APPEAL NO. 120131

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIAN AND JANELLE SHELLEM, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN C.S. AND M.S., BRETT AND EMILIE GARRELTS, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILD B.G., AND GRADY AND THERESA EPPERLY, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN L.E., C.E., O.E., AND M.E.,

PLAINTIFFS/APPELLEES

V.

ANGELA GRUNEWALD, SUPERINTENDENT OF EDMOND PUBLIC SCHOOLS, AND EDMOND BOARD OF EDUCATION MEMBERS JAMIE UNDERWOOD, CYNTHIA BENSON, KATHLEEN DUNCAN, LEE ANN KUHLMAN, MEREDITH EXLINE, SUED IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES,

DEFENDANTS/APPELLANTS.

ON APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, STATE OF OKLAHOMA
DISTRICT COURT CASE NO. CJ-2021-3883
THE HONORABLE DON ANDREWS, PRESIDING
NATURE OF CASE: INJUNCTIVE RELIEF

APPELLANTS' PETITION FOR REHEARING

RESPECTFULLY SUBMITTED THIS 17TH DAY OF APRIL, 2023

THE CENTER FOR EDUCATION LAW, P.C.

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INTRODUCTION

Appellants (collectively, "District") are mindful of the time and attention this Court devotes to its public service, as well as the civic responsibility to refrain from unjustifiably consuming such resources. In the interest of fairness and adherence to Oklahoma Supreme Court Rules and precedent, however, District respectfully requests this Court grant rehearing in this matter for three reasons: (1) in conflict with clear and established Oklahoma Supreme Court precedent, the Court based its opinion on an issue that was not preserved for appeal, not included in any Petition in Error, and not briefed by any party;[1] (2) in conflict with Okla. Sup. Ct. R. 1.12(A)(1), the Court permitted a non-party amicus curiae to insert an issue that was not on appeal; and (3) after *sua sponte* addressing an issue that was not on appeal or briefed by the parties, the Court did not notify the parties and allow them to properly brief the dispositive issue, in conflict with long-established Oklahoma Supreme Court precedent.[2]

The error alleged by District may be easily cured by granting rehearing and either (A) issuing an opinion based on the only issue appealed (the Equal Protection Clause ruling) or (B) ordering the parties to provide briefing on the issue that was not appealed but became the dispositive issue in the Court's opinion (the ruling based on 70 O.S. § 1210.189(A)(1)).

PROCEDURAL HISTORY

On December 7, 2021, the Oklahoma County District Court issued an order that (A) denied appellees a declaratory judgment that District's COVID-19 quarantine policy violated 70 O.S. §

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[1] *May-Li Barki, M.D., Inc. v. Liberty Bank & Tr. Co.*, 1999 OK 87, ¶ 9, 20 P.3d 135, 144; *Bivins v. State ex rel. Okla. Mem'l Hosp.*, 1996 OK 5, ¶ 20, 917 P.2d 456, 465.

[2] *Indep. Sch. Dist. #52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56 at ¶ 54, 473 P.3d 475, *as corrected* (July 1, 2020); *Conterez v. O'Donnell*, 2002 OK 67, n. 5, 58 P.3d 759, n. 5, as corrected (Sept. 27, 2002) ("Although every court must inquire *sua sponte* into its own jurisdiction, **concerns for due notice to the parties** and **for undue surprise** counsel that, unless the issue of cognizance has been raised, the question should be resolved **only after** the litigants have had an opportunity to submit briefs on the *sua sponte* inquiry the court wishes to undertake." *Whitehead v. Tulsa Pub. Schs.*, 1998 OK 71, ¶ 0, 968 P.2d 1211; *Gilliland v. Chronic Pain Assoc., Inc.*, 1995 OK 94, n. 5, 904 P.2d 73, 75 n. 5; *Woody v. State, ex rel. Dep't of Corr.*, 1992 OK 45, ¶ 2, 833 P.2d 257, 258; *Lambert v. Town of Stringtown*, 1992 OK 103, ¶ 1, 834 P.2d 955; *Fields v. A & B Elecs.*, 1990 OK 7, ¶ 4, 788 P.2d 940, 941; *Grant Square Bank & Tr. Co. v. Werner*, 1989 OK 126, 782 P.2d 109, 110; *Anderson, Clayton & Co. v. First Am. Bank of Erick*, 1980 OK 78, ¶ 14, 614 P.2d 1091, 1095. *See also City of Lawton v. Int'l Union of Police Ass'ns, Loc. 24*, 2002 OK 1, ¶ 3, 41 P.3d 371, 374." (citations and emphasis in original)).

1210.189(A)(1) but (B) granted injunctive relief based on the court's belief that the policy violated the Equal Protection Clause of the U.S. Constitution.[3] On January 6, 2022, District filed its Petition in Error, appealing the trial court's ruling granting injunctive relief based on the Equal Protection Clause because: (1) the Equal Protection Clause was not pleaded or briefed by the parties; (2) the trial court agreed that controlling the spread of COVID-19 was a legitimate government interest but nonetheless held there was no rational basis for District's policy; (3) the order included erroneous factual findings that the trial court relied upon to rule that the policy violated the Equal Protection Clause; (4) the order found all Plaintiffs would suffer irreparable harm but cited only harm that would apply to minor Plaintiffs requiring special education services; (5) the order held there was no discernible difference between vaccinated and unvaccinated students; and (6) the ruling shifted the burden to District to show its policy actually resulted in fewer cases of COVID-19. Pet. in Error, Ex. B.

Appellees did not appeal the trial court's denial of their relief based on 70 O.S. § 1210.189(A)(1), and no party briefed the issue on appeal. The only issue presented to the Court on appeal was whether District's policy violated the Equal Protection Clause of the U.S. Constitution. The previous Attorney General filed an amicus curiae brief that did not address the issue on appeal but instead addressed an issue that Appellees chose not to appeal to this Court. It was this issue that the Court based its opinion upon without providing the parties an opportunity to present their argument.

ARGUMENT & AUTHORITY
STANDARD FOR PETITION FOR REHEARING

A Petition for Rehearing should be granted:

> (1) to correct an error or omission; (2) to address an unresolved jurisdictional issue; or (3) to clarify the opinion. Rehearing is not for rearguing a question which has been previously presented and fully considered by this Court. Likewise, it is not for

[3] The trial court order also denied relief on other theories not relevant to this appeal.

presenting points which the losing party overlooked, misapprehended, or failed to fully address.

Tomahawk Res., Inc. v. Craven, 2005 OK 82, 130 P.3d 222 (Suppl. Op. on Reh'g) (citations omitted).

Here, District files this Petition for Rehearing to address errors or omissions concerning the Court's March 28, 2023 Order(attached as Exhibit A)—specifically, the Court's reliance on a non-party's brief to introduce an issue not on appeal without first giving the parties an opportunity to provide argument.

PROPOSITION I: THE COURT BASED ITS DECISION ON AN ISSUE THAT WAS NOT BEFORE THE COURT ON APPEAL.

This Court has long recognized the maxim that "**no relief can be granted** from a [trial court] judgment to an appellee who did not counterappeal." *May-Li Barki, M.D., Inc.*, 20 P.3d at 144 (emphasis in original). Indeed, a counter or cross-appeal is necessary for a party to make challenges to lower court rulings or to raise issues on appeal. *Bivins*, 917 P.2d at 465 ("A successful party below who did not bring an appeal, counter- or cross-appeal may, as appellee, argue **only those errors** which, if rectified, would **support the correctness** of the trial court's judgment." (emphasis in original.)).[4] An appellee cannot be the beneficiary of a vacation or reversal on appeal without first filing a counter- or cross-appeal. *Id.* at ¶ 20; *Matter of Bradshaw's Estate*, 606 P.2d at 580. The failure to file a cross- or counter-appeal precludes review of such errors unless the appellee is attempting to demonstrate the correctness of the judgment as entered. *Id.* **An appellee who does not counter appeal is confined to simply defending the judgment entered and is not entitled to attack its validity**. *Bivins*, 1996 OK 5, ¶ 20; *see also In re Patton*, 1963 OK 19, 378 P.2d 762, 764; *Cole v. Anderson*, 1956 OK 315, 304 P.2d 295, 300.

[4] *See also May-Li Barki, M.D., Inc.*, 20 P.3d at 144; *Price v. Reed,* 1986 OK 43, 725 P.2d 1254, 1261 n. 29; *Okla. Water Res. Bd. v. Texas Cnty. Irr. & Water Res. Ass'n, Inc.*, 1984 OK 96, 711 P.2d 38, 43–44; *Cleary Petroleum Corp. v. Harrison*, 1980 OK 188, 621 P.2d 528, 534; *Matter of Bradshaw's Est.*, 1980 OK 17, 606 P.2d 578, 580; *Nilsen v. Tenneco Oil Co.*, 1980 OK 14, 614 P.2d 36, 39; *May v. May*, 1979 OK 82, 596 P.2d 536, 540; *Woolfolk v. Semrod*, 1960 OK 98, 351 P.2d 742, 745.

Further, this Court has routinely declined to address issues on appeal that were not properly preserved and briefed by the parties. *Tres C, LLC v. Raker Res., LLC*, 2023 OK 13, ¶ 19, n. 108; *Johnson v. CSAA Gen. Ins. Co.*, 2020 OK 110, ¶ 33, 478 P.3d 422, 437, as corrected (Dec. 18, 2020); *Hofmeister*, 2020 OK 56 at ¶ 52; *Osage Nation v. Bd. of Comm'rs of Osage Cnty.*, 2017 OK 34, 394 P.3d 1224, 1233; *Logan Cnty. Conservation Dist. v. Pleasant Oaks Homeowners Ass'n*, 2016 OK 65, ¶ 25, 374 P.3d 755, 765; *Worsham v. Nix*, 2006 OK 67, ¶ 28, 145 P.3d 1055, 1064. Even when issues are included in a petition in error but not supported by argument and authority in the party's brief, they are considered waived. *Matter of Bradshaw's Estate*, 1980 OK 17 *of Walker* at ¶ 4, Okla. Sup. Ct. R. 1.11(k)(1); *Worsham*, 2006 OK 67; *Okla. Tpk. Auth. v. Little*, 1993 OK 116, ¶ 10, 860 P.2d 226, 228; *State ex rel. Remy v. City of Norman*, 1981 OK 139, ¶ 12, 642 P.2d 219, 222.

The trial court found District's policy did not violate 70 O.S. § 1210.189(A)(1), a finding that was prejudicial to Appellees. Appellees did not appeal that finding. Neither did District, who appealed a different finding—that the policy violated the Equal Protection Clause—and Appellees chose not to counterappeal the ruling based on the statute. Under longstanding Supreme Court precedent, Appellees may not be granted any relief based on an issue they did not appeal. In the Supreme Court, Appellees are limited to arguing the correctness of the trial court's decision—i.e., arguing the trial court was correct when it held the policy violated the Equal Protection Clause—and that is exactly what their Answer Brief addressed. But Oklahoma Supreme Court precedent goes further than merely limiting Appellees' briefing; it counsels that the Court, may not grant relief to Appellees on any issue they themselves did not appeal, either in a Petition in Error or Counter-Petition in Error.

Under Supreme Court Rules and precedent, the issue based on § 1210.189(A)(1) was not before this Court, and the Court had no basis to decide the matter on an issue not preserved for appeal or briefed by the parties. The only entity that raised the issue based on § 1210.189(A)(1) on appeal was

the previous Attorney General, but amicus curiae are not parties, and Supreme Court rules clearly state that they cannot insert issues not raised by the parties.

PROPOSITION II: THE AMICUS CURIAE BRIEF WAS IMPROPERLY CONSIDERED.

The opinion accurately states that District raised six points of error in its appeal, all based on the trial court's ruling regarding the Equal Protection Clause. Op. at ¶ 6. The opinion then cites the amicus curiae brief of the former Attorney General that introduced a seventh issue not raised by the parties but that nonetheless became the only alleged error reviewed by the Court. *Id.* The opinion specifically notes that the amicus curiae brief was filed with the consent of the parties, who did not file a response. *Id.* This appears to be the rationale for the Court's decision to decide this matter based on an issue that was not preserved for appeal or briefed by any party: *Because neither party responded to the amicus curiae brief, they tacitly amended the Petition in Error to include the issue argued by the Attorney General.* **But Okla. Sup. Ct. R. 1.12 only allows the Court to consider amicus curiae briefs that are "confined to the issues *raised by the parties*." Sup. Ct. R. 1.12(a)(1).**[5]

Under Oklahoma Supreme Court caselaw, an amicus curiae is not a party to the action and has no right to raise issues at its own behest. *Teleco, Inc. v. Corp. Comm'n of State of Okla.*, 1982 OK 93, 649 P.2d 772, n. 2, 649 P.2d 772, 773 n. 2; *Application of Goodwin*, 1979 OK 106, 597 P.2d 762, 764 and 767. When reviewing amicus curiae briefs, the Court is therefore restricted to considering the issues raised at the trial court ***and* preserved on appeal**. *City of Okla. City v. State ex rel. Okla. Dept. of Labor*, 1995 OK 107, n. 4, 918 P.2d 26, 32 n. 4; *see also Teleco* at 774 (Amicus curiae briefs "must, of course, be confined to the issues raised in the trial tribunal and preserved on appeal.").

No Supreme Court rule requires any party to respond to an amicus curiae brief, and even when a party fails to respond to a brief in chief or answer brief, Oklahoma Supreme Court caselaw holds

[5] The Attorney General was not a party to the trial court proceedings either, as no party challenged the constitutionality of a state statute.

that does not deem any issues waived or admitted. *Enochs v. Martin Prop., Inc.*, 1997 OK 132, ¶ 6, 954 P.2d 124; *Hamid v. Sew Original*, 1982 OK 46, ¶ 7, 645 P.2d 496, 497. Because an amicus curiae is not a party to the action, the parties are not obligated to respond to its brief. And this makes sense, as many cases heard by this Court invite a multitude of amicus curiae briefs. To hold that parties must respond to each brief or waive the issues therein would result in exponentially higher attorney's fees for appellants and appellees alike, as their counsel would need to respond to each specific amicus curiae for fear of having this Court deem the points admitted or waived. It would double or triple the amount of briefing this Court would have to review anytime a case with multiple amicus parties appeared on its docket.

Failure to respond to an amicus curiae brief does not waive any of the Oklahoma Supreme Court Rules, including Sup. Ct. R. 1.12's provision precluding an amicus curiae brief from raising issues that were not raised by the parties on appeal. It would be unfairly prejudicial to District for the Court to rule that District waived argument of what was properly before the Court by not responding to the amicus curiae brief while *not* ruling that Appellees waived review of the trial court's § 1210.189(A)(1) decision by not including it in a Counter-Petition in Error, or arguing the issue in its brief. The Court's allowance of the amicus curiae to determine the issues on appeal is error that can easily be remedied on rehearing and, in fairness, should be.

PROPOSITION III: APPELLANTS WERE NOT GIVEN THE OPPORTUNITY TO BRIEF THE STATUTORY ISSUE RELIED UPON IN THE OPINION.

The sole ruling at issue in this appeal was the trial court's finding that District's quarantine policy violated the Equal Protection Clause of the U.S. Constitution. Neither side appealed the trial court's interpretation and application of 70 O.S. § 1210.189(A)(1), and neither side was heard on that issue. The Court, however, elected to analyze the trial court's interpretation of 70 O.S. § 1210.189(A)(1) and base its holding entirely on that statute.

While it is true that this Court may affirm a judgment if is sustainable on any rational theory, when issues are raised *sua sponte* to reverse a judgment,[6] "the parties must be given a reasonable opportunity to present such facts and law on the issue *prior to the court's decision adjudicating the sua sponte issue.*" *Hofmeister*, 2020 OK 56 at ¶ 54 (emphasis in original) (citing *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶¶ 35–38, 396 P.3d 210, 223–24); *Wilds v. Universal Res. Corp.*, 1983 OK 35, ¶ 16, 662 P.2d 303, 307 (citing *Carpenter v. Carpenter*, 1982 OK 38, 645 P.2d 476, 480).[7]

The Court relied on a theory not presented in the appeal to reverse a judgment of the trial court. While the Court may affirm a judgment on any rational theory, it must give an opportunity for briefing before it can reverse a judgment based on a theory not at issue in the appeal. Appellants here were not afforded the opportunity to argue the correctness of the trial court's judgment based on 70 O.S. § 1210.189(A)(1), the dispositive issue for the majority in the adjudication of this matter. Given the importance of the Court's interpretation of 70 O.S. § 1210.189(A)(1) and its resulting application to the facts, District has been unfairly prejudiced because it has not been afforded the opportunity to provide the Court with specific argument, statutory authority, and precedent to support the trial court's interpretation and application of the statute.

CONCLUSION

District is attuned to the importance of finality in our civil justice system, and this is not an example of appealing for the sake of appealing. To the contrary, District was prejudiced by an opinion entirely based on an issue it was not permitted an opportunity to argue but which fails to address the important constitutional question at the heart of each party's argument. In short, District was not heard.

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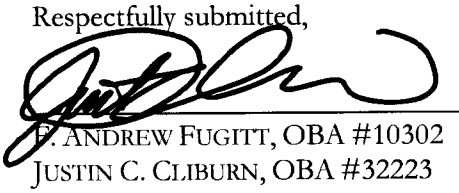
[6] The opinion vacated the ruling based on the Equal Protection Clause and reversed the ruling based on 70 O.S. § 1210.189(A)(1).

[7] The majority of cases on this issue address the issue of jurisdiction, but not case limits the principle of allowing parties to respond to *sua sponte* issues based solely on jurisdiction.

Although presented as one for rehearing, this Petition is in fact merely asking for a fair opportunity to address the issues the Court deemed dispositive. This can be accomplished in two ways. First, the Court may review the briefs on file and issue an opinion based on what District believes is the only issue on appeal: whether District's policy violates the Equal Protection Clause. Second, the Court may order the parties to submit briefing addressing the statute raised *sua sponte* and exclusively relied upon in the opinion. Therefore, to correct an error or omission by the Court, District respectfully requests the Court grant its Petition for Rehearing.

Respectfully submitted,



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CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

This is to certify that on this April 17, 2023, a true and correct copy of this Brief in Chief was mailed to the below individuals via:

☐ U.S. Mail, Postage Prepaid
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I further certify that a copy was mailed to, or filed in, the Office of Court Clerk on the 17th day of April, 2023.

JUSTIN C. CLIBURN, OBA #32223

2023 OK 26

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIAN AND JANELLE SHELLEM, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN, C.S. AND M.S., BRETT AND EMILIE GARRELTS, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILD B.G., AND GRADY AND THERESA EPPERLY, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN L.E., C.E., O.E., AND M.E.,

Plaintiffs/Appellees,

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Defendants/Appellants.

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAR 28 2023

JOHN D. HADDEN
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No. 120,131

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ON APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY

HONORABLE DON ANDREWS, DISTRICT JUDGE

¶ 0 Parents, individually, and on behalf of their minor children, filed a Petition for Declaratory Judgment and Injunctive Relief and an Application for Temporary Restraining Order requesting the trial court enjoin Edmond Public School District from enforcing its quarantine policy. The quarantine policy required unvaccinated students who have not tested positive for COVID-19 within ninety days and who are identified as a close contact to quarantine for either seven or ten days; whereas vaccinated students who are identified as a close contact are not required to quarantine. The trial court denied the parents' Temporary Restraining

Dist.'s Ex. A

Order, but granted a Temporary Injunction on the basis that the parents established the quarantine policy likely violated the Equal Protection Clause of the 14th Amendment to the United States Constitution. The Edmond Public School District appealed and we retained the matter. We vacate the trial court's order and grant declaratory relief.

MATTER PREVIOUSLY RETAINED FOR DISPOSITION; ORDER OF THE DISTRICT COURT VACATED; DECLARATORY JUDGMENT GRANTED.

Stanley M. Ward, Noble, Oklahoma, and Richard Labarthe and Alexey Tarasov, LABARTHE & TARASOV, a professional association, Norman and Oklahoma City, Oklahoma for Plaintiffs/Appellees.

F. Andrew Fugitt and Justin C. Cliburn, THE CENTER FOR EDUCATION LAW, a professional association, Oklahoma City, Oklahoma for Defendants/Appellants.

OPINION

ROWE, V.C.J.:

I. BACKGROUND

¶1 During the summer of 2021, Appellants, Edmond Public School Board Members and Edmond Public School District Superintendent, Angela Grunewald, (collectively "District") anticipated a complete return to in-person instruction for the 2021-2022 school year. Prior to the start of the school year, the Oklahoma City County Health Department ("OCCHD") expressed to District that quarantines should be recommended rather than required. In response, District prepared a standard letter that alerted parents when their child was exposed to a positive COVID-19 case, which left the responsibility "for carrying out a quarantine or not"

up to the parents.[1] School began on Thursday, August 12, 2021. By the fourth day of school, District reported 140 positive cases of COVID-19 which rose to 170 positive cases on the fifth day of the school year.

¶2 Based on guidance from the Centers for Disease Control and Prevention ("CDC"), OCCHD informed District that individuals deemed a "close contact"[2] should quarantine in light of the drastic spike of positive COVID-19 cases within the first week of the school year. OCCHD strongly recommended close contacts quarantine for 7-10 days unless (A) the close contact was vaccinated against COVID-19 or (B) the close contact had tested positive in the previous 90 days (the "Policy"). The following day, District implemented a policy consistent with OCCHD's recommendation and informed parents of the Policy by email.[3]

¶3 The Policy provided that a vaccinated close contact was not required to quarantine unless he or she displayed symptoms, but an unvaccinated close contact that had not tested positive within ninety days was required to quarantine. In the case of being identified as a close contact, the unvaccinated individual was presented with two options for quarantine: (1) a 7-day quarantine, in which the individual may return to school on day 8 if he or she provides a negative COVID-

[1] "In the case of a quarantine notification, parents will be notified if their child has been in close contact with a positive case, and the parent will be responsible for carrying out the quarantine or not." Ex. to Pls.' Appl. for Temporary Inj., Defs.' Ex. 9.

[2] "Defined as being within six feet of a positive individual for a period of 15 minutes or more or within three feet if both parties are masked." Temporary Inj. Order 2, n.2.

[3] The Policy was initially provided to parents through a letter sent via email on August 18, 2021. *See* Ex. To Pls.' Appl. For Temporary Inj. Defs.' Ex. 3. Included on the letter was a link to District's website, edmondschools.net, which provided the specific protocols to be followed starting August 18, 2021. *See* Ex. to Pls.' Appl. for Temporary Inj., Defs.' Ex. 4.

19 test on or after day 5 and continues to remain symptom free; or (2) a 10-day quarantine, in which the individual may return to school on or after day 11 if he or she remains symptom free.

¶4 As a result of the Policy, several unvaccinated students were required to quarantine due to being identified as a close contact. The Appellees, parents of children enrolled in Edmond Public Schools affected by the Policy ("Parents"), individually and on behalf of their children, filed a Petition for Declaratory Judgment and Injunctive Relief and an Application for Temporary Restraining Order ("TRO") in the District Court of Oklahoma County. Parents alleged the Policy violated: (1) 70 O.S. § 1210.189(A)(1); (2) their children's Fourteenth Amendment right to procedural due process; and (3) their children's First Amendment right to freely assemble. District objected, and the TRO was denied.

¶5 Following denial of the TRO, the trial court heard testimony on Parents' Petition for Injunctive Relief. A week later, the Attorney General filed a motion for leave to file an amicus curiae brief in support of granting Parents' Injunction on the basis that the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1). District objected to the filing of the brief, but the trial court granted the Attorney General's motion. The trial court denied relief on all three counts pleaded in the Petition, but granted a Temporary Injunction based on Parents' Equal Protection Clause argument and enjoined District from implementing or enforcing the Policy.

¶6 District timely appealed raising five counts of error relating to the trial court's Equal Protection analysis and inconsistencies of the trial court's order concerning evidence of irreparable harm. In addition, the Attorney General filed an amicus curiae brief with consent of the parties suggesting to the Court that while the trial court properly enjoined District from enforcing the Policy, the trial court improperly interpreted 70 O.S.Supp.2021, § 1210.189(A)(1). Neither Parents nor District filed a response to the Attorney General's amicus brief. We retained the matter for review.

II. STANDARD OF REVIEW

¶7 To obtain a temporary injunction, a plaintiff must show that four factors weigh in his or her favor: (1) the likelihood of success on the merits; (2) irreparable harm to the party seeking the relief if the injunction is denied; (3) their threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest. *Edwards v. Bd. Of Cnty Comm'rs of Canadian Cnty*, 2015 OK 58, ¶ 12, 378 P.3d 54, 59. "The right to injunctive relief must be established by clear and convincing evidence and the nature of the injury must not be nominal, theoretical, or speculative." *Id.*

¶8 "A judgment issuing or refusing to issue an injunction will not be disturbed on appeal unless the lower court has abused its discretion or the decision is clearly against the weight of the evidence." *Id.* ¶ 11, 378 P.3d at 58. "To reverse under an abuse of discretion standard, an appellate court must find the trial court's conclusions and judgment were clearly erroneous, against reason and evidence."

Murlin v. Pearman, 2016 OK 47, ¶ 17, 371 P.3d 1094, 1097. We will consider all the evidence on appeal to determine whether the trial court's granting of a temporary injunction was an abuse of discretion. *Dowell v. Pletcher*, 2013 OK 50, ¶ 5, 304 P.3d 457, 460.

¶9 "[A] clear abuse of discretion standard includes appellate review of both fact and law issues: 'In order to determine whether there was an abuse of discretion, a review of the facts and the law is essential.'" *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608 (quoting *Bd. of Regents of Univ. of Oklahoma v. Nat'l Collegiate Athletic Ass'n*, 1977 OK 17, ¶ 3, 561 P.2d 499, 502). Underlying questions of law are reviewed *de novo*. *Lierly v. Tidewater Petroleum Corp.*, 2006 OK 47, ¶ 16, 139 P.3d 897, 903. An issue presented in this cause is one of statutory interpretation. Statutory interpretation presents a question of law which this Court reviews under a *de novo* standard. *Corbeil v. Emricks Van & Storage, Guarantee Ins.*, 2017 OK 71, ¶ 10, 404 P.3d 856, 858.

¶10 The trial court determined Parents were likely to succeed on the merits of their Equal Protection Clause claim against District but were unlikely to succeed on the merits of their claim that the Policy violated 70 O.S.Supp.2021, § 1210.189(A)(1). We find the trial court improperly interpreted § 1210.189(A)(1) and incorrectly concluded Parents were unlikely to succeed on the merits of their claim that the Policy violates § 1210.189(A)(1). Because we determine the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1), we need not address the Equal Protection Clause argument.

III. DISCUSSION

¶11 On March 15, 2020, Oklahoma Governor, J. Kevin Stitt, declared a statewide emergency due to the coronavirus pandemic and its threat to the people of this State and their peace, health, and safety.[4] The Governor rescinded his emergency declaration on May 3, 2021.[5] Subsequently, the Oklahoma Legislature passed Senate Bill 658 in May of 2021, which was signed into law on May 28, 2021.

¶12 Senate Bill 658 made additions and amendments to school health and safety statutes within 70 O.S.2011, §§ 1210.191-1210.194. Specifically, Senate Bill 658 created two new sections, 70 O.S.Supp.2021, §§ 1210.189 and 190.[6] The

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[4] The Governor's Executive Order 2020-07, filed with the Oklahoma Secretary of State on March 15, 2020, states in pertinent part:

> Therefore, I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare and order the following:
>
> 1. There is hereby declared an emergency caused by the impending threat of COVID-19 to the people of this State and the public's peace, health, and safety.

Exec. Order No. 2020-07, https://www.sos.ok.gov/documents/executive/1913.pdf.

[5] The Governor's Executive Order 2021-11, filed with the Oklahoma Secretary of State on May 3, 2021 states in pertinent part:

> I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in my by Section 2 of Article VI of the Oklahoma Constitution hereby order:
>
> Effective May 4, 2021, Second Amended Executive Order 2021-07 is withdrawn and rescinded.

Exec. Order No. 2021-11, https://www.sos.ok.gov/documents/executive/1999.pdf.

[6] In *Ritter v. State*, 2022 OK 73, 520 P.3d 370, this Court determined 70 O.S.Supp.2021, §§ 1210.189 and 190 were an unconstitutional, impermissible delegation of Legislative authority. However, the objectionable provision was stricken, and the remainder of the statute was upheld as constitutional. The text that was stricken arises from § 1210.190(A)(1) which provides:

> A. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device as provided in this subsection.
>
> 1. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device after consultation with the

relevant section here is § 1210.189. Section 1210.189 concerns restrictions on a school district's ability to mandate COVID-19 vaccinations and mask mandates. More specifically, § 1210.189 provides:

> A. A board of education of a public school district or a technology center school district, the board of regents of an institution within The Oklahoma State System of Higher Education, the governing board of a private postsecondary educational institution, the Oklahoma State Regents for Higher Education, the State Board of Education or the State Board of Career and Technology Education shall not:
>
> 1. Require a vaccination against Coronavirus disease 2019 (COVID-19) as a condition of admittance to or attendance of the school or institution;
>
> 2. Require a vaccine passport as a condition of admittance to or attendance of the school or institution; or
>
> 3. Implement a mask mandate for students who have not been vaccinated against COVID-19.
>
> B. As used in this section, "vaccine passport" means documentation that an individual has been vaccinated against COVID-19.
>
> C. Nothing in this section shall be construed to apply to any public or private healthcare setting.

The subsection at issue before us is § 1210.189(A)(1).

¶13 Before the trial court, Parents and the Attorney General argued the Policy violates § 1210.189(A)(1) because the Policy's quarantine requirement for unvaccinated students effectively excludes those students from attending school

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> local county health department or city-county health department within the jurisdiction of where the board is located and **when the jurisdiction of where the board is located is under a current state of emergency declared by the Governor.**

The Court determined that the emphasized language usurped local control granted by the Legislature by requiring the Governor to declare or not declare a state of emergency—an impermissible delegation of authority.

The result in *Ritter* has no effect on the application of § 1210.189 as it relates to the case before us, as the Court held the remainder of the statute was constitutional.

due to their COVID-19 vaccination status. District made several arguments in response to demonstrate the Policy does not violate § 1210.189(A)(1). First, District argues the Policy is not based on COVID-19 vaccination status, pointing out that hundreds of unvaccinated students attend school within the district each day. Specifically, District contends COVID-19 vaccination status is not the only condition that triggers whether a student is required to quarantine. Rather, District asserts what determines whether a student should be temporarily quarantined is evidence of that student's heightened immunity to COVID-19. District highlights that the Policy references three types of students exposed to a positive COVID-19 case: (1) vaccinated students; (2) unvaccinated students who have tested positive for COVID-19 within the previous ninety days; and (3) unvaccinated students who have *not* tested positive for COVID-19 within the previous ninety days.

¶14 To the extent District uses a student's vaccination status as a factor of whether they can attend school, § 1210.189(A)(1) is violated. The statute explicitly prohibits school districts from utilizing a student's COVID-19 vaccination status as a condition of whether he or she may attend school in-person. The Policy's consideration of whether a student has tested positive for COVID-19 within the previous ninety days in addition to a student's COVID-19 vaccination status does not cure the violation. If we were to conclude that the Policy does not violate § 1210.189(A)(1) because the Policy also factors in whether a student has tested positive for COVID-19 within the previous ninety days, the result would run contrary to the intent and plain language of the statute. Interpreting the Policy's condition

for quarantine as a level of heightened immunity is a distraction from what the Policy on its face and in practice accomplishes: conditioning a student's attendance of school on COVID-19 vaccination status. Accordingly, District's argument on this point fails.

¶15 Second, District contends quarantined students that participate in virtual learning are counted in "attendance;" therefore, the Policy does not violate § 1210.189(A)(1). Parents and the Attorney General argue "attendance" means physical, in-person attendance. Conversely, District argues that in light of the pandemic, "attendance" is not limited to physical, in-person attendance because of the implementation of virtual learning.

¶16 "The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent and purpose as expressed by the statutory language." *Odom v. Penske Truck Leasing Co.*, 2018 OK 23, ¶ 17, 415 P.3d 521, 528. "It is presumed that the Legislature has expressed its intent in a statute's language and that it intended what it so expressed." *Id.* "Intent is ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each." *Keating v. Edmondson*, 2001 OK 110, ¶ 8, 37 P.3d 882, 886. "Only where legislative intent cannot be ascertained from the language of a statute, as in cases of ambiguity, are rules of statutory interpretation employed." *Odom*, ¶ 18, 415 P.3d at 528.

¶17 To ascertain legislative intent, we begin with the text. The plain meaning of "attendance" is "the act or fact of attending something."[7] The plain meaning of "attend" is "to be present at: to go to."[8] Nothing in the text suggests the Legislature intended for "attendance" to mean anything more than in-person, physical attendance. *Odom*, ¶ 17, 415 P.3d at 528 ("It is presumed that the Legislature has expressed its intent in a statute's language and that it intended what it so expressed."); *Stemmons, Inc. v. Universal C.I.T. Credit Corp.*, 1956 OK 221, ¶ 21, 301 P.2d 212, 216 ("In absence of an attempt to define any of the terms used in the statutes in question, it must be presumed the legislature considered it unnecessary to define particular words and phrases, and that it was intended only that same bear their usual and commonly accepted meaning."). We find "attendance" unambiguous.

¶18 Though we need not explore other provisions within Title 70 to aid us in ascertaining the Legislature's intent, doing so leads us to the same conclusion. Reading 70 O.S.2011, § 1210.194 in conjunction with § 1210.189(A)(1), it is clear the Legislature intended for "attendance" to mean in-person, physical attendance. Section 1210.194 discusses the prohibition of students from *attending* school when afflicted by a contagious disease or head lice. Subsection (A) provides "[a]ny child afflicted with a contagious disease . . . may be prohibited from *attending* a public .

[7] *Attendance*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/attendance (visited February 8, 2023).
[8] *Attend*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/attend (visited February 8, 2023).

. . school until such time as he is free from the contagious disease . . . ." 70 O.S.2011, § 1210.194(A) (emphasis added). It would be absurd to conclude the Legislature intended for "attending" to mean anything other than in-person physical attendance. *Ledbetter v. Oklahoma Alcoholic Beverage L. Enf't Comm'n*, 1988 OK 117, ¶ 7, 764 P.2d 172, 179 ("[S]tatutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits.").

¶19 While it appears that District's intention was to curb the spread of COVID-19, the Policy effectively prohibits unvaccinated students from attending school when exposed to COVID-19 because of their COVID-19 vaccination status. Because we hold "attendance" means in-person, physical attendance, we find the Policy violates § 1210.189(A)(1). Accordingly, the trial court erred when it concluded Parents were unlikely to succeed on the merits of their claim the Policy violates 70 O.S.Supp.2021, § 1210.189(A)(1).

¶20 Our determination that "attendance" unambiguously means in-person, physical attendance renders it unnecessary to address the other construction-based arguments proffered by District. "A cardinal precept of statutory construction is that where a statute's language is plain and unambiguous, and the meaning clear and unmistakable, no justification exists for the use of interpretive devices to fabricate a different meaning." *Keating v. Edmonson*, 2001 OK 110, ¶ 15, 37 P.3d 882, 888. District's suggestion that we look to the State Board of Education's administrative code 2021 amendment for an alternate definition of

"attendance" runs counter to our principles of statutory construction. "[A]dministrative construction of a statute will not override the plain statutory language." *Id.* We will not look to the administrative code to override the plain meaning of an unambiguous statutory term.

¶21 Lastly, we also find the trial court erred when it interpreted 1210.189(A)(1) as "prohibit[ing] a school district from placing an unvaccinated student into quarantine, even if that student was symptomatic and/or tested positive for COVID-19."[9] District retains the statutory authority to exclude a student from the school premises if afflicted with a contagious disease.[10]

IV. CONCLUSION

¶22 District adopted a quarantine policy in response to a dramatic spike in positive COVID-19 cases. The Policy effectively prohibited students from attending school in-person based upon their COVID-19 vaccination status, in

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[9] Temporary Inj. Order 6.

[10] 63 O.S.Supp.2021, § 1-507 and 70 O.S.2011, § 1210.194 provide school districts the ability to prohibit a student afflicted with a contagious disease from attending school. Thus, if an unvaccinated student exhibited symptoms of COVID-19 and/or tested positive, District retains the statutory authority to exclude student from the school premises.

63 O.S.Supp.2021, § 1-507 provides:

> No person having a communicable disease shall be permitted to attend a private or public school, and it shall be the duty of the parent or guardian and the school of such person to exclude from the school such person until the expiration of the period of isolation or quarantine ordered for the case, or until permission to do so shall have been given by the local county health department or the State Department of Health.

70 O.S.2011, § 1210.194(A) provides:

> Any child afflicted with a contagious disease or head lice may be prohibited from attending public, private, or parochial school until such time as he is free from the contagious disease or head lice.

violation of 70 O.S.Supp.2021, § 1210.189(A)(1). Thus, the trial court improperly interpreted § 1210.189(A)(1) and erred by determining Parents would likely be successful on the merits of their Equal Protection Clause claim.

¶23 With the passage of 70 O.S.Supp.2021, § 1210.189(A)(1), the Legislature divested school districts from establishing policies that condition a student's school attendance on their COVID-19 vaccination status. We find District's policy violates § 1210.189(A)(1). The trial court's order is vacated and declaratory judgment is granted in favor of Parents.

**MATTER PREVIOUSLY RETAINED FOR DISPOSITION;
ORDER OF THE DISTRICT COURT VACATED;
DECLARATORY JUDGMENT GRANTED.**

Kane, C.J., Rowe, V.C.J., Winchester, Darby and Kuehn, JJ., concur.

Kauger, J. (by separate writing), Edmondson, Combs (by separate writing), and Gurich, JJ., dissent.

Dist.'s Ex. No. A

ORIGINAL

2023 OK 26

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIAN and JANELLE SHELLEM, Husband and Wife, individually and on behalf of their Minor Children, C.S. and M.S.; BRETT and EMILIE GARRELTS, Husband and Wife, individually and on behalf of their Minor Child, B.G.; and GRAY and THERESA EPPERLY, Husband and Wife, individually and on behalf of their Minor Children, L.E., C.E., O.E., and M.E.,

Plaintiffs/Appellees,

v.

ANGELA GRUNEWELD,

Superintendent of Edmond Public Schools, and Edmond Board of Education Members JAMIE UNDERWOOD, CYNTHIA BENSON, KATHLEEN DUNCAN, LEE ANN KUHLMAN, and MEREDITH EXLINE, sued in their official and individual capacities,

Defendants/Appellants.

No. 120,131

FOR OFFICIAL PUBLICATION

KAUGER, J., with whom Gurich, J. joins, dissenting:

¶1 I agree with the dissent by Justice Combs for yet another reason. The Oklahoma Constitution art. 13 §4 addresses compulsory school attendance and the possibility of alternatives. It provides:

> The Legislature shall provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the State who are sound in mind and body, between the ages of eight and sixteen years, for at least three months in each year.

¶2 Although the framers did not anticipate virtual schooling, they were prescient by recognizing that another means, other than actual attendance, was possible to fulfill the attendance requirement.

$10C

ORIGINAL

105 80223

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
JAN - 6 2022
JOHN D. HADDEN
CLERK

BRIAN AND JANELLE SHELLEM, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN C.S. AND M.S.,
BRETT AND EMILIE GARRELTS, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILD B.G., AND
GRADY AND THERESA EPPERLY, HUSBAND AND WIFE, INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR CHILDREN L.E., C.E., O.E., AND M.E.,

PLAINTIFFS

VS.

ANGELA GRUNEWALD, SUPERINTENDENT OF EDMOND PUBLIC SCHOOLS, AND EDMOND BOARD OF EDUCATION MEMBERS JAMIE UNDERWOOD, CYNTHIA BENSON, KATHLEEN DUNCAN, LEE ANN KUHLMAN, MEREDITH EXLINE, SUED IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES,

DEFENDANTS.

SUPREME COURT NO. #120131

OKLAHOMA COUNTY
DISTRICT COURT NO. CJ-2021-3883

JUDGE DON ANDREWS

Received
Mailed
Returned
Cert mailed
Updated

PETITION IN ERROR

- ☒ Petition in Error
- ☐ Amended or Supplemental Petition
- ☐ Cross Petition
- ☐ Counter-Petition

DATE FIRST PETITION IN ERROR FILED: JANUARY 6, 2022

I. TRIAL COURT HISTORY

Court/Tribunal:	Oklahoma County District Court
County:	Oklahoma
Case No.:	CJ-2021-3863
Judge:	The Honorable Don Andrews
Nature of Case:	Injunctive Relief

Dist.'s Ex. B

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Angela Grunewald, Superintendent of Edmond Public Schools, and Edmond Board of Education Members Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman, Meredith Exline

THIS APPEAL IS BROUGHT FROM (CHECK ONE):

- ☐ Judgment, Decree or Final order of District Court.
- ☐ Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).
- ☐ Appeal from Revocation of Driver's License (Rule 1.21(b)).
- ☐ Final Order of Other Tribunal. (Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. _____)
- ☒ Interlocutory Order Appealable by Right.
- ☐ Other:

II. TIMELINESS OF APPEAL

1. Date judgment, decree or order appealed was filed: December 7, 2021.

2. If decision was taken under advisement, date judgment, decree or order was mailed to parties:

3. Does the judgment or order on appeal dispose of all claims by and against all parties?

☐ Yes ☒ No.

If not, did district court direct entry of judgment in accordance with 12 O.S. § 994?

☐ Yes ☒ No.

When was this done? _____

4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? ☒ Yes ☐ No.

5. If none of the above applies, what is the specific statutory basis for determining the judgment or order is appealable?

6. Were any post-trial motions filed?

Type	Date Filed	Date Disposed
Motion for Stay	January 6, 2022	Pending

7.

This Petition is filed by: ☒ Delivery to Clerk, or

Dist.'s Ex. B

☐ Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested on _____

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding:

N/A

List all related appeals involving same issues:

N/A

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? ☐ Yes ☒ No

V. RECORD ON APPEAL

☒ A Transcript will be ordered.

☐ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal.

☐ A Narrative Statement will be filed.

☐ Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT "A"

(Attach as Exhibit "A" to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII. SUMMARY OF CASE – EXHIBIT "B"

Attach as Exhibit "B" a brief summary of the case *not to exceed one 8 ½" x 11" double spaced page.*

VIII. ISSUES TO BE RAISED ON APPEAL – EXHIBIT "C"

Attach as Exhibit "C" the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as "Judgment not supported by law."

Dist.'s Ex. B

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

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Dist.'s Ex. B

DATE: JANUARY 6, 2022

Verified by:
Justin C. Cliburn
Attorney for Defendants/Appellants

OBA No. 32223
Firm The Center for Education Law
Address 900 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102

Telephone 405.528.2800

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

This is to certify that on this January 6, 2022, a true and correct copy of the above and foregoing was mailed to the below individuals via:

☐ U.S. Mail, Postage Prepaid
☐ Certified U.S. Mail, Postage Prepaid
☒ Certified U.S. Mail, Postage Prepaid, Return Receipt Requested
☒ E-Mail

Stanley M. Ward, OBA# 9351
8001 E Etowah Rd.
Noble, Oklahoma 73068
(405) 872-5111 Telephone

Richard C. Labarthe
Alexey V. Tarasov
20 N.E. 63rd Street, Suite Lower E
Oklahoma City, Oklahoma 73105-6431

I further certify that a copy of the Petition in Error was mailed to, or filed in, the Office of Court Clerk on the 6th day of January, 2022.

JUSTIN C. CLIBURN, OBA NO. 32223

Dist.'s Ex. B

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

Brian Shellem, et. al.

Plaintiffs,

vs.

Angela Grunewald, et al.

Defendants.

Case No.: CJ-2021-3883

ORDER ON TEMPORARY INJUNCTION

THIS MATTER came on for hearing on September 29, 2021, and September 30, 2021, upon Plaintiffs' request for a temporary injunction. The Plaintiffs, Brian and Janelle Shellem, Brett and Emilie Garrelts, and Grady and Theresa Epperly (hereinafter referred to as the "PLAINTIFFS"), appeared in person and/or by and through their counsel, Richard C. Labarthe and Alexey V. Tarasov of the law firm of LABARTHE & TARASOV, P.C., and Stanley Ward, and the Defendants, Angela Grunewald, Superintendent of Edmond Public Schools, and Edmond Board of Education members, Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman and Meredith Exline, in their official and individual capacities, appeared in person and/or by and through their counsel, F. Andrew Fuggit and Justin C. Cliburn of THE CENTER FOR EDUCATION LAW, P.C. The Court, having reviewed the file herein, having heard testimony from the witnesses sworn, and having heard argument presented by counsel, FINDS and ORDERS as follows:

FINDINGS OF FACTS

1. Plaintiffs are the parents of students who attend Independent School District No. 12 of Oklahoma County, Oklahoma, also known as Edmond Public Schools ("District");[1] that none of Plaintiffs' children have been vaccinated against COVID-19.

2. Defendant Angela Grunewald is the District's Superintendent.

3. Defendants Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman, and Meredith Exline are members of the District Board of Education.

4. During the summer of 2021, in response to the COVID-19 pandemic, the District consulted with the Oklahoma City-County Health Department ("OCCHD").

5. The District received recommendations from the OCCHD that included quarantining individuals who (A) had been exposed to a positive COVID-19 case;[2] (B) were not vaccinated against COVID-19; and (C) had not tested positive for COVID-19 in the previous 90 days.

6. Beginning August 18, 2021, the District instituted its COVID-19 quarantine protocols ("policy" or "protocol") that required unvaccinated students who were identified as "close contacts" of individuals positive for COVID-19, and who had not tested positive for COVID-19 in the previous 90 days, to quarantine at home for between seven-to-ten days. Even if an unvaccinated student did not display signs or symptoms commonly associated with COVID-19, the District's policy required the student to self-isolate at home.[3]

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[1]Plaintiffs Brian and Janelle Shellem have two children: C.S. and M.S., who are in the 9th grade. Plaintiffs Brett and Emilie Garrelts have two children: B.G. is in the 9th grade and J.G. is in the 4th grade. Plaintiffs Grady and Theresa Epperly have 4 children: O.E, who is in kindergarten; C.E., who is in 3rd grade; M.E., who is in 5th grade, and L.E., who is in 7th grade.
[2]Defined as being within six feet of a positive individual for a period of 15 minutes or more or within three feet if both parties are masked.
[3]Trial Transcript at Page 306-07; Defendant's Exhibit #3.

7. After completing a quarantine, an unvaccinated student was permitted to return to in-person learning at the District without receiving, or providing proof of receiving, a COVID-19 vaccine.

8. The District counted all Plaintiffs' children as being in attendance for any day they quarantined as a result of being a close contact of a positive case of COVID-19;[4] Plaintiffs' children received full credit for any instruction they completed during quarantine.

9. Plaintiffs' children experienced a wide range of negative psychological and physical effects as a result of being quarantined by the District,[5] to-wit:

A. That quarantining devastated Plaintiff, Brenna Harris, and her autistic child; that her child suffers severe behavioral problems, including anxiety, self-harm, and regression, and the quarantine caused her child to become extremely violent. Additionally, her child was quarantined for ten days, and at no time did any official from the District provide aid or assistance regarding her child's behavioral issues.[6]

B. One of Joy Tisdale's three children, who is disabled and has special needs, has been quarantined two times. While quarantined, Tisdale's child received a mere 160 minutes of instruction, compared to 1,200 minutes of in-person instruction normally received. Tisdale's child's special needs make remote learning especially difficult, and her child has fallen behind in studies.[7]

C. Theresa Epperly testified that her child's math grades dropped significantly while isolated in quarantine. Epperly was forced to teach school subjects to her child using YouTube videos.[8]

D. Lindsay Frace testified that the District's quarantine grossly exacerbated her child's underlying anxiety, which has led to suicidal tendencies.[9]

E. Brian Shellem's child experienced psychosomatic effects of isolation and lost the ability to absorb nutrients, losing weight while quarantined.[10]

F. Rebekah Graham's child's grades suffered, and the child exhibited signs of anxiety while quarantined.[11]

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[4]Trial Transcript at Page 315, Line 3 – Page 316, Line 6.
[5]Plaintiffs proffered affidavits of additional parents, whose children attend school within the District, which were admitted as evidence by the Court.
[6]Trial Transcript at Page 34, Line 17 – Page 40, Line 14. .
[7]Trial Transcript at Page 58, Line 6 – Page 60, Line 11; and Page 62, Line 22 – Page 63, Line 8.
[8]Trial Transcript at Page 75, Line 1 – Page 76, Line 6.
[9]Trial Transcript at Page 147, Line 23 – Page 149, Line 3; Page 150, Line 16 – Page 151, Line 9; and Page 156, Line 15 – Page 160, Line 8.
[10]Trial Transcript at Page 176, Line 22 – Page 177 Line 22.
[11]Trial Transcript at Page 211, Line 19 – Page 213, Line 10; and Page 214, Line 17 – Page 215, Line 15.

G. Emelie Garrelts' child, who has been diagnosed with an adjustment disorder, began talking about death much more frequently while quarantined.[12]

10. The District's quarantine protocols impacted Plaintiffs' unvaccinated students in two ways: (1) the policy frustrated the ability of Plaintiffs' students to learn; and (2) the policy inflicted negative psychological and physical effects on Plaintiffs' students, especially those children with special needs.

11. Children and adolescents experience high rates of depression and anxiety during and after being quarantined.[13]

12. The policy of sending heathy students into quarantine has shown little effectiveness over time;[14] that quarantining apparently healthy students leads to higher rates of depression and anxiety among those students.[15]

13. None of the Plaintiffs' students who were quarantined pursuant to the District's policy displayed symptoms associated with COVID-19 while isolated at home, nor did they test positive for COVID-19 while quarantined pursuant to the District's policy.[16]

14. That fully vaccinated individuals can become infected with COVID-19 and can transmit the disease.[17]

15. The number of COVID-19 positive cases within the District followed a similar trend and pattern as those districts without a close-contact policy solely for unvaccinated children.[18]

[12]Trial Transcript at Page 226, Line 6 – Page 227, Line 10.
[13]Trial Transcript at Page 99, Lines 14.
[14]Trial Transcript at Page 127, Lines 14-22.
[15]Trial Transcript at Page 127 Line 12 – Page 128, Line 2.
[16]Trial Transcript at Pages 15, 24, 29-30, 36, 40, 78, 93, 180 and 211.
[17]Trial Transcript at Page 141, Lines 7-11.
[18]Trial Transcript at Page 234, Lines 6-22; Defendants' Exhibit #38.

CONCLUSIONS OF LAW

Temporary Injunction Standard

The decision to grant or deny injunctive relief rests within the sound discretion of the trial court.[19] An injunction is an extraordinary remedy and should not be granted lightly. The discretion of the court must be exercised within sound equitable principles, taking in all the facts and circumstances of the case.[20]

To obtain a temporary injunction, a plaintiff must show that four factors weigh in his favor: (1) the likelihood of success on the merits; (2) irreparable harm to the party seeking injunctive relief if the injunction is denied; (3) his threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest.[21]

Senate Bill 658

Plaintiffs, including the Attorney General, contend that under Senate Bill 658, codified as 70 O.S. Supp. 2021 § 1210.189(A)(1) (emerg. eff. July 1, 2021), the District cannot impose a quarantine policy. Plaintiffs' posit the word "attendance" within Senate Bill 658 means physical, in-person attendance. The Court respectfully disagrees.

"The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent and purpose as expressed by the statutory language."[22] A court's primary goal is to determine legislative intent through the "plain and ordinary meaning" of the statutory language.[23] The court should only employ rules of statutory construction when legislative intent cannot be ascertained

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[19] *Johnson v. Ward*, 541 P.2d 182, 188, 1975 OK 129.
[20] *Amoco Production Co. v. Lindley*, 609 P.2d 733, 745, 1980 OK 6; *Dowell v. Pletcher*, 2013 OK 50, ¶ 5, 304 P.3d 457, 460 (The "grant or denial of injunctive relief are of equitable concern").
[21] *Dowell v. Pletcher*, 2013 OK 50, ¶ 7, 304 P.3d 457, 460 (citing *Daffin v. State ex rel. Okla. Dept. of Mines*, 2011 OK 22, 251 P.3d 741); *see also*, 12 O.S. § 1382, 1383.
[22] *Am. Airlines, Inc., v. State Tax Comm'n.*, 2014 OK 95, ¶33, 431 P.3d 56.
[23] *Kohler v. Chambers*, 2019 OK 2, ¶ 6, 435 P.3d 109, 111.

(e.g., in cases of ambiguity).[24] The test for determining the ambiguity of a statute depends on whether its language is susceptible to more than one meaning.[25]

Senate Bill 658 prohibits school districts from requiring a COVID-19 vaccination (or proof of a COVID-19 vaccination) as a condition of enrollment and *attendance* or imposing a mask mandate on students who have not been vaccinated against COVID-19. The word "attendance" is not defined within Senate Bill 658. Perhaps more importantly though, Senate Bill 658 does not address whether a school district may impose a quarantine.

The plain text of Senate Bill 658 does not limit a school district's authority to quarantine. If Plaintiffs' reading of Senate Bill 658 is correct, the law would also prohibit a school district from placing an unvaccinated student into quarantine, even if that student was symptomatic and/or tested positive for COVID-19. A school that takes protective action to isolate a student known to be carrying a highly contagious disease is acting upon its clear statutory and administrative authority to keep fellow students and staff safe as required under 40 O.S. § 403(A).

Moreover, in response to COVID-19, the State Board of Education amended certain rules governing alternative instructional delivery systems.[26] These rules require local districts to implement written policies regarding remote learning and provide districts with discretion to implement virtual learning protocols in the event of a national, state, or local emergency. Here, Edmond Public Schools implemented such virtual learning protocols; that the District counted all Plaintiffs' children as being in attendance for any day they quarantined. Moreover, Plaintiffs' children received full credit for any instruction they completed for any day they quarantined.

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[24] *Christian v. Christian*, 2018 OK 91, ¶ 5, 434 P.3d 941, 942.
[25] *Christian v. Christian*, 2018 OK 91, ¶ 5, 434 P.3d 941, 942-43.
[26] O.C.A. 210:35-1-2(c).

Senate Bill 658 is not ambiguous. If the law was intended to limit a school district's authority to quarantine students, the legislature could have easily addressed that issue within the text of the statute. Instead, the law is silent and makes no mention of a school district's authority to quarantine students, nor does it address whether virtual learning protocols suffice as "attendance" during a quarantine. In sum, the Court finds Plaintiffs are unlikely to succeed on the merits of their claim under Senate Bill 658.

Plaintiffs' Constitutional Rights Claims

Plaintiffs make three constitutional claims: First, they assert the District's policy infringed upon their children's First Amendment rights under the United States Constitution. Second, they urge the policy violated their students' Due Process rights enshrined in the Fourteenth Amendment to the United States Constitution. Third, Plaintiffs allege the District's COVID-19 protocols violate the Equal Protection clause of the United States Fourteenth Amendment.

i. Plaintiffs' First Amendment Claim

Plaintiffs' First Amendment arguments are unpersuasive. The right to freely assemble pertains to the rights of citizens to meet peaceably for consultation in respect to public affairs and to petition their elected officials for redress of grievances.[27]

Plaintiffs contend the District's policy prohibited their children from engaging in social interactions at school, but the Supreme Court has held the right to expressive association under the First Amendment requires a showing of "intimate association" or "expressive association extending to groups organized to engage in speech that does not pertain directly to politics "[28]

[27] *De Jong v. Oregon*, 299 U.S. 353, 364 (1937); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 678 (2000); *see also, McCook v. Springer Sch. Dist.*, 44 Fed. Appx. 896, 910 (10th Cir. 2002).
[28] *City of Dallas v. Stanglin*, 490 U.S. 19, 35 109 S. Ct. 1591, 104 Ed. 2d. 18 (1989); *see also, Roberts v. U.S. Jaycees*, 468 U.S. 409, 617018, 104 S.Ct. 3244, 3249, 82 L.Ed.2d 462 (1984); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 658 (10th Cir. 2006).

While it is true that children quarantined pursuant to the District's policy were prevented from assembling with other students at school, no evidence was presented that Plaintiffs' children sought access to the District's property for the purpose of engaging in private associations or expressive associations. Instead, Plaintiffs point to a generalized association—the right of their students to interact with other students during the school day. While such social interactions may be important in the development of children, Plaintiffs cite no cases that held students have a right to socialize generally within schools.

Because Plaintiffs fail to identify the kind of expressive association or intimate association that their students were denied, the Court finds Plaintiffs' First Amendment claims are unlikely to succeed on the merits.

ii. Plaintiffs' Due Process Claim

Plaintiffs' Due Process claim is unconvincing. "The fundamental requisite of due process of law is the opportunity to be heard."[29]

In *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975), the Supreme Court held that compulsory attendance laws may provide students a property interest in public education that is protected by the Due Process Clause. But the due process rights recognized in *Goss* are infringed when students are suspended or dismissed for misconduct without notice and a hearing.[30] The objective in providing students with Due Process under the law is to ensure that in the context of discipline, there is a "balancing of the students' interest in unfair or mistaken exclusion from the educational process and the school's interest in discipline and order."[31]

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[29] *Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914).
[30] *Goss v. Lopez*, 419 U.S. 565, 574, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975)
[31] *Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1240 (10th Cir. 2001).*

Here, the evidence shows that Plaintiffs' children were not disciplined nor alleged to have engaged in any misconduct. District's policy was not punitive in nature. The students were not suspended nor disenrolled from school. Instead, students were allowed to attended classes virtually with instructions. On basis of facts and the law, the Court find the Plaintiffs are unlikely to succeed on the merits of their Due Process claim.

iii. Plaintiffs' Equal Protection Claim

The Court now turns to the issue of whether the District's policy infringed on Plaintiffs' students' right to equal protection under the law. In short, the Court finds Plaintiffs' are likely to succeed on the merits as it relates to their claims under the Fourteenth Amendment of the United States Constitution.

At the onset, the Court notes that we are admittedly in uncharted waters. The advent of the pandemic has created new, highly unusual factual situations that make applying our pre-pandemic caselaw exceptionally challenging. Nevertheless, we start with the Equal Protection Clause itself, which commands that no government shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike.[32]

The default rule is that a government policy is *presumed* to be valid and will be *sustained* if the classification drawn by the policy is rationally related to a legitimate governmental interest.[33] Violations of the Fourteenth Amendment are made actionable under 42 U.S.C § 1983. Generally, the challenger bears the burden of proving the irrationality of the challenged policy.[34]

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[32] *Plyler* v. *Doe*, 457 U.S. 202, 216 (1982); U.S. CONST. amend. XIV, § 1.
[33] *Schweiker* v. *Wilson*, 450 U.S. 221, 230 (1981). "The legislation may draw certain classifications among individuals or groups of individuals, if those classifications are not arbitrary and capricious and bear some reasonable or rational relationship to a permissible public policy or goal." *Rivas v. Parkland Manor*, 2000 OK 68, ¶8, 12 P.3d. 452.
[34] *City of New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976) (*per curiam*).

The default rule gives way when a policy classifies individuals by race, alienage, or national origin. In such case, a heightened standard of review is used by the courts.[35] To date, the United States Supreme Court has not declared that vaccination status establishes a suspect class or quasi-suspect class that would trigger strict review by the courts.

The District correctly points out that the United States Supreme Court has declined to provide a strict standard of review when the policy impacts a person who is intellectually challenged or physically infirmed, unless there is a corresponding federal statute.[36] Nevertheless, in the case the District cites, the United States Supreme Court found the city's applied zoning ordinance which prevented an entity from building a facility for intellectually challenged individuals violated the Equal Protection clause because the record revealed there was no "rational basis for believing that the . . . . home would pose any special threat."[37]

When a particular policy touches upon an immutability or an important right, the United States Supreme Court has, even when applying rational basis review, thoughtfully examined the law's rationality, questioning whether animus or fear were a motivating factor in the law's enactment.[38] As Circuit Judge Holmes has noted, this line of United States Supreme Court cases falls on a continuum, and an irrational classification "may be present where the lawmaking authority is motivated solely by the urge to call one group 'other,' to separate those persons from the rest of the community (i.e., an 'us versus them' legal construct)."[39]

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[35] *See e.g., McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964); *Graham* v. *Richardson*, 403 U.S. 365 (1971); *Mississippi University for Women* v. *Hogan*, 458 U.S. 718 (1982); *Craig* v. *Boren*, 429 U.S. 190 (1976).

[36] *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 442, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985). The *Individuals with Disabilities Education Act of 2004* (IDEA) requires that, *to the maximum extent appropriate*, special education students are not to be removed from regular classes, even with supplemental aids and services, unless education in regular classes cannot be achieved satisfactorily. 20 U.S.C. §1412 (a)(5)(A). Whether the IDEA may apply to this case is unclear at this juncture. *See Cudjoe v. Indep. Sch. Dist. No. 12*, 297 F.3d 1058, 1064-1066 (10th Cir. 2002) (finding parents must exhaust administrative procedures before seeking civil action).

[37] *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985). The Supreme Court noted that persons with intellectual challenges have historically been subject to a "history of unfair and often grotesque mistreatment." *Id* at 473.

[38] *See e.g., Romer v. Evans*, 517 U.S. 620, 632, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

[39] *Bishop v. Smith*, 760 F.3d 1070, 1100 (10th Cir. 2014) (concurring opinion); *see also, Bowers v. NCAA*, 475 F.3d 524, 554 (3d Cir. 2007) (examining whether NCAA's rules created a "caste system" for student-athletes with learning disabilities).

The United States Supreme Court has found that while education is not a fundamental right, it "is perhaps the most important function of state and local governments."[40] When examining a government policy under rational basis review that touches upon an important right, the United States Supreme Court has sometimes inspected means the government has selected to achieve its purpose and weighed the benefits and harms of the challenged policy. In *Romer v. Evans*, 517 U.S. 620, 635 (1996), the Supreme Court found Colorado's enactment inflicted "immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it." Likewise, the Supreme Court has also examined whether the challenged policy overly burdens one group while ignoring other groups.[41] *Cleburne*, at 458; *see also*, *U.S. States Dept. Agric. V. Moreno*, 413 U.S. 528 (1974).

Ultimately, even under the most deferential standard of review, the court must still "insist on knowing the relation between the classification adopted and the object to be obtained."[42] Simply put, under rational basis review, courts look to see whether there is "any reasonably conceivable state of facts" that could justify the differential treatment.[43]

For the reasons set forth above, the Court will analyze the District's policy under rational basis review. As a threshold matter, the Tenth Circuit has stated that "an equal protection violation occurs when the government treats someone differently than another who is similarly situated."[44] To be "similarly situated" the individuals "must be prima facie identical in all relevant respects or directly comparable in all material respects; although this is not a precise formula, it is

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[40] *Plyler*, at 222, (quoting *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954)).The Oklahoma Supreme Court has likewise recognized the great importance of education. *Miller v. Childers*, 1924 OK 675, 238 P. 204, 206 (1924); *Fair Sch. Fin. Council of Okla., Inc. v. State*, 1987 OK 114, 746 P.2d 1135, 1149 (declaring students have a right to "a basic, adequate education according to the standards that may be established by the State Board of Education").

[41] *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 458, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985).

[42] *Romer v. Evans*, 517 U.S. 620, 632, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

[43] *City of Herriman v. Bell*, 590 F.3d 1176, 1194 (10th Cir. 2010).

[44] *Penrod v. Zavaras*, 94 F.3d 1399, 1406 (10th Cir. 1996).

nonetheless clear that similarly situated individuals must be very similar indeed."[45] Here, the Court finds Plaintiffs' have established that unvaccinated children are prima facie identical in all relevant respects to those students who are fully vaccinated. The evidence presented during the Evidentiary Hearing established fully vaccinated students are capable of transmitting COVID-19 too.

The next inquiry entails examining the differential treatment. Here, all sides agree that remote learning is inferior to in-person instruction. Moreover, as the record demonstrates, for many of the special needs students, consistency in instruction is critically important to their academic success and mental health. Thus, while students without special needs may be capable of quickly and successfully adjusting between classroom instruction and remote learning, Plaintiffs' students often cannot. The disruption caused by the District's quarantine policy creates significant, detrimental impacts on students with special needs, often leaving them emotionally distressed.

Importantly, the evidence presented reveals that distance learning for many of the Plaintiffs' children is exceptionally inferior because their unique challenges subject them to an elevated risk of falling significantly behind their non-quarantined peers in their studies. Thus, for many of the Plaintiffs' students, the combined impact of self-isolation and remote learning exacerbates their underlying special needs while significantly frustrating their ability to learn. Because of these facts, the Court finds the District's policy has a disproportionate impact on students with special needs. Specifically, the evidence shows the District's one-size-fits-all policy of removing unvaccinated students from the classroom grossly burdens students with special needs, imposing uniquely harsh consequences upon them.

Further, the evidence presented demonstrates that isolating unvaccinated children provided no measurable benefit in combating the spread of COVID-19. During the Evidentiary Hearing,

[45] *U.S. v. Moore*, 543 F.3d 891 (7th Cir. 2008).

there was little or no evidence showing that quarantining unvaccinated children produced any demonstrated decrease in the transmission of COVID-19 within the District. Additionally, Plaintiffs' evidence showed the District's policy for unvaccinated students did nothing to stop the spread of COVID-19. Dr. Stephens, M.D., testified that in his professional opinion, the policy of sending heathy students into quarantine has over time proven largely useless. Plaintiffs also showed that fully vaccinated children are capable of spreading the virus too, yet those students are not subject to the District's close-contact protocols. Plaintiffs firmly established the District's policy overly burdened and irreparably harmed their children, subjecting them to significant mental and physical distress while frustrating their ability to learn. Likewise, Plaintiffs showed that absent an injunction, their unvaccinated children with special needs will likely suffer further irreparable harm.

To be clear, this is not to suggest that the detrimental impact of the District's policy was intentional. Quite the contrary, the Court finds District administrators relied in good faith on guidance from county health officials.[46] Additionally, controlling the spread of COVID-19 is certainly a legitimate, if not highly compelling, governmental interest. But the record demonstrates that not one child quarantined by the District could be classified as "asymptomatic" because (1) no evidence was presented which showed any of the unvaccinated quarantined children tested positive for COVID-19; (2) none of the unvaccinated children were suspected of having been infected while quarantined; (3) no evidence was offered to show any unvaccinated child transmitted the virus to anyone while quarantined.

The District quarantined unvaccinated-yet-healthy children based on concern that some of those students could become asymptomatic transmitters of COVID-19. But evidence before the

[46]There is no question the District has a duty to keep its students, teachers, and staff safe. 40 O.S. § 403(A); Oklahoma Administrative Code 210: 35-3-186(e).

Court shows that in practice, the policy of removing unvaccinated-yet-healthy children from the classroom provided no benefit in slowing the spread of COVID-19. The policy did, however, inflict tremendous harm on some of those students, pushing some to the brink of suicide, while causing others to fall significantly behind in their studies. The District's policy is irrational and fails to balance any of the known dangers associated with quarantining children against the fear of asymptomatic spread among unvaccinated students.

For these reasons, the Court finds there is no reasonably conceivable state of facts that can justify the differential treatment between vaccinated and unvaccinated students at issue here. Therefore, the Court finds that even under a differential standard of review, Plaintiffs are likely to establish that the District's policy violates the Equal Protection Clause of the Fourteenth Amendment.

The Court recognizes that in times of emergency, government officials, like school administrators, are often called upon to make difficult decisions during rapidly evolving situations. When the pandemic began nearly two years ago, perhaps not enough was known about the virus to second-guess the actions of officials who were acting in good-faith to combat the spread. But as more has become known about the virus and targeted ways to respond to it, heavy burdens on constitutional liberties, especially those which overburden vulnerable children, warrant thoughtful judicial review. While school officials can and should consult with public health authorities regarding proper ways to respond to the virus, school administrators are still bound by the constraints of the Constitution. This means school administrators must take the guidance they receive from health officials and craft protocols for their students that avoid offending the Constitution.

Based on the findings of facts and conclusions of law above, the Court **FINDS** the following regarding Plaintiffs' request for a temporary injunction:

1. Plaintiffs are likely to succeed on the merits of their Fourteenth Amendment claim against the Edmond Public School District's COVID-19 protocols at issue here.

2. Absent a temporary injunction, the Edmond Public School District's COVID-19 protocols for unvaccinated students will continue to do irreparable harm to Plaintiffs' children.

3. The threatened injury to the Plaintiffs' children outweighs the injury the Edmond Public School District will suffer under a temporary injunction.

4. Requiring the Edmond Public School District to comply with the Fourteenth Amendment and preventing further harm to Plaintiffs' students is in the public interest.

Plaintiffs' request for temporary injunctive relief is therefore **ORDERED** and **GRANTED** as follows:

1. The Edmond Public School District is temporarily ENJOINED from implementing or enforcing its COVID-19 protocols for unvaccinated students because Plaintiffs have established the protocols likely violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. IT IS FURTHER ORDERED the Edmond Public School District is enjoined from implementing its COVID-19 protocols for unvaccinated students until further Order of the Court.

IT IS SO ORDERED this 7th day of December, 2021.

JUDGE OF THE DISTRICT COURT

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JAN - 5 2022

RICK WARREN COURT CLERK Oklahoma County

Dist.'s Ex. B

Certificate of Mailing

This is to certify that on the 7th day of December, 2021, a copy of the above Order was mailed, postage pre-paid, to:

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Dist.'s Ex. B

EXHIBIT B: SUMMARY OF THE CASE

In Summer 2021, Edmond Public Schools ("District") sought the advice of the Oklahoma City-County Health Department ("OCCHD") due to a rise in COVID-19 infections. Based on guidance from the Centers for Disease Control and Prevention ("CDC"), OCCHD recommended "close contacts" of infected individuals quarantine for 7–10 days unless (A) the close contact was vaccinated against COVID-19 or (B) the close contact had tested positive in the previous 90 days. District implemented a procedure consistent with the guidance from OCCHD.

On September 14, 2021, Plaintiffs filed a Petition for Declaratory Judgment and Injunctive Relief and Application for Temporary Restraining Order ("TRO") alleging the quarantine policy violated: (1) 70 O.S. § 1210.189; (2) the 14th Amendment right to procedural due process; and (3) the First Amendment right to freely assemble. Defendants objected, and a TRO was denied.

The trial court then heard two days of testimony on Plaintiffs' Petition, where District objected to Plaintiffs' Equal Protection Clause argument because it was not pleaded in the Petition or Application. The court denied relief on 70 O.S. § 1210.189, procedural due process, and the right to freely assemble but granted a temporary injunction based on the Equal Protection Clause. The court erred in finding irreparable harm by attributing suicidal ideations and weight loss to District's 7–10-day quarantine policy when the testimony showed those conditions manifested during the prior school year's long-term District-wide lockdown and had since dissipated.

The court abused its discretion in finding no rational basis for the policy because District did not prove: (1) the policy slowed the spread of COVID-19; and (2) any unvaccinated children in quarantine tested positive or transmitted the virus to others. The trial court erred by misstating testimony, finding vaccinated and unvaccinated children are identical, attributing harm to unvaccinated special needs students to *all* unvaccinated students, placing the burden on District to prove the efficacy of its quarantine policy, and not finding District's policy had a rational basis when it was modeled after CDC guidelines.

Dist.'s Ex. B

EXHIBIT C: ISSUES TO BE RAISED ON APPEAL

1. Did the trial court abuse its discretion in granting a temporary injunction based upon an equal protection argument that was not pleaded by Plaintiffs and briefed by Defendants?

2. Did the trial court abuse its discretion in granting a temporary injunction under rational basis review when the trial court agreed that controlling the spread of COVID-19 is a legitimate, if not highly compelling, governmental interest?

3. Did the trial court abuse its discretion in granting a temporary injunction based upon erroneous factual findings that District's quarantine procedure caused some students to lose weight and pushed some students to the brink of suicide when the testimony established those conditions were suffered during the previous school year in response to District-wide lockdowns and had since dissipated?

4. Did the trial court abuse its discretion in finding that *all* Plaintiffs would suffer irreparable harm absent a temporary injunction when the irreparable harm cited applied only to unvaccinated *special needs* students?

5. Did the trial court abuse its discretion in holding that, under rational basis review, there was no conceivable state of facts to justify differential treatment between vaccinated and unvaccinated students when the undisputed evidence was that the Centers for Disease Control and Prevention, the Oklahoma State Department of Health and the Oklahoma City-County Health Department all recommended that unvaccinated close contact students be quarantined?

6. Did the trial court abuse its discretion in holding that, under rational basis review, District had the burden of proving its quarantine procedure *actually* resulted in fewer cases of COVID-19?

Dist.'s Ex. B

EXHIBIT C: ISSUES TO BE RAISED ON APPEAL

7. Did the trial court abuse its discretion in finding that the threatened injury to Plaintiffs' children outweighed the injury to the entire District?

Dist.'s Ex. B