-30; and
3. Ensures a plan for periodic review of and/or amendments to the Plan when needed and/or required by statute, regulation, or State guidance.

See *North Mac Community Unit School District #34, Operational Services/ Pandemic Preparedness; Management; and Recovery*, 4:180, adopted August/October 2020 (attached as Exh. D to Dr. Goble's Affidavit). According to Policy 4:170, Emergency Closing, attached as Exhibit C, "[t]he Superintendent is authorized to close school(s) in the event of a hazardous

weather or other emergency that threatens the safety of students, staff members, or school property.” (adopted February 2019)¹¹.

The Illinois State Board of Education May 2021 Resolution emphasizes that “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 “... Illinois schools are receiving 7.8 billion in federal pandemic relief funds for the safe return to in-person learning....”

In consideration of the CDC’s most recent guidelines, the Illinois Department of Public Health and the Illinois State Board of Education adopted Revised Public Health Guidance for Schools, Part 5- Supporting the Full Return to In-Person Learning for All Students – August 2021 to ensure in-person learning is available.

All parties agree North Mac CUSD #34 and Superintendent Goble are bound to follow these guidelines until such time as the IDPH and ISBE issue updated guidelines.

According to the *Joint Guidance*, IDPH and ISBA adopted and implemented “**Public Health Requirements for Schools.**” These requirements include masking of all teachers, students, staff, and visitors – regardless of vaccination status and compliance with contact tracing, isolation, and quarantine¹², as directed by state and local public health departments. In addition, the IDPH and ISBE implemented additional critical preventative strategies “to protect students,

¹¹ The Court rejects Defendants’ argument that Policy 4:170 gives the Superintendent broad authority to close an entire high school if he deems it appropriate. Where more specific laws are in place, those apply over general guidelines. Here, 4:180 specifically refers to Emergency School Closings and Remote Learnings during a pandemic, and therefore 4:180 policy trumps 4:170.

¹² According to the *Joint Guidance*, “[s]tudents and staff who are fully vaccinated with no COVID-19-like symptoms do not need to quarantine or be restricted from school or extracurricular activities. CDC recommends that fully vaccinated individuals test three to five dates after close contact exposure to someone with suspected or confirmed COVID-19.” (p. 16, bold emphasis in original).

teachers, and staff who are not fully vaccinated, especially in areas of moderate to high community transmission levels,” to ensure the safe delivery of in-person instruction. *Joint Resolution*, p. 5 (bold emphasis in original, underlining added).

According to these authoritative bodies of government, in addition to Governor Pritzker’s Order, “[s]chools must implement these other layered preventative strategies 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.” *Id.* (emphasis added). These required, mandatory layered preventative strategies include:

- 1) Promoting and/or providing COVID-19 immunization for all eligible staff and students.
- 2) Facilitating physical distancing (to the extent possible¹³).
- 3) Implementing or providing provisions for SARS-CoV-2 testing for diagnostic testing for suspected cases, close contacts, and **during outbreaks**, as well as screening testing for unvaccinated staff and students according to the CDC’s testing recommendations.
- 4) Improving ventilation to reduce the concentration of potentially virus-containing droplets in schools’ indoor air environments.
- 5) Promoting and adhering to hand hygiene and respiratory etiquette.
- 6) Encouraging individuals who are sick to stay home and get tested for COVID-19.
- 7) Cleaning and disinfecting surfaces in schools to maintain healthy environments.

Joint Guidance, pp. 5-6 (emphasis added). This *Joint Guidance* reiterates that “**these requirements are subject to change pursuant to changing public health conditions and subsequent updated public health guidance, including from CDC.**” (bold emphasis in original). Neither party presented authoritative documentation from the public health department or CDC showing that these requirements have been updated or amended, and thus, this Court is bound to apply the laws as they currently exist.

¹³ According to the *Joint Guidance* from IDPH and ISBE, “[n]o school should exclude students from in-person learning to keep a minimum distance requirement.” p. 13.

With regard to testing guidelines, the *Joint Guidance* instructs schools to refer to IDPH's Interim Guidance on Testing for COVID-19 in Community Settings and Schools. According to these two sets of guidelines,

The state of Illinois has made testing available free of charge to all school in Illinois through SHIELD Illinois.

Outbreak testing is recommended for schools in outbreak status (two or more cases linked epidemiologically that do not share the same household and are not listed as close contacts of each other outside the outbreak setting), similar to the approach used in workplaces and congregate settings. Implementation of outbreak testing should begin as soon as possible from the date the outbreak is declared and at least within three days. *Schools should conduct twice weekly testing of unvaccinated staff and students targeted to the impacted classroom(s), grade(s), extracurricular participants, or entire student body, depending on the circumstances, unless the LHD recommends otherwise. Testing should continue until the school has gone two incubation periods, or 28 days, without identifying any new cases. If testing is not already in place for screening, schools should make plans to deploy outbreak testing when needed.* A listing of free testing sites is available at dph.illinois.gov. Additionally, SHIELD Illinois can be quickly deployed to a school setting by emailing Beth Heller, Senior Director of External Affairs for SHIELD, at bheller@uillinois.edu. Schools can also utilize BinaxNOW rapid antigen testing for outbreak response by emailing dph.antigentesting@illinois.gov.

Screening tests for SARS-CoV-2 are intended to identify infected persons who are asymptomatic and without known or suspected exposure to SARS-CoV-2. Screening tests are performed to identify persons who may be contagious so that measures can be taken to prevent further transmission. Schools or organizations using SHIELD or another test provider to conduct end-to-end diagnostic or screening tests, do not need to obtain a CLIA waiver directly; the provider will instead be responsible for obtaining a CLIA waiver. Schools that directly administer diagnostic or screening tests require a Clinical Laboratory Improvement Amendments (CLIA) certificate. A CLIA certificate is required to report or to provide any of the following diagnostic testing information from your screening program: Negative, Positive, Inconclusive, or Presumptive Positive results of Clinical Significance, or a result of Potential Clinical Significance. Assays and test systems used for COVID-19 diagnostic or screening testing must have received an Emergency Use Authorization (EUA) from the FDA. Currently approved FDA EUAs can be found on FDA's website. A COVID-19 diagnostic/screening test performed by a CLIA certified laboratory does not have to have an EUA. A certified

lab may develop a lab developed test (LDT) for COVID-19 screening without having FDA EUA.

See *Joint Guidance*, p. 20 and IDPH’s Interim Guidance on Testing for COVID-19 in Community Settings and Schools (bold emphasis in original, italics added). This section regarding Outbreak testing does not reference “adaptive pause.”

The Court also looks to *State of Illinois and Centers for Disease Control and Prevention (CDC) Guidance for COVID-19 Prevention in P-12 Schools*, dated August 9, 2021 for additional information. According to this document,

[i]f school administrators, in consultation with local public health officials, decide to remove any of the recommended rather than required prevention strategies for their school based on local conditions, they should remove them one at a time and monitor closely (with adequate testing through the school and/or community) for any increases in COVID-19 cases. Required prevention strategies may not be removed at any time. (Review IDPH answers to FAQs on COVID-19 testing in schools for more information.) Schools should communicate their strategies and any changes in plans to teachers, staff, families, and directly to older students, using accessible materials and communication channels, in a language and at a literacy level that teachers, staff, students, and families understand. ... In addition ... school districts that decide not to follow [State and CDC] guidance should consult with their insurers regarding risk assumption and liability coverage. Insurers may be unwilling to cover liabilities created as a result of failure to adhere to public health guidance.

See *State of Illinois and Centers for Disease Control and Prevention (CDC) Guidance for COVID-19 Prevention in P-12 Schools*, p. 1.

The only reference to “adaptive pause” is contained in “Frequently Asked Questions” (FAQ) referenced Dr. Ayala’s August 31, 2021. In her letter, she states,

[r]ecognizing the utmost important of full in-person learning, state statute also allows for remote learning in certain circumstances. Further, briefly transitioning to remote learning on an individual student or schoolwide bases, in consultation with the local department of public health, may be necessary to keep the school community safe. ... The purpose of remote learning for brief intervals when in-person instruction is not recommended is to ensure continuity of learning and help students return successfully to in-person learning as

soon as possible. ... We have received many questions about the limited circumstances when remote learning is allowed and required. ISBE has prepared a chart and FAQ to help clarify the remote learning options and requirements.

Dr. Ayala's August 31, 2021 letter (emphasis added).

According to the August 31, 2021 **Current Remote Learning Options Under Illinois Law – Guidance for Schools and Districts**, "... there are several sections in the School Code that permit for require a district to offer remote learning in certain circumstances. The below FAQ identifies these School Code section and summarizes their key requirements. This FAQ is not inclusive of all legal requirements. School and district leaders should consult with their own legal counsel for proper implementation."

I. Disaster Proclamation Remote Learning
105 ILCS 5/10-30 and 105 ILCS 5/34-18.66

The State Superintendent has the authority under Sections 10-30 and 34-18.66 of the Illinois School Code to declare a requirement for a school district, multiple school districts, a region, or the entire state to use remote learning days when a disaster declaration is in effect.

1. Which students are entitled to remote learning under the Superintendent's current Remote Learning Declaration? (bold in original)

Districts must provide remote instruction to any student who is under quarantine or excluded from school consistent with guidance or requirements from a local health department of the Illinois Department of Public Health. This includes students who are not in-person **due to the *district entering into an adaptive pause*** after consultation with the local health department. (underline in original, bold/italics added)

IV. E-Learning
105 ILCS 5/10-20.56

3. Can a district use an e-learning day in lieu of an emergency day if the district feels that conditions related to COVID-19 constitute an emergency and

determines to close all district school buildings? (bold in original, underline/italics added)

School districts may not enter into an adaptive pause without first consulting with their local health department. If in discussion with the local health department, it is determined that an adaptive pause is needed, remote learning days must be offered for the duration of the adaptive pause.

If a district has an approved e-learning plan, it can use an e-learning day in lieu of an emergency day to close buildings under a multitude of circumstances. However, e-learning days are limited to five per year.

According to the Chart that is attached to the FAQ, district superintendents are required to develop and approve a policy/plan and periodically review and amend it and post it on the district's website when operating under a "Disaster Proclamation Remote Learning," as in this case.

According to Defendants' Exhibit K, **North Mac Return to School Plan for the 2021-2022 School Year**, updated August 10, 2021,

North Mac will establish protocols and procedures to maintain safe learning environments, through collaboration with the Illinois State Board of Education (ISBE), and the Illinois Department of Public Health (IDPH), and the Macoupin County Public Health Department (MCPHD). As always, guidelines are based on recommendations from the Center for Disease Control and Prevention (CDC).

The most recent CDC Updates on the operational strategies and guidance for COVID-19 prevention in K-12 schools (as of July 9, 2021) are as follows:

- *Students benefit from in-person learning, and safely returning to in-person instruction in the fall 2021 is a priority.*

- *Screening testing ... [is] also [an] important layer[] of prevention to keep schools safe.*

- *Many schools serve children under the age of 12 who are not eligible for vaccination at this time. Therefore, this guidance emphasizes implementing layered prevention strategies (e.g., using multiple prevention strategies together consistently) to protect people who are not fully vaccinated, including students, teachers, staff, and other members of their households.*

- *COVID-19 prevention strategies remain critical to protect people, including students, teachers, and staff, who are not fully vaccinated, especially in areas of moderate-to-high community transmissions levels.*
- *Localities should monitor community transmission, vaccination coverage, screening testing, and occurrence of outbreaks to guide decisions on the level of layered prevention strategies (e.g., physical distancing, screening testing).*
- **On August 4th, 2021, Governor Pritzker issued a universal mask mandate for all students and staff in schools. Until this mandate is lifted, proper face coverings must be worn while indoors in all schools.** Updated August 8th, 2021.

See **North Mac Return to School Plan for the 2021-2022 School Year, updated August 10, 2021**, p. 2 (bold and italics in original, underlining added except for last bullet point)

According to p. 9 of North Mac’s Return to School Plan, “Checking for Signs & Symptoms,” students and staff should *self-check* for symptoms of COVID-19 and *self-certify* prior to coming into a school building that they are not displaying any COVID-19 symptoms. Per the *Joint Guidance* that North Mac is required to follow, “testing is most helpful in identifying new cases to prevent outbreaks, to reduce risk of further transmission, and to protect students and staff from COVID-19.” Schools are instructed to refer to the Interim Guidance for Testing for additional guidance. (See pp. 9-10, *supra*).

Here, Superintendent Goble admits in his Affidavit that the District does not currently have a COVID-19 testing/screening program in place. (See Affidavit, p. 3, par. 11). By Dr. Goble’s own admission, his district is not in compliance with the IDPH/ISBE’s *Joint Guidance*, issued in August 2021, which requires schools to, among other things, “implement or provide provisions for SARS-CoV-2 testing for diagnostic testing for suspected cases, close contacts, and during outbreaks, as well as screening testing for unvaccinated staff and students according to the CDC’s testing recommendations.” (See pp. 5 and 19-20 of IDPH/ISBE *Joint Guidance*, attached as Exhibit F to Dawn Sanson’s Affidavit).

VI. FINDINGS

To be entitled to a Temporary Restraining Order, the moving party must establish:

- 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

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 are entitled to an in-person education and that only the State Superintendent can order a school district into remote learning/adaptive pause. Plaintiffs request a temporary restraining order declaring Superintendent Goble exceeded his authority. The Court denies this limited requested. Plaintiffs then ask the Court “for such other and further relief as this Court deems just and proper.”

Here, it is clear that each side has selected the laws they think apply to their arguments and discount those that are less favorable. The parties cannot pick and choose which laws this Court is going to look at and suggest which ones the Court should ignore. That is not how the legal system works. This Court looks at the laws collectively, and when one does that, it is clear that the students do have a clearly ascertainable right in need of protection, namely a fundamental right to expect North Mac CUSD #34 will follow the Public Health Requirements for Schools set forth by IDPH and ISBE to ensure in-person learning occurs. And when a district’s failure to implement

the required layered, strategic preventative safety measures causes an entire high school to enter into an adaptive pause and pivot to remote learning, students have a fundamental right to expect the district will get into compliance as quickly as possible to allow for a prompt and safe return to in-person learning.

In other words, while Superintendent Goble, after consultation with the local health department, had the authority to enter into a temporary adaptive pause and revert to remote learning, the District's failure to "implement or provide provisions for SARS-CoV-2 testing for diagnostic testing for suspected cases, close contacts, and during outbreaks, as well as screening testing for unvaccinated staff and students according to the CDC's testing recommendations" is not consistent with what is expected for continued and safe in-person learning, especially when a number of the tests are offered to school districts for free.

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)

Here, Superintendent Goble placed the entire high school in an adaptive pause for an indefinite period of time. This decision occurred on August 30, 2021. At the time of the emergency hearing on September 3, 2021 (one week later), the District did not have a plan in place for the safe return to in-person learning. According to North Mac School Board Policy 4:180,

Suspension of In-Person Instruction ...

When the Governor declares a disaster due to a public health emergency pursuant to 20 ILCS 3305/7, and the State Superintendent of Education declares a requirement for the

District to use *Remote Learning Days* or *Blended Remote Learning Days*, *the Superintendent shall approve and present to the Board for adoption a Remote and/or Blended Remote Learning Day Plan* (Plan) that:

4. Recommends to the Board for consideration any suspensions or amendments to curriculum-related policies to reduce any Board-required graduation or other instructional requirements in excess of minimum curricular requirements specified in School Code that the District may not be able to provide due to the pandemic;
5. Implements the requirements of 105 ILCS 5/10-30; *and*
6. *Ensures a plan for periodic review of and/or amendments to the Plan when needed and/or required by statute, regulation, or State guidance.*

Policy 4.180 (underline and italics added); see also, Chart attached to ISBE’s August 31, 2021 FAQ.

Failure to get into compliance with the public health requirements and have an adequate plan in place for the safe return to in-person learning will cause irreparable harm to these students and their right to an in-person education as is preferred and expected according to Governor Pritzker, the CDC, ISBE, IDPH, and the medical/mental health professionals.

According to the State Board of Education and Dr. Ayala, “children learn best – and educators teach best – when they are physically present together in the same space. In-person learning with appropriate protective measures should be both safe and essential to students’ mental health and academic growth. ... A recent study released by [CDC] suggests that remote learning can be challenging for many students, leading not only to learning loss but also worsening mental health for children as well as parents. ... Restoring full-time in-person learning for all students is essential to our state’s commitment to educational equity.” See *Current Remote Learning Options Under Illinois Law*, issued August 31, 2021. See also, *Illinois State Board of Education, May 2021 Resolution* (where “reconnecting with teacher[s] and peers in-person is essential for students’

mental health and social-emotional development, especially after prolonged isolation of the pandemic”).

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.

While Superintendent Goble had the authority to enter into an adaptive pause, after consulting with local and state health departments (based on guidance from the ISBE’s and Dr. Ayala’s August 31, 2021 FAQ), there is a genuine issue as to whether he and the North Mac school district had the right to contribute to an entire high school being converted to remote learning through the District’s failure to comply with IDPH and ISBE’s Public Health Requirements for Schools with regarding to diagnostic testing for suspected cases, close contacts, and during outbreaks, as well as screening testing. There is also a genuine issue as to whether this adaptive pause can be “indefinite” considering Dr. Ayala states remote learning should be for “brief intervals.”

E. Balance of Hardships

The Court agrees that “Defendants have a vital interest in regulating the response to COVID-19 and protecting the health and safety of students, teachers, other school personnel, and

the public[and that] combating the spread of the virus, especially in a largely unvaccinated population, is of prime importance.” (See pp. 11-12 of Defendants’ Response). Defendants argue that the issuance of a TRO, however, would undermine the Board’s authority and would allow parents to use the courts to “second-guess every discretionary judgment decision of the Superintendent and District” and would “... severely disrupt the District’s educational mission by diverting resources toward litigating the many disagreements that arise in the ordinary course of a school year.” Lastly, Defendants argue a TRO would cause the Courts to intercede “in difficult discretionary judgment calls that must be made by public officials charged with those decisions by law.” *Id.*,p. 12. Here, however, according to Dr. Goble’s own words, “the District does not currently have a COVID-19 testing/screening program in place.” Thus, this Court cannot conclude that the District’s decision, in consultation with the local health department, would have been the same had the District been in compliance with IDPH and ISBE’s *Joint Guidance*, issued August 2021.

As such, the issuance of a partial temporary restraining order requiring the District to follow the Public Health Requirements for in-person learning will not undermine the District’s authority to enter into an adaptive pause if, after consultation with local and/or state health departments, it is determined that course of action is warranted. In this case, the Superintendent and the local health department decided a pivot to remote learning was appropriate based on 0.02% of the high school population testing positive for COVID-19 and a significant number of students being quarantined. The Superintendent did not make the same determination with regard to the South Campus (junior high school) despite having only 3 less COVID-19 positive cases, and as such, the rest of the School District remains open for in-person learning. The Courts will not second-guess those decisions and must presume they were based on scientific data.

The Court also finds a partial TRO requiring the District to implement a plan for a safe and prompt return to in-person learning will not create a hardship. The students, parents, teachers, and staff deserve no less.

VII. CONCLUSION

In closing, this Court recognizes that School Districts, School Boards, and Superintendents across this State and nation are struggling to do all that is within their power to follow CDC and state and local health departments recommendations in order to keeps kids safe and in school for in-person learning. Provided those districts are complying with the requirements and expectations that have been imposed by the professional experts, then Courts will never second-guess those decisions. It is when those guidelines and requirements are not being followed, that in turn may lead to an abuse of discretion resulting in an entire shut-down, that Courts will get involved. Emotions, fear, and panic cannot and should not result in an entire school being forced into an adaptive pause. Those decisions must be made after all other reasonable preventative measures have been implemented (as required) and then the local health department makes that recommendation.

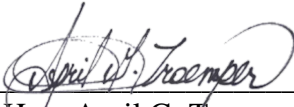
This Court also recognizes that students, teachers, and staff must also do their part to cooperate with any and all safety measures that are implemented by the School Districts and local health departments. This is not a time for a “game of chess.” This is not a time for “tit for tat,” nor is it a time for “one-upping” the other side. This situation is serious. This is about peoples’ lives and their education. They go hand-in-hand. It requires teamwork. It requires everyone: school districts, school boards, superintendents, teachers, staff, students, and parents doing what is expected and recommended at all times. Failure of any one person or entity to comply with what is required does not equal teamwork. It just promotes self-destruction of a common goal.

Thus, if in-person learning is going to continue, then people and districts must comply – whether they agree or disagree with what is required and expected.

WHEREFORE, the Court enters the following partial temporary restraining order:

- 1) North Mac CUSD #34 must get into compliance with the Governor’s Executive Order 21-18 and IDPH and ISBE’s *Revised Public Health Guidance for Schools- Part 5 – Supporting the Full Return to In-Person Learning for All Students – August 2021*, which require schools to implement layered preventative strategies, including but not limited to, diagnostic and “screening testing,” and
- 2) North Mac CUSD #34 must implement a plan for the quick, efficient, and safe return to in-person learning and notify the students, parents, and teachers.
- 3) North Mac CUSD #34 and Superintendent Goble must come into compliance with paragraphs 1 and 2 within 10 business days from the date of this Order.
- 4) If Defendants cannot come into compliance within the stated timeframe, then they must petition the Court prior to the expiration, and if good cause is shown, the Court may grant an extension.
- 5) This TRO was issued on September 6, 2021 at 7:32 p.m.
- 6) It shall remain in effect through September 16, 2021.
- 7) A hearing on Plaintiffs’ Motion for Preliminary Injunction is set for September 13, 2021 at 9:30 a.m.
- 8) Bond is waived as good cause has been shown.

Dated: September 6, 2021

By: 

Hon. April G. Troemper, Circuit Judge