

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

IOWA STATE EDUCATION ASSOCIATION;)	
IOWA CITY COMMUNITY SCHOOL DISTRICT,)	
)	
Petitioners,)	EQUITY CASE NO. _____
)	
v.)	
)	PETITION FOR DECLARATORY
KIM REYNOLDS, ex rel. STATE OF IOWA;)	JUDGMENT AND INJUNCTIVE
IOWA DEPARTMENT OF EDUCATION;)	RELIEF
ANN LEBO, in her official capacity as Director)	
of the IOWA DEPARTMENT OF EDUCATION,)	
)	
Respondents.)	

COMES NOW Petitioners Iowa State Education Association (hereinafter, "ISEA"), by and through its attorneys, Gerald L. Hammond, Christy A.A. Hickman, and Katherine E. Schoolen, of the Iowa State Education Association, and the Iowa City Community School District (hereinafter, the "District"), by and through its attorney, C. Joseph Holland, of Holland, Michael, Raiber & Sittig PLC, and pray for emergency temporary injunctive relief, as well as permanent injunctive relief, restraining Respondents Kim Reynolds ex rel. State of Iowa, Iowa Department of Education (hereinafter, "Department"), Ann Lebo, in her official capacity as Director of the Department, from enforcing Section Two of Governor Kim Reynolds' July 17, 2020, Proclamation of Disaster Emergency as interpreted by the office of the Governor (hereinafter, the "July 17, 2020, Proclamation") and related guidance from the Department, which would force public school districts to conduct in-person education for students during the Novel Coronavirus 19 (hereinafter, "COVID-19") pandemic at least fifty percent of the time during any two week period, as well as a declaratory judgment that the Governor's July 17, 2020, Proclamation and related guidance violates the Constitution of the State of Iowa and Iowa law, and in support thereof, state the following:

STATEMENT OF THE CASE

1. This case presents the constitutional question whether Respondent Reynolds may impose her interpretation of Senate File 2310 upon local school districts, including their staff and students, to require in-person learning more than fifty percent (50%) of the time in a given two week period during the public health crisis that resulted from the COVID-19 pandemic. Petitioners argue Respondents, under Article I, Sections 1 and 2 of the Iowa Constitution, have a duty to protect the health and safety of her constituents and that her requirement for Iowa’s teachers and children to return to in-person learning more than fifty (50%) of the time in any given two-week period, amid being in the throes of a state-wide pandemic, is a flagrant violation of her duties as Governor of the State of Iowa to uphold the Iowa Constitution.

2. Petitioners challenge Respondents’ interpretation and application of Senate File 2310, Iowa Acts chapter 1107, to usurp the statutory authority of school districts to decide when closure is necessary given the spread of COVID-19 in their communities and the safety of students, staff, and the greater community.

3. Finally, Petitioners assert Respondents’ actions exceed their statutory and Constitutional authority.

PARTIES

4. Petitioner ISEA is a statewide nonprofit membership organization headquartered in Des Moines, Polk County, Iowa, representing more than 30,000 members, the majority of whom, are employees of public schools throughout the state of Iowa. The mission of ISEA is to “promote quality public education by placing students at the center of everything [ISEA does] while advocating for education professionals.” ISEA sues on behalf of its members, who will be adversely affected by Respondents’ actions.

5. Petitioner District is a school corporation organized and existing under the laws of the State of Iowa. The District serves approximately 14,000 students, and employs approximately 2,250 staff members. Johnson county, the county in which the District is located, has a population of approximately

151,000, and is home to the University of Iowa, which has a student enrollment of approximately 32,500. The District sues on its behalf because it will be adversely affected by Respondents' actions.

6. Respondent State of Iowa enacted and is responsible for the enforcement of Senate File 2310, passed by the 88th General Assembly and signed into law on June 29, 2020, by Respondent Reynolds.

7. Respondent Reynolds, the Governor of the State of Iowa, signed into law Senate File 2310, and has since issued a series of "Proclamations of Disaster Emergency" applying and interpreting provisions therein under the purported authority of Iowa Code section 29C.6(1) (2019). The governor is responsible for the enforcement of state law. Iowa Const. art. IV, §§ 1, 9.

8. Respondent Department and Respondent Lebo, in her official capacity as the Director of the Department and acting under the authority of Iowa Code chapter 256 issued guidance on the reopening of schools, applying and interpreting Senate File 2310 and other state laws.

JURISDICTION AND VENUE

9. Petitioner's request for declaratory judgment and injunctive relief is made pursuant to Iowa Rules of Civil Procedure 1.1101 through 1.1109, *Declaratory Judgments*, and 1.1501 through 1.1511, *Injunctions*. The undersigned certify that a petition for the same relief, or part thereof, has not been previously presented to and refused by any court or justice.

10. The Court has jurisdiction in this matter pursuant to Iowa Code section 602.6101.

11. Venue is proper pursuant to Iowa Code sections 616.3(2) and 616.14, because part of the controversy arises in Johnson County.

FACTS

I. Proclamations of Disaster Emergency Due to COVID-19 Outbreak

12. On March 9, 2020, Respondent Reynolds issued her first Proclamation of Disaster Emergency, in which she stated the World Health Organization (hereinafter, "WHO"),

has reported an outbreak of tens of thousands of cases and thousands of deaths associated with Novel Coronavirus 2019 (COVID -19) in multiple countries across the globe; and . . . has raised the global pandemic alert

to five, meaning a pandemic is imminent and states should finalize preparations to contain an outbreak; and . . . the United States Department of Health and Human Services declared a national public health emergency; and . . . the . . .Centers for Disease Control and Prevention have confirmed an outbreak of COVID-19 and cases have been identified in at least 35 states; and . . . on March 9, 2020, multiple individuals tested presumptive positive for COVID-19 within the state of Iowa¹

13. On March 15, 2020, Respondent Reynolds issued a news release, stating that “[b]ased on new information . . . now is the time to move to the next level of response. I am now recommending that all Iowa schools close for a period of four weeks to help mitigate the spread of COVID-19.”²

14. On March 17, 2020, Respondent Reynolds issued another Proclamation of Disaster Emergency stating,

multiple cases of COVID-19 have been confirmed in Iowa, and the Iowa Department of Public Health has determined that community spread of COVID-19 is occurring within our state; and . . . reports forwarded by local public health officials and state public health officials indicate that local resources and capacities are being exhausted . . . and; . . . the risk of transmission of COVID-19 may be substantially reduced by community containment strategies that may include temporarily closing schools in affected communities”

The Proclamation of Disaster Emergency on March 17, 2020, then directed closure of all bars, fitness centers, theaters, casinos, and prohibited any mass gatherings of more than ten people.³

15. By her Proclamation of Disaster Emergency of March 22, 2020, Respondent Reynolds further ordered the closure of all salons, medical spas, barber shops, tattoo establishments, tanning facilities, massage therapy establishments and swimming pools.⁴

¹ Iowa Proclamation of Disaster Emergency, March 9, 2020, <https://governor.iowa.gov/sites/default/files/documents/202003100818.pdf>.

² Iowa Department of Public Health News, *Gov. Reynolds recommends Iowa schools close for four weeks, will hold press conference tomorrow (3/15/20)*, March 15, 2020, <https://idph.iowa.gov/News/ArtMID/646/ArticleID/158307/Gov-Reynolds-recommends-Iowa-schools-close-for-four-weeks-will-hold-a-press-conference-tomorrow-31520>.

³ Iowa Proclamation of Disaster Emergency, March 17, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.17.pdf>.

⁴ Iowa Proclamation of Disaster Emergency, March 22, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.22.pdf>.

16. On March 26, 2020, Respondent Reynolds issued another Proclamation of Disaster Emergency stating,

this public health disaster requires preservation of personal protective equipment to protect our healthcare workforce and the preservation of critical hospital capacity for Iowans impacted by the COVID-19 outbreak or needing other essential medical care; and . . . the risk of transmission of COVID-19 may be substantially reduced by continuing to temporarily close certain public establishments and closing additional nonessential retail establishments

Respondent Reynolds then ordered the cessation of all nonessential surgeries, as well as all nonessential dentistry procedures, and extended her closure order to all book stores, clothing stores, shoe stores, jewelry stores, luggage stores, cosmetic, beauty or perfume stores, florists and furniture and home furnishing stores.⁵

17. On April 2, 2020, Respondent Reynolds issued a Proclamation of Disaster Emergency providing that “all public and nonpublic schools, as defined in Iowa Code, § 280.2, shall remain closed until and including April 30, 2020, to prevent and control the transmission of COVID-19.” She further waived

the instructional time requirements of section 279.10, subsection 1, and the minimum school day requirements of section 256.7, subsection 19, from April 13, 2020, until April 30, 2020, for those school districts and accredited nonpublic schools that adopt a plan for offering continuous learning and submit it to the Iowa Department of Education by April 10, 2020. Consistent with any continuing learning guidance from the Department, such plan may offer Voluntary Educational Enrichment Opportunities or provide Required Educational Services and must be submitted through the Consolidated Accountability and Support Application (CASA) system.⁶

18. On April 6, 2020, Respondent Reynolds issued another Proclamation of Disaster Emergency ordering the further closure of all malls, tobacco or vaping stores, toys, gaming, music,

⁵ Iowa Proclamation of Disaster Emergency, March 26, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.26.pdf>.

⁶ Iowa Proclamation of Disaster Emergency, April 2, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Disaster%20Proclamation%20-%202020.04.02.pdf>.

instrument, movie, or adult entertainment stores, social and fraternal clubs, amusement establishments, museums, libraries, aquariums and zoos, race tracks, skating rinks, parks, playgrounds, campgrounds and door-to-door sales.⁷

19. On April 16, 2020, Respondent Reynolds issued another Proclamation of Disaster Emergency stating as follows:

A. All social, community, recreational, leisure, and sporting gatherings of any size with individuals other than members of the same household who reside together are prohibited. Weddings, funerals, and other spiritual or religious gatherings of more than 10 people are prohibited, and such gatherings with fewer people may continue to be held only if all present comply with paragraph B.

Paragraph B then provided, “All people who do leave their homes, must practice social distancing by making every effort to stay at least six feet away from all people other than members of the same household who reside together.”⁸

20. On April 27, 2020, Respondent Reynolds issued another Proclamation of Disaster Emergency stating that “all public schools and nonpublic schools, as defined in Iowa Code, Section 280.2 shall remain closed for the remainder of the regularly scheduled school year, to prevent and control the transmission of COVID-19.”⁹

II. Iowa Department of Education Return-to-Learn Requirements

21. In order to assist Iowa school districts in formulating plans to return to offering instruction for the 2020-2021 school year, the Department, on May 8, 2020, under the authority of Iowa Code section 256.9, issued Return-To-Learn guidance (hereinafter, “Return-to-Learn Guidance”) which provided as goals for every district that the plans submitted provide for “[e]nsuring that remote learning

⁷ Iowa Proclamation of Disaster Emergency, April 6, 2020, <https://eoc.iowa.gov/public/Public%20Health%20Proclamation%20-%202020.04.06.pdf>.

⁸ Iowa Proclamation of Disaster Emergency, April 16, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.04.16%20-%20Region%206.pdf>.

⁹ Iowa Proclamation of Disaster Emergency, Part I, April 27, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.04.27%20-%20Pt%201.pdf>.

options are available for all students” and “[e]nabling schools to move between on-site and remote learning as needed.”¹⁰ (A copy of the full Return-to-Learn Guidance is attached hereto, marked as Exhibit 1 and by this reference incorporated herein.),

22. The Return-to-Learn Guidance specifically provided three permissible options to school districts for instruction of students during the 2020-2021 school year. Districts could choose between (i) fully remote learning, denominated “Required Continuous Learning” (*see* Exhibit 1, page 3, column 1, denominated “Step 1”); (ii) onsite delivery of instruction in brick and mortar buildings, (*see* Exhibit 1, page 3, column 3, denominated as “Step 3”); and (iii) a hybrid learning plan, combining remote and onsite instruction (*see* Exhibit 1, page 3, column 2, denominated as “Step 2”). The Return-to-Learn Guidance noted that each district was required to have a plan for fully remote instruction and provided the option of using either the onsite or hybrid models described in the Return-to-Learn Guidance. Further, the Return-to-Learn Guidance indicated that the Department could award credit to students for coursework completed under any of the three options of Return-to-Learn plans.

23. In describing the required plan for remote instruction, the Return-to-Learn Guidance provided:

Required Continuous Learning ensures that academic work is equivalent in effort and rigor to typical classroom work. All students are required to participate, attendance is taken, work is graded, and credit is granted. Typically, instruction is provided through some type of online learning.

24. The Return-to-Learn Guidance describes the Required Continuous Learning model as one which “may include online education, home delivery or pick-up of educational resources, online or telephonic check-ins or other innovative methods.” *See* Exhibit 1, page 3, column 1, denominated “Step 1”.

25. In compliance with the Return-to-Learn Guidance, local school board members, school superintendents and principals, teachers, and support personnel, worked countless hours during the months of May, June and July, to develop the required Return-to-Learn plans best suited to the needs of

¹⁰ Iowa Department of Education, *Return-to-Learn Guidance*, May 8, 2020, <https://educateiowa.gov/sites/files/ed/documents/2020-05-08COVID-19Return-to-LearnGuidance.pdf>.

their individual school districts and which would allow the students and staff of their districts to commence the 2020-2021 school year in the safest manner possible.

26. Across the state of Iowa, plans were formulated and submitted to the Department in compliance with, the Return-to-Learn Guidance (*see* Exhibit 1) with each district choosing remote learning, onsite learning, or a hybrid plan combining the two in proportions local districts deemed appropriate for their students, staff, and communities.

III. Senate File 2310

27. On June 13, 2020, the Iowa Legislature passed Senate File 2310, Iowa Acts Chapter 1107, to allow school districts flexibility in their planning as they return to school.¹¹

28. Senate File 2310, section 9, provides as follows:

NEW SUBSECTION.

3. *a.* For the school year beginning July 1, 2020, and ending June 30, 2021, any instruction provided in accordance with a return-to-learn plan submitted by a school district or accredited nonpublic school to the department of education in response to a proclamation of a public health disaster emergency, issued by the governor pursuant to section 29C.6 and related to COVID-19, shall be deemed to meet the requirements of subsection 1, regardless of the nature, location, or medium of instruction if the return-to-learn plan contains the minimum number of days or hours as required by subsection 1. Any return-to-learn plan submitted by a school district or accredited nonpublic school must contain provisions for in-person instruction and provide that in-person instruction is the presumed method of instruction.

b. This subsection is repealed on July 1, 2021.¹²

29. Senate File 2310, section 15, provides as follows:

Sec. 15. INSTRUCTIONAL TIME PROVISIONS FOR SCHOOL DISTRICTS AND ACCREDITED NONPUBLIC SCHOOLS FOR THE 2020-2021 SCHOOL YEAR.

1. Notwithstanding any other provision of law to the contrary, the instructional time requirements of section 279.10, subsection 1, and the minimum school day requirements of section 256.7, subsection 19, shall not be waived any time during the school year beginning July 1, 2020,

¹¹ Ian Richardson, *How a once-noncontroversial new law became the center of Iowa's polarizing return-to-school plans*, THE DES MOINES REGISTER, August 9, 2020, <https://www.desmoinesregister.com/story/news/politics/2020/08/09/how-quietly-passed-iowa-law-sparked-uproar-over-school-return-plans/3294620001/>.

¹² 2020 Iowa Acts Chapter 1107, Section 9.

and ending June 30, 2021, for school closure due to the COVID-19 pandemic unless the school district or the authorities in charge of the accredited nonpublic school, as appropriate, provide compulsory remote learning, including online learning, electronic learning, distance learning, or virtual learning. Unless explicitly authorized in a proclamation of a public health disaster emergency issued by the governor pursuant to section 29C.6 and related to COVID-19, a brick-and-mortar school district or accredited nonpublic school shall not take action to provide instruction primarily through remote-learning opportunities.

2. If the board of directors of a school district or the authorities in charge of an accredited nonpublic school determines any time during the school year beginning July 1, 2020, and ending June 30, 2021, that a remote-learning period is necessary, the school board or the authorities in charge of an accredited nonpublic school, as appropriate, shall ensure that teachers and other necessary school staff are available during the remote-learning period to support students, to participate in professional development opportunities, and to perform other job-related functions during the regular, required contract hours, even if the accessibility to or by the teachers and other necessary school staff is offered remotely.¹³

IV. The District Prepares for the 2020-2021 School Year in the Midst of the COVID-19 Pandemic and Continually Changing State Directives

30. On July 14, 2020, in compliance with Department's Return-to-Learn Guidance, the District announced its plans to open the 2020-2021 school year remotely, with no students immediately returning to brick and mortar school buildings.¹⁴

31. On July 17, 2020, Respondent Reynolds issued a new Proclamation of Disaster Emergency purportedly stripping local school districts of the authority to decide what Return-To-Learn plan was safest for students, staff and community members attending, working and residing in the community served by the local district.¹⁵

32. In Section 2 of her July 17, 2020, Proclamation, Respondent Reynolds stated:

Pursuant to Iowa Acts Chapter 1107 (Senate File 2310), section 15, subsection 1, I hereby authorize a brick and mortar school district or accredited nonpublic school to provide instruction primarily through remote learning opportunities only in the following circumstances:

¹³ 2020 Iowa Acts Chapter 1107, Section 15.

¹⁴ Molly Duffy, *Iowa City schools will start school year only online as COVID-19 cases rise*, THE GAZETTE, July 15, 2020, <https://www.thegazette.com/subject/news/education/iowa-city-school-district-iccsd-coronavirus-return-online-20200715>.

¹⁵ Iowa Proclamation of Disaster Emergency, July 17, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.07.17.pdf>.

- A. **Parental consent:** If a parent or guardian voluntarily selects the remote learning opportunity from among multiple options provided by the school district or nonpublic school in accordance with its Return-to-Learn Plan; or
- B. **Approved temporary school building or district closure:** If the Iowa Department of Education, in consultation with the Iowa Department of Public Health, approves of the temporary move to primarily remote learning for an entire school build or district because of public health conditions in the building or district.
- C. **Temporary remote learning for individual students or classrooms:** If the school district or accredited nonpublic school determines, in consultation with state and local public health departments, that individual students or classrooms, but not all the students in a school building, must temporarily move to primarily remote learning because of public health conditions in the building.
- D. **Temporary remote learning because of inclement weather:** If the school district or accredited nonpublic school determines that an entire school building or district must temporarily move to primarily remote learning because of inclement weather for a period not exceeding five consecutive school days unless the Iowa Department of Education approves a longer period.

So long as any remote learning is provided in accordance with a compliant Return-to-Learn plan and is authorized in this section or is not the primary method of instruction (because at least half of the school district or accredited nonpublic school's instruction is provided in-person during any two-week period). Any instructional time provided by remote learning shall count towards the hours and days requirements of Iowa law as provided for by 2020 Iowa Acts Chapter 1107 (Senate File 2310), Section 9.¹⁶

33. Respondent Reynolds, in her news conference announcing the July 17, 2020, Proclamation, made clear her opinion that remote instruction exceeding fifty percent would violate Senate File 2310, which she signed into law on June 29, 2020.

34. Respondent Reynolds apparently seized on the single word "primarily" in Senate File 2310, section 15, to ground her authority not only to order all Iowa school districts to provide onsite instruction for a minimum of fifty percent of instructional time for the 2020-2021 school year, but also for the issuance of extensive criteria and requirements for a district to file an application for permission to exceed the fifty percent limitation on remote instruction.

¹⁶ Iowa Proclamation of Disaster Emergency, July 17, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.07.17.pdf>.

35. On July 21, 2020, Bruce Teague, the mayor of Iowa City, Iowa issued an order requiring every person when in public, and within city limits, to wear a mask or face covering sufficient to cover to mouth and nose.¹⁷ In his July 21, 2020, order, Mayor Teague noted,

Whereas, positive cases of the virus continue at an alarming rate in Johnson County and Iowa City, its largest municipality; and, Whereas, August may bring the return of thousands of students to attend the University of Iowa, which will further increase the risk of spread of the virus within our community; and, Whereas the Centers for Disease Control (CDC) has determined that face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the virus, particularly when used universally with communities¹⁸

36. On August, 6, 2020, the Johnson County Board of Supervisors passed a county-wide face covering mandate, requiring “every person in Johnson County to wear a face covering/mask when in public settings indoors and outdoors when it is not possible to keep six feet away from others.”¹⁹

37. On July 30, 2020, based on Senate File 2310 and Respondent Reynolds’ July 17, 2020, Proclamation, the Department published its criteria for granting permission to close a school building.²⁰

38. Before a school district may even request consideration for a school district or school building closure, the district must meet a threshold of a ten percent student absence rate, and the county in which the district is located must have a 15-20% positivity rate in testing. Even if those thresholds are met, the strategies suggested do not call for school closure, but rather only closure of school events and communal spaces.²¹

¹⁷ Iowa City Mayor’s Order re: Face Coverings, <https://www8.iowa-city.org/WebLink/0/edoc/1952773/MaskOrder07-21-2020.pdf>.

¹⁸ KCRG, *Iowa City mayor defies Gov. Reynolds, announces face mask mandate*, July 21, 2020, <https://www.kcrg.com/2020/07/21/iowa-city-mayor-to-defy-gov-reynolds-by-ordering-mask-mandate/>.

¹⁹ Johnson County Board of Supervisors face covering/mask resolution for Johnson County, August 6, 2020, <https://www.johnson-county.com/>

²⁰ Iowa Department of Education, *Senate File 2310: Guidance for Schools*, July 17, 2020, https://educateiowa.gov/sites/files/ed/documents/2020-07-17_SF_2310_Guidance.v2.pdf; Iowa Department of Education, *Senate File 2310 and Governor’s Proclamation Frequently Asked Questions*, July 20, 2020, https://educateiowa.gov/sites/files/ed/documents/2020-07-20_SF2310_Guidance_GovProcFAQs.pdf.

²¹ *Id.*

39. To qualify for actual consideration of a school building closure, or school district closure, the positivity rate for testing in the county where the school district is located must be at, or above, twenty percent. (The Department guidance on schools reopening, issued July 30, 2020 (hereinafter, “Reopening Guidance”), is attached hereto, marked as Exhibit 2, and by this reference incorporated herein).²²

40. On August 1, 2020, Iowa health professionals from across the state of Iowa rallied at the state capitol building, and petitioned Respondent Reynolds to issue a state-wide mask mandate in order to curb the alarming spread of the virus in Iowa.²³

41. On August 2, 2020, the Iowa Department of Public Health reported that an additional 544 confirmed cases of COVID-19 had been reported in the last twenty-four hours, and that the statewide positivity rate in testing had climbed to 9.4 percent as compared to 8.1 percent in the prior twenty-four-hour period.²⁴

42. On August 3, 2020, the District’s Board of Directors requested permission from the Department, in conformance with Defendant Reynolds’ July 17, 2020, Proclamation, to open the school year with remote instruction exceeding the fifty percent maximum established by the July 17, 2020, Proclamation.

43. The District’s Board of Directors sought such permission because it determined that its plan, exceeding the fifty percent maximum for remote instruction, provided the most effective option to protect the health and safety of the district’s students, staff, parents, and greater community.

²² *Id.*

²³ Robin Opsahl, *Doctors call on Gov. Kim Reynolds to Mandate Mask Wearing in Public Spaces to Slow Coronavirus Spread*, DES MOINES REGISTER, August 2, 2020, <https://www.desmoinesregister.com/story/news/2020/08/01/doctors-urge-iowa-gov-kim-reynolds-order-mask-wearing-public-spaces/5562072002/>.

²⁴ KCCI, *Iowa’s statewide COVID-19 cases surpass 45,000, Iowa DPH reports*, August 2, 2020, <https://www.kcci.com/article/iowa-coronavirus-numbers-august-2/33491673>; and Iowa Department of Public Health News, *Additional COVID-19 Cases in Iowa, Additional Deaths Confirmed (5/2/20)*, May 3, 2020, <https://idph.iowa.gov/News/ArtMID/646/ArticleID/158354>.

44. On August 5, 2020, the District's request for a waiver to open school with an excess of fifty percent remote instruction was denied by the Department.²⁵

45. On August 7, 2020, two days after the denial of the District's waiver request, the Centers for Disease Control and Prevention (hereinafter, "CDC") published a case study of a week-long overnight camp that was held in June in Georgia, where of the 597 people who attended the camp, 260 contracted COVID-19. The youngest campers, ages 6-10, had the highest rate of infection of all age groups in the study, resulting in a fifty-one percent attack rate.²⁶

46. On August 17, 2020, the Associated Press reported that a data error in Respondent State of Iowa's COVID-19 reporting system caused the number of newly confirmed positive cases to be incorrect, thereby lowering the number of new positive COVID-19 cases throughout the state.²⁷ The article stated,

The glitch means the Iowa Department of Public Health has inadvertently been reporting fewer new infections and a smaller percentage of daily positive tests than is truly the case, according to Dana Jones, an Iowa City nurse practitioner who uncovered the problem. It's particularly significant because school districts are relying on state data to determine whether they will offer in-person instruction when school resumes in the coming days and weeks.²⁸

V. Public Health Guidance

47. The CDC has issued the following statements regarding the COVID-19 pandemic:

- "Implementation [of return to school plans] should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community."²⁹

²⁵ Hillary Ojeda, *Department of Education denies Iowa City school district request to start with online-only learning*, Iowa City Press Citizen, August 6, 2020, <https://www.press-citizen.com/story/news/education/k-12/2020/08/06/return-learn-plan-iowa-denies-city-request-go-online-only/3311933001/>.

²⁶ Centers for Disease Control and Prevention, *SARS-CoV-2 Transmission and Infection Among Attendees of an Overnight Camp – George, June 2020*, August 7, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>.

²⁷ The Hill, *'Horrible' Data Glitch Skews Key Iowa Coronavirus Metrics*, August 17, 2020, <https://apnews.com/c15b742f95a73ba2a45f7e7bf7d7255d>.

²⁸ *Id.*

²⁹ Centers for Disease Control and Prevention, *Considerations for Schools* (last updated May 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>.

- “All decisions about implementing school-based strategies (e.g., dismissals, event cancellations, other social distancing measures) should be made locally, in collaboration with local health officials who can help determine the level of transmission in the community.”³⁰

48. According to the WHO, “[a]s this is a new virus, we are still learning about how it affects children. We know it is possible for people of any age to be infected with the virus, but so far there are relatively few cases of COVID-19 reported among children. This is a new virus and we need to learn more about how it affects children.”³¹

49. The American Academy of Pediatrics (hereinafter, “AAP”) reports there is much uncertainty regarding the COVID-19 transmission. Studies of adults suggest,

screening for symptoms will fail to identify all people who can transmit virus to susceptible contacts. At the present time, it appears the risk of symptomatic disease among infected people is directly proportional to age, with children and adolescents younger than 18 years least likely to become symptomatic.³²

50. The AAP also emphasizes,

[t]he important steps for mitigation and reducing the risk of SARS-CoV-2 infection can be remembered by avoiding the three C's: closed spaces, crowded spaces and close contact settings. Covering respiratory mucosal surfaces with a face mask in a setting of risk is the fourth C.³³

51. The WHO stated on May 12, 2020, that a positivity rate among those tested higher than five percent was cause for immediate action to prevent further spread of the virus. (The WHO’s guidance

³⁰ Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)* March 11, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>.

³¹ World Health Organization, *Key Messages and Actions for COVID-19 Prevention and Control in Schools March 2020*, <https://www.who.int/publications/m/item/key-messages-and-actions-for-covid-19-prevention-and-control-in-schools>.

³² H. Cody Meissner M.D., FAAP, *Ask the Expert: Why is there so much uncertainty about SARS-CoV-2 transmission?*, AAP News (July 28, 2020), <https://www.aappublications.org/news/aapnewsmag/2020/07/28/sarscov2transmission072820.full.pdf>

³³ H. Cody Meissner M.D., FAAP, *Ask the Expert: Why is there so much uncertainty about SARS-CoV-2 transmission?*, AAP News (July 28, 2020), <https://www.aappublications.org/news/aapnewsmag/2020/07/28/sarscov2transmission072820.full.pdf>

issued on May 12, 2020, is attached hereto, marked as Exhibit 3, and by this reference incorporated herein).

52. On July 1, 2020, Iowa was one of 18 states designated in a report to the White House COVID-19 task force, to be a “red zone” state where the positivity rate for COVID-19 testing was at least ten percent.³⁴

53. On July 10, 2020, in a joint statement from the AAP, the American Federation of Teachers, and the National Education Association it was advised:

Local school leaders, public health experts, educators and parents must be at the center of decisions about how and when to reopen schools, taking into account the spread of COVID-19 in their communities and the capacities of school districts to adapt safety protocols to make in-person learning safe and feasible. For instance, schools in areas with high levels of COVID-19 community spread should not be compelled to reopen against the judgment of local experts. A one-size-fits-all approach is not appropriate for return to school decisions.³⁵ According to the AAP, “[f]rom July 9 to July 23, 2020, the number of child COVID-19 cases increased nationally by 88,103 new cases (200,184 to 288,287), a 44% increase in child cases.³⁶

54. On July 26, 2020, a new report distributed to states by the Trump administration’s coronavirus task force on the response to COVID-19 reported Iowa’s continued designation as a state in the “Red Zone” and recommended containment measures.³⁷

³⁴The Center for Public Integrity, Exclusive: White House Document Shows 18 States in Coronavirus “Red Zone”, July 16, 2020, updated July 17, 2020, <https://publicintegrity.org/health/coronavirus-and-inequality/exclusive-white-house-document-shows-18-states-in-coronavirus-red-zone-covid-19/>; Katarina Sostaric, *White House Document: Iowa in ‘Red Zone’ for Coronavirus Cases, More Restrictions Recommended*, July 16, 2020, <https://www.iowapublicradio.org/health/2020-07-16/white-house-document-iowa-in-red-zone-for-coronavirus-cases-more-restrictions-recommended>.

³⁵ Press Release, Pediatricians, Educators and Superintendents Urge a Safe Return to School This Fall (July 10, 2020) <https://services.aap.org/en/news-room/news-releases/aap/2020/pediatricians-educators-and-superintendents-urge-a-safe-return-to-school-this-fall/>.

³⁶ American Academy of Pediatrics, Children and COVID-19: State-Level Data Report (July 23, 2020) <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>.

³⁷ N.Y. TIMES, *Read the Latest Federal Report on States’ Response to the Virus*, July 28, 2020, <https://www.nytimes.com/interactive/2020/07/28/us/states-report-virus-response-july-26.html> (providing full report at <https://int.nyt.com/data/documenttools/states-report-virus-response-july-26/e241189157b34378/full.pdf>).

55. On July 30, 2020, a joint report was released by the AAP and the Children's Hospital Association indicating that 97,078 children tested positive for COVID-19 from July 16 to July 30, 2020. These positive cases caused a 40% increase in the nation's cumulative total child cases.³⁸

56. On July 30, 2020, the Journal of American Medical Association released a study which found children under the age of 5, who present with mild to moderate COVID-19 symptoms, carry higher amounts of SARS-CoV-2 viral material in the nasopharynx (upper throat behind the nose) than adults, which suggests children under 5 may be more contagious and, therefore, more effective at transmitting the virus than adults. The study also showed that children between the ages of 5 and 17 appeared to have the same amount of viral material as people who are 18 or older.³⁹

57. The Centers for Disease Control and Prevention defines individuals exposed to COVID-19 as those being within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; or who provided care at home to someone who is sick with COVID-19; had direct physical contact with a person who has COVID-19 (hugged or kissed them); shared eating or drinking utensils with someone with has COVID-19; sneezed, coughed, or somehow got respiratory droplets from someone with COVID-19.⁴⁰

58. Much is still unknown to the medical community about the nature of COVID-19 including, and perhaps most significantly, the potential long-lasting and damaging effects of the virus on the internal organs, including the lungs, kidneys, heart, and circulatory systems of all who have contracted the virus, and supposedly fully recovered. In addition, it is not known at this time whether and when an effective vaccine will be developed, as well as the effectiveness of any antibodies that may be produced.

³⁸ Study by American Academy of Pediatrics and the Children's Hospital Association, Children and COVID-19: State Data Report, July 30, 2020, <https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%207.30.20%20FINAL.pdf>.

³⁹ Taylor Heald-Sargent, et al., Age-Related Differences in Nasopharyngeal Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Levels in Patients with Mild to Moderate Coronavirus Disease 2019 (COVID-19), Journal of American Medical Association July 30, 2020, <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2768952>.

⁴⁰ Centers for Disease Control and Prevention, When to Quarantine, updated August 16, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>.

59. While it appears that children under the age of 10 may contract the virus at a lower rate than adults, and may, in many cases, be infected with the virus but remain asymptomatic, it is medically beyond dispute that children, in the age group attending school in K-12 school buildings, are fully capable of contracting the virus and transmitting it to others.

60. On August 17, 2020, the CDC acknowledged,

Due to community mitigation measures and school closures, transmission of SARS-CoV-2 to and among children may have been reduced in the United States during the pandemic in the spring and early summer of 2020. This may explain the low incidence children compared with adults.⁴¹

61. Basic to fighting the spread of COVID-19, there has been consistent medical advice to follow these three procedures to avoid exposure: 1) wear a face mask that covers the mouth and nose, 2) socially distance at a minimum of six feet, and 3) avoid groups of ten or more persons in an enclosed space.

62. In a K-12 school setting, without the flexibility to mix appropriate elements of onsite and remote instruction, many school districts will have no ability to meet criteria 2 and 3 cited in the preceding paragraph, thus making the likelihood of exposure to COVID-19 extremely difficult to avoid.

63. Successfully attaining even one of the three basic requirements, as referenced in paragraph 61, for slowing the spread of COVID-19 will be difficult, at best, for K-12 school districts in Iowa.

64. By not allowing local school boards to determine quickly, and independently of the Department and the Iowa Department of Public Health, whether schools in their districts should be closed and moved to remote learning, the delay in seeking, and perhaps being denied, permission from the Department and the Iowa Department of Public Health to effectuate such a closure, will only exacerbate an already untenable situation in providing a safe education to Iowa students during the 2020-2021 school year in all public school districts in Iowa.

⁴¹ Centers for Disease Control and Prevention, *Information for Pediatric Healthcare Providers*, updated August 17, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>.

65. Petitioner ISEA, based on medical guidance from experts in epidemiology, has produced a simple fact sheet with the requirements all districts should be allowed to follow in reopening their districts safely, whether remote, or in a brick and mortar building, both of which are integrally related to each other. (A copy of the ISEA checklist is attached hereto, marked as Exhibit 4 and by this reference incorporate herein).

CLAIMS FOR RELIEF

COUNT I

THE JULY 17, 2020, PROCLAMATION IS UNCONSTITUTIONAL AND IN VIOLATION OF ARTICLE I, SECTIONS 1 AND 2 OF THE CONSTITUTION OF THE STATE OF IOWA

66. Article I of The Constitution of the State of Iowa, in relevant part, provides:

Rights of persons. Section 1. All men and women are, by nature, free and equal and have certain inalienable rights - among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and pursuing and attaining happiness.

Political power. Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

67. The July 17, 2020, Proclamation by Respondent Reynolds, as written and interpreted by Respondent Reynolds, denying to Iowa school districts the independent ability to determine when a building closure or district closure is in the best interests of the students, staff, and greater community, undermines and unnecessarily interferes with the basic right of all Iowans secured by the first two sections of the Constitution of the State of Iowa to enjoy, their guarantee, through their government, of protection and security from the ravages of the COVID-19 pandemic. Further, the actions, as well as inactions, of this government of the State of Iowa and, specifically, Respondents Reynolds, for all the reasons listed above, further place in severe and needless jeopardy, the basic right of the citizens of the State of Iowa to defend their health and their lives, and to continue their pursuit and attainment of happiness.

COUNT II

IOWA LAW AND SENATE FILE 2310 GRANTS TO SCHOOL DISTRICTS THE EXCLUSIVE RIGHT TO DETERMINE WHEN REMOTE LEARNING IS NECESSARY AND DOES NOT REQUIRE SCHOOL DISTRICTS TO PROVIDE AT LEAST HALF OF THEIR INSTRUCTION TO BE IN-PERSON DURING ANY TWO-WEEK PERIOD.

68. The allegations stated in paragraphs 1-67 above are restated and incorporated herein by reference.

69. Iowa Code section 274.1 gives school districts “exclusive jurisdiction in all school matters over the territory therein contained.”

70. Iowa Code section 274.3 authorizes districts to “exercise any broad and implied power, not inconsistent with the laws of the general assembly and administrative rules adopted by state agencies pursuant thereto, related to the operation, control, and supervision of those public schools.” Iowa Code section 274.3(3) provides “statutes relating to the boards of directors of school districts and to school districts shall be liberally construed to effectuate the purposes of subsection 1.”

71. Iowa law dictates the instructional time school districts must provide to students. Iowa Code section 279.10(1) provides in pertinent part that “[t]he school calendar shall include not less than one hundred eighty days or one thousand eighty hours of instruction during the calendar year.”

72. On June 29, 2020, Respondent Reynolds signed into law Senate File 2310, amending Iowa Code Section 279.10 by adding the following new subsection:

NEW SUBSECTION. 3. a. For the school year beginning July 1, 2020, and ending June 30, 2021, any instruction provided in accordance with a return-to-learn plan submitted by a school district or accredited nonpublic school to the department of education in response to a proclamation of a public health disaster emergency, issued by the governor pursuant to section 29C.6 and related to COVID-19, shall be deemed to meet the requirements of subsection 1, regardless of the nature, location, or medium of instruction if the return-to-learn plan contains the minimum number of days or hours as required by subsection 1. Any return-to-learn plan submitted by a school district or accredited nonpublic school must contain provisions for in-person instruction and provide that in-person instruction is the presumed method of instruction.
b. This subsection is repealed on July 1, 2021.

73. Division III of Senate File 2310 granted *Temporary Flexibility for Certain Educational*

Instructional and Policy Requirements. Section 15 therein provides as follows:

Sec. 15. INSTRUCTIONAL TIME PROVISIONS FOR SCHOOL DISTRICTS AND ACCREDITED NONPUBLIC SCHOOLS FOR THE 2020-2021 SCHOOL YEAR.

1. Notwithstanding any other provision of law to the contrary, the instructional time requirements of section 279.10, subsection 1, and the minimum school day requirements of section 256.7, subsection 19, shall not be waived any time during the school year beginning July 1, 2020, and ending June 30, 2021, for school closure due to the COVID-19 pandemic unless the school district or the authorities in charge of the accredited nonpublic school, as appropriate, provide compulsory remote learning, including online learning, electronic learning, distance learning, or virtual learning. Unless explicitly authorized in a proclamation of a public health disaster emergency issued by the governor pursuant to section 29C.6 and related to COVID-19, a brick-and-mortar school district or accredited nonpublic school shall not take action to provide instruction primarily through remote-learning opportunities.

2. If the board of directors of a school district or the authorities in charge of an accredited nonpublic school determines any time during the school year beginning July 1, 2020, and ending June 30, 2021, that a remote-learning period is necessary, the school board or the authorities in charge of an accredited nonpublic school, as appropriate, shall ensure that teachers and other necessary school staff are available during the remote-learning period to support students, to participate in professional development opportunities, and to perform other job-related functions during the regular, required contract hours, even if the accessibility to or by the teachers and other necessary school staff is offered remotely.

74. Pursuant to Section 15, “the board of directors of a school district or the authorities in charge of an accredited nonpublic school determines . . . that a remote-learning period is necessary.”

75. The July 17, 2020, Proclamation signed by Respondent Reynolds declaring that remote learning is “not the primary method of instruction” when “at least half of the school district or accredited nonpublic school’s instruction is provided in-person during any two week period” deprives the right of school districts to “determine” when “a remote-learning period is necessary.”

76. The July 17, 2020, Proclamation signed by Respondent Reynolds, declaring that remote learning is “not the primary method of instruction” when “at least half of the school district or accredited nonpublic school’s instruction is provided in-person during any two-week period” deprives the right of school districts to draft and implement Return-To-Learn plans which are flexible and responsive to the safety of students, staff, families, and the communities in which the individual school districts reside.

77. The July 17, 2020, Proclamation and the Reopening Guidance prevent school districts from developing and implementing return-to-learn plans wherein the “presumed method of instruction” is “in-person instruction” and without “tak[ing] action to provide instruction primarily through remote-learning opportunities.”

COUNT III

RESPONDENT REYNOLDS’ JULY 17, 2020, PROCLAMATION, REQUIRING SCHOOL DISTRICTS TO PROVIDE AT LEAST HALF OF STUDENT INSTRUCTION TO BE IN-PERSON DURING ANY TWO-WEEK PERIOD, EXCEEDED HER CONSTITUTIONAL AND STATUTORY AUTHORITY.

78. The allegations stated in paragraphs 1-77 above are restated and incorporated herein by reference.

79. In her July 17, 2020, Proclamation, Respondent Reynolds purported to act “by the power and authority vested . . . by Iowa Constitution Art. IV, §§ 1, 8 and Iowa Code §§ 29C.6(1), 135.140(6), and 135.144” to require “at least half of the school district or accredited nonpublic school’s instruction is provided in-person during any two-week period” unless the following circumstances are present:

- A. **Parental consent:** If a parent or guardian voluntarily selects the remote learning opportunity from among multiple options provided by the school district or nonpublic school in accordance with its Return-to-Learn Plan; or
- B. **Approved temporary school building or district closure:** If the Iowa Department of Education, in consultation with the Iowa Department of Public Health, approves of the temporary move to primarily remote learning for an entire school build or district because of public health conditions in the building or district.
- C. **Temporary remote learning for individual students or classrooms:** If the school district or accredited nonpublic school determines, in consultation with state and local public health departments, that individual students or classrooms, but not all the students in a school building, must temporarily move to primarily remote learning because of public health conditions in the building.
- D. **Temporary remote learning because of inclement weather:** If the school district or accredited nonpublic school determines that an entire school building or district must temporarily move to primarily remote learning because of inclement weather for a period not exceeding

five consecutive school days unless the Iowa Department of Education approves a longer period.⁴²

80. This action was taken in excess of Respondent Reynolds' authority under Iowa Constitution Art. IV, §§ 1, 8 and Iowa Code §§ 29C.6(1), 135.140(6), and 135.144.

81. This action unlawfully usurps the authority of school districts under Iowa Code section 274.1, giving school districts "exclusive jurisdiction in all school matters over the territory therein contained", and Iowa Code section 274.3, authorizing districts to "exercise any broad and implied power, not inconsistent with the laws of the general assembly and administrative rules adopted by state agencies pursuant thereto, related to the operation, control, and supervision of those public schools", and unjustifiably prevents school districts from assuring safe conditions upon reopening.

PRAYER FOR RELIEF: DECLARATORY JUDGEMENT AND INJUNCTION

82. The allegations stated in paragraphs 1-81 above are restated and incorporated herein by reference.

83. Injunctive relief is appropriate to restrain Respondent Reynolds and the State of Iowa, and Respondent Lebo and the Department, from any enforcement activities or taking punitive measures against any Iowa school district for formulating and effectuating an individual Return-To-Learn plan in a district that is inconsistent with the relevant portions of Respondent Reynolds' July 17, 2020, Proclamation or the relevant portions of Senate File 2310. Petitioners have a clear legal right to insist the government of Iowa, led by Respondent Reynolds, protect them to the greatest extent possible from threats to public health and safety including outbreaks of infectious diseases such as the COVID-19 pandemic.

84. It is irresponsible, and in violation of the constitutional duty of Respondents Reynolds and the State of Iowa to protect the safety of Iowans, to prohibit each school district from formulating the safest Return-To-Learn plan for their district in the 2020-2021 school year, and to instead mandate an

⁴² Iowa Proclamation of Disaster Emergency, July 17, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.07.17.pdf>.

across-the-board metric for determining the extent of remote learning, even though by following that metric individual districts may clearly be putting the health and safety of students, staff and the community unnecessarily at risk.

85. If Iowa school districts are not immediately allowed full authority to determine for themselves the extent of remote instruction for their students, irreparable harm will inevitably occur to countless Iowans as children and staff return to brick and mortar buildings as mandated by Respondents, and Petitioners have no adequate remedy at law to prevent such irreparable harm.

WHEREFORE, Petitioners respectfully request this Court to enter judgment as follows:

- (1) Declaring that the Respondent Reynolds July 17, 2020, Proclamation, Section Two, as interpreted to require public school districts to deliver in-person instruction, violates the Constitution of the State of Iowa and other Iowa laws;
- (2) Granting an injunction prohibiting Respondent Reynolds and the State of Iowa, and Respondent Lebo and the Department, from any enforcement activities or taking punitive measures against any school district for formulating and effectuating their individual return-to-learn plans in their districts that are inconsistent with the relevant portions of the July 17, 2020, Proclamation issued by Respondent Reynolds or the relevant portions of Senate File 2310;
- (3) Taxing the costs herein against Respondents; and,
- (4) Granting any other relief the Court deems equitable and appropriate.

Respectfully submitted,

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