

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Iowa State Education Association and)	
Iowa City Community School District,)	
)	
Petitioners,)	No. CVCV081968
)	
vs.)	
)	RULING
Kim Reynolds, ex rel. State of Iowa;)	
Iowa Department of Education; and Ann)	
Lebo, in her official capacity as Director)	
of the Iowa Department of Education,)	
)	
Respondents.)	

Hearing took place on September 3, 2020 on Petitioners’ request for emergency temporary injunctive relief. Appearances were made by Attorneys Charles Holland, Christy Hickman, Crystal Raiber, and Katherine Schoolen for Petitioners, and by the Iowa Solicitor General, Attorney Jeff Thompson, for Respondents. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioners filed a Petition for Declaratory Judgment and Injunctive Relief on August 19, 2020. Petitioner Iowa State Education Association (ISEA) describes itself as 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 Iowa. The ISEA’s mission is to “promote quality public education by placing students at the center of everything [ISEA does] while advocating for education professionals.” ISEA states it is suing Respondents on behalf of ISEA members, who ISEA claims will be adversely affected by Respondents’ actions. Petitioner Iowa City Community School District (ICCSA) describes itself as a school corporation organized and existing under the laws of the State of Iowa. ICCSD states it serves approximately 14,000 students, and employs approximately 2,250 staff members. ICCSD points out that Johnson County, Iowa has a population of approximately 151,000, and is home to the University of Iowa, which has a student enrollment of approximately 32,500. ICCSD also claims it will be adversely affected by Respondents’ actions.

Petitioners challenge Senate File 2310, which was passed by the Iowa Legislature and signed into law on June 29, 2020 by Iowa Governor Kim Reynolds. Additionally, in response to the ongoing COVID-19 public health emergency, Governor Reynolds has issued a series of “Proclamations of Disaster Emergency,” and Iowa Department of Education Director Ann Lebo has issued guidance regarding the reopening of schools, applying and interpreting Senate File 2310 and other state laws. In her Proclamations of Disaster Emergency, Governor Reynolds recommended on March 15, 2020 that all Iowa schools should close for a period of four weeks to help mitigate the spread of COVID-19, and schools ultimately were closed for the remainder of

the regularly scheduled school year. Other facilities and venues also were closed by the Governor during this time period, and the Governor also directed Iowans to practice social distancing. The Iowa Department of Education issued Return-to-Learn guidance on May 8, 2020, which included goals for Iowa school districts to ensure that remote learning options are available for students, and to enable schools to move between on-site and remote learning, as needed.

The Return-to-Learn guidance provides three permissible options to school districts for instruction of students during the 2020-21 school year: (a) fully remote, which was described as “Required Continuous Learning”; (b) on-site delivery of instruction in brick and mortar buildings; and (c) a hybrid learning plan, combining remote and on-site instruction. Each school district in Iowa was instructed to have a plan for fully remote instruction, and was given the option of using the on-site or hybrid models. Additionally, school districts were advised that the Department of Education could award credit to students for coursework completed under any of the three options in the Return-to-Learn plan. “Required Continuous Learning” was described by the Department of Education as ensuring “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.” “Required Continuous Learning” was permitted to “include online education, home delivery or pick-up of educational resources, online or telephonic check-ins or other innovative methods.”

Petitioners claim that, in compliance with this guidance, school boards, superintendents and principals, teachers, and support personnel worked countless hours during May, June, and July, 2020, to develop the required Return-to-Learn plans best suited to the needs of their individual school districts and which would allow the students and staff or their districts to commence the 2020-2021 school year in the safest manner possible. Petitioners also claim that the plans of Iowa school boards were submitted to the Department of Education in compliance with the Return-to-Learn guidance.

Senate File 2310 was passed on June 13, 2020, and provides, in pertinent part, as follows:

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.

...

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.

On July 14, 2020, ICCSD announced plans to open the 2020-21 school year remotely. On July 17, 2020, Governor Reynolds issued a new Proclamation of Disaster, stating that brick and mortar school districts or accredited nonpublic schools were authorized to provide instruction primarily through remote learning opportunities only in circumstances where there is parental consent; approved temporary school building or district closure; temporary remote learning for individual students or classrooms; or temporary remote learning because of inclement weather. Governor Reynolds announced that remote instruction exceeding fifty percent would violate Senate File 2310. Petitioners believe this is based on the use of “primarily” in Senate File 2310. On July 30, 2020, the Department of Education published criteria for granting permission to close a school building, which includes the school district meeting a threshold of 10% student absence rate, and the county in which the district is located must have a 15-20% positivity rate in testing. Petitioners believe that even if these thresholds are met, only closure of school events and communal spaces is authorized, and school building or district closure is authorized only when the positivity rate for testing in the county where the district is located is at or above 20%. ICCSD has requested permission from the Department of Education to waive these requirements, and the request has been denied.

Petitioners claim that the July 17, 2020 Proclamation is unconstitutional and in violation of Article I, Sections 1 and 2 of the Iowa Constitution. Petitioners assert that the July 17, 2020 Proclamation undermines and unnecessarily interferes with the basic right of all Iowans secured by the first two sections of the Iowa Constitution to enjoy their guarantee, through their

government, of protection and security from the COVID-19 pandemic. Petitioners further assert that the actions and inactions of Respondents place in severe and needless jeopardy the basic right of the citizens of Iowa to defend their health and their lives, and to continue their pursuit and attainment of happiness.

Petitioners' next argument is that Iowa law and Senate File 2310 grant to school districts the exclusive right to determine when remote learning is necessary and do not require school districts to provide at least half of their instruction to be in-person during any two-week period. Petitioners assert that the July 17, 2020 Proclamation deprives the right of school districts to "determine" when "a remote-learning period is necessary"; 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; and the July 17, 2020 Proclamation and reopening guidance from the Department of Education 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."

Next, Petitioners argue that Governor 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. Petitioners contend the action unlawfully usurps the authority of school districts under Iowa Code §§ 274.1 and 274.3, and unjustifiably prevents school districts from assuring safe conditions upon reopening.

Petitioners seek a declaratory judgment that the July 17, 2020 Proclamation, as interpreted to require public school districts to deliver in-person instruction, violates the Iowa Constitution and other Iowa laws. Petitioners also seek an expedited injunction prohibiting Respondents 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 or the relevant portions of Senate File 2310.

In support of the Petition, Petitioners have submitted the May 8, 2020 and July 30, 2020 Return-to-Learn Guidance from the Iowa Department of Education (Exhibits 1 and 2); "Public health criteria to adjust public health and social measures in the context of COVID-19," as issued by the World Health Organization (Exhibit 3); and ISEA's "Checklist for Safely and Equitably Reopening Schools and Campus Buildings." Petitioners also have submitted affidavits from Dr. Austin Baeth, MD; Dr. Megan Srinivas, M.D., M.P.H.; and Michael Beranek.

Respondents have resisted the request for an expedited injunction. In support of their Resistance, Respondents have submitted Governor Reynolds' June 29, 2020 approval of SF2310 (Exhibit A); Governor Reynolds' July 17, 2020 Proclamation of Disaster Emergency (Exhibit B); SF 2310 Guidance for Schools (Exhibit C); August 5, 2020 letter from Director Lebo to Matt Degner, Interim Superintendent of ICCSD (Exhibit D); August 26, 2020 letter from Director Lebo to Superintendent Degner (Exhibit E); Affidavit of Caitlin Pedati, State of Iowa, Iowa Department of Health, State Epidemiologist and Public Health Medical Director (Exhibit F); Affidavit of Amy J. Williamson, State of Iowa, Iowa Department of Education, Bureau Chief for

School Improvement (Exhibit G); and Affidavit of Melissa Walker, Registered Nurse and Advanced Registered Nurse Practitioner (Exhibit H).

By way of background facts, Respondents state that Iowa Code chapters 29C and 135 provide the Iowa Governor with extensive powers to respond to a public health disaster emergency that threatens the lives and livelihoods of Iowans. Respondents further state that in March, 2020, Governor Reynolds issued the first of many Proclamations of Disaster Emergency related to the COVID-19 pandemic, and Respondents claim Governor Reynolds used the broad powers entrusted to her to temporarily close many businesses to prevent the spread of COVID-19; she prohibited, for a time, gatherings of more than ten people; and in April, 2020, she closed Iowa public and nonpublic schools for the remainder of the 2019-2020 school year. Respondents note that the Iowa Legislature suspended its session in March, 2020, to avoid the spread of COVID-19, and the Legislature returned in June, 2020 to finish its shortened session, at which time SF 2310 was passed, to, as Respondents put it, allow school districts flexibility as they planned the return to school while the pandemic continued. Respondents state that on July 17, 2020, Governor Reynolds explicitly authorized school districts to provide instruction primarily through remote learning in four situations: when a child's parent or guardian chooses remote instruction for that child; when the Iowa Department of Education, in consultation with the Department of Public Health, approves a district to do so temporarily because of public health conditions in the district; when the district determines that a student or classroom must move online temporarily because of public health conditions; and during inclement weather. Respondents claim that if Governor Reynolds had not issued a Proclamation granting permission to districts to provide instruction primarily through remote learning in some circumstances, then under the terms of SF 2310, districts would not have been permitted to provide primarily remote learning at any time.

Respondents state that on the same day the Governor issued the Proclamation, the Department of Education provided guidance to Iowa school districts on SF 2310 and the Governor's Proclamation. Respondents assert the guidance explained that SF 2310's prohibition on taking action to provide instruction primarily through remote learning meant that a school cannot provide more than half its instruction to students through remote learning opportunities except in the situations authorized by the Governor, and subsequent Department of Education guidance informed districts when requests to temporarily provide instruction primarily through remote-learning opportunities would be approved. Respondents described this as happening when COVID-19 transmission in a county or counties is substantial, as reflected in a 15% or greater positivity rate in testing over the preceding 14 days and 10% absenteeism among students expected for in-person learning; at these rates, the Department of Education may approve a district to temporarily provide instruction primarily through remote learning. Respondents assert that, where COVID-19 transmission is minimal to moderate, districts must continue to provide on-site learning.

Respondents acknowledge that, on August 3, 2020, ICCSD requested permission to provide instruction primarily online to start the school year. Respondents assert that, at that time, the levels of community transmission in Johnson County did not reach the substantial level that, according to the Iowa Department of Public Health and the Iowa Department of Education guidelines, would make primarily remote instruction necessary. On August 5, 2020, the Iowa

Department of Education denied ICCSD's request to begin the 2020-2021 school year with primarily remote instruction. On August 26, 2020, ICCSD again requested permission to provide instruction primarily through remote learning, and reported to the Iowa Department of Education that the 14-day positivity rate in Johnson County was 13.95% and climbing. The Department of Education granted ICCSD's request, for a two week period.

For their legal argument, Respondents contend that Petitioners cannot show that they are likely to succeed on the merits. Respondents argue that Petitioners' broad assertion that local school boards can make decisions regarding the best interests of their school districts, their employees, and the children in their care disregards the express role the legislature has established for the executive branch during a public health disaster, and the legislature's specific directives regarding the provision of educational instruction during the COVID-19 pandemic. Respondents further argue that Petitioners' position disregards Iowa case law that is clear that it is the responsibility of the General Assembly to decide how to allocate responsibilities between the state and local districts. Respondents assert the Iowa Governor has broad powers to manage a public health emergency, and Governor Reynolds and the Iowa Department of Education have reasonably interpreted SF 2310. Respondents further assert there is no constitutional or statutory right to "local control" for school districts.

Respondents argue that Petitioners cannot show that they will be irreparably harmed in the absence of a temporary injunction, and the fact that ICCSD has been granted permission to start classes remotely renders the request for temporary injunction moot. Respondents further argue that any harm from future enforcement proceedings is speculative, and Petitioners have an adequate remedy at law if the state or its administrative agencies commences an enforcement action at a future date related to a district's implementation of its Return-to-Learn plan. Respondents contend Petitioners cannot demonstrate that they are likely to suffer an injury in the absence of an injunction.

Respondents assert that injunctive relief is not warranted considering the circumstances as a whole, and the balance of harms does not favor the Petitioners. Respondents claim an injunction would harm the State's interest in effectuating statutes enacted by the representatives of its people, and students and families will be harmed if students are not provided an option to attend school in person.

CONCLUSIONS OF LAW

Iowa Rule of Civil Procedure 1.1502 allows temporary injunctions "under any of the following circumstances:

1.1502(1) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.

1.1502(2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's rights respecting the subject of the action and tending to make the judgment ineffectual.

1.1502(3) In any case especially authorized by statute.”

I.R.Civ.P. 1.1502. “A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when.” I.R.Civ.P. 1.1504.

“A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to the final judgment and to protect the subject of the litigation.” Lewis Investments, Inc. v. City of Iowa City, 703 N.W.2d 180, 184 (Iowa 2005) (citing Kleman v. Charles City Police Dep’t, 373 N.W.2d 90, 95 (Iowa 1985)). “The issuance or refusal of temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case.” Id. (citing Kent Prods. v. Hoegh, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953)). “One requirement for the issuance of a temporary injunction is a showing of the likelihood or probability of success on the merits of the underlying claim.” Id.

The Iowa Supreme Court has “often noted that ‘[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.’” Sear v. Clayton County Zoning Board of Adjustment, 590 N.W.2d 512, 515 (Iowa 1999). “The party seeking the injunction must establish: (1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available.” Id. “When considering the appropriateness of an injunction ‘the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief.’” Id. Another factor to be considered is the public interest in granting injunctive relief. Mid-America Real Estate Co. v. Iowa Realty Co., Inc., 406 F.3d 969, 972 (8th Cir. 2005). A party is not entitled to injunctive relief when it has an adequate remedy at law. Lewis, 703 N.W.2d at 185.

The Court first considers whether Petitioners are likely to succeed on the merits of their claim. As Respondents have pointed out, Article IV of the Iowa Constitution provides very broad powers to the Governor. With respect to emergency powers, Respondents also point out that the legislature has given the Iowa Governor broad powers to respond to a public health disaster. Examples of this are found in Iowa Code § 29C.6, which authorizes the governor to proclaim a disaster emergency, and in Iowa Code § 135.144, which sets forth additional duties of the Iowa Department of Public Health with respect to public health disasters. The United States Supreme Court has held that “the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.” Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25, 25 S.Ct. 358, 361, 49 L.Ed. 643 (1905). “[I]n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” Id., 197 U.S. at 29, 25 S.Ct. at 362. However, the Iowa Supreme Court has held that it is “a fundamental principle that an emergency does not create power.” Duncan v. City of Des Moines, 268 N.W. 547, 552 (Iowa 1936). “It only gives the right to the exercise of power that already exists.” Id. “It never gives the right to exercise the power forbidden by the Constitution.” Id.

The Court concludes that the Iowa Constitution and Iowa Code chapter 29C specifically delegate certain powers to the Iowa Governor, and Iowa Code chapter 135 specifically delegates certain powers to the Iowa Department of Public Health. There are authorities and responsibilities given to the Iowa Governor and the Department of Public Health under these provisions, and the Court concludes there are powers that “already exist[.]” and are not being relied on by the Iowa Governor and the Iowa Department of Public Health solely as provisions that “create power.” Pursuant to Duncan, the Iowa Governor and the Iowa Department of Public Health have utilized Iowa Code chapters 29C and 135 to exercise power that already exists.

Relying on these powers, the Iowa Governor and the Department of Public Health have interpreted SF 2310. As Respondents points out, Section 9 of SF 2310 specifically authorizes remote learning *in response to a proclamation of public health disaster emergency, issued by the governor pursuant to section 29C.6 and related to COVID-19*. Further, Section 15 of SF 2310 clearly prevents school districts from providing instruction *primarily* through remote-learning opportunities. Petitioners are not likely to show that Respondents’ actions are inconsistent with the specific directives of the Iowa Legislature as set forth in SF 2310, or that the provisions of SF 2310 are conflicting. The Court is persuaded by Respondents’ interpretation of SF 2310, i.e., that Section 9 sets forth provisions regarding minimum instructional time requirements for remote learning, while Section 15 specifies that instruction may not take place *primarily* through remote learning unless authorized by proclamation. Additionally, the Court agrees with Respondents that interpreting “primarily” as “at least fifty percent” is a reasonable interpretation of the use of this word in SF 2310. See Merriam-Webster, online edition (2020); Cambridge Dictionary, online edition (2020) (equating “primarily” to “chiefly” and “mainly,” respectively).

Petitioners have objected to the Iowa Department of Education using a two-week window to determine whether a district is providing instruction primarily through remote-learning opportunities. However, it is likely to be found reasonable for the Department of Education to use this timeframe, considering scheduling practices and cycles for learning used by schools, and a longer timeframe may result in schools being closed for longer periods of time than may be necessary, due to changing COVID-19 infection rates.

Petitioners have urged that local control should apply for school boards to make decisions about the level of remote-learning made available by their schools. However, the Court is not persuaded that the authorities relied on by Petitioners overcome the emergency powers given to the Iowa Governor by the Iowa Constitution and by Iowa Code chapter 29C, or the powers delegated to the Iowa Department of Education by Iowa Code chapter 135. There is not specific authorization in the Iowa Code to school boards to make these specific types of emergency decisions, such as is given to the Iowa Governor.

The Court next concludes that Petitioners have not shown that they will be irreparably harmed if a temporary injunction is not put into place. The emergency powers utilized by the Iowa Governor essentially have worked as they were intended to; infection rates in the ICCSD rose to levels that authorized the school board to seek 100% remote-learning, and, having considered the infection rates, the ICCSD was granted permission to proceed with 100% remote-learning. As Respondents point out, the status quo is preserved by the Court denying injunctive

relief, where ICCSD has been given permission to resume classes on September 8, 2020 with a 100% remote-learning model. The Court also agrees that any harm from future enforcement proceedings is speculative, in that there are no enforcement proceedings against ICCSD, and any decision by the Court regarding an enforcement proceedings would be dependent on the facts of any such enforcement proceedings brought against ICCSD. Petitioners have an adequate remedy at law in that they could seek judicial review of any enforcement proceedings once they have been filed. Petitioners also have not shown they are likely to suffer an injury if an injunction is not put in place, since they have been granted the option of 100% remote-learning based on current Johnson County infection rates. This and any future decisions regarding remote-learning authorization are made based on the expertise of the Iowa Department of Education, in consultation with the Iowa Department of Public Health, and the decision to allow ICCSD to utilize the 100% remote-learning option demonstrates that these agencies apply their expertise regarding public health conditions in addressing the moving pieces presented by the COVID-19 public health emergency.

Finally, when the harms to the parties are balanced, the facts weigh against putting a temporary injunction in place. The Iowa Legislature passed SF 2310, which was signed into law by Governor Reynolds, and the Court is bound to apply Iowa law in reaching its decisions. While COVID-19 certainly presents the risk of harm to Petitioners' members, staff, and students, there also are risks to students that may result from school closures, as described in Dr. Pedati's affidavit. The risks are compelling and equal on both sides of this argument, and Petitioners cannot show that the harms of which they complain outweigh those of the experiences that students might have if schools are permitted to shutdown indefinitely and without oversight from Respondents.

This is not the type of situation that warrants the extraordinary remedy of temporary injunctive relief. Petitioners have not met their burden of showing they are entitled to temporary injunctive relief, and their request for emergency injunctive relief should be denied.

RULING

IT IS THEREFORE ORDERED that Petitioners' request for emergency injunctive relief is **DENIED**.

Clerk to notify.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV081968
Case Title ISEA AND ICCSD VS STATE OF IOWA, ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Mary E. Chocchelly". The signature is written in a cursive, somewhat stylized font.

Mary E. Chocchelly, District Court Judge
Sixth Judicial District of Iowa