

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DES MOINES INDEPENDENT)
COMMUNITY SCHOOL DISTRICT,)
KYRSTIN DELAGARDELLE, in her)
official capacity as BOARD CHAIR;)
DWANA BRADLEY, in her official)
capacity as BOARD VICE CHAIR; ROB)
X. BARRON, in his official capacity as)
BOARD MEMBER; TERE)
CALDWELL-JOHNSON, in her official)
capacity as BOARD MEMBER; KALYN)
CODY, in his official capacity as)
BOARD MEMBER; KIMBERLY)
MARTORANO, in her official capacity)
as BOARD MEMBER; and KELLI)
SOYER, in her official capacity as)
BOARD MEMBER,)

Petitioners,)

v.)

GOVERNOR KIMBERLY K.)
REYNOLDS, in her official capacity as)
Governor of the State of Iowa; ANN)
LEBO, in her official capacity as Director)
of the Iowa Department of Education; the)
IOWA STATE BOARD OF)
EDUCATION; the IOWA)
DEPARTMENT OF EDUCATION; the)
IOWA DEPARTMENT OF PUBLIC)
HEALTH; and DR. CAITLIN PEDATI,)
in her official capacity as State)
Epidemiologist of the Iowa Department)
of Public Health,)

Respondents.)

Law No. _____

**PETITION FOR JUDICIAL REVIEW
OF AGENCY ACTION,
DECLARATORY RULING, and
INJUNCTIVE RELIEF**

COME NOW Petitioners, the Des Moines Independent Community School District
("DMPS"), Kyrstin Delagardelle, Dwana Bradley, Rob X. Barron, Teree Caldwell-Johnson,

Kalyn Cody, Kimberly Martorano, and Kelli Soyer, and pursuant to Iowa Code § 17A.19 and Iowa Rules of Civil Procedure 1.1101 and 1.1501, state as follows:

INTRODUCTION

1. At its core, this is a case about local control. It involves critical questions of public health and safety and the authority held by duly elected local school boards to make decisions in the best interest of their school districts, their employees, and the children in their care.

2. The Iowa Legislature has vested local school boards with broad authority. *See, e.g.*, Iowa Code § 274.1 (stating each school district “shall have exclusive jurisdiction in all school matters”); Iowa Code § 274.7 (“The affairs of each school corporation shall be conducted by a board of directors”); Iowa Code § 279.8 (stating each school board “shall make rules for its own government and that of the directors, officers, employees, teachers and pupils . . . and shall aid in the enforcement of the rules”).

3. This authority specifically includes the power to determine the manner in which education services may be delivered to students. *See, e.g.*, Iowa Code § 279.11 (stating the school board “shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend”); Iowa Code § 280.3(5) (stating the board of directors “shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district”); Iowa Code § 297.1 (stating the board of directors “may fix the site for each schoolhouse”).

4. It also includes the power to determine if extracurricular activities may be delivered. See Iowa Code § 280.14(1) (stating local school boards have the power to “establish and maintain . . . policies on extracurricular activities”). *Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 69 (Iowa 2002) (holding that school districts are required to “exercise the same standard of care toward children that a parent of ordinary prudence would observe in comparable circumstances”).

5. With such authority comes the obligation to operate their schools in a safe manner, protecting both students and employees from known hazards.

6. No circumstances in our lifetimes have had a greater impact on the ability of school districts to operate safely than the COVID-19 global health pandemic. This is literally a matter of life and death.

7. To date, at least 1,044 Iowans have died and many thousands more have been hospitalized due to COVID -19, according to official state reports. Iowa Department of Public Health – COVID-19 in Iowa, at <https://coronavirus.iowa.gov/#CurrentStatus>.

8. On March 9, 2020, Governor Reynolds issued a Proclamation of Disaster Emergency relating to the COVID-19 pandemic, citing the World Health Organization report that COVID-19 had caused, at the time, “tens of thousands of cases and thousands of deaths...in multiple countries across the globe.” <https://governor.iowa.gov/sites/default/files/documents/202003100818.pdf>.

9. On March 15, 2020, Governor Reynolds issued an order closing all schools in the state of Iowa for four weeks. At the time of her order, there were 22 total cases of COVID-19 in Iowa. <https://www.desmoinesregister.com/story/news/education/2020/03/15/coronavirus-iowa->

[governor-all-schools-close-4-weeks/5056441002/](https://www.ia.gov/governor-all-schools-close-4-weeks/5056441002/). The statewide school closure was extended to April 30 and then through the remainder of the 2020-21 school year.

10. The World Health Organization has advised governments that the rate of positivity in testing should remain at 5% or lower for at least 14 days prior to reopening. <https://coronavirus.jhu.edu/testing/testing-positivity>.

11. CDC Director Robert Redfield indicated that in areas where there are COVID-19 “hot spots,” which he defined as areas where more than 5% of COVID-19 tests are positive, “remote and distance learning may need to be adopted for some amount of time.” https://www.washingtonpost.com/education/cdc-director-concedes-schools-in-hot-spots-face-tougher-call-on-reopening/2020/07/24/273ee068-cdd8-11ea-b0e3-d55bda07d66a_story.html.

12. On August 9, 2020, the White House Coronavirus Task Force urged Respondent Reynolds to take immediate actions to address the alarming COVID-19 infection rates in Iowa, including issuing a statewide mask mandate and closures of or restrictions on bars, gyms, and in-person gatherings. See <https://www.kcci.com/article/white-house-document-recommended-that-iowa-issues-mask-mandate-close-bars/33668643>. To date, Respondent Reynolds has taken none of the actions recommended by the White House Coronavirus Task Force.

13. On August 20, 2020, Respondent Pedati admitted there were material inaccuracies in COVID-19 data collected by the IDPH, including the 14-day positivity rates which Respondent Reynolds directed be used by the DE, IDPH, and local school districts as a metric for building and district closures. <https://www.kcci.com/article/iowas-top-doctor-says-she-knew-of-covid-19-data-glitch-in-july/33660148>.

14. As of August 25, 2020, the CDC reports that there are 5,682,491 total cases of COVID-19 in the United States, an increase in 38,679 cases in one day. The CDC also reports that there have been 176,223 deaths related to COVID-19 in the United States alone. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

15. As of August 24, 2020, there are 56,658 individuals who have tested positive for COVID-19 in the state of Iowa and 11,796 total cases in Polk County alone. Over 1 in 5 positive COVID-19 cases in Iowa are from Polk County.

16. As of August 24, 2020, there have been 1,044 COVID-19-related deaths in the state of Iowa and 215 in Polk County. Over 1 in 5 COVID-19 deaths in Iowa are from Polk County.

17. The state does not report COVID-19 data at the city level. Thus, the statistics above for Polk County include the City of Des Moines as well as suburban and rural areas of Polk County.

18. The number of total cases of COVID-19 in Iowa and Polk County have risen significantly in the past several weeks.

19. Without significant measures to limit transmission of COVID-19, the number of cases, and the number of deaths, can reasonably be expected to rise.

20. The CDC has identified a long list of medical conditions that can put children and adults of any age at an increased risk of severe illness from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>.

21. Additionally, regardless of underlying health, the CDC has determined that the risk of a severe case of COVID-19 increases with age. Adults in their 50s are more likely to contract a severe case, while adults 60+ are at an even higher risk of severe illness. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

22. There are also heightened risks for COVID-19 based on race and ethnicity. As of June, age-adjusted hospitalization rates are 4-5 times higher among people of color than among non-Hispanic white persons. See <https://pubmed.ncbi.nlm.nih.gov/32562416/> and <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

23. Despite assertions to the contrary, children are not immune from contracting, spreading, becoming ill, or even dying from COVID-19.

24. The CDC has reported that Multisystem Inflammatory Syndrome, a rare but serious complication that can cause severe organ damage and death, has been associated with children who have contracted COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/infographic-mis-c.html>.

25. In data reported from March 15 through May 20, 2020 by the CDC, the median age of MIS-C cases is 8.9 years old. *Id.*

26. Eighty percent (80%) of children with MIS-C require treatment in the Intensive Care Unit, and 24% require mechanical ventilation or ECMO (extracorporeal membrane oxygenation, a treatment that uses a pump to circulate blood through an artificial lung, thus bypassing the child's heart and lungs). *Id.*

27. Two percent of MIS-C cases due to COVID-19 have resulted in child death. *Id.*

28. On August 23, 2020, the Iowa Department of Public Health announced that an Iowa child under age five had died in June 2020 due to COVID-19. *See* <https://www.kcrg.com/2020/08/23/iowa-confirms-first-child-death-from-covid-as-schools-reopen/>.

JURISDICTION

29. This Petition arises from a denial of DMPS's request to begin the year, which was submitted to the Iowa Department of Education (the "DE") on August 17, 2020.

30. On August 17, 2020, after careful consideration, DMPS's Board of Education voted 7-0 to begin the 2020-2021 school year in a primarily remote mode of instruction due to increasing rates of COVID-19 infections in Polk County.

31. Pursuant to state guidance that states that school districts must seek a waiver from of the DE and Iowa Department of Public Health ("IDPH") to obtain "temporary authorization to move to 100% online or remote learning," DMPS filed a waiver request with the DE on August 17, 2020.

32. On August 21, 2020, the DE and IDPH denied DMPS's request.

33. The DE's August 21, 2020 decision constitutes a final agency action and is therefore subject to judicial review under Iowa Code § 17A.19(1).

VENUE

34. Venue is proper under Iowa Code § 17A.19(2), which permits a petition for judicial review of an agency action to be filed either in Polk County district court or where the Petitioner has its principal place of business.

PARTIES

35. Petitioner DMPS is a public-school district organized and operated in accordance with the laws of the state of Iowa.

36. DMPS is governed by a seven-member Board of Education who are duly elected by voters of DMPS. Petitioner Delagardelle is the Chair of the DMPS Board of Education. Petitioner Bradley is the Vice Chair. Petitioners Barron, Caldwell-Johnson, Cody, Martorano, and Sawyer are members of the Board. All seven individually-named Petitioners voted in favor of the requests submitted to and denied by the DE/IDPH that gave rise to this Petition.

37. Respondent Kimberly K. Reynolds is the duly-elected Governor of Iowa. She is the chief elected official overseeing Iowa's COVID-19 response. Respondent Reynolds issued the July 17, 2020 Proclamation that directly resulted in the denial of DMPS's request to begin the year through primarily online learning.

38. Respondent Ann Lebo is the Director of the Iowa Department of Education. Respondent Lebo was appointed by Respondent Reynolds to lead the DE on March 12, 2020. Along with the State Board of Education, Respondent Lebo is charged with overseeing the DE, which acts "in a policymaking and advisory capacity and to exercise general supervision over the state system of education" pursuant to Iowa Code § 256.1. Respondent Lebo issued the August 21, 2020 denial of DMPS's request to begin the 2020-2021 school year primarily through continuous, required online learning and to transition when appropriate into DMPS's hybrid model.

39. The State Board of Education is established to oversee the DE, and by extension, to exercise general supervision over the state's system of public education. *See* Iowa Code § 256.3.

40. Respondent Iowa Department of Education is a state administrative agency that acts "in a policymaking and advisory capacity and to exercise general supervision over the state system of education" pursuant to Iowa Code § 256.1. Acting under the direction of Respondent Reynolds, the DE issued the July 17, 20, 30 and August 14, 2020 guidance documents challenged herein. The DE also issued the August 21, 2020 denial of DMPS's request to begin the 2020-2021 school year primarily through continuous, required online learning.

41. Respondent Iowa Department of Public Health is the state administrative agency charged with exercising "general supervision over the public health." *See* Iowa Code § 135.11. According to its website, IDPH works to "protect and improve the health of Iowans." *See* <https://idph.iowa.gov/About>. Among other things, Respondent IDPH directed or materially assisted with the development of the July 30 "Return to Learn, Reopening Iowa's Schools Safely and Responsibly" guidance and consulted with Respondent DE in denying DMPS's waiver request.

42. Respondent Caitlin Pedati, M.D., is the Medical Director of the Iowa Department of Public Health and Iowa state epidemiologist. Among other things, Respondent Pedati directed or materially assisted with the development of the July 30 "Return to Learn, Reopening Iowa's Schools Safely and Responsibly" guidance.

FACTS

43. DMPS is the largest and most diverse public school district in the state of Iowa. It serves approximately 32,545 students and employs approximately 5,141 employees.

44. Approximately 63.2% of DMPS's student population are students of color.

45. Many DMPS students live in multi-generational homes with family members who are at high risk of contracting a serious case of COVID-19 due to age and/or pre-existing medical conditions.

46. 31.5% of DMPS's total staff have a health condition that puts them at a higher risk of a severe, potentially fatal, case of COVID-19.

47. 34% of DMPS's total staff are over age 50, which puts them at higher risk of a severe, potentially fatal, case of COVID-19.

48. 10.1% of DMPS's total staff are over age 60, which puts them at higher risk of a severe, potentially fatal, case of COVID-19.

49. Many DMPS employees have one or more family members with whom they reside who fall into a high-risk category based on health condition or age.

RETURN TO LEARN PLANNING

50. On May 8, 2020, the DE issued guidance stating that all Iowa public school districts were required develop Return to Learn Plans for the 2020-2021 school year. *See* <https://educateiowa.gov/sites/files/ed/documents/2020-05-08COVID-19Return-to-LearnGuidance.pdf>. School districts were required to “have a plan for offering Continuous Learning...[to] 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.” This portion of the plan was the only portion for which DE approval was required. *Id.*

51. Schools were also allowed to develop a plan for hybrid on-site and remote continuous learning to allow for social distancing while partially reopening school buildings. *Id.* This portion of the Return-to-Learn plan did not require DE approval. *Id.*

52. Finally, schools could move to “on-site provision of educational services...as long as it is deemed safe by public health officials and the school has actively planned for appropriate health and safety measures.” *Id.* DE approval for return to 100% in-person instruction was not required. *Id.*

53. On July 1, 2020, DMPS submitted its initial Return-to-Learn plan to the DE. This plan provided for two options to begin the year: (1) a parent-choice 100% virtual learning model, and (2) a hybrid in-person and online model that allows DMPS to implement safe distancing. DMPS initially received approval from the DE for its Return-to-Learn plan.

54. DMPS’s plan was based on extensive feedback from the community, including surveys sent to parents and guardians of DMPS students and employees. 74.7% of DMPS parents and 77.6% of DMPS staff completed the return to learn survey.

55. DMPS’s hybrid plan would be used when it was possible to safely reopen schools but where conditions relating to COVID-19 still warranted social distancing. This hybrid plan provided the following:

- a. Students in grades K–8 would be split into two cohorts. Cohort A would attend school in person on Monday and Tuesday. Cohort B would attend school in person Thursday and Friday.
- b. High school students would attend one day per week in-person, based on grade level, at their comprehensive high school. Students enrolled in concurrent enrollment courses for which in-person lab time is required to earn credit would attend a second day at a central facility with adequate physical distancing.

- c. For all grades, buildings would be closed Wednesdays to provide for deep cleaning and sanitizing to minimize the risk of transmission between cohorts.
- d. Remote instruction would be provided during all school days that students were not in-person. By reducing the overall building loads, this model also allows for greater in-person learning for students with special needs, including special education and English language learners.

SENATE FILE 2310 AND SUBSEQUENT EXECUTIVE ACTIONS

56. On June 29, 2020, two days before school districts were required to submit Return to Learn plans to the DE, Governor Reynolds signed Senate File 2310, which adopted a variety of requirements applicable to school district reopening plans in Iowa.

57. Sections 9, 14, and 15 of Senate File 2310 are highly germane to DMPS's Petition, as, taken together, they vest local decision-making authority with local school boards, not with the Governor, the DE, or IDPH.

58. Section 9 of Senate File 2310 amends Iowa Code § 279.10 to state as follows:

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.

59. Section 9 explicitly vests DMPS with the authority to establish the “nature, location, or medium of instruction.” While in-person instruction may be the “presumed” method of instruction, this presumption can and should be overcome by local conditions relating to

COVID-19 that makes returning to in-person instruction an unreasonable risk to the lives, health, and safety of DMPS students, employees, and their families.

60. Section 14 of Senate File 2310 states that for the 2020-2021 school year:

[I]f the governor proclaims a public health disaster pursuant to section 29C.6, the board of directors of a school district may authorize closure of the school district or any school district attendance center due to an outbreak of COVID-19 in the school district or any school district attendance center. School districts *are encouraged to follow guidelines* issued by the centers for disease control and prevention of the United States department of health and human services and the Iowa department of public health, and *may* consult with the local board of health when...authorizing a school closure.

(emphasis added).

61. Section 14 explicitly vests the authority to close an entire school district or any attendance center with the board of directors of a school district; not with Respondents.

62. Section 15 of Senate File 2310 further states that the instructional time requirements of section 279.10(1) and minimum school day requirements of section 256.7(19) shall not be waived “*unless* the school district...provide[s] compulsory remote learning, including online learning, electronic learning, distance learning, or virtual learning.” (emphasis added).

63. DMPS’s Return-to-Learn Plan provides for compulsory remote learning. Furthermore, DMPS has taken extensive measures to ensure all students have access to required online learning, including delivering thousands of laptops and Wi-Fi hotspots to DMPS students.

64. The final sentence of Section 15(1) states that “[u]nless 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...shall not take action to provide instruction primarily through remote-learning opportunities.”

65. Section 15(1) does not define what “take action to provide instruction primarily through remote-learning opportunities” means.

66. Nothing in Section 15(1), or Senate File 2310 as a whole, supports the adoption of a two-week measurement window for in-person learning.

67. The last sentence of Section 15(1) must be read not in isolation, but in the context of the entirety of the section, which specifically relates to the “instructional time requirements of Section 279.10, subsection 1.” Section 279.10(1) addresses the minimum number of days or instructional hours *for an entire school year*.

68. Immediately following this, Section 15(2) states that “If the *board of directors of a school district*...determines at any time...that a remote-learning period is necessary” they shall ensure that teachers and other necessary school staff are available to perform their duties during the period of remote learning.

69. The last sentence of Section 15(1) should be read in the context of Senate File 2310 as a whole, which vests decision-making in these matters with local school districts.

70. On July 17, 2020, nearly three weeks after Return-to-Learn Plans were required to be submitted to the DE and slightly more than one month before school start dates, the Governor issued a proclamation directly contradicting SF 2310’s grant of authority to local school districts to determine when school buildings or districts should close due to COVID-19. The July 17 Proclamation requires school districts to obtain approval of the Iowa Department of Education,

in consultation with the Iowa Department of Public Health to move to primarily remote learning for a particular building or the entire school district.

71. The Governor's July 17 Proclamation inserted a definition of the "primary method of instruction" as "at least half of the school district[s]...instruction is provided in person during any two-week period."

72. Under this Proclamation, the DE issued guidance documents to school districts on July 17, 2020 and July 20, 2020. See https://educateiowa.gov/sites/files/ed/documents/2020-07-17_SF_2310_Guidance.v2.pdf and https://educateiowa.gov/sites/files/ed/documents/2020-07-20_SF2310_Guidance_GovProcFAQs.pdf.

73. On July 30, 2020, the DE and IDPH released additional guidance, including a one-page chart entitled "Return to Learn, Reopening Iowa's Schools Safely and Responsibly." See <https://educateiowa.gov/sites/files/ed/documents/2020-07-20ReopeningandPublicHealth.pdf>, <https://educateiowa.gov/sites/files/ed/documents/Return%20to%20Learn%2007302020.pdf>, and <https://educateiowa.gov/sites/files/ed/documents/Evaluating%2007302020.pdf>.

74. The July 30 DE/IDPH chart requires school districts to remain fully open for in-person learning until community transmission has exceeded 15% positivity and the school district has at least 10% student absenteeism.

75. The July 30 DE/IDPH chart states that school districts are only allowed to request "temporary continuous/remote learning" for an entire school building or district for up to 14 days," and must get permission of the DE and IDPH to authorize such a closure.

76. Also on July 30, 2020, the DE and IDPH released a one-page chart entitled "Evaluating Sick Students and Staff." This chart creates an erroneous distinction between so-

called “high risk symptoms” and “low risk symptoms.” This distinction has no evidentiary or scientific merit.

77. The July 30 “Evaluating Sick Students and Staff” chart also states that employees who have been exposed to COVID-19 may return to work immediately after exposure “if there are staffing shortages as long as they remain asymptomatic.” *See id.* This ignores evidence that individuals who are asymptomatic or presymptomatic can still readily transmit COVID-19 to other individuals. *See* https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article.

78. The July 30 DE/IDPH documents rely solely on a county-wide positivity percentage that might distort or dilute the actual positivity rates in a densely-populated city like Des Moines.

79. The July 30 DE/IDPH documents do not contain any guidance relating to employee absenteeism and how a school district’s ability to safely staff its programs and services may be impacted by COVID-19.

80. On Tuesday, August 4, 2020, Respondent Reynolds stated that school districts would not be allowed to count any days of instruction not in compliance with her edict and would be required to make those days up at the end of the school year. <https://www.weareiowa.com/article/news/education/return-to-learn/iowa-coronavirus-covid-19-press-conference-update-governor-kim-reynolds-august-4-2020/524-e4ced396-7a0a-4346-8e26-55218f08d562>.

81. On Tuesday, August 4, 2020, Respondent Reynolds threatened that school administrators whose districts do not meet her 50% in-person edict may face unspecified discipline against their professional educator licenses. *Id.*

82. On August 14, 2020, at the direction of Respondent Reynolds, the DE issued a Frequently Asked Questions document that states that, with respect to extracurricular activities, “[a]ll in-person activities and practices would need to be suspended during the period of 100% remote learning.” See <https://educateiowa.gov/sites/files/ed/documents/2020-07-14ReopeningandPublicHealthFAQ.pdf>.

DMPS WAIVER REQUEST

83. After becoming aware of the Governor’s erroneous interpretation of Senate File 2310, DMPS Board Members and school leaders attempted to work with the Governor’s staff and DE to find a way to start the school year in a way that is safe and appropriate for the needs of DMPS and its students and employees that also meets with DE approval.

84. After several meetings and discussions, Respondents made it clear that DMPS would need to provide at least 50% of their instruction in person, even if it meant abandoning social distancing altogether.

85. DMPS has continued to monitor the rapidly rising COVID-19 infection rates in Des Moines and Polk County over the last several weeks.

86. As of August 24, 2020, the 14-day average COVID-19 positivity rate in Iowa is 9.0%. <https://coronavirus.iowa.gov/#CurrentStatus>.

87. As of August 24, 2020, the 14-day average COVID-19 positivity rate in Polk County is 8.3%. <https://coronavirus.iowa.gov/#CurrentStatus>.

88. DMPS reasonably believes that COVID-19 infections will continue to increase in Polk County, and that reopening schools at this time poses an unreasonable risk to the lives, health, and safety of DMPS students and employees, and their families.

89. On August 21, 2020, DMPS requested permission from the DE to begin the year through a primarily continuous, required online learning model. This request was for a period of one quarter. It also sought a waiver of the Governor's 50% in-person edict so that it could resume in-person instruction under its Hybrid plan once it was safe to do so.

90. DMPS remains committed to fully reopening its schools as soon as it is safe for employees, students, and their families, based on a consistent trend of declining COVID-19 positivity in Polk County and DMPS's ability to effectively follow the social distancing and other public health recommendations.

91. In accordance with the Governor's July 17 Proclamation, the DE and IDPH denied DMPS's request on August 21, 2020, stating:

Your request and current public health data contain evidence that the Des Moines Independent Community School District does not meet the criteria in that guidance for moving to primarily remote learning. The Iowa Department of Public Health has corrected the current fourteen-day average percent positivity rate for Polk County as 8%. And your request, including the detailed letter of you provided, and our consultation with the Iowa Department of Public Health have not identified any other basis for concluding that it is appropriate to start the school year with primarily remote learning. For these reasons, your request is denied.

COUNT I—THE DENIAL OF DMPS'S WAIVER REQUEST SHOULD BE REVERSED PURSUANT TO IOWA CODE § 17A.19(10).

92. Petitioners replead Paragraphs 1–91 as if fully restated herein.

93. Petitioners seek judicial review of the DE's denial of its request to begin the school year with 100% online learning due to local public health conditions relating to COVID-19.

94. Pursuant to Section 14 of Senate File 2310, neither the DE nor IDPH has authority to make determinations regarding the closure of the building or DMPS as a whole.

95. Even if this Court determines that the DE and/or IDPH has such authority, their denial should be overruled due to compelling public health and safety considerations relating to COVID-19, consistent with Iowa Code § 17A.19(10).

96. DMPS requests reversal on the basis of the following, any of which on its own would be sufficient to reverse the denial:

- a. Respondents' action is beyond the authority delegated to them by any provision of law or in violation of any provision of law. Iowa Code § 17A.19(10)(b).
- b. Respondents' action is based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in their discretion. Iowa Code § 17A.19(10)(c).
- c. Respondents' action is based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process. Iowa Code § 17A.19(10)(d).
- d. Respondents' action is not supported by substantial evidence in the record before the Court when that record is viewed as a whole. Iowa Code § 17A.19(10)(f).
- e. Respondents' action is inconsistent with their rules. Iowa Code § 17A.19(10)(g).
- f. Respondents' action is inconsistent with their prior practice or precedents. Iowa Code § 17A.19(10)(h).
- g. Respondents' denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it is the product of reasoning that is so illogical as to render it wholly irrational. Iowa Code § 17A.19(10)(i).
- h. Respondents' denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it is the product of a decision-making process in which they did not, and could not, consider a relevant and important matter relating to the propriety of the District's request to begin the year with virtual learning. Iowa Code § 17A.19(10)(j).
- i. Respondents' denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it was not required by Senate File 2310 and the denial's negative impact on the students and employees of the District and their families is so grossly disproportionate to the alleged benefits of compelling the District to reopen for in-person learning during a worsening pandemic that it lacks any foundation in rational policy. Iowa Code § 17A.19(10)(k).

- j. If the Court finds that the challenged action was within the discretion of Respondents', the denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it is based upon an irrational, illogical, and wholly unjustifiable interpretation of Senate File 2310. Iowa Code § 17A.19(10)(l).
- k. If the Court finds that the challenged action was within the discretion of Respondents, the denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it is based upon an irrational, illogical, and wholly unjustifiable application of Senate File 2310 to the facts presented in the School District's application. Iowa Code § 17A.19(10)(m).
- l. Respondents' denial, which was compelled by the Governor's July 17, 2020 Proclamation, should be overturned because it is otherwise arbitrary, capricious, and an abuse of discretion. Iowa Code § 17A.19(10)(n).

WHEREFORE, Petitioners Des Moines Independent Community School District, Kyrstin Delagardelle, Dwana Bradley, Rob X. Barron, Teree Caldwell-Johnson, Kalyn Cody, Kimberly Martorano, and Kelli Soyer respectfully request that this Court reverse Respondents' decision denying DMPS the authority to begin the year online pursuant to Iowa Code § 17A.19(11), along with any other relief this Court deems appropriate.

COUNT II—DECLARATORY JUDGMENT AGAINST ALL RESPONDENTS

97. Petitioners replead Paragraphs 1–96 as if fully restated herein.

98. The Governor's July 17, 2020 Proclamation and correspondence DE/IDPH guidance documents are arbitrary, capricious, and inherently unreasonable because they seize authority granted to local school boards under Senate File 2310 and impose unreasonable standards on school districts that are reasonably expected to lead to drastic increases in community transmission of COVID-19 and to illness, disability, and death from the same.

99. The Governor's July 17, 2020 Proclamation and corresponding DE/IDPH guidance documents are arbitrary, capricious, and inherently unreasonable because they impose a definition of ambiguous language in Senate File 2310 that is directly in conflict with School

District's legal obligations to provide a reasonably safe learning and working environment for students and employees.

100. The July 30, 2020 DE/IDPH "Return to Learn" document is arbitrary, capricious, and inherently unreasonable because it imposes unreasonable standards for school building and district closure decisions that are not supported by law or fact and are inconsistent with public health and safety.

101. The July 30 DE/IDPH "Return to Learn" document is arbitrary, capricious, and inherently unreasonable because it impermissibly seizes authority granted to local school boards under Senate File 2310 and imposes State control *ultra vires* over DMPS, and all Iowa school districts, with respect to its ability to close buildings or districts while providing required continuous online instruction pursuant to the reasonable judgment of DMPS's Board of Education.

102. The July 30 DE/IDPH "Return to Learn" document is arbitrary and capricious because it requires the School District, and all Iowa school districts, to seek approval for building and district closures every two weeks—which will significantly impair the School District's ability to effectively operate.

103. The August 14, 2020 DE/IDPH "Reopening and Public Health Frequently Asked Questions" document is arbitrary, capricious, and inherently unreasonable because it was promulgated, at least in part, to coerce local school districts into compliance with the Governor's edict relating to 50% in-person instruction in any two-week period, rather than to achieve legitimate educational or health and safety objectives.

104. The August 14 DE/IDPH FAQ document is arbitrary, capricious, and inherently unreasonable to the extent that it seizes authority left to local school boards.

105. The August 14 DE/IDPH FAQ document is arbitrary, capricious, and inherently unreasonable to the extent that it constitutes an *ultra vires* exercise of authority.

106. The DE/IDPH guidance documents challenged herein constitute a violation of the Iowa Administrative Procedures Act because they seek to enforce procedural and substantive requirements on DMPS without following appropriate rulemaking procedures. *See* Iowa Code § 17A.4.

107. Respondents' actions challenged herein violate Article I, Section 2 of the Iowa Constitution, which states that "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." The challenged actions do not promote the "protection, security, and benefit of the people."

WHEREFORE Petitioners Des Moines Independent Community School District, Kyrstin Delagardelle, Dwana Bradley, Rob X. Barron, Teree Caldwell-Johnson, Kalyn Cody, Kimberly Martorano, and Kelli Soyer seek a declaratory judgment from this Court in accordance with Iowa Rule of Civil Procedure 1.1101 that the Governor's July 17 proclamation, as well as the July 17, July 20, July 30, and August 14 guidance documents issued by the DE/IDPH are invalid for the reasons stated above, along with any other relief this Court deems appropriate.

COUNT III—INJUNCTIVE RELIEF AGAINST ALL RESPONDENTS

108. Petitioners replead Paragraphs 1–107 as if fully restated herein.

109. Petitioners seeks an order enjoining Respondents from taking any adverse action against DMPS and/or its officers, employees, agents, contractors, or assigns due to their refusal

to comply with Respondents edicts and orders challenged herein. This includes, but is not limited to, any action:

- a. Forcing DMPS to reopen schools when it is unsafe to do so;
 - b. Usurping the authority of local school boards to make decisions regarding building and district operations in accordance with Iowa Code sections 274.1, 274.3, 279.8, and Senate File 2310;
 - c. Requiring DMPS to make up days that it is primarily engaged in remote learning or in a hybrid model that does not comply with Respondent Reynolds' arbitrary, capricious, and unreasonable 50% in any two-week-period edict;
 - d. Pursuing complaints before the Iowa Board of Educational Examiners against the professional educator licenses of DMPS administrators due to DMPS's resistance to Respondents' arbitrary, capricious, and unreasonable interpretation of Senate File 2310, its decisions with regard to in-person, hybrid, or remote learning in response to COVID-19, and/or its filing of this Petition;
 - e. Prohibiting DMPS from conducting any in-person extracurricular activities during the period DMPS is primarily engaged in remote learning; and
 - f. Issuing future proclamations, orders, or other guidance that are outside of their legal authority; or are arbitrary, capricious, or inherently unreasonable; or that are inconsistent with legitimate public health and safety objectives.
110. Failure to enjoin Respondents actions will result in irreparable harm or injury to

DMPS and its students and staff.

WHEREFORE Petitioners Des Moines Independent Community School District, Kyrstin Delagardelle, Dwana Bradley, Rob X. Barron, Teree Caldwell-Johnson, Kalyn Cody, Kimberly Martorano, and Kelli Soyer seek injunctive relief from this Court in accordance with Iowa Rule of Civil Procedure 1.1501 in accordance with the above, along with any other relief this Court deems appropriate.

Respectfully submitted,

/s/ Miriam Van Heukelem

Miriam D. Van Heukelem (AT0010074)

Kristy M. Latta (AT0004519)

AHLERS & COONEY, P.C.

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: 515/243-7611

Facsimile: 515/243-2149

E-mail: mvanheukelem@ahlerslaw.com

klatta@ahlerslaw.com

ATTORNEYS FOR PETITIONERS DES MOINES
INDEPENDENT COMMUNITY SCHOOL
DISTRICT, KYRSTIN DELAGARDELLE,
DWANA BRADLEY, ROB X. BARRON, TERE
CALDWELL-JOHNSON, KALYN CODY,
KIMBERLY MARTORANO, and KELLI SOYER