

5. District 214 is a school district in Cook County, Illinois, attended by B.C.

Jurisdiction and Venue

6. Venue is proper under 735 ILCS 5/2-101 as Mr. Pritzker maintains a principal office and a principal residence in Cook County.
7. Venue is proper under 735 ILCS 5/2-101 as both Dr. Ayala and District 214 maintain principal offices in Cook County.
8. This Court has jurisdiction as a controversy exists in this case between B.C. and District 214, and the powerful coercive effect of Mr. Pritzker's and Dr. Ayala's actions are the but-for cause of the controversy between B.C. and District 214. A judgement in B.C.'s favor would terminate the controversy in its entirety.

Background

9. On July 30th, 2021, the Board of Education for District 214 voted to allow masks to be optional for students in the district.
10. On August 4th, 2021, Pritzker issued an Executive Order ("Order 85"), directing that all K-12 schools in Illinois require masks indoors, regardless of vaccination status. The order is attached as Exhibit A.
11. Then, on August 11th, 2021, Dr. Ayala and the ISBE issued a letter to all Illinois superintendents, informing them that, should they fail to comply with the Governor's mask mandate, the State may revoke their recognition. The letter is attached as Exhibit B.
12. In direct response to Order 85 and the ISBE's Letter, District 214 amended its guidance to require all students to wear masks.

13. To ensure compliance with the new mask mandate, District 214 will discipline students who refuse to wear masks while in school, with punishments including suspensions.
14. Mr. Pritzker based Order 85 on the Illinois Constitution, and §§ 7(1), 7(2), 7(3), 7(8), 7(12), 7(19) of the Illinois Emergency Management Act (“IEMA”), 20 ILCS 3305.
15. The Order does not identify the specific section of the Illinois Constitution from which the Pritzker alleges he derive authority.
16. IEMA Section 7(1) provides for the suspension “of the provisions of any regulatory statute prescribing procedures for conduct of State business, or the order, rules and regulations of any State agency, if strict compliance with the provision of any statute, order rule or regulation would in any way prevent, hinder, or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.”
17. IEMA Section 7(2) provides for the utilization of “all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.”
18. IEMA Section 7(3) provides: “to transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.”
19. IEMA Section 7(8) provides: “to control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.”
20. IEMA Section 7(12) provides: “control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the

use, sale, or distribution of food, feed, fuel, clothing, and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.”

21. There is no Section 7(19) of the Illinois Emergency Management Agency Act.
22. It is clearly established in Illinois that “*school directors and boards of education*” have authority to impose emergency measures to prevent the spread of infectious disease. *Hagler v. Larner*, 120 N.E. 575, 576 (Ill. 1918) (emphasis added) (citing *Potts v. Breen*, 47 N.E. 81 (Ill. 1897); *People ex rel. LaBaugh v. Bd. of Educ. of Dist. No. 2*, 52 N.E. 850 (Ill. 1899); *People ex rel. Jenkins v. Bd. of Educ. of City of Chicago*, 84 N.E. 1046 (Ill. 1908)).
23. Currently pending in the Illinois legislature is HB2789. Exhibit C.
24. HB2789, should it pass, would change the rule in *Hagler*, and permit the governor to suspend the authority of local school boards, compel them to comply with public health requirements, and prohibit local school boards from passing resolutions that contradict gubernatorial orders related to public health emergencies.
25. HB2789 would give the ISBE the authority to revoke State recognition if they fail to abide by the public health proclamations of the governor or the ISBE during public health emergencies.

Count 1: Declaratory Judgement

26. B.C. incorporates the allegations from paragraphs 1-25 as if each were fully restated herein.
27. Order 85 proports to compel all K-12 schools in Illinois to require students wear masks.

28. The ISBE's Letter further explains that, should a school board fail to comply with Pritzker's order, or issue contrary orders, then the state may revoke recognition of that school board.
29. The question presented – a question of first impression in this Circuit – is whether or not Pritzker and the ISBE have the authority to create substantive law that supplants the power of local school boards, and then use the powerful coercive power of the executive branch to force school districts to change their duly enacted mask policies.
30. Pritzker identified six portions of Illinois law which he believes grant him the authority to impose such a mandate, and usurp power from local school boards.
31. IEMA Section 7(1) provides for the “suspension [of] the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency.” This section does not address – let alone permit – the creation of substantive law that usurps the authority of local school boards.
32. IEMA Section 7(2) provides for the use of State resources to cope with disasters. It neither addresses nor permits the creation of substantive law.
33. IEMA Section 7(3) addresses the control of State department, agencies, and units to effect disaster response and recovery. It gives no authority to create law, and it, conspicuously, does not grant not authority the control of local units of government.
34. IEMA Section 7(8) relates only to logistics: controlling ingress and egress from disaster areas. It neither addresses nor permits the authority Pritzker claims.
35. IEMA Section 7(12) provides for economic controls including imposing quotas, rationing, and price fixing. It does neither addresses nor grants the authority to usurp the control of local school districts.

36. There is no Section 7(19) of the IEMA.
37. The plain language of the IEMA does not delegate Pritzker the authority to usurp and control local school boards.
38. The Illinois legislature itself neither intended nor effectuated such a delegation to the Office of the Governor.
39. Currently pending in the Illinois legislature is HB2789. If passed, HB2789 would compel local school boards to follow the direction of the IDPH during a public health emergency. The bill also imposes sanctions in the event a school board fails to follow the IDPH's instructions.
40. If the legislature understood the original IEMA to delegate to the governor the authority to usurp local school districts, then there would be no reason for them to be considering HB2789.
41. Only the Illinois legislature has the authority to take power from local school boards, and to vest new power in administrative agencies like the ISBE; it is clear by the pending HB2789 that no such delegation has taken place.
42. Pritzker's mask mandate, and the ISBE's threat to remove state recognition of local school boards violates the separation of powers, and represents an illegitimate exercise of authority.
43. The illegal issuance of Order 85 and the ISBE's letter are the but-for cause of District 214's adoption of a mandatory mask mandate.
44. Under District 214's mask rule, students – like B.C. – who do not comply will be sanctioned as a result of the District 214 needing to comply with Order 85.
45. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

Count 2: Injunctive Relief

46. B.C. incorporates the allegations from paragraphs 1-45 as if each were fully restated herein.
47. Injunctive relief is appropriate when a party meets four conditions: (1) he or she possesses a clearly ascertainable right which needs protection; (2) he or she will suffer irreparable injury without the injunction; (3) there is no adequate remedy at law for his or her injury; and (4) a likelihood of success on the merits exists.” *Sheaffer v. Sheaffer*, 993 N.E.2d 559, 561 (Ill. 2nd Dist. 2013), citing *In re Marriage of Davenport*, 904 N.E.2d 650 (Ill. 2nd Dist. 2009) (internal quotation marks omitted).
48. B.C.’s right to have his local school board determine the conduct of his school district is clearly ascertainable as 105 ILCS 5/1 *et seq.* establishes local school boards to carry out the duties associated with the right to education in Illinois. See IL Const. Art. X§1.
49. B.C. has a right to be free from punishment directly resulting from a regulation imposed in violation of Illinois law.
50. By illegally taking authority from local school boards, Mr. Pritzker directly caused a near-certain threat of District 214 disciplining B.C. for not wearing a mask – this constitutes a continuing irreparable injury to B.C.
51. No other remedy at law may compensate B.C. for Pritzker’s illegal actions, or for District 214’s enforcement of the Order 85-induced mandatory mask mandate.
52. B.C. is likely to succeed on the merits of this claim. The Illinois Legislature is currently considering a bill which would grant Pritzker the exact authority he proports to have in this case. If he in fact had the authority to compel K-12 schools to follow COVID guidance from the IDPH and ISBE, then no such bill would be

necessary. The clear actions of the legislature indicate a significant probability of success on the merits of this claim.

- 53. District 214 will attempt to punish B.C. -- in accord with the illegal Order 85 -- should B.C. go forward with his plan to not wear a mask.
- 54. The illegal actions of Mr. Pritzker and the ISBE are the but-for cause of the prospective threat of District 214's disciplinary enforcement against B.C.

Prayer for Relief

For the foregoing reasons, the Plaintiff, TRACY A. COSLEY, on behalf of her minor son B.C., respectfully requests this Court enter an Order:

- A. Declaring that Pritzker has no authority to compel local school boards to follow joint COVID-19 guidance from the Illinois Department of Public Health or the Illinois State Board of Education during a public health emergency;
- B. Declaring that the ISBE has no authority to suspend, revoke, or otherwise penalize local school boards for failing to follow COVID-19 guidance from the Illinois Department of Public Health or the Illinois State Board of Education during a public health emergency;
- C. Declaring that Order 85's mask mandate for all K-12 schools exceeds Pritzker's authority under currently-existing law;
- D. Preliminarily and permanently enjoining the ISBE from suspending, revoking, or otherwise penalizing District 214's school board for permitting masks to be work optionally;
- E. Ordering Township High School District 214 to reinstate the pre-Order 85 status quo, reinstating the board's original vote making the mask mandate voluntary;

- F. Preliminarily and permanently enjoining Township High School District 214 from disciplining or punishing B.C. for not wearing a mask while on school grounds, including extracurricular activities;
- G. For any further relief that this Court deems equitable and just.

Respectfully submitted,



DONALD J. COSLEY
Cosley Law Office
Counsel for Plaintiffs

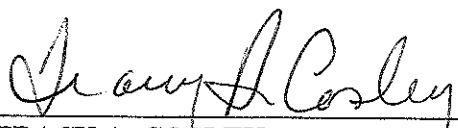
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Attorney No.	32514

State of Illinois)
) SS.
County of Cook)

Verification by Certification

Under penalties of perjury provided by Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matter stated to be on information and belief, and as to such matters, the undersigned certifies that the undersigned believes the same to be true.

Dated: 9-24-21



TRACY A. COSLEY, on behalf of
B.C., a minor

Hearing Date: 1/26/2022 10:30 AM - 10:30 AM
Courtroom Number: 2102
Location: District 1 Court
Cook County, IL

Executive Order Number 18

(COVID-19 EXECUTIVE ORDER NO. 85)



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9/29/2021 4:12 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04914

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August 04, 2021

WHEREAS, since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life, infecting over 1,430,000, and taking the lives of more than 23,475 residents; and,

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WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions; and,

WHEREAS, as Illinois continues to respond to the public health disaster caused by COVID-19, the burden on residents, healthcare providers, first responders, and governments throughout the State has been unprecedented; and,

WHEREAS, the Delta variant of the coronavirus is more aggressive and more transmissible than previously circulating strains, and poses new risks in the ongoing effort to stop and slow spread of the virus; and,

WHEREAS, the Delta variant may cause more severe disease than prior strains of the virus; and,

WHEREAS, the Centers for Disease Control and Prevention (CDC) estimates that the Delta variant now accounts for more than 90 percent of all sequenced coronavirus in the U.S.; and,

WHEREAS, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

WHEREAS, it is critical that the State take every step possible to ensure children can attend school in-person; and,

WHEREAS, social distancing, face coverings, and other public health precautions have proven to be critical in slowing and stopping the spread of COVID-19; and,

WHEREAS, COVID-19 vaccines are effective at preventing COVID-19 disease, especially severe illness and death, but a proportion of the population remains unvaccinated and some residents, including younger children, cannot yet receive the vaccine; and

WHEREAS, the CDC has provided guidance for COVID-19 Prevention in K-12 Schools; and,

WHEREAS, the CDC recently updated its COVID-19 guidance for schools, and now indicates that everyone in K-12 schools should wear a mask indoors, including teachers, staff, students, and visitors, regardless of vaccination status; and,

schools of everyone over the age of two, regardless of vaccination status, because a significant portion of the student population is not yet eligible for vaccines, and masking is proven to reduce transmission of the virus and to protect those who are not vaccinated; and,

WHEREAS, the Illinois State Board of Education (ISBE) and the Illinois Department of Public Health (IDPH) are issuing updated joint COVID-19 guidance and recommendations designed to allow schools in Illinois serving pre-kindergarten through 12th grade students to conduct in-person teaching and learning, while at the same time keeping students, teachers, staff, and visitors safe; and,

WHEREAS, the CDC continues to advise that day care providers use COVID-19 prevention strategies, including masking and physical distancing, even after day care providers and their staff are vaccinated; and,

WHEREAS, the Illinois Department of Children & Family Services (DCFS) and IDPH are issuing updated joint COVID-19 guidance and recommendations for day care facilities, including all licensed day care centers, day care homes, group day care homes, and license-exempt facilities; and,

WHEREAS, the CDC continues to advise that congregate facilities use COVID-19 prevention strategies, including masking and physical distancing, regardless of vaccination status; and,

WHEREAS, IDPH issues and updates COVID-19 guidance for nursing homes and other long-term care facilities, which includes mitigation strategies such as masking and physical distancing, even among vaccinated residents, staff, and visitors; and,

WHEREAS, on July 23, 2021, considering the continuing spread of COVID-19 and the ongoing health and economic impacts that will be felt over the coming month by people across the State, I declared all counties in the State of Illinois as a disaster area;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, pursuant to the Illinois Constitution and the Illinois Emergency Management Agency Act, 20 ILCS 3305, Sections 7(1), 7(2), 7(3), 7(8), 7(12), and 7(19) thereof, and consistent with the powers in public health laws, I hereby order the following:

Section 1: School Mitigation Measures. All public and nonpublic schools in Illinois serving pre-kindergarten through 12th grade students must follow the joint guidance issued by ISBE and IDPH and take proactive measures to ensure the safety of students, staff, and visitors, including, but not limited to:

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

testing, ventilation, handwashing and respiratory etiquette, advising individuals to stay home when sick and get tested, contact tracing in combination with appropriate quarantine and isolation, and cleaning and disinfection) to the greatest extent possible and taking into consideration factors such as community transmission, vaccination coverage, screening testing, and occurrence of outbreaks, consistent with CDC guidance.

Section 2: Day Care Mitigation Measures. All day care facilities in Illinois must follow the joint guidance issued by DCFS and IDPH and take proactive measures to ensure the safety of children, staff, and visitors, including, but not limited to:

- a. Requiring the indoor use of face coverings by children, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status, consistent with CDC guidance; and,
- b. Implementing other layered prevention strategies (such as physical distancing, screening testing, ventilation, handwashing and respiratory etiquette, advising individuals to stay home when sick and get tested, contact tracing in combination with appropriate quarantine and isolation, and cleaning and disinfection) to the greatest extent possible and taking into consideration factors such as community transmission, vaccination coverage, screening testing, and occurrence of outbreaks, consistent with CDC guidance.

Section 3: Long-Term Care Mitigation Measures. All nursing homes and long-term care facilities in Illinois must continue to follow the guidance issued by the CDC and IDPH that requires the use of face coverings in congregate facilities for those over the age of two and able to medically tolerate a face covering, regardless of vaccination status.

Section 4: Savings Clause. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

JB Pritzker, Governor

Issued by the Governor August 4, 2021

Filed by the Secretary of State August 4, 2021

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Illinois State Board of Education

100 North First Street • Springfield, Illinois 62777-0001
www.isbe.net

Darren Reisberg
Chair of the Board

Dr. Carmen I. Ayala
State Superintendent of Education

Pg. 1 of 2

August 11, 2021



Dear Superintendents:

I know many of you are in a difficult position. The pandemic has required us to navigate changing circumstances and guidance. I deeply appreciate your leadership and the courage and integrity you have shown in tremendously challenging times. Many of you have requested clarity on the action ISBE will take to enforce the universal indoor masking requirement, and this communication seeks to provide that clarity.

As you know, [Executive Order 2021-18](#), which went into effect last Wednesday, requires that all students, staff, and visitors wear masks indoors in all P-12 schools in Illinois. Governor Pritzker took this action after the Centers for Disease Control and Prevention and the American Academy of Pediatrics recommended it.

The purpose of the universal indoor masking requirement is to ensure all students can safely attend school in-person this fall. We know that consistent and correct mask use is the simplest, most effective way to keep students safely in school, where they can learn and grow to their fullest potential. Masks work best when everyone wears one. Research conducted by the CDC found that schools are safe **when they have prevention strategies in place**, as documented in the updated [guidance](#) from ISBE and IDPH.

The Delta variant is causing a surge in cases and hospitalizations, and masking is a critical strategy to protect students' access to in-person learning and to keep students, staff, and the community around them safe. We don't throw our umbrella away in a rainstorm because we're not getting wet. We have to keep our umbrella up until the storm passes.

The executive order has the force of law. I understand the pressure some school and district leaders may be facing from community members, and I will provide you with every support to understand, communicate, and comply with the order.

However, noncompliance is not an option. I will not compromise the health and safety of students or staff, nor will I risk even one child's life.

Local boards of education, schools, and school districts do not have the authority to deny the Governor's Executive Order requiring universal indoor masking in schools. Doing so not only

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puts students' health and safety at risk but also opens the district to extraordinary legal liability – potentially without any insurance to cover damages. I strongly recommend that each district consult with its legal counsel and insurer to fully understand the repercussions.

Further, the Illinois State Board of Education has and will use its regulatory authority, pursuant to 23 Ill Admin. Code 1.20, to ensure school districts protect students and staff; if school districts fail to do so, this risks State recognition.

A district would have multiple opportunities to remedy the deficiencies that present a health hazard or a danger to students or staff before becoming unrecognized. A district would first have its recognition status changed to “On Probation” and would be asked to submit a corrective action plan. Failure to address the deficiencies would lead to nonrecognition, meaning total loss of access to state funding and loss of the school’s ability to engage in any Illinois High School Association and Illinois Elementary School Association athletic competitions.

These are not steps anyone at ISBE wishes to take nor should these steps be necessary. School districts have the moral and legal obligation to follow public health requirements and guidance to keep their students and staff safe.

Wearing a mask is simple, safe, and easy. I know it can be uncomfortable sometimes, but so are football helmets and seatbelts. Sometimes we have to bear a little discomfort for the sake of safety and because it’s the law.

We have so many important issues to face as we start the school year, and we want to start the year off with positivity for all our students. I ask that you respect that there is a mask requirement, communicate this to your school communities and celebrate the return to in-person learning.

Thank you for your partnership and support.

Sincerely,



Dr. Carmen I. Ayala
State Superintendent of Education
Illinois State Board of Education

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1 AN ACT concerning education.
 2 **Be it enacted by the People of the State of Illinois,**
 3 **represented in the General Assembly:**
 4 Section 5. The Department of Public Health Powers and
 5 Duties Law of the Civil Administrative Code of Illinois is
 6 amended by adding Section 2310-705 as follows:
 7 (20 ILCS 2310/2310-705 new)
 8 Sec. 2310-705. In-person instruction at schools. The
 9 Department shall establish requirements by rule for providing
 10 in-person instruction at nonpublic schools and public schools
 11 that include, but are not limited to, personal protective
 12 equipment, cleaning and hygiene, social distancing, occupancy
 13 limits, symptom screening, and on-site isolation protocols and
 14 shall disseminate information about those requirements to
 15 nonpublic schools and public schools with the assistance of
 16 the Illinois State Board of Education. The authority to
 17 enforce the rules adopted pursuant to this Section lies with
 18 the Department and local departments of public health. Upon
 19 receipt of a complaint that a school cannot or is not complying
 20 with the Department's rules under this Section, the Department
 21 or local public health department shall investigate the
 22 complaint within 45 days after receiving the complaint. If
 23 upon investigation, a school is found to be in violation of the

1 rules adopted under this Section, the Department has the
 2 authority to take the appropriate action necessary to promote
 3 the health or protect the safety of students, staff, and the
 4 public, including, but not limited to, closure of a classroom,
 5 gym, library, lunch room, or any other school space until such
 6 time that the Department determines that the violation or
 7 violations have been remedied. Nothing in this Section limits
 8 the authority or requirements of the Department or local
 9 public health departments. All complaints and related
 10 documents shall be maintained and are subject to applicable
 11 disclosure requirements under the Freedom of Information Act.
 12 Section 10. The School Code is amended by adding Section
 13 22-92 as follows:
 14 (105 ILCS 5/22-92 new)
 15 Sec. 22-92. In-person instruction. In order to provide
 16 in-person instruction, nonpublic schools and public schools

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17 must follow the requirements adopted by rule by the Department
18 of Public Health under Section 2310-705 of the Department of
19 Public Health Powers and Duties Law of the Civil
20 Administrative Code.
21 Section 99. Effective date. This Act takes effect upon
22 becoming law.