

How are the masks required by law?

Based on the state mandate and ISBE/IDPH guidance, the District is requiring students to wear a face mask while indoors.

On August 4, 2021, the Illinois Governor issued Executive Order 2021-18, which requires the indoor use of face coverings (masks) by all students who are over age two and able to medically tolerate a face covering, regardless of vaccination status. The Governor's Executive Order states that:

All public and nonpublic schools in Illinois serving pre-kindergarten through 12th-grade students must follow the joint guidance issued by ISBE and IDPH and take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to:

- a. Requiring the indoor use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status, consistent with CDC guidance;

Because the Governor's Order mandates that schools must follow the joint guidance issued by ISBE and IDPH, the school is required to follow the guidance. ISBE/IDPH Guidance similarly requires that all teachers, staff, students, and visitors, who are medically able to tolerate a mask, wear a mask while indoors unless a specific exemption applies.

The Board of Education voted to approve the District's Safe Return to School Plan, which follows the Governor's Order requiring the indoor use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status.

Because the Governor has imposed this mask mandate, the District is required to follow the Governor's Order. The Governor's Executive Order has the effect of law and requires school districts to comply. On November 16, 2020, the Sangamon County Illinois Court held that the Governor lawfully issued his Executive Orders regarding COVID-19 mitigation. The Court explained that:

The Governor lawfully issued EO5, EO40, EO44, and all subsequent Executive Orders; IDPH and ISBE lawfully issued Guidance; and the schools and their officers and employees, agents and persons acting in concert with them are not exempt from public health measures required under the executive orders.

See the attached court order. On November 13, 2020, the 2nd District Court of Appeals also upheld the Governor's right to issue disaster proclamations and denied a Plaintiff's request for a

temporary restraining order against an Executive Order requiring COVID-19 restrictions. Fox Fire Tavern, LLC v. Pritzker, 161 N.E.3d 1190 (2nd Dist. 2020).

The District has the legal authority to enforce health and safety measures on school property, including requiring masks. On August 14, 2020, an Adams County Court dismissed a parent's lawsuit challenging a school district's right to require students to wear masks. The Court further upheld that district's right to require COVID-19 mitigations. See the attached court order.

Furthermore, the 7th Circuit Court of Appeals has held that it is not the responsibility of a local government entity, such as a school district, to determine whether a state law is constitutional. See Bethesda Lutheran Homes & Servs. v. Llean, 154 F.3d 716 (7th Cir 1998). The Court explained that "When the municipality is acting under the compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury." Id. at 718.

These documents will be updated as more court cases are decided. Our district will re-evaluate our plan details if any court cases allow for plan changes.

IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT
ADAMS COUNTY, ILLINOIS

RONI QUINN, as parent and guardian of J.L.)
Plaintiff,)
v.)
BOARD OF EDUCATION SCHOOL DISTRICT)
No. 172, ADAMS COUNTY, ILLINOIS,)
a body politic,)
Defendant.)

2020-MR-166

FILED

AUG 14 2020

Shri R. Swachundhar
Clerk Circuit Court 8th Judicial Circuit
ILLINOIS, ADAMS CO.

ORDER

This cause coming upon for hearing on all pending motions by remote hearing held via ZOOM, hosted by Judge Roger B. Thomson on the record in Mason County Courtroom 2; Plaintiff appearing with attorney Thomas Devore; Defendant appearing with attorney David Penn; proposed intervenors appearing by Assistant Attorney General Gretchen Helfrich; and proposed amici appearing by attorney Joseph Shapiro;

The Court, having considered the Petition For Leave To Intervene, Plaintiff's Objection To Intervention, the Reply In Support Of Petition For Leave To Intervene, and the arguments of Assistant Attorney General Helfrich and Plaintiff's attorney Devore, and being fully advised in the premises, hereby DENIES the Petition To Intervene. The Petition is brought pursuant to 75 ILCS 5/2-408(b)(2) whereby the court has discretion to permit intervention when the applicant's claim or defense and the main action have a question of law or fact in common. The Court finds that so long as Plaintiff only seeks to challenge the authority of the Defendant Board of Education to adopt and enforce rules requiring that students wear a face covering and submit to a temperature check prior to entry into the school buildings, but does not seek to challenge the authority of the proposed intervenors (Governor Pritzker, Dr. Ngozi Ezike as Director of the Illinois Department of Public Health, and Dr. Carmen Ayala as State Superintendent of Education), granting intervention would unnecessarily raise new issues and add new parties. However, the Court reserves authority to modify this decision should Plaintiff's claims be expanded in the future.

The Court, having considered the Defendant's Section 2-619.1 Motion To Dismiss, Defendant's Memorandum of Law In Support, Plaintiff's Response to Defendant's Motion To Dismiss, Defendant's Reply In Support of Motion To Dismiss, and the arguments of Defendant's attorney Penn and Plaintiff's attorney Devore, and being fully advised in the premises, hereby DENIES the motion in part, and GRANTS the motion in part.

The Court DENIES Defendant's motion to dismiss alleging Plaintiff's failure to exhaust administrative remedies, finding that Plaintiff's Complaint challenges the authority of the Defendant to adopt and enforce the aforesaid rules as beyond the Defendant's enabling legislation. Exhaustion of administrative remedies is not required where an administrative rule asserting administrative authority is challenged on its face as not authorized by the enabling legislation. See *Landfill, Inc. v. Pollution Control Bd.*, 74 Ill.2d 541 (1978).

The Court GRANTS Defendant's motion to dismiss Plaintiff's Complaint, pursuant to 735 ILCS 5/2-619, finding that Defendant has statutory authority to adopt and enforce rules requiring that students wear a face covering and submit to a temperature check prior to entry into the school buildings. The School Code, 105 ILCS 5/10-1 et seq., authorizes school boards to "exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board" (105 ILCS 5/10-20); "to adopt and enforce all necessary rules for the management and government of the public schools of their district" (105 ILCS 5/10-20.5); and to "adopt a school uniform or dress code policy ... that is necessary to maintain the orderly process of a school function or prevent endangerment of student health and safety" (105 ILCS 5/10-22.25b). School boards also have a broad spectrum of implied incidental powers which are to be inferred from their general powers. *Nuding v. Board of Education of Cerro Gordo Community Unity School District No. 100, Piatt County, Ill.*, 313 Ill. App. 3d 344 (4th Dist. 2000).

The cases cited by Plaintiff in support of her argument that "the Board's Mandates are beyond their authority to promulgate and are otherwise in violation of Illinois law" (*Potts v. Breen*, 167 Ill. 67 (1897); *People ex rel. Labaugh v. Board of Education of District No. 2*, 177 Ill. 572 (1899); *People ex rel. Jenkins v. Board of Education of City of Chicago*, 234 Ill. 422 (1908); *Hagler v. Larner*, 284 Ill. 547 (1918); *People ex rel. Barmore v. Robertson*, 302 Ill. 422 (1922); and *Burroughs v. Mortenson*, 312 Ill. 163 (1924)) are distinguishable from the present case. The cited cases involved the school board's statutory authority to require that student be immunized prior to attending school during the smallpox epidemic between 1897 and 1924. The Illinois Legislature has greatly expanded the powers and authority of school boards by enacting and amending the School Code, 105 ILCS 5/10-1 et seq., during the past 96 to 123 years. These expanded powers include not only those powers discussed above, but also the power to allow school attendance by "remote learning" through implementation of technologies unimagined at the time Plaintiff's cited cases were rendered, and where the sole education delivery method was in-person attendance inside a school building. See 105 ILCS 5/10-19 et seq. In addition, the currently challenged rules requiring that students wear a face covering and submit to a temperature check prior to entry into the school building are temporary and non-invasive in comparison to the irreversibly permanent and highly invasive smallpox inoculation.

WHEREFORE, the Court hereby dismisses Plaintiff's Complaint without prejudice. Plaintiff is granted 21 days to file an Amended Complaint. In the event Plaintiff fails to file an Amended Complaint within 21 days, the dismissal will be "with prejudice."

Enter: August 13, 2020,
nunc pro tunc August 6, 2020.



JUDGE

cc: Devore, Plaintiff's attorney
Penn, Defendant's attorney
Helfrich, attorney for proposed Intervenor
Shapiro, attorney for proposed amici

I hereby certify that a copy hereof was:
Mailed, postage prepaid, Faxed
Personally delivered Emailed
SAO PO Counsel Penn, Devore, Helfrich
Plaintiff Defendant Shapiro
8/14/20
Date Deputy Clerk

PAUL PALAZZOLO
SANGAMON COUNTY, CLERK OF CIRCUIT COURT
200 SOUTH 9TH STREET ROOM 405
SPRINGFIELD, IL 62701

Case: 2020-MR-000589 Type: Declaratory Judgment Assigned Judge: GRISCHOW
Filed: 07/23/2020 Status: Cause Stricken Report: Terminated

	Case Participant	Attorney
Plaintiff	RILEY CRAIG	Lead: THOMAS DEVORE
Plaintiff	KEITH AYRE	Lead: THOMAS DEVORE
Plaintiff	CHRIS SCHMULBACH	Lead: THOMAS DEVORE
PETITIONER	DANIEL ENGLISH	
	...More	

vs.

Defendant GOVERNOR JAY ROBERT PRITZKER Lead: NADINE WICHERN

11/16/2020 Entry Regarding State's Motion for Judgment On The Pleadings
Judge: GRISCHOW

Matter comes on for hearing on the State's Motion for Judgment on the Pleadings pursuant to 735 ILCS 615(e) in two cases, Mainer 20-CH-13 and Hutsonville 20-MR-557. Mr. Verticchio, Ms. Helfrich and Mr. DeVore appear in person. Arguments heard. Judgement is entered in favor of the Governor and State Agencies. The Governor has the constitutional and statutory authority during a health crisis to require schools to follow the health guidance issued by state agencies. The Court finds as follows: The Governor lawfully issued EO5, EO40, EO44 and all subsequent Executive Orders; IDPH and ISBE lawfully issued Guidance; and the schools and their officers and employees, agents and persons acting in concert with them are not exempt from public health measures required under the executive orders. The attorney general is to draft an Order consistent with the Court's rulings and submit it to the Court in Word format within 14 days, on or before Monday, November 30, 2020. The order once entered is a final order with no just reason for delaying either enforcement or appeal or both of this Order. The clerk is directed to send a copy of the docket entry to the attorneys of record.

Judge: GRISCHOW Reporter: TH Clerk: PL