

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PATRICK FLYNN, AJ RATERINK, PATRICIA
LOOKS, BRIAN DOKTER, AND STEVE AND
JAMIE LEMIEUX,

CASE NO. 21-6624-CZ

Plaintiffs,

v

HON. JON HULSING

OTTAWA COUNTY DEPARTMENT OF PUBLIC
HEALTH, LISA STEFANOVSKY, M. ED., in her
official capacity as Administrative Health Officer for
the Ottawa County Department of Public Health,
AND THE OTTAWA COUNTY BOARD OF
COMMISSIONERS,

Defendants.

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AMENDED COMPLAINT FOR IMMEDIATE DECLARATORY RELIEF AND MANDAMUS

There is no other pending or resolved
civil action arising out of the transactions or
occurrences alleged in this Complaint.

NOW COME the Plaintiffs, Patrick Flynn (“Mr. Flynn”), AJ Raterink (“Ms. Raterink”), Patricia
Looks (“Ms. Looks”), Brian Dokter (“Mr. Dokter”), and Steve and Jamie LeMieux (the “LeMieuxes”),
(collectively, the “Plaintiffs”), by and through their counsel, Smith Haughey Rice & Roegge, P.C., and for

their Amended Complaint against the Defendants, Ottawa County Department of Public Health (the “Health Department”), Lisa Stefanovsky, M. Ed., in her official capacity as Administrative Health Officer for the Ottawa County Department of Public Health (“Ms. Stefanovsky”), and the Ottawa County Board of Commissioners (the “County Commission”), hereby state as follows:

INTRODUCTION

1. This lawsuit is an attempt by several community members to reclaim the machinery of local government. More specifically, in this case, the Plaintiffs challenge the ability of one unelected government official to unilaterally make decisions affecting their fundamental rights without any oversight or accountability.

2. On August 20, 2021, three days before the scheduled start of the school year, Ms. Stefanovsky, acting as Administrative Health Officer for the Health Department, issued an order (the “Mask Mandate”) requiring every student and teacher in the K-6 setting to wear a face covering while indoors. (**Exhibit 1**, 8/20/21 Order).

3. The Mask Mandate was an unlawful exercise of governmental authority because it purported to take effect without the County Commission, a group that serves as the elected representatives of the people, voting to approve it. The Mask Mandate was unlawful for other reasons, too.

4. The public’s reaction to the Mask Mandate was swift and definitive. Nearly one-thousand people attended the next County Commission meeting on August 24, 2021. And, the vast majority of them expressed their outrage at the Mask Mandate and asked the County Commission to do something about it. At the same meeting, several County Commissioners took the position that they were powerless to stop the Mask Mandate from taking effect.

5. On August 25, 2021, the very next day, the County Commission’s Chairman, Roger Bergman, issued a public statement doubling-down on his alleged political powerlessness. In that

statement, Commissioner Bergman claimed that there is “no question that the [County Commission] cannot make this decision and cannot reverse this decision.” (**Exhibit 2**, Commissioner Bergman’s 8/25/21 statement). That’s simply untrue.

6. The Plaintiffs filed this lawsuit challenging the Mask Mandate on several grounds. In response, on October 8, 2021, Ms. Stefanovsky issued a new order (the “Reconciled Mask Mandate”) that made several “factual determinations” in an attempt to reconcile other previous orders, including the Mask Mandate, with “current facts and law.” (**Exhibit 3**, 10/8/21 Order).

7. At the same time, the Reconciled Mask Mandate “supersede[d] the...August 20, 2021 Order where inconsistent and incorporate[d] by reference all provisions of the...August 20, 2021 Order that are not inconsistent.” Put another way, then, the Reconciled Mask Mandate left the original Mask Mandate’s face covering restrictions fully intact.

8. The Reconciled Mask Mandate was designed to clean up the Health Department’s previous mandates and help them survive judicial scrutiny by bolstering their factual underpinnings.

9. However, the Reconciled Mask Mandate did not attempt to cure the original Mask Mandate’s procedural defect. More specifically, the Reconciled Mask Mandate was issued without County Commission approval.

10. Not surprisingly, while answering the Plaintiffs’ Complaint, the Defendants relied upon the Reconciled Mask Mandate. They also reiterated their pre-suit contention that Ms. Stefanovsky can promulgate orders like the ones at issue without the County Commission’s approval. But, the Defendants are wrong. Michigan law requires the County Commission to approve of the Mask Mandate, the Reconciled Mask Mandate, and any other future orders before the same can be given legal effect. Ms. Stefanovsky is not allowed to operate in an accountability vacuum.

11. In light of these recent developments, the central question posed by this lawsuit—whether Ms. Stefanovsky can issue mandates like these without obtaining the County Commission’s approval—is framed perfectly for judicial review. So, the Plaintiffs are filing an Amended Complaint, and sharpening their claims for declaratory relief.

12. The Plaintiffs now seek a judicial declaration that the Reconciled Mask Mandate is unlawful; that the Health Department’s regulations—including pandemic orders—don’t take effect until the County Commission has approved them; and that the voice of Ottawa County’s residents still has value. For the reasons that follow, the Plaintiffs’ request for relief should be granted.

PARTIES, JURISDICTION, AND VENUE

13. Mr. Flynn is a resident of Ottawa County. He has a child who attends a Jenison Public School in the K-6 setting, and is otherwise subject to the Reconciled Mask Mandate. Michigan law recognizes Mr. Flynn’s fundamental right to “make decisions concerning the care, custody, and control” of his child. *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014); see also *Frowner v Smith*, 296 Mich App 374, 382; 820 NW2d 235 (2012) (holding that “a parent’s precious right to raise his or her child is so firmly rooted in our jurisprudence that it needs no further explanation.”). The Reconciled Mask Mandate interferes with that right. So, Mr. Flynn has standing to bring this challenge.

14. Ms. Raterink is a resident of Ottawa County. She has a child who attends an Allendale Public School in the K-6 setting. For that reason, Ms. Raterink also has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of her child. *In re Sanders*, supra, at 409. The Reconciled Mask Mandate interferes with that right. She has standing to bring this challenge, too.

15. Ms. Looks is a resident of Ottawa County. She has a child who attends a Coopersville Public School in the K-6 setting. Ms. Looks has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of her child. *In re Sanders*, supra, at 409. The Reconciled Mask

Mandate interferes with that right. So, like the other Plaintiffs, Ms. Looks has standing to bring this challenge.

16. Mr. Dokter is a resident of Ottawa County. He has three children who attend a Hudsonville Public School in the K-6 setting. Mr. Dokter has a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of his children. *In re Sanders*, supra, at 409. The Reconciled Mask Mandate interferes with that right. Mr. Dokter has standing to bring this challenge, too.

17. The LeMieuxes are residents of Ottawa County. They have a child who attends a Coopersville Public School in the K-6 setting. The LeMieuxes have a legally recognized “fundamental right” to make decisions regarding the care, custody, and control of their child. *In re Sanders*, supra, at 409. The Reconciled Mask Mandate interferes with that right. So, they have standing to bring this challenge.

18. The County Commission is an elected body that represents the people of Ottawa County, Michigan. Its powers are derived from the Michigan Constitution and state statutes. *Arrowhead Development Co v Livingston County Road Commission*, 413 Mich 505, 511-512; 322 NW2d 702 (1982). Moreover, the County Commission constitutes a “local governing entity” as that term is used in MCL 333.2406(a), the portion of the public health code relevant to this dispute. Finally, according to Ottawa County’s website, the County Commission “provides leadership and policy direction for all County activities,” and is responsible for “[establishing] the policies of county government” and “[devoting] ... time to oversight of the administrators in county government.” See <https://www.miottawa.org/departments/boc/>

19. The Health Department is the local administrative agency tasked with protecting the public health of Ottawa County, but only within the limits of its statutorily delegated authority. Additionally, the Health Department constitutes a “local health department” as that term is used in MCL 333.2401, *et seq.*

20. Ms. Stefanovsky is the Administrative Health Officer of the Health Department. She constitutes a “local health officer” as that term is used in MCL 333.2428.

21. This Court has jurisdiction over this dispute by virtue of MCL 600.605.

22. Venue is proper in this Court under MCL 600.1615 because all the Defendants exercise governmental authority in Ottawa County. Each Defendant maintains a principal office in Ottawa County. Venue is appropriate in this Court for that reason, too.

23. Under MCR 2.605, an action for declaratory judgment is considered “within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.” As such, the fact that the Plaintiffs are seeking declaratory relief does not affect this Court’s jurisdiction over the underlying action.

24. Finally, under MCR 3.305(A)(B), an action for mandamus against a county commission, like this one, must be brought in a circuit court for a county in which venue is proper under the general venue statutes and rules. So, venue for the purpose of the Plaintiffs’ mandamus claim is proper here, too.

IMMEDIATE DECLARATORY RELIEF UNDER MCR 2.605 IS APPROPRIATE

25. Under Michigan law, “whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.” *League of Women Voters v Secretary of State*, 506 Mich 561, 585-586; 957 NW2d 731 (2020).

26. To that end, MCR 2.605(A)(1) states that, “[i]n a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.”

27. To show an “actual controversy,” the Plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing School Educational Association v Lansing Board of Education*, 487 Mich at 372 n 20; 792 NW2d 686 (2010).

28. Michigan’s appellate courts have consistently found that a plaintiff pleads an “actual controversy” where they allege that an invalid rule or illegal action jeopardizes their rights or interests. See *Lash v Traverse City*, 479 Mich 180, 196-197; 735 NW2d 628 (2007); *UAW v Central Michigan University Trustees*, 295 Mich App 486, 496-497; 815 NW2d 132 (2012).

29. Here, the Plaintiffs allege that the Reconciled Mask Mandate was issued in violation of the Public Health Code’s statutory framework. Moreover, each of the Plaintiffs has a constitutionally protected interest that is affected by the Reconciled Mask Mandate’s restrictions. They (and their children) are also susceptible to civil or criminal penalties for non-compliance with the Reconciled Mask Mandate. So, the Reconciled Mask Mandate, which they allege to be invalid, jeopardizes the Plaintiffs’ well-established rights or interests. A declaratory judgment is therefore necessary to sharpen the issues raised, and to clarify that the Reconciled Mask Mandate is an invalid and unlawful exercise of governmental authority.

30. Additionally, in their Answer to the Plaintiffs’ initial Complaint, the Defendants take the position that orders like the Reconciled Mask Mandate are not subject to reversal, ratification, approval, or rejection by the County Commission. That position further sharpens the central issue in this lawsuit. Declaratory relief is appropriate for that reason, too.

31. Finally, MCR 2.605(D) says that a court “may order a speedy hearing of an action for declaratory relief” and otherwise “advance it on the calendar.” Given the purely legal nature of the issues presented and the fundamental nature of the rights involved, the Plaintiffs hereby request an expedited determination of their claims.

32. For these reasons, then, the Plaintiffs request a declaratory judgment under MCR 2.605.

FACTUAL BACKGROUND

33. On August 20, 2021, the Health Department issued the original Mask Mandate, which required every educational institution in Ottawa County to ensure that its students in “Pre-Kindergarten

through Grade 6 consistently and properly wear a facial covering while inside any enclosed building or structure of the institution.” (**Exhibit 1**, p. 3).

34. The Mask Mandate also required every educational institution to ensure that “all persons, regardless of vaccination status, providing service to any persons in Pre-Kindergarten through Grade 6 properly and consistently wear a facial covering while inside an enclosed building or structure of the institution.” (*Id.*).

35. Under the Mask Mandate, the term “persons” includes “students, teachers, administrative staff, attendees, volunteers, coaches, camp leaders, and other employees or volunteers” of an educational institution. (*Id.*). The Health Department’s Mask Mandate further defines “educational institutions” as including “youth camps, youth programs, child care centers, preschools, primary through secondary schools,” among other things. (*Id.*).

36. According to the Mask Mandate’s plain terms, the Health Department allegedly derived the authority to issue it from several statutes and one administrative rule. But, none of those code sections authorized that version of the Mask Mandate. Nor did any of those legal authorities otherwise insulate the Mask Mandate from the County Commission’s plenary power to approve or disapprove of it.

37. The Plaintiffs filed this lawsuit, challenging the Mask Mandate on several grounds. In direct response to those challenges, Ms. Stefanovsky issued the Reconciled Mask Mandate. According to its plain terms, that new order, which was also issued without County Commission approval, incorporated and superseded the original Mask Mandate. (**Exhibit 3**, page 4). The Reconciled Mask Mandate also left all the Health Department’s previous mandates, including the Mask Mandate related to K-6 student face coverings, fully intact.

38. The initial Mask Mandate contained several loosely connected and, ultimately, insufficient factual findings in support of the Health Department’s COVID-19 mitigation mandates. The Defendants

recognized that was a problem. As a result, the Reconciled Mask Mandate made several new factual findings in an attempt to support the Defendant's assertion that requiring everyone in the K-6 setting to wear a face covering while indoors is necessary to protect the public health; to ensure continued access to essential public health services; to ensure continued enforcement of health laws; and to prevent imminent danger to Ottawa County's residents. Aside from those additional factual findings, though, the Reconciled Mask Mandate left Ms. Stefanovsky's August 20, 2021 order virtually unchanged.

39. Several days after the Reconciled Mask Mandate was issued, the Defendants filed their Answer to the Plaintiffs' initial Complaint. In that pleading, the Defendants denied most of the Plaintiffs' allegations, including that the original Mask Mandate was unlawful. The Defendants also relied upon the new factual findings contained in the Reconciled Mask Mandate.

40. More importantly, though, the Defendants' Answer made two, far more significant assertions: (1) that the original Mask Mandate was not a Health Department "regulation" because it was an "order"; and (2) that, as an "order," the original Mask Mandate was not subject to reversal, modification, ratification, or approval by the County Commission under MCL 333.2441. Neither of these things are true.

41. In light of the Reconciled Mask Mandate's content, as well as the Defendants' official litigation position, the Plaintiffs' are now amending their claims. More specifically, the Plaintiffs no longer challenge whether Ms. Stefanovsky's factual findings were enough to trigger the authority granted by the statutes and rules cited in the original Mask Mandate and incorporated by the Reconciled Mask Mandate. Rather, the Plaintiffs focus solely on the Defendants' contention that Ms. Stefanovsky and the Health Department can operate in an accountability vacuum, where the people's elected representatives are powerless to intercede, despite clear statutory authority to the contrary.

42. Moreover, none of the urgency surrounding the Plaintiffs' claims has been dissipated by these recent events. Both the original Mask Mandate and the Reconciled Mask Mandate were, are, and will

continue to be invalid exercises of governmental authority. Yet, Ottawa County’s residents, including the Plaintiffs and their children, remain subject the Reconciled Mask Mandate’s restrictions, the violation of which is a misdemeanor “punishable by imprisonment for not more than 6 months or a fine not more than \$200, or both.” MCL 333.2443.

43. The Health Department had previously taken other steps to enforce the original Mask Mandate, too. On September 15, 2021, it issued a form Attestation to the relevant COVID-19 response contact person at every school in Ottawa County. (**Exhibit 4**, 9/15/21 Attestation). This Attestation was supposed to be signed by every principle or head administrator of a school under the Health Department’s jurisdiction, and required those individuals to declare that they had: (1) “enforced” the original Mask Mandate and corrected any violations of it, (2) told parents and teachers that the original Mask Mandate “[was] not optional and [was] not a matter of parental or personal choice,” and (3) told their staff that any student who takes their mask off “must ... replace it or be directed to the office where the parent is then called and asked to promptly pick the child up.” (*Id.*).

44. Based upon the language of the Attestation, the Health Department intends to enforce its face covering regulations, including those that are contained in the Reconciled Mask Mandate, by requiring that every K-6 student who refuses to wear a face covering be removed from the classroom and sent home.

45. Ultimately, then, the salient facts are these: (1) just like the Health Department’s original Mask Mandate, the Reconciled Mask Mandate was issued unlawfully without the County Commission’s approval; (2) the failure to comply with the Reconciled Mask Mandate places every noncompliant child or adult at risk of one or more of the penalties set forth above; and (3) the Defendants are entrenched in the position that the Reconciled Mask Mandate (and any subsequently issued orders of that type) are immune from County Commission oversight.

46. Given these considerations, an actual, justiciable controversy exists and immediate declaratory relief is appropriate.

COUNT I
JUDICIAL DECLARATION: THE COUNTY COMMISSION HAS A STATUTORY DUTY TO “APPROVE” OR “DISAPPROVE” OF THE RECONCILED MASK MANDATE

47. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

48. The Health Department is a “local health department” under the Public Health Code. As such, its authority is limited and explicitly defined by statute. The statutory limits of the Health Department’s authority are defined as follows:

- a. Under MCL 333.2433(2)(a) and (f), a local health department shall “[i]mplement and enforce laws for which responsibility is vested in the local health department” and “[h]ave powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law”;
- b. Under MCL 333.2435(d) and (i), a local health department may “[a]dopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination” and “[p]erform a delegated function”;
- c. Under MCL 333.2441, a “local health department may adopt regulations necessary or appropriate to implement or carry out the duties or functions vested by law in the local health department”; and
- d. Under MCL 333.2428, the “local health officer shall act as the administrative officer of the Board of Health and local health department and may take actions and make determinations necessary or appropriate to carry out the local health department’s functions under this part or functions delegated under this part and to protect the public health and prevent disease.”

49. According to the Health Department, the Reconciled Mask Mandate is an “order” promulgated under the authority conferred by MCL 333.2451, MCL 333.2453, MCL 333.2433, and MCL 333.2428(2).

50. The County Commission constitutes a “local governing entity” under Michigan’s Public Health Code. Furthermore, under Michigan law, “local health departments” are created by a “local governing entity.” MCL 333.2413. In that sense, the County Commission has primacy over, and is statutorily obligated to oversee, the Health Department.

51. The Public Health Code’s plain language supports this conclusion by providing that, when a local health department adopts a “regulation,” it “shall be approved or disapproved by the local governing entity.” MCL 333.2441. And, those regulations only become effective after receiving this “approval.” (*Id.*).

52. Clearly, then, Michigan law requires that a local governing entity oversee, and ultimately, approve any “regulations” issued by a local health department before they obtain the force of law.

53. The Health Department’s Reconciled Mask Mandate is a “regulation” within the plain meaning of MCL 333.2441.

54. So, the County Commission is statutorily obligated to approve or disapprove of the Reconciled Mask Mandate before it takes effect.

WHEREFORE, the Plaintiffs hereby respectfully request that this Honorable Court issue an Order declaring that:

- a. Under MCL 333.2441, the County Commission has a mandatory statutory duty to exercise oversight over the Health Department’s regulations;
- b. Any orders promulgated by the Health Department under MCL 333.2451, MCL 333.2453, MCL 333.2433, and MCL 333.2428(2) are “regulations” within the plain meaning of MCL 333.2441; and
- c. Under the plain language of MCL 333.2441, the Health Department’s Reconciled Mask Mandate is a “regulation” subject to the County Commission’s approval or disapproval.
- d. The Health Department’s Reconciled Mask Mandate is procedurally invalid and legally inoperative because it was never approved by the County Commission.

COUNT II
MANDAMUS

55. The Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

56. Although it cannot be used to compel a particular outcome, mandamus is properly employed “to require a body or an officer charged with a duty to take action in the matter, notwithstanding the fact that the execution of that duty may involve some measure of discretion.” *Teasel v. Department of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984).

57. Under MCL 333.2441, the County Commission has a mandatory statutory duty to exercise oversight in relation to the Health Department’s regulations, including the Reconciled Mask Mandate. Use of the term “shall” within the relevant statutory framework plainly establishes this fact.

58. So, while the County Commission has discretion to *either* “approve” or “disapprove” of the Health Department’s Reconciled Mask Mandate, its exercise of that discretion is statutorily mandated by the plain language of MCL 333.2441. Put another way, then, the County Commission cannot refuse to “approve” or “disapprove” of the Reconciled Mask Mandate.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court issue a writ of mandamus compelling the County Commission to comply with its statutory duty and vote to either “approve” or “disapprove” of the Reconciled Mask Mandate as required by the plain language of MCL 333.2441.

REQUEST FOR RELIEF

WHEREFORE, for the reasons stated above, the Plaintiffs respectfully request that this Honorable Court:

- a. Order “a speedy hearing” of this action and “advance it on the calendar” of the docket under MCR 2.605(D);

- b. Issue a judgment providing the declaratory relief articulated above;
- c. Issue a writ of mandamus compelling the County Commission to comply with its statutory duty and vote to either “approve” or “disapprove” of the Reconciled Mask Mandate; and
- d. Grant any other relief deemed to be equitable and just.

Date: October 25, 2021

By: 

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EXHIBIT 1



**STATE OF MICHIGAN
OTTAWA COUNTY DEPARTMENT OF PUBLIC HEALTH**

August 20, 2021

In the Matter of:

COVID-19 Prevention through the Wearing of Face Masks in Educational Settings
within Ottawa County, Michigan:

The Administrative Health Officer of the Ottawa County Department of Public Health makes the following factual determinations and issues this Order pursuant to the Michigan Public Health Code, MCL 333.2451 and 333.2453, as well as R. 325.175(4), which is an administrative rule promulgated by the Michigan Department of Health and Human Services pursuant to MCL 333.2226(d). Factual findings include:

1. The virus (SARS-CoV-2) that causes COVID-19 spreads mainly from person-to-person, primarily through respiratory droplets produced when an infected person or carrier coughs, sneezes, or talks. These droplets can enter the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely to occur when people are in close contact with one another (within about 6 feet).
2. The Delta variant of the SARS-CoV-2 virus is the dominant variant in Michigan and is significantly more contagious than the original form that entered the United States in winter 2020. Current research indicates the Delta variant may cause more serious illness in persons of all ages, including children. West Michigan cases have already emerged in which previously healthy infants, children, and teens have faced hospitalization, life support, life-threatening complications (Multisystem Inflammatory Syndrome in Children) and chronic symptoms (Long COVID-19).
3. COVID-19 infections and COVID-19 hospitalizations are increasing among children in the United States, with over 120,000 children testing positive the week of August 6-12, according to a report from the American Academy of Pediatrics (AAP). This is an increase from the week prior when just over 93,000 child COVID-19 cases were reported. According to the Centers for Disease Control and Prevention (CDC), as of August 16, 2021 the rate of new hospital admissions among children 0-17 years of age increased to 0.41 new admissions per 100,000 population, the highest recorded since August of 2020. In States experiencing surges, hospital new admission rates per 100,000 population for children are as high as 3.41 in Alabama, 1.06 in Georgia, and 1.28 in Florida; indicating that a surge in Michigan could easily result in an increased hospitalization rate among children.
4. Although vaccinations prevent most infections, slow community transmission, and

reduce the risk of severe outcomes due to COVID-19 disease, COVID-19 remains a public health issue that impacts local institutions, particularly in educational settings where students younger than twelve (12) years of age are ineligible to receive vaccination, are required to receive an education and are at school five days each week for many hours each day.

5. Studies of COVID-19 incidence in school districts during the 2020-2021 school year demonstrate that proper masking is the most effective mitigation strategy to prevent secondary transmission in schools when COVID-19 is circulating and when vaccination is unavailable, or there is insufficient uptake of vaccination.
6. According to the AAP, the CDC, and the Michigan Department of Health and Human Services (MDHHS), the universal use of masks in schools is a safe, essential, and proven strategy to reduce the spread of COVID-19 in schools.
7. Masks are primarily intended to reduce the emission of virus-laden droplets, which is especially relevant for asymptomatic or pre-symptomatic infected wearers who feel well and may be unaware of their infectiousness to others, and who, are estimated to account for more than 50% of transmissions. Masks also help reduce inhalation of these droplets by the wearer. The community benefit of masking for SARS-CoV-2 control is due to the combination of these effects; individual prevention benefit increases with increasing numbers of people using masks consistently and correctly.
8. On August 18, 2021, the MDHHS publicly presented an update on COVID-19 data trends across the state. That presentation included data and interpretation supporting the following statements from MDHHS:
 - a. Consistent mask use can reduce risk in the school setting. A study from North Carolina concluded that 40 - 70% of cases could be prevented through mask use.
 - b. Counties with mask mandates have experienced lower rates of illness.
9. When layered prevention strategies are applied consistently, including consistent and proper mask use, school-associated transmission of COVID-19 is reduced.
10. The preceding factual findings have been concluded after careful deliberation of the literature and review by a medical advisory workgroup consisting of local physicians and experts specializing in infectious disease control and pediatric health.
11. The wearing of face masks in schools is supported by Holland Hospital, Mercy Health Saint Mary's, Metro Health – University of Michigan Health, North Ottawa Community Health System, and Spectrum Health as important for protecting the health of our community. These local healthcare institutions continue to see the severe impacts of COVID-19 on all parts of our community, including among young people, and they share our commitment to see our community's children receive excellent in-person education in the safest environments reasonably possible.
12. The Kent County Health Department and the Ottawa County Department of Public Health are jointly making these findings to achieve a consistent regional approach to the face mask measures contained in this Order.

13. The Local Health Departments are aware of information circulating in the Community regarding alleged motivations and alleged untoward alliances regarding masking and assure the Community that the only motivations involved in this Order are the health, safety, and well-being of area children in the face of the newest variant of the novel Coronavirus, and the only alliances involved in this Order are among the Health Department professionals that share the same singular motivations.

NOW, THEREFORE, IT IS HEREBY ORDERED that all Educational Institutions and all Persons in Educational Settings must adhere to the following rules:

1. The Educational Institutions shall ensure that people in pre-kindergarten through grade six consistently and properly wear a facial covering while inside any enclosed building or structure of the institution.
2. The Educational Institutions shall ensure that all persons, regardless of vaccination status, providing service to any persons in pre-kindergarten through grade six properly and consistently wear a facial covering while inside any enclosed building or structure of the institution.

IT IS FURTHER ORDERED that the following terms shall have the following definitions for purposes of this ORDER:

- a. "Educational Institutions" or "Educational Settings" includes youth camps, youth programs, childcare centers, preschools, primary through secondary schools, vocational schools, colleges, and universities and other organized activities outside the home where coursework is taught. This definition includes educationally affiliated extracurricular activities such as school athletics.
- b. "Fully vaccinated persons" means persons for whom at least two weeks has passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.
- c. "Persons in Educational Settings" means students, teachers, administrative staff, attendees, volunteers, coaches, camp leaders, and other employees or volunteers of Educational Institutions.

IT IS FURTHER ORDERED that this ORDER shall not apply to the following Persons:

1. Persons in the act of eating or drinking.
2. Persons under the age of four years; however, supervised masking is recommended for children who are at least two years of age.
3. Persons with developmental conditions of any age attending school for whom it has been demonstrated that the use of a face covering would inhibit the person's access to education. These are limited to persons with an Individualized Education Plan, Section 504 Plan, Individualized Healthcare Plan or equivalent.
4. Vaccinated teachers who are working with children who are hard of hearing or students with developmental conditions who benefit from facial cues.

5. Persons who have a medical reason confirmed in writing from a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO) currently licensed to practice medicine in the State of Michigan.

IT IS FURTHER REMINDED that:

1. On January 29, 2021, the CDC issued an ORDER that required face masks to be worn by all people while on public transportation (which included all passengers and all personnel operating conveyances) traveling into, within, or out of the United States and U.S. territories. The CDC ORDER includes school buses, both public and private.
2. On July 27, 2021, the CDC issued recommendations calling for universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status. On August 13, 2021, the MDHHS issued updated guidance stating that all schools should require universal indoor masking. The Local Health Departments Educational Institutions of these recommendations and encourage them to enact policies to this effect.
3. This order does not repeat, supersede, or rely on any current MDHHS or Federal Epidemic Orders, which are incorporated by reference herein.

THIS ORDER is effective immediately and remains in effect until 60 days past the date COVID-19 vaccine is authorized or approved by the FDA and available to persons in pre-kindergarten through grade six, or community transmission for Ottawa County is categorized as "Low" by the CDC for at least seven consecutive days, or until further notice from the Administrative Health Officer.

August 20, 2021



Lisa Stefanovsky, M.Ed.
Administrative Health Officer
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EXHIBIT 2



Ottawa County
Board of Commissioners

Roger A. Bergman
Chairperson

Matthew R. Fenske
Vice-Chairperson

Statement of Roger Bergman, Chair
Ottawa County Board of Commissioners
Wednesday, August 25, 2021

I was impressed with the number of citizens who showed up yesterday to express themselves, but very disappointed by the organized effort to bully and intimidate anyone who dared to speak in favor of a mask mandate in schools. County-wide epidemic orders are extremely rare and typically generate intense controversy, which is why our state legislature has insured that those decisions are made by the county health officers exclusively. There is no question that the Board of Commissioners cannot make this decision and cannot reverse this decision. Legally, the Board cannot fire the health officer for making this decision nor can it use its power of the purse to bully her into rescinding the decision. There were some legitimate issues that the Board will ask the County's health officer to address such as the timing of her decision, the type of masks that will be available to children, and how students with legitimate medical reasons can more easily obtain exemptions. I wish to remind everyone that most of the students in the United States will be in school with masks, as they were last year. The temporary area local health orders this year only apply to K-6 and, unlike last year, will not apply outdoors. The Ottawa County Board of Commissioners sincerely hope that the order will expire during the fall semester by its own terms, that we can keep the schools open this year, and that we can return to complete normalcy by the spring semester.

Roger A. Bergman

Francisco C. Garcia Joseph S. Baumann Douglas R. Zylstra Allan Damsenborg Randall J. Meppelink
Kyle J. Terpstra James H. Holveluwer Phillip D. Kuyers Gregory J. DeJong

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EXHIBIT 3



**STATE OF MICHIGAN
OTTAWA COUNTY DEPARTMENT OF PUBLIC HEALTH**

**RECONCILIATION OF CERTAIN PROVISIONS IN AUGUST 6, 2021 AND AUGUST 20, 2021
ORDERS**

Pursuant to MCL §333.2451, MCL §333.2453, MCL §333.2433 and by MCL §333.2428(2), the Administrative Health Officer makes the following factual determinations to reconcile the orders considering current facts and law:

In the Matter of:

COVID-19 Prevention in Educational Settings within Ottawa County.

Based on changes in the recommendations from Michigan Department of Health and Human Services (MDHHS), the definition of an “Outbreak” in an educational setting is from two cases to three:

1. “Outbreak” in an educational setting is generally defined by the CSTE and referenced in the Michigan State and Local Public Health Standard Operating Procedures. The CSTE definition has been updated for K-12 schools since the issuance of the August 6, 2021 Order. This definition can be found at the following link:

<https://preparedness.cste.org/wp-content/uploads/2021/08/CSTE-Standardized-COVID-19-K-12-School-Surveillance-Guidance-for-Classification-of-Clusters-and-Outbreaks.pdf>

The August 6, 2021 Order requires quarantine for all persons in educational settings in close contact with a COVID-19 case involved in an outbreak. This change to the “Outbreak” in an educational setting definition from two to three cases may result in fewer children and school staff being required to quarantine.

In the Matter of:

COVID-19 Prevention through the Wearing of Face Masks in Educational Settings Grades pre-kindergarten through Grade 6 within Ottawa County.

The Public Health Code sections referenced above have **not** been amended by the State Legislature’s 2021/22 appropriations bill and, therefore, the legal support for this Order has not changed. If the Legislature amends the health officers’ statutory authority, the Orders will certainly be adjusted or terminated accordingly.

One of the two methods whereby the Order is terminated is adjusted from seven consecutive days of community transmission at the CDC “Low” level to fourteen consecutive days of community transmission in the “Moderate” level, with additional factual findings to support this order:

1. Specifically, the August 20, 2021 Order and the provisions of this Reconciliation Order remain in effect until 60 days past the date COVID-19 vaccine is authorized or approved by the FDA and

available to persons in pre-kindergarten through grade six, or community transmission for Ottawa County is categorized as “Moderate” by the CDC for at least fourteen consecutive days, or until further notice from the Administrative Health Officer.

2. The CDC Community Transmission Level was “Moderate” during summer 2021, with relatively few pediatric or adult COVID-19 cases reported each week; if “Moderate” transmission is reattained, select mitigation strategies in schools could be reduced.
3. Face masking of unvaccinated children and their teachers in a congregate gathering, which is what occurs in an in-person classroom setting, is a necessary contingency to the gathering in order for the Health Department to prevent the spread of COVID-19, as is required of the Department under MCL §333.2433, and to ensure continuation of essential public health services and enforcement of health laws in Ottawa County for reasons that include but are not limited to the following:
 - a. Many children in this age group have close contact with their grandparents and other family members who are 65 years of age and older and, therefore, particularly vulnerable to complications of COVID-19 infection, requiring extra attention of the public health system to avoid COVID-19 exposure, and who may require extensive treatment measures if infected thus impairing essential public health and health care services and the enforcement of health laws. Thus, this order protects not only children in this age group, but their teachers, parents, grandparents, and others affected by community spread who are statistically more vulnerable to severe COVID illness and death;
 - b. Because the congregate activities of children in the subject age group are in close proximity and result in numerous close contacts, the complex nature of contact tracing for positive COVID-19 cases in educational settings particularly strains and interferes with essential public health services and enforcement of health laws, such as quarantining and contact tracing. As of October 7, 2021, the public health system has responded to over 5,000 close contact events in schools during the 2021 Fall semester, adding substantial strain to the public health system which is simultaneously experiencing a backlog of over 1,100 cases of all ages awaiting review and investigation follow-up, indicating the growing stress on the public health system;
 - c. Because vaccines are not yet available in this age group, parents do not have that option to protect their children who may be particularly vulnerable to COVID-19, such as those with underlying conditions or disabilities which suppress the immune system or place them at higher risk of severe disease, whom I find are in imminent danger in an unmasked, unvaccinated congregate classroom gathering, and the masking of all students is, therefore, a reasonable accommodation for the gathering pursuant to MCL §333.2451;
 - d. Many studies during the pandemic have indicated the efficacy and effectiveness of face masks for reducing the spread of COVID-19 in indoor settings. Two new studies conducted between July 2021 and September 2021¹ indicate that masking of all students

¹ Budzyn SE, Panaggio MJ, Parks SE, et al. Pediatric COVID-19 Cases in Counties With and Without School Mask Requirements — United States, July 1–September 4, 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1377–1378.

DOI: <http://dx.doi.org/10.15585/mmwr.mm7039e3external icon>.

Jehn M, McCullough JM, Dale AP, et al. Association Between K–12 School Mask Policies and School-Associated COVID-19 Outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1372–1373.

DOI: <http://dx.doi.org/10.15585/mmwr.mm7039e1external icon>.

in kindergarten through twelfth grade schools during a period when the highly transmissible Delta variant is the predominant strain and some older children and educational staff are fully vaccinated in the educational setting, results in a demonstrable reduction of COVID-19 cases and outbreaks, protecting those in school, contributing to the maintenance of in-person learning and reducing the opportunity of community spread;

- e. An evaluation conducted by MDHHS comparing COVID-19 case rates in school districts with High, Medium, and Low mask indices found that districts with the fewest mask rules (Low mask index) experienced higher case rates and faster case rate increases compared to districts with High or Medium mask indices. Any additional increase in COVID-19 cases among school districts in Ottawa County, similar to areas with a Low mask index, would further impair the public health system's ability to conduct COVID-19 response in a timely manner, thereby leading to greater community spread and further impairing essential public health services and enforcement of public health laws;
- f. For the week ending September 26, 2021, one area hospital system reported a census of twelve (12) pediatric patients hospitalized with COVID-19, a level not observed since May 2021. Further, for the week ending October 3, 2021, four (4) pediatric patients hospitalized with COVID-19 required admission to an Intensive Care Unit (ICU). A weekly census of four (4) pediatric patients admitted to ICU has not occurred since May 2021. While these findings shed light on the challenges faced by public health systems to accurately estimate the impact of COVID-19, it supports the imminent danger of the Delta variant to our children and the need for the August 20, 2021 Order as clarified to ensure the continuation of essential public health services and enforcement of public health laws;
- g. Current data suggest that COVID-19 variants are many times more transmissible than influenza and therefore may result in a higher number of pediatric mortalities than influenza, especially when parents cannot choose to obtain COVID-19 vaccine for their children under 12 years of age, though influenza vaccine has been available for ages six (6) months and older for many years. Nearly 600 U.S. children under age eighteen (18) have died from COVID-19 since the beginning of the pandemic in March 2020, while only twenty-eight (28) children in this age group died from influenza during the same period;
- h. Preliminary findings from the world's largest study² on long COVID in children who tested positive for COVID-19 from January through March of 2021, show that one in seven (14%) children and young people may have symptoms linked to the virus months later. There is still much that is unknown about the long-term effects of the virus that causes COVID-19, raising concern that children in this age group who become infected with COVID-19 may suffer debilitating ailments years later. Subacute sclerosing panencephalitis, for instance, is an illness that has a high mortality rate resulting from a measles virus infection acquired 7-10 years prior. Similarly, infections from the Human Papilloma Virus can result in cancer years after initial infection, which is why there is now a vaccine for children;
- i. If exposed to a COVID-19 case in a school setting, unmasked children are considered a close contact and may be subject to a mandatory quarantine if within six feet of an infected person, while masked children are considered a close contact only if within three feet of a masked infected person. Besides alleviating the substantial increase in the public health staff effort to implement and enforce the quarantines, the Order promotes

² Preprint. Stephenson T, Pereira S, Shafran R, et al. Long covid—the physical and mental health of children and non-hospitalised young people 3 months after SARS-CoV-2 infection; a national matched cohort study (The CLoCk) Study.2021. doi: <https://assets.researchsquare.com/files/rs-798316/v1/82480913-3b6d-47fc-9d50-096244918954.pdf?c=1632402660>

the ideal educational environment of in-person learning by allowing children to remain in school who might otherwise be required to quarantine;

This Reconciliation Order supersedes the August 6, 2021 and August 20, 2021 Order where inconsistent and incorporates by reference all provisions of the August 6, 2021 and August 20, 2021 Order that are not inconsistent.

October 8, 2021



Lisa Stefanovsky
Administrative Health Officer
Ottawa County Department of Public Health
12251 James Street Suite 400
Holland, MI 49424

EXHIBIT 4



ATTESTATION
September 15, 2021

I declare that I am the Principal or Head Administrator of _____
School and that I have been present at the School and have enforced the Health Officer's August 20, 2021
Order ("Order") to the best of my knowledge and belief.

I further attest that I have consistently advised parents and teachers that the limited mask mandate in the
Order is not optional and is not a matter of parental or personal choice, rather the only exceptions to the
face covering obligation are those contained in the Order.

I further attest that I have instructed my staff to provide a mask to any pre-K to 6th grade student who does
not have one. Any student who does take the mask off must therefore replace it or be directed to the office
where the parent is then called and asked to promptly pick the child up.

Finally, I attest that I have consistently corrected any violations of this Order among staff and students.

Signature of Principal or Head Administrator

Print Name

Please return a signed copy of this attestation through mail, e-mail or fax no later than **September 22, 2021**.

Attn: Educational Setting Attestation Form

Mail: Ottawa County Department of Public Health
12251 James Street, Suite 400
Holland, MI 49424

E-mail: Covid19@miOttawa.org

Fax: 616-393-5643