

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

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

IN THE IOWA DISTRICT COURT OF JOHNSON COUNTY

IOWA STATE EDUCATION ASSOCIATION;)	
IOWA CITY COMMUNITY SCHOOL DISTRICT;)	
)	
Petitioners,	)	EQUITY CASE NO. _____
)	
v.)	
	)	AFFIDAVIT OF
KIM REYNOLDS, ex rel. STATE OF IOWA;	)	AUSTIN BAETH, MD
IOWA DEPARTMENT OF EDUCATION;)	
ANN LEBO, in her official capacity as Director)	
of the IOWA DEPARTMENT OF EDUCATION,)	
)	
Respondents.)	

STATE OF IOWA)
) ss
 POLK COUNTY)

I, Austin Baeth, having first been duly sworn, hereby depose and state the following:

1. In 2007, I received my Bachelor of Science degree with Highest Distinction in Integrative Physiology from the University of Iowa. I graduated from the University of Iowa College of Medicine in 2012. I completed my Internal Medicine residency at the University of Colorado in 2015. I have been licensed to practice medicine in the state of Iowa since 2015 and am a physician in good standing. I specialize in internal medicine and palliative medicine and practice in Des Moines, Iowa. I am board certified by the American Board of Internal Medicine. (A copy of the Dr. Baeth's Curriculum Vitae is attached hereto, marked as Exhibit 1 and by this reference incorporated herein).

2. That the current pandemic involving the novel coronavirus, SARS-CoV-2, the virus that causes COVID-19 (hereinafter, "COVID-19"), involves a very fluid situation and much is still unknown to the medical community about the nature of this virus.

3. Reopening schools for in-person teaching amid high rates of community spread of COVID-19 likely poses a grave danger to the health of students, school staff, and the community at large. Current state policy requiring county test positivity rates of 15% or greater to entertain requests for school closure is incongruent with expert recommendations from the World Health Organization (hereinafter, "WHO"), which recommends that test positivity rates should remain below 5% for two weeks before lifting public health and social measures such as school closure. By WHO standards, community test positivity rates of 5% or greater indicate that the epidemic is uncontrolled and therefore high risk for escalation in the absence of more stringent public health measures. Accordingly, the opening of schools statewide for in-person teaching when a large majority of Iowa counties report test positivity rates of 5% or greater represents an action that is exactly counter to WHO recommendations.

4. While some countries appear to have successfully reopened schools without incurring an appreciable surge of COVID-19, it should be noted that the United States as a whole, and the state of Iowa in particular, have COVID-19 test positivity and per capita infection rates that are significantly higher than countries that have reopened schools successfully and without a surge in the virus.
5. From a scientific basis, it appears reasonable to conclude that reopening schools amid a relatively high COVID-19 infection rate poses elevated risk of in-school and community transmission of COVID-19.
6. While young children appear to transmit this virus at lower rates, a recent study of nearly 65,000 subjects in South Korea found that children ages 10 and older appear to transmit COVID-19 at rates comparable to adults. Serious manifestations of this disease are more rare in children, though deaths and other devastating outcomes are widely reported.
7. Of particular concern is the health of the teachers and other school staff who remain at much higher risk of adverse health consequences of COVID-19, especially those with comorbid health conditions.
8. A patient of mine, who is a preschool teacher and is currently undergoing treatment for cancer, has been forced to make the very difficult decision to resign from her job in order to protect her health. This patient also has a daughter in high school and is, understandably, very concerned that her daughter's return to school will have potentially devastating consequences for the entire family. Similar concerns have been echoed by numerous other parents and teachers treated in my practice.
9. COVID-19 infection and test positivity rates are quite variable within the state of Iowa. It is therefore reasonable to conclude that the risks associated with reopening schools will vary widely among school districts.
10. In an effort to mitigate the threat in high-risk areas, there is scientific basis to recommend that plans to reopen schools for in-person instruction should be tailored to current COVID-19 infection rates within each community.

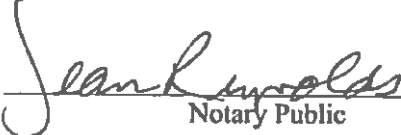
DATED this the 18th day of August, 2020.



Signature of Affiant

SWORN to and subscribed before me, this the 18 day of August, 2020.





Notary Public

IN THE IOWA DISTRICT COURT OF JOHNSON COUNTY

IOWA STATE EDUCATION ASSOCIATION;)	
IOWA CITY COMMUNITY SCHOOL DISTRICT;)	
)	
Petitioners,	)	EQUITY CASE NO. _____
)	
v.)	
	)	AFFIDAVIT OF
KIM REYNOLDS, ex rel. STATE OF IOWA;	)	MICHAEL BERANEK
IOWA DEPARTMENT OF EDUCATION;)	
ANN LEBO, in her official capacity as Director)	
of the IOWA DEPARTMENT OF EDUCATION,)	
)	
Respondents.)	

STATE OF IOWA)
) ss
JOHNSON COUNTY)

I, Michael Beranek, after being duly sworn on oath, do depose and state that the following facts are true and correct as I verily believe:

I, Michael Beranek, being first duly sworn on oath, do depose and state that the following facts are true and correct as I verily believe:

1. I currently serve as the President of the Iowa State Education Association (hereinafter, "ISEA").
2. ISEA represents over 30,000 educators employed in Iowa K-12 school districts, area education agencies and community colleges.
3. ISEA exists to promote the professional advancement of all its members, and to place our members' students at the center of all we do.
4. The current situation and environment involving the COVID-19 pandemic is unprecedented, and has, therefore, presented challenges to our members, their students and school districts that have never before needed to be addressed.
5. The Governor's required return to brick and mortar school buildings is fraught with potential health hazards that have never before been encountered, and the level of anxiety of our members is acute and continues to grow as the start date of the 2020-2021 school year nears.
6. Our members are concerned for the health and safety of themselves, their students, their families, and the elderly for whom they provide daily care, as well as the health and welfare of the members of the communities in which they live.

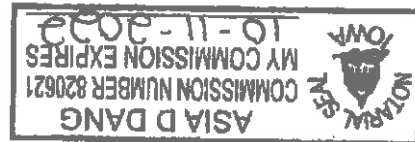
7. One strategy for opening schools is to open with a component of remote (online) instruction.
8. The people best positioned to determine what is the safest Return-To-Learn plan for their students, staff and community are the members of the local school boards of each Iowa school district.
9. Governor Kim Reynolds' decision to deprive school districts of local control over the details of their Return-To-Learn plans is improvident at best, and reckless and dangerous at worst.
10. Governor Kim Reynolds' refusal to allow each school board to implement the safest Return-To-Learn plan possible for their local situations, poses the risk of unnecessarily exacerbating community spread of COVID-19.

DATED this the 18 day of August, 2020.


Signature of Affiant

SWORN to and subscribed before me, this the 18 day of August, 2020.


Notary Public



high-risk group includes persons over fifty years of age, and those who are medically compromised or suffering from other diseases or afflictions, independent of COVID-19 (including but not limited to heart disease, kidney disease, obesity, pulmonary issues, and autoimmune diseases).

7. Children of all ages are fully capable of contracting COVID-19. Per a recent joint report from the American Academy of Pediatrics and the Children's Hospital Association, more than 97,000 children tested positive for COVID-19 in the last two weeks of July 2020 alone. That is a 40% increase from prior infections in this age group. Moreover, a Centers for Disease Control and Prevention (hereinafter, "CDC") case study analyzed the infection attack rate in a weeklong sleep-away camp during June 2020 in Georgia. The CDC found that of the 597 people attending the camp, 260 contracted COVID-19. The highest rate of infection was amongst the youngest campers between the ages of six and ten years of age (51% attack rate in this group).
8. Children infected with the virus are fully capable of transmitting the virus to others. A study published in the Journal of the American Medical Association (JAMA) on July 30, 2020, studied the contagiousness of children by estimating the amount of nasopharyngeal viral shedding occurring at various age groups. They found that children younger than five years of age with mild to moderate COVID-19 carry higher amounts of SARS-CoV-2 viral material in the nasopharynx than adults, suggesting that they may be more contagious and, thus, more effective at transmitting the virus than adults. Children between the ages of 5 and 17 years appeared to have the same amount of viral material as adults (18 years or older).
9. Ways to mitigate the spread of COVID-19 include i) social distancing at least six feet apart; ii) avoiding enclosed spaces where people from different households are gathered together; iii) wearing facial coverings; and iv) maximizing ventilation through proper HVAC systems.
10. Per data from other countries as well as recommendations from the World Health Organization (hereinafter, "WHO"), if a particular community has a five percent or higher positivity rate when testing for COVID-19, immediate action should be taken to reduce the spread of the virus, which may include school closures. As reiterated by the WHO, CDC, and Harvard Global Health Institute, the largest predictor of in-person learning success and safety is a community's COVID-19 prevalence. It is critical that we allow for local control of school closure and COVID-19 mitigation decisions to ensure more timely action based on a community's trajectory and prevalence. Dependence on statewide thresholds can lead to delays that can result in increased morbidity and mortality.

DATED this the 17 day of August, 2020.


Signature of Affiant

SWORN to and subscribed before me, this the 17th day of August, 2020.

Jessica E. Ritson
10/20/2020


Notary Public





May 8, 2020

Return-to-Learn Guidance

Purpose

Return-to-Learn plans are required to be submitted to the Iowa Department of Education (Department) by July 1, 2020. These plans are designed to help districts and nonpublic schools meet the challenges of 2020-21 by:

- Ensuring that remote learning options are available for all students;
- Planning to help students catch-up for the learning they may have missed during school closures;
- Integrating public health strategies into Iowa's schools;
- Enabling schools to move between on-site and remote learning as needed; and
- Helping the Department and our partners at Iowa's area education agencies (AEAs) understand how best to support schools.

All districts and nonpublic schools must submit a Return-to-Learn Plan through the Department's Consolidated Accountability and Support Application (CASA). The steps to creating your Return-to-Learn plan are described in the following section.

Creating the Return-to-Learn Plan

Iowa schools will potentially reopen in stages rather than all at once in the fall as they have in previous years. These steps are essential to create a Return-to-Learn Plan that honors the stages of reopening that schools may experience.

School Calendar

A school district or accredited nonpublic school may begin its school calendar before August 23, 2020, but only if the school district adopts a calendar as a part of its Return-to-Learn Plan submitted to the Department. The plan submitted must ensure that any instructional time scheduled before August 23, 2020 is in excess of the minimum instructional time of 180 days or 1,080 hours. There are a few ways districts can add time onto the 2020-21 calendar:

- Districts may choose to move days or hours of instructional time from those remaining in the 2019-20 school calendar to their 2020-21 calendar. This is subject to local contract negotiations.
- Districts may choose to fund additional days of instruction prior to August 23, 2020. These additional days can be added via Continuous Learning or a Hybrid model to reduce costs if either model fits local needs.

Steps

STEP 1: PLAN FOR REQUIRED CONTINUOUS LEARNING

All districts and accredited nonpublic schools must have a plan for offering Continuous Learning and requiring the participation of students as schools reopen for the 2020-21 school year. This learning plan can be used in an emergency, such as the resurgence of COVID-19, or under another circumstance in which it is not possible for students to be in the building receiving instruction. Required Continuous Learning plans will be submitted as part of the Return-to-Learn plans due July 1, 2020 and are the only portion that must be approved by the Department. To facilitate creation of these plans, districts and schools must use the [Continuous Learning Template](#).

STEP 2: PLAN FOR HYBRID LEARNING

All districts and accredited nonpublic schools may choose to offer educational services through a hybrid model of Continuous Learning and On-Site Learning for at least some portion of the 2020-21 school year. This means services are offered both remotely and at physical school locations. The Hybrid model may allow for social distancing while partially reopening school buildings to provide educational services. Plans involving Hybrid models will be submitted as part of the Return-to-Learn Plan but will not be approved or denied. Districts and schools planning for the Hybrid model are encouraged to use the [Return-to-Learn Support Document](#).

STEP 3: PLAN FOR ON-SITE DELIVERY

All districts and accredited nonpublic schools may also choose to move to on-site provision of educational services as part of their Return-to-Learn Plan, as long as it is deemed safe by public health officials and the school has actively planned for appropriate health and safety measures. Plans involving On-Site models will be submitted as part of the Return-to-Learn Plan but will not be approved or denied. Districts and schools planning to offer all educational service on-site are encouraged to use the [Return-to-Learn Support Document](#).

STEP 4: SUBMIT YOUR RETURN-TO-LEARN PLAN

Return-to-Learn plans are due in CASA no later than July 1, 2020. Applications for Required Continuous Learning are part of Return-to-Learn Plans for [all district and nonpublic schools](#), regardless of prior approval during spring school closure. For the Hybrid and On-Site portions of the plans, submissions will be marked "received" by the Department but not approved or denied.

State Support

The Department, along with AEAs and other education organizations, will be creating and releasing support and professional learning to ensure that all Iowa schools can meet the demands of the Return-to-Learn plans for the 2020-21 school year. These include:

- Professional development to support the use of the [Return-to-Learn Support Document](#);
- Provision of a statewide platform for online learning that all Iowa districts may use if they wish; and
- Professional learning on the support of students with special needs in a Continuous Learning environment, particularly students with disabilities.

We will continue to reach out to the education community to ensure that we are meeting the needs of all Iowa schools at this time.

Return-to-Learn Steps

This table provides a summary of the steps to take to create your Return-to-Learn Plan and how they are applied.

Question	Step 1: Required Continuous Learning	Step 2: Hybrid Learning Plan	Step 3: On-Site Delivery Plan
Who may/must provide this?	All districts and nonpublic schools <u>must</u> have a plan to provide this.	All districts and nonpublic schools <u>may</u> have a plan to provide this.	All districts and nonpublic schools <u>may</u> have a plan to provide this.
What is this delivery model?	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.	This model is a combination of Required Continuous Learning and On-Site Learning Delivery. The methods may be combined by offering some student groups services on-site at different times or choosing which student groups get each delivery method by matching need.	This model provides educational services on-site in traditional brick and mortar settings.
What methods can we use?	This model may include online education, home delivery or pick-up of educational resources, online or telephonic check-ins, or other innovative methods.	This model may include online education, home delivery or pick-up of educational resources, online or telephonic check-ins, or other innovative methods paired with traditional classroom instruction. On-Site Learning may be delivered on alternative schedules to accommodate requirements for social distancing.	On-Site Learning may be delivered on alternative schedules to accommodate requirements for social distancing and augmented with targeted distance education strategies for those students and teachers who are unable to enter school buildings.
When is this option available?	After approval of your application by the Department for the 2020-21 school year.	After your Return-to-Learn Plan is received in CASA.	After your Return-to-Learn Plan is received in CASA.
Are students required to participate?	Yes.	Yes.	Yes.

Question	Step 1: Required Continuous Learning	Step 2: Hybrid Learning Plan	Step 3: On-Site Delivery Plan
Are there equity concerns for subgroups of students?	Yes. Equity must be considered for all students, including subgroups.	Yes. Equity must be considered for all students, including subgroups.	Yes. Equity must be considered for all students, including subgroups.
Are there FAPE (free and appropriate public education) concerns for special education that we should consider?	Yes. IEP teams must determine how FAPE will be provided through remote learning methods.	Yes. IEP teams must determine how FAPE will be provided through remote learning methods or provided as schools reopen and change service delivery methods.	Yes. IEP teams must determine how FAPE will be provided as schools reopen and change service delivery methods.
Can we grade materials submitted?	Yes.	Yes.	Yes.
Can we award credit?	Yes.	Yes.	Yes.
What application/paperwork should the district fill out with the state?	Districts and nonpublic schools must complete the application to provide Required Continuous Learning services as part of the Return-to-Learn Plan due July 1, 2020.	Districts and nonpublic schools must submit a Return-to-Learn Plan due July 1, 2020.	Districts and nonpublic schools must submit a Return-to-Learn Plan due July 1, 2020.

Questions and Additional Guidance

If you have questions, please contact [Brad Niebling](#), [Barb Guy](#), or [Barbara Ohlund](#). For additional COVID-19 guidance and information, please visit the Department's [COVID-19 webpage](#).



July 30, 2020

Return to Learn: Reopening Iowa's Schools Safely and Responsibly

Purpose

This guidance was written by the Iowa Department of Education (Department) in consultation with the Iowa Department of Public Health (IDPH) and is intended to help districts (1) determine when to use each of the Return-to-Learn models they have planned for during the 2020-2021 school year, and (2) handle potential and/or confirmed cases of COVID-19 in schools. This guidance should be read in conjunction with prior guidance on [Return-to-Learn supports](#), [Senate File 2310](#), and [Reopening Guidance](#). Please consult the Department's [Return-to-Learn Google site](#) for the latest supports for schools. In addition, always refer to the latest information from IDPH on their [COVID-19 site](#).

Which of my approved Return-to-Learn models should I use?

The health, safety, and well-being of students, teachers, staff and their families is the most important consideration in determining whether temporary transitions to alternate learning models or school closures are necessary. The Iowa Departments of Education and Public Health, and local public health officials, will assist schools and districts with transitions based on the following criteria and conditions in their respective communities. The following table summarizes the levels of community transmission schools may observe and, for each, suggested mitigation strategies that align with current Centers for Disease Control and Prevention (CDC) and IDPH guidance, and appropriate Return-to-Learn models.

Community Transmission	Suggested Strategies	Return-to-Learn Model(s)
<p>None to Minimal</p> <p>0-5% positivity in county on average over the past 14 days</p> <p><i>* Healthcare resources remain stable</i></p>	<ul style="list-style-type: none"> • Stay home if you are sick or exposed to someone confirmed to have COVID-19 • Practice frequent hand-washing • Stay 6 feet from others as much as possible • Use face coverings when able to do so safely and correctly • Maintain frequent cleaning schedule using EPA-approved cleaning products • Monitor absenteeism among teachers, staff, and students 	<p>On-Site Learning following DOE, IDPH and CDC guidance.</p> <p>Hybrid Learning as necessary based on</p> <ul style="list-style-type: none"> • Parent or guardian preference • Student quarantine

Iowa Department of Education guidance should be viewed as advisory unless it's specifically authorized by state statute, according to Iowa Code section 256.9A. This does not apply to administrative rules, declaratory orders, or materials required by federal law or courts.

Community Transmission	Suggested Strategies	Return-to-Learn Model(s)
<p>Minimal to Moderate</p> <p>6-14% positivity in a county on average over the past 14 days</p> <p><i>* Healthcare resources remain stable</i></p>	<ul style="list-style-type: none"> • Continue above strategies • Reduce group events/gatherings • Limit inter-school interactions • Ensure student and staff groupings/cohorts are as static as possible and that interactions among groups of students and staff are limited 	<p>On-Site Learning following DOE, IDPH and CDC guidance.</p> <p>Hybrid Learning as necessary based on</p> <ul style="list-style-type: none"> • Parent or guardian preference • Student quarantine
<p>Substantial Controlled</p> <p>15-20% positivity in a county on average over the past 14 days AND 10% absenteeism among students expected for in-person learning</p> <p><i>* Healthcare resources remain stable</i></p>	<ul style="list-style-type: none"> • Continue above strategies • Consider regular health checks for any on-site students/staff if feasible • Cancel school events/gatherings • Close communal spaces (e.g., cafeterias, media centers) 	<p>Hybrid Learning as necessary based on</p> <ul style="list-style-type: none"> • Parent or guardian preference • Student quarantine <p>Temporary Continuous/Remote Learning for an entire school building or district for up to 14 days may be requested:</p> <ul style="list-style-type: none"> • Please contact the Department of Education by submitting your information via the CASA system. • Only the Departments of Education and Public Health can make the determination and provide temporary authorization to move to 100% online or remote learning.
<p>Substantial Uncontrolled</p> <p>>20% positivity in a county on average over the past 14 days with healthcare resource capacity concerns</p>	<p>State and local education and public health officials should work closely together to make decisions on school operations.</p>	<p>Temporary Continuous/Remote Learning for an entire school building or district for up to 14 days may be requested:</p> <ul style="list-style-type: none"> • Please contact the Department of Education by submitting your information via the CASA system. • Only the Departments of Education and Public Health can make this determination and provide temporary authorization to move to 100% online or remote learning.

*Your local public health department uses data to determine the level of community transmission. Most districts in Iowa are in 2-4 counties, so it is important to know which public health departments you work with and how to contact them. The highest positivity rate in any county that a district is a part of should be considered.

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Evaluating Sick Students and Staff

Students or staff members should remain home when sick. Students or staff members with **any** high-risk symptom or **two or more** low risk symptoms should stay home and are advised to seek an evaluation by a health care provider.

High Risk Symptoms	Low Risk Symptoms
New cough, shortness of breath or difficulty breathing, new loss of taste or smell	Fever, headache, muscle and body aches, fatigue, sore throat, runny nose, congestion, nausea, vomiting, diarrhea

Evaluation by Health Care Provider

Negative COVID-19 Test	Alternative Diagnosis	Positive COVID-19 Test
Return to school after 24 hours with no fever (without the use of fever-reducing medicine) and symptoms improving	Return to school after 24 hours with no fever (without the use of fever-reducing medicine) and symptoms improving	Return to school after 24 hours with no fever (without the use of fever-reducing medicine) and symptoms improving and 10 days since symptoms started

Identifying Close Contacts for COVID-19 Cases

Close Contact: Individuals who've been within 6 feet for more than 15 minutes with a positive COVID-19 case during the infectious period. Contact may occur in a classroom, lunchroom, free period, during transportation to or from school, at practices or games, and during extracurricular activities.

School will	Public Health will
<ul style="list-style-type: none"> Notify local public health department Identify close contacts and quarantine exposed students and staff Notify appropriate school administration, families and staff (without identifying the COVID-19 case) Provide Public Health with list of close contacts 	<ul style="list-style-type: none"> Recommend quarantine for all household contacts of COVID-19 case Work with school to determine which students and staff should be quarantined

Students	Staff	Individuals Previously Positive
<ul style="list-style-type: none"> If no symptoms develop, students can return to school 14 days from their last contact with the COVID-19 case If symptoms develop, students should be evaluated by a health care provider. 	<ul style="list-style-type: none"> Staff may be considered critical personnel and can be allowed to return to work if there are staffing shortages as long as they remain asymptomatic. Staff should take their temperature and screen for symptoms at the start and 	<ul style="list-style-type: none"> Those who have been previously diagnosed positive for COVID-19 within the past 12 weeks, and were exposed to a COVID-19 case, do not need to quarantine.

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Students	Staff	Individuals Previously Positive
<ul style="list-style-type: none"> If a student tests positive for COVID-19, they should isolate for 10 days. If a student tests negative for COVID-19, they must still complete their 14-day quarantine before returning to school. 	<p>end of each day, and wear a mask at work.</p> <ul style="list-style-type: none"> If symptoms develop, they must isolate immediately. 	

What information do I need to submit in my application for Temporary Permission to Provide Primarily Continuous/Remote Learning?

The Department will ask you to provide the following information:

- Evidence of consultation with local/county public health determining that the area meets the requirements established by IDPH.
- If the application for temporary permission is approved:
 - How will the district or accredited nonpublic school ensure that all students with IEPs are provided with FAPE during the time the district/school is providing services primarily online?
 - How will the district or accredited nonpublic school ensure that students who require mental health or health services still have access to these services during the time the district/school is providing services primarily online?
 - How will the district or accredited nonpublic school ensure that students with 504 plans continue to receive services?
 - How will the district continue to provide meals to students?
 - How will the district provide access to instructional materials and services for students who do not have access to the internet?
 - What process will you use to communicate with parents/families on educational services and changes in delivery models?

How quickly will the Departments of Education and Public Health respond to my application for Temporary Permission to Provide Primarily Continuous/Remote Learning?

You will receive a response within 48 hours, not including weekends.

This plan is fluid and subject to change as more information becomes available. The Department will release an FAQ to supplement this information. If you have questions, please contact your school improvement consultant.

Public health criteria to adjust public health and social measures in the context of COVID-19

Annex to Considerations in adjusting public health and social measures in the context of COVID-19

12 May 2020



Background

In response to COVID-19, countries around the globe have implemented several public health and social measures (PHSM), including large scale measures such as movement restrictions, closure of schools and businesses, geographical area quarantine, and international travel restrictions. As the local epidemiology of the disease changes, countries will adjust (loosen/reinstate) these measures accordingly. On 16 April 2020, WHO published interim guidance that provides advice on adjusting PHSM, while managing the risk of resurgence of cases. A series of annexes was developed to help guide countries through adjusting various public health measures in different contexts. This annex shows a pragmatic decision process for adapting PHSM based on epidemiological and public health criteria, and it should be read in conjunction with the interim guidance document.¹

The document presents only public health criteria, while other critical factors, such as economic factors, security-related factors, human rights, food security, and public sentiment, should also be considered.

This document is intended for national authorities and decision makers in countries that have introduced large scale PHSM and are considering adjusting them.

How to use the criteria

The criteria are grouped into three domains that should be evaluated to address three main questions:

1. **Epidemiology** - Is the epidemic controlled? (Yes or No)
2. **Health system** - Is the health system able to cope with a resurgence of COVID-19 cases that may arise after adapting some measures? (Yes or No)
3. **Public Health Surveillance** - Is the public health surveillance system able to detect and manage the cases and their contacts, and identify a resurgence of cases? (Yes or No)

The criteria are not prescriptive, and it may not be feasible to answer some of them owing to lack of data, for instance. To the extent possible countries should focus on the criteria most relevant for them to inform decision making. The thresholds are indicative and may need to be revisited as further information about the epidemiology of COVID-19 becomes available. It is recommended to systematically assess the criteria at least weekly at a subnational administrative level when feasible.

1. There is indication that the epidemic is controlled

Key measure: Effective reproduction number (R_t) < 1 for at least 2 weeks

Theoretically, R_t (the effective number of secondary cases per infectious case in a population) below 1 is the best indication that the epidemic is controlled and declining. A package to estimate R_t is available,² together with an interactive application.³ In countries with a large population, R_t might vary across the population and should be estimated at a subnational level.

A qualitative assessment based on some or all of the following criteria can be used to supplement estimates of R_t , or if surveillance data are insufficient to robustly assess R_t , to assess whether the epidemic is controlled.

Table 1. Epidemiological Criteria

Epidemiological Criteria*	Explanation
Decline of at least 50% over a 3-week period since the latest peak and continuous decline in the observed incidence of confirmed and probable cases °	This indicates a decline in transmission equivalent to a halving time of three weeks or less since the latest peak, when the testing strategy is maintained or strengthened to test a greater % of suspected cases.
Less than 5% of samples positive for COVID-19, at least for the last 2 weeks, ° assuming that surveillance for suspected cases is comprehensive	The % positive samples can be interpreted only with comprehensive surveillance and testing of suspect cases, in the order of 1/1000 population/week

Less than 5% of samples positive for COVID-19, at least for the last 2 weeks ^o , among influenza-like-illness (ILI) samples tested at sentinel surveillance sites	Through ILI sentinel surveillance, a low % of positive samples indicates low community transmission*
At least 80% of cases are from contact lists and can be linked to known clusters	This indicates that most transmission chains have been identified, offering the opportunity for follow-up. This may be limited by the fact that the information will certainly not have been collected at the height of the epidemic.
Decline in the number of deaths among confirmed and probable cases at least for the last 3 weeks ^o	This will indicate, with an approximately 3-week lag-time, that the total number of cases is decreasing. If testing has decreased, then the number of deaths in probable cases will be more accurate.
Continuous decline in the number of hospitalization and ICU admissions of confirmed and probable cases at least for the last 2 weeks ^o	This indicates, with an approximately 1-week lag-time and providing that the criteria for hospitalization have not changed, a decline in the number of cases.
Decline in the age-stratified excess mortality due to pneumonia	When pneumonia cases cannot be systematically tested, a decline in the mortality of pneumonia would indirectly indicate a reduction in the excess mortality due to COVID-19.

* Trend evaluation requires that no changes occurred in testing or measurement strategy

^o 2-week period corresponds to the maximum incubation period and is the minimum period on which to assess changes in trends.

2. The health system is able to cope with a resurgence of cases that may arise after adjusting some measures

Key measure: Number of new cases requiring hospitalization is smaller than the estimated maximum hospital and ICU bed capacity of the health system (i.e. the health system can cope with new hospitalizations without becoming overwhelmed while maintaining delivery of essential health services).⁴

In the absence of this information, a qualitative assessment based on some or all the following criteria can be used.

Table 2. Health system Criteria

Health System Criteria	Explanation
All COVID-19 patients can be managed according to national standard	This indicates that the health system has returned to a state where all conditions (staff, beds, drugs, equipment, etc.) are there to provide the same standard of care that existed before the crisis.
All other patients with a severe non-COVID-19 condition can be managed according to national standard	
There is no increase in intra-hospital mortality due to non-COVID-19 conditions	
The health system can absorb or can expand to cope with at least a 20% increase in COVID-19 case load	This indicates that the system would be sustainable even if it had to absorb a surge in cases resulting from loosening public health and social measures. This includes sufficient staff, equipment, beds, etc.
An Infection, Prevention and Control (IPC) focal point is available in all health facilities (1 full-time trained IPC focal point per 250 beds) and at district level	This indicates strong capacity for coordination, supervision and training on IPC activities, including in primary health facilities.
All health facilities have screening for COVID-19	This is for ensuring that all patients who come to a facility are assessed for COVID-19 in order to prevent health associated infections.
All acute health facilities have a mechanism for isolating people with suspected COVID-19	The health system has sufficient capacity to isolate all patients with COVID-19

3. The public health surveillance can identify most cases and their contacts

Countries should have sufficient laboratory testing capacity and have a clear testing strategy in place to reliably identify cases.

A qualitative assessment of some or all the following criteria can be used.

Table 3. Public Health Surveillance Criteria

Public Health Surveillance Criteria	Explanation
Surveillance systems	
New cases can be identified, reported, and data included in epidemiological analysis within 24 hours	A surveillance system for COVID-19 is in place that is geographically comprehensive and covers all persons and communities at risk. Comprehensive surveillance includes surveillance at the community level, primary care level, in hospitals, and through sentinel surveillance sites for influenza and other respiratory diseases, where they exist. ⁵
Immediate reporting of probable and confirmed cases of COVID-19 is mandated within national notifiable disease with requirements	This indicates that appropriate public health policies are in place for immediate notification of cases of COVID-19 from all health facilities.
Enhanced surveillance is implemented in closed residential settings and for vulnerable groups	This indicates that public health authorities have identified populations who live in residential settings or are vulnerable and that enhanced surveillance is put in place for these populations.
Mortality surveillance is conducted for COVID-19 related deaths in hospitals and in the community	This indicates the ability to rapidly and reliably track the number of deaths related to COVID-19. Where possible, medical certificate of death for COVID-19 deaths should be issued. Other approaches for mortality surveillance may be considered, such as reports from religious centres or burial sites.
The total number of laboratory tests conducted for COVID-19 virus is reported each day	Knowing the testing denominator can indicate the level of surveillance activity and the proportion of tests positive can indicate the intensity of transmission among symptomatic individuals.
Case Investigation	
Public health rapid response teams are functional at all appropriate administrative levels	A measure of the capability to rapidly investigate cases and clusters of COVID-19. ⁶
90% of suspect cases are isolated and confirmed/released within 48 hours of symptom onset	This indicates that investigation and isolation of new cases is sufficiently rapid to minimize the generation of secondary cases.
Contact tracing ⁷	
At least 80% of new cases have their close contacts traced and in quarantine within 72 hours of case confirmation	These indicate that the capacity to conduct contact tracing is sufficient for the number of cases and contacts.
At least 80% of contacts of new cases are monitored for 14 days	Contacts should be contacted each day during the 14-day period and ideally no more than two days should elapse without feedback from a contact.
Information and data management systems are in place to manage contact tracing and other related data	While contact tracing data can be managed on paper at a small scale, large-scale contact tracing can be supported by electronic tools such as the <i>Go.Data</i> contact tracing software.

Adaptation of public health and social measures based on level of risk

Depending on the answers to the three questions, a level of risk (high, intermediate, low) is assigned. Here, the risk is an overall appraisal of the negative consequences resulting from loosening measures and the capacity to manage them. The risk level may be used to guide the adaptation of PHSM. In the context of the COVID-19 pandemic, finding, testing, and isolating cases, contact tracing, and quarantine remain core public health measures through all stages of the response. Similarly, measures to ensure protection of health workers and vulnerable groups must be maintained. Depending on the risk level, other measures such as community measures, restriction of mass gathering and measures to reduce the risk of introduction of the virus must be adapted.

References

1. World Health Organization. Considerations in adjusting public health and social measures in the context of COVID-19 (Interim Guidance) (<https://www.who.int/publications-detail/considerations-in-adjusting-public-health-and-social-measures-in-the-context-of-covid-19-interim-guidance>, accessed 15 April 2020)
2. Cori A et al (2019). EpiEstim: Estimate Time Varying Reproduction Numbers from Epidemic Curves. R package version 2.2-1. (<https://CRAN.R-project.org/package=EpiEstim>, accessed 09 May 2019)
3. Thompson RN, Stockwin JE, van Gaalen RD, Polonsky JA, et al. Improved inference of time-varying reproduction numbers during infectious disease outbreaks. *Epidemics* (2019) (<https://shiny.dide.imperial.ac.uk/epiestim/>)
4. World Health Organization. Coronavirus disease (COVID-19) technical guidance: Essential resource planning. Geneva 2020 (<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/covid-19-critical-items>)
5. World Health Organization. Surveillance strategies for COVID-19 human infection (Interim Guidance) (<https://www.who.int/publications-detail/surveillance-strategies-for-covid-19-human-infection>, accessed 10 May 2020)
6. World Health Organization. Considerations in the investigation of cases and clusters of COVID-19 (Interim Guidance) (<https://www.who.int/who-documents-detail/considerations-in-the-investigation-of-cases-and-clusters-of-covid-19>, accessed 13 March 2020)
7. World Health Organization. Contact tracing in the context of COVID-19 (Interim Guidance) (<https://www.who.int/publications-detail/contact-tracing-in-the-context-of-covid-19>, accessed 10 May 2020)

WHO continues to monitor the situation closely for any changes that may affect this interim guidance. Should any factors change, WHO will issue a further update. Otherwise, this interim guidance document will expire 2 years after the date of publication.

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WHO reference number: WHO/2019-nCoV/Adjusting_PH_measures/Criteria/2020.1



ISEA's CHECKLIST FOR SAFELY AND EQUITABLY REOPENING SCHOOLS AND CAMPUS BUILDINGS

No one wants to be back in schools and on campuses with our students more than educators. All educators – teachers, faculty, bus drivers, cafeteria staff, custodians, school nurses, school psychologists, and more – love our students, our schools, and our communities, and that is why we need to do this right. As educators we are responsible for safeguarding the health and safety of our students and school communities and ensuring that reopenings address longstanding inequities rather than compound them.

Appropriate resources must be devoted to the above outlined measures in order to insure the health and safety of students, staff and school communities.

THE THREE KEY REQUIREMENTS FOR THE SAFE RETURN TO IN-PERSON LEARNING

ONE. The Covid-19 pandemic is under control in your community. Leading public health experts agree that reopening school and campus buildings for any in-person learning must wait until transmission rates in the community are both low AND declining over at least the past two weeks as measured by key indicators such as infection rates, hospitalization rates and hospital capacity. Testing must be accessible to all who need it and contact tracing practices must be in place. Otherwise, reopening school and campus buildings may spur a resurgence of the virus in the community.

TWO. Specific protections have been put in place to keep the virus under control and protect students and staff.

1. **Accommodations:** high-risk students, staff and families are protected through appropriate accommodations such as remote learning and instruction arrangements.
2. **Distancing:** All necessary steps have been taken to maintain at least six feet of physical distance among all students, staff, and visitors throughout the day including, where necessary, class size reductions, reconfiguring classrooms and readjusting school schedules and traffic patterns. Safe school-sponsored transportation must also be provided including reconfiguring school buses and transportation schedules to allow for distancing.
3. **Deterrence:** Strong deterrence measures have been put in place, including:
 - a) a requirement that everyone wear appropriate face coverings and that the employer provide those face coverings. Staff should be provided the appropriate face coverings for their specific job responsibilities.
 - b) a requirement that students, staff and visitors wash their hands for 20 seconds several times a day and, where doing so is not possible, are provided with hand-sanitizer of at least 60% alcohol.
 - c) plexiglass protections installed where necessary.
 - d) heating, ventilating, and air-conditioning [HVAC] systems inspected and, if necessary, retrofitted or modified to increase air flow, air filtration and the circulation of clean air.
 - e) sufficient classroom supplies and consumables are provided so each student has their own.

**Research on the novel coronavirus continues. These recommended steps will be updated as necessary to align with new research findings.*

Updated 7-23-2020

4. **Deep Cleaning:** Thorough protocols are in place for daily cleaning and disinfecting of school and campus buildings and buses, as well as more frequent cleaning of high-touch surfaces and frequently used areas such as restrooms. Staff have been trained and provided the necessary PPE to perform the cleaning and disinfecting tasks safely.
5. **Detection:** Procedures are in place to detect COVID-19 cases among students, staff, and visitors, including education on symptoms, requiring those who are sick to stay home, isolation of symptomatic individuals, and closing school buildings to contain potential outbreaks.
6. **Quarantine, Isolation and Notification Procedures:** Triggers for school/campus closures to in-person instruction are clear to families and staff. A protocol is in place that provides for notification of individuals exposed in school to someone with COVID-19, for immediate isolation of that person, and quarantines of those who have been exposed. Robust plans exist for continuity of instruction through substitutes or other instruction when teachers or professors must quarantine or when in-person instruction must be closed. During any such closure, continuity of instruction, nutrition and support services for all students must be provided.
7. **Educator and Family Involvement:** Procedures are in place to ensure educators and families have a voice in how the return to in-person instruction occurs and how necessary protections function throughout the school year. Potential avenues for educator and family input include district- and building-level health and safety committees and, where possible, collective bargaining.
8. **Monitoring:** Health and safety protections are independently enforced through regular, unannounced building inspections by local health authorities and a widely publicized hotline to report violations. Whistleblowers must be protected against any and all retaliation or adverse actions.
9. **Enforcement:** Clear policies are established for how protective measures will be enforced consistently, ensuring that disparate discipline of students or staff does not occur.
10. **Multiple work locations:** Staff that work in multiple school buildings and districts will need additional support from their employer to ensure that all work locations are safe and following the above outlined requirements.

THREE. Plans are in place to ensure continuous learning for all students.

1. There is a plan for instruction (whether in-person or virtual) that addresses racial and social equity in the provision of instruction and support services.
2. The plan includes training for *educators, families and students* on the processes and protocols in the event a COVID-19 outbreak necessitates returning, in whole or in part, to virtual instruction.
3. Educators are involved at each step of the planning process for any form of virtual teaching and learning, including adjusting the curriculum and methods of instruction.
4. The plan for continuous learning addresses device access for every student, high-speed internet access for every *student and educator*, and accommodates gaps in such services.

Additional Resources and Source Documents

- **AAP:** <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>
- **NAS:** <https://www.nationalacademies.org/news/2020/07/schools-should-prioritize-reopening-in-fall-2020-especially-for-grades-k-5-while-weighing-risks-and-benefits>
- **CDC:** <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/School-Admin-K12-readiness-and-planning-tool.pdf>
- **Johns Hopkins** Guidance on Appropriate Masks <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-face-masks-what-you-need-to-know>
- **ASHRAE** Guidance on Ventilation Standards <https://www.ashrae.org/technical-resources/schools>

This document was adapted from the NEA's Checklist for Safely and Equitably Reopening Schools and Campus Buildings.



<https://educatingthroughcrisis.org/>

<https://educatingthroughcrisis.org/your-rights/>

<https://educatingthroughcrisis.org/meeting-students-and-families-needs/>

<https://educatingthroughcrisis.org/digital-supports/>

<https://educatingthroughcrisis.org/take-action/>

