

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Petitioners,

v.

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

Respondents.

Law No.

PETITIONERS' BRIEF IN SUPPORT
OF MOTION FOR TEMPORARY
INJUNCTION

COMES NOW Petitioners, the Des Moines Independent Community School District (“DMPS”), Kyrstin Delagardelle, Dwana Bradley, Rob X. Barron, Teree Caldwell-Johnson, Kalyn Cody, Kimberly Martorano, and Kelli Soyer, and pursuant to Iowa Rule of Civil Procedure 1.1502, submit the following brief in support of their motion for a temporary injunction:

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I. INTRODUCTION

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

On August 17, 2020, the Board of Education for DMPS voted 7–0 to begin the 2020-2021 school year primarily online due to increasing rates of COVID-19 infections in Des Moines and Polk County. Although the Board believes it has the authority to make this determination under Senate File 2310, it directed Superintendent Thomas Ahart to seek a waiver from the Iowa Department of Education (the “DE”) to begin the school year primarily online. Superintendent

Ahart filed the waiver request on August 17, 2020. Ex. 1. On August 21, 2020, Respondents denied the School District's request. Ex. 2.

The basis for the denial of DMPS's waiver request is the proclamation of the Governor issued July 17, 2020 as well as the guidance of the DE and Iowa Department of Public Health ("IDPH) issued July 17, July 20, and July 30, 2020, which, taken together, require that a school district demonstrate that the 14-day average positivity rate in their county is at least 15% and student absenteeism is at least 10% due to COVID-19 before the school district would be allowed to move to a mode of instruction that provide in contravention of Senate File 2310 passed by the Iowa Legislature. *See* Ex. 3–6. On August 14, 2020, the Iowa Department of Education issued further guidance opining that extracurricular activities must be suspended during the period of 100% online learning. Ex. 7.

For factual background and context, Petitioners restate Paragraphs 1–28 and 43–91 of its petition for judicial review as if fully restated herein.

II. STANDARDS FOR INJUNCTIVE RELIEF

“A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation.” *Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005) (citations omitted). The equitable power to enjoin is a remedy designed to avoid irreparable damage and afford relief when there is no adequate remedy at law. *See City of Denison v. Clabaugh*, 306 N.W.2d 748, 755 (Iowa 1981). “The issuance or refusal of a temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case.” *Lewis*, 703 N.W.2d at 184. A temporary injunction should issue where there exists “a pressing necessity to avoid injurious

consequences, which cannot be repaired under any standard of compensation.” *Beidenkopf v. Des Moines Life Ins. Co.*, 141 N.W. 434, 437-38 (Iowa 1913).

Whether a temporary injunction is appropriate in this case depends on four considerations: (1) the probability that Petitioners will succeed on the merits; (2) the threat of irreparable harm to Petitioners should the Court deny the injunction; (3) the balance between this harm and the harm granting the injunction will cause to the Respondents; and (4) the public interest. *See Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001); *see also* Iowa R. Civ. P. 1.1502.

III. ARGUMENT

The Court should grant Petitioners’ motion because, as will be outlined below, Petitioners easily meets the burden of proof required of parties seeking a temporary injunction. *See United Indus. Corp. v. Clorox Co.*, 140 F.3d 1175, 1179 (8th Cir. 1998).

A. Petitioners Are Likely to Succeed on the Merits

Petitioners’ petition for judicial review is based primarily on the contention the Respondents violated Iowa law by usurping the authority granted to local school boards to make decisions in the best interests of their own students and employees. Petitioners are likely to succeed on the merits of this claim.

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

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

With such authority comes the obligation to operate their schools in a safe manner, protecting both students and employees from known hazards. Under Iowa law, school districts are required to “exercise the same standard of care toward children that a parent of ordinary prudence would observe in comparable circumstances,” in light of what risks are reasonably foreseeable. See *Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 69 (Iowa 2002) (citation omitted). School districts can be held responsible for “risks *arising* at school but *materializing* at some later time.” *Mitchell v. Cedar Rapids Community School District*, 832 N.W.2d 689, (2013) (emphasis in original).

No circumstances in our lifetimes have had a greater impact on the ability of school districts to operate safely than the COVID-19 global health pandemic. This is literally a matter of life and death. The operational decisions that need to be made by school boards are totally dependent on the individual circumstances of each respective school district. Like a “a parent of ordinary prudence,” *Ette*, 656 N.W.2d at 69, duly-elected local school boards are in the best position to know their specific communities and evaluate the factors relevant to mitigating risks associated with COVID-19 spread therein, such as school district population and demographics, student and

staff desires and feedback, ability to comply with social distancing and masking guidelines in person, ability deliver online education services, and the like.

Contrary to law and sound public policy, Respondents have prevented local school boards from making decisions to protect the health and safety of their students and staff and have threatened coercive punitive measures to enforce compliance. The one-size-fits-all approach being peddled by the Respondents not only misses the mark by failing to recognize the inherent differences between the smallest school district in Iowa and the largest school district in Iowa, it also plainly usurps the authority of local school boards to make decisions for themselves.

Respondents' approach stands in sharp contrast to well-established Iowa law, which has long held that educational policy is left to school boards. *Olds v. Bd. of Educ. of Nashua Community Sch. Dist.*, 334 N.W.2d 765, 772 (Iowa App. 1983). Even where persons outside a school board believe that strong arguments exist contravening the board's policy choice, those persons have no authority to decide which is the wiser policy when the board is acting pursuant to its statutory authority. *Id.*; *see also In re Lone Tree Community Sch. Dist.*, 159 N.W.2d 522, 525 (Iowa 1968); *Armstrong-Ringsted Community Sch. Dist. v. Lakeland Area Educ. Agency*, 597 N.W.2d 776, 777 (Iowa 1999). DMPS, as a standalone political corporation, is not subject to Respondents' attempt to act as a "super school board." *Cf. Smith v. Bd. of Educ. of Mediapolis Sch. Dist.*, 334 N.W.2d 150, 153-54 (Iowa 1983).

On June 29, 2020, Governor Reynolds signed Senate File 2310, which adopted a variety of requirements applicable to school district reopening plans in Iowa. *See* Ex. 8. Sections 9, 14, and 15 of Senate File 2310 are highly germane to DMPS's Petition, as, taken together, they vest local decision-making authority with local school districts, not with the Governor, the DE, or

IDPH. *See id.* Section 9 explicitly vests DMPS with the authority to establish the “nature, location, or medium of instruction.” *See id.* While in-person instruction may be the “presumed” method of instruction, this presumption can and should be overcome by local conditions relating to COVID-19 that makes returning to in-person instruction an unreasonable risk to the lives, health, and safety of DMPS students, employees, and their families. *See id.*

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

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

Id. (emphasis added). Section 14 explicitly vests the authority to close an entire school district or any attendance center with the board of directors of a school district; not with Respondents. *See id.*

Section 15 of Senate File 2310 further states that the instructional time requirements of section 279.10(1) and minimum school day requirements of section 256.7(19) shall not be waived “*unless* the school district...provide[s] compulsory remote learning, including online learning, electronic learning, distance learning, or virtual learning.” *Id.* (emphasis added). DMPS’s Return-to-Learn Plan provides for compulsory remote learning for all students, with in-person opportunities for students who have special needs, including special education students and English Language Learners. *See* Ex. 9. Furthermore, DMPS has taken extensive measures to ensure all students have access to required online learning, including delivering thousands of laptops and Wi-Fi hotspots to DMPS students.

The final sentence of Section 15(1) states that “[u]nless explicitly authorized in a proclamation of a public health disaster emergency issued by the governor pursuant to section 29C.6 and related to COVID-19, a brick-and-mortar school district...shall not take action to provide instruction primarily through remote-learning opportunities.” Ex. 8. However, Section 15(1) does not define what “take action to provide instruction primarily through remote-learning opportunities” means. *See id.* Nothing in Section 15(1), or Senate File 2310 as a whole, supports the adoption of a two-week measurement window for in-person learning. *See generally id.*

The last sentence of Section 15(1) must be read not in isolation, but in the context of the entirety of the section, which specifically relates to the “instructional time requirements of Section 279.10, subsection 1.” *See id.* Section 279.10(1) addresses the minimum number of days or instructional hours *for an entire school year*. Immediately following this, Section 15(2) states that “If the *board of directors of a school district*...determines at any time...that a remote-learning period is necessary” they shall ensure that teachers and other necessary school staff are available to perform their duties during the period of remote learning. *See id.* (emphasis added).

The last sentence of Section 15(1) must also be read in context of Senate File 2310 as a whole. The Iowa Supreme Court has stated that:

When an examination of the statutory provisions taken together in context creates ambiguity regarding the interpretation of a certain provision, we rely on our rules of statutory construction to guide our interpretive analysis. *Ramirez-Trujillo*, 878 N.W.2d at 770. “We assess the statute in its entirety rather than isolated words or phrases to ensure our interpretation is harmonious with the statute as a whole.” *Id.* Additionally, “we presume the legislature included every part of the statute for a purpose” and “avoid construing statutory provisions in a manner that will lead to absurd results.” *Id.*

Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 251 (Iowa 2018). Taking Senate File 2310 in its entirety, it strongly supports Petitioners’ position.

To be sure, there are many alternatives and opinions as to how to approach returning to school in the midst of COVID-19. And, undoubtedly, those alternatives and opinions each have some value in their own way. But, the choice of which to pursue does not lend itself well to any particular means of resolution and, in this case, it is the role of DMPS and its duly-elected school board—not Respondents’—to decide. *See id.*; *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 859 (Iowa 2008). DMPS’ decision-making has been guided by the important health and safety needs of its community, and has been informed at all times by the input of parents and staff, and by ongoing consultation with public health experts, including Dr. Michael Osterholm, Director of the Center for Infectious Disease Research and Policy at the University of Minnesota. *See Ex. 9*, ¶¶ 20, 26–27.

Respondents cannot order the School District otherwise without a duly approved law. *See Iowa Code § 256.9A* (stating Iowa Department of Education guidance is as only “advisory,” unless specifically authorized by state statute, administrative rules, declaratory orders, or materials required by federal law or courts); by statute.”); *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009) (stating that rules or guidance in excess of the Iowa Department of Education’s purview are “void and invalid”). This is further reinforced by Sections 9, 14, and 15 of Senate File 2310, which when taken together, clearly vest local decision-making authority with local school boards, not with Respondents. Likewise, Respondents cannot prohibit extracurricular activities during 100% online learning when the statutory authority for same has been vested in the School District. *See Iowa Code § 280.14(1)* (stating local school boards have the power to “establish and maintain . . . policies on extracurricular activities”).

While we are certainly living through unprecedented times where existing case law does not always provide ready answers to the very difficult circumstances created by the COVID-19 pandemic, a ruling was issued earlier this week in a state circuit court in Florida on a petition for injunctive relief brought against the Florida governor and other state and local officials relating to their return-to-learn orders. Ex. 10 (*Florida Educ. Ass’n et al. v. DeSantis et al.*, Case No. 2020 CA 001450 (Fla. 2d Cir., Aug. 24, 2020)). Florida’s governor offered Florida’s schools a Hobson’s choice—reopen when it was not safe to do so, or risk losing state funding. *See id.* at *5. The court acknowledged that this gave school districts “no meaningful alternative. If an individual school district chooses safety...it risks losing state funding, *even though every student is being taught.*” *Id.* This is directly analogous to Respondent Reynolds’ edict: open schools, or else face the dire consequence of being required to make up days of instruction, even though every student will receive instruction during the time DMPS is engaged in primarily virtual learning. *See id.*

The Florida court noted that Governor DeSantis’s policy ran afoul of the Florida Supreme Court’s admonishment that “government may not deny a benefit to a person on a basis that infringes his constitutionally protected interest. *See id.* (quotations and citation omitted). Here, Respondents’ actions are in direct contradiction to Article I, Section 2 of the Iowa Constitution, which states that “All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people.” Forcing DMPS to resume in-person instruction when it is not safe to do so is clearly not in the interest of the “protection, security, and benefit of the people.” *See id.*

The Florida court noted that, like DMPS, “[t]here is not room in many classrooms for social distancing. There is not room to put desks 4 feet apart, much less 6 feet apart as is recommended.

Students entering and leaving classrooms are inherently close together.” Ex. 10 at *12. The court also noted that, like DMPS, “some teachers have medical conditions that make them particularly susceptible to COVID-19. Many teachers are also parents. Some of their children have medical conditions that make them particularly susceptible to COVID-19. Some teachers live with other people...who might be particularly susceptible to COVID-19.” *Id.* See also Ex. 9, ¶¶ 13–18. Thus, the Florida court concluded that the plaintiffs had shown a likelihood of success on the merits of their lawsuit, as required to grant injunctive relief. See Ex. 10 at *13.

DMPS knows that its teachers want to teach and support staff want to get back to work in-person. DMPS knows that its students want to get back to school and see their friends in-person. Everyone wants normal life to resume. The question is not whether DMPS *wants* to begin school in-person; the question is whether, as a local governmental body, DMPS and its Board believe that it is in the interest of the “protection, security, and benefit” of the DMPS community to return to at least 50% in-person instruction at this time. Based on all reasonable evidence available to the Board, it is not.

Because Respondents’ actions are arbitrary, capricious, and inherently unreasonable, Petitioners are likely to succeed on the merits of the petition and its motion for injunctive relief should be granted.

B. Petitioners and their Constituents Will Suffer Irreparable Harm

The second factor to address in considering whether a temporary injunction is appropriate is the threat of irreparable harm to Petitioners should the Court deny the request for injunction. The irreparable harm to be suffered could not be clearer or more concrete.

As of August 25, 2020, the CDC reports that there are 5,682,491 total cases of COVID-19 in the United States, an increase in 38,679 cases in one day. The CDC also reports that there have been 176,223 deaths related to COVID-19 in the United States alone. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. As of August 24, 2020, there are 56,658 individuals who have tested positive for COVID-19 in the state of Iowa and 11,796 total cases in Polk County alone. <https://coronavirus.iowa.gov/pages/case-counts>. Over 1 in 5 positive COVID-19 cases in Iowa are from Polk County. *See id.* As of August 24, 2020, there have been 1,044 COVID-19-related deaths in the state of Iowa and 215 in Polk County. *Id.* Over 1 in 5 COVID-19 deaths in Iowa were in Polk County. *See id.* The state does not report COVID-19 data at the city level. Thus, the statistics above for Polk County include the City of Des Moines as well as suburban and rural areas of Polk County. Without significant measures to limit transmission of COVID-19, the number of cases, and the number of deaths, can reasonably be expected to rise.

The CDC has identified a long list of medical conditions that can put children and adults of any age at an increased risk of severe illness from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>. Additionally, regardless of underlying health, the CDC has determined that the risk of a severe case of COVID-19 increases with age. Adults in their 50s are more likely to contract a severe case, while adults 60+ are at an even higher risk of severe illness. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>. There are also heightened risks for COVID-19 based on race and ethnicity. As of June, age-adjusted hospitalization rates are 4-5 times higher among people of color than among non-Hispanic white

persons. See <https://pubmed.ncbi.nlm.nih.gov/32562416/> and <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>. 62.3% of DMPS students are students of color. See Ex. 9, ¶ 13. Additionally, many DMPS students live in multi-generational homes with family members who are at high risk of contracting a serious case of COVID-19 due to age and/or pre-existing medical conditions. *Id.* ¶ 14.

Additionally, Petitioners are gravely concerned about the risk of irreparable harm to its staff if it is forced to return to in-person learning where adequate physical distancing cannot be ensured. 31.5% of DMPS’s total staff have a health condition that puts them at a higher risk of a severe, potentially fatal, case of COVID-19. *Id.* ¶ 15. 34% of DMPS’s total staff are over age 50, and 10.1% are over age 60, which puts them at higher risk of a severe, potentially fatal, case of COVID-19. *Id.* ¶¶ 16–17. Moreover, many DMPS employees have one or more family members with whom they reside who fall into a high-risk category based on health condition or age. *Id.* ¶ 18.

Based on evidence regarding the likelihood of harm to teachers and their families, the Florida court in *Florida Education Association v. DeSantis* concluded that the plaintiffs had “established irreparable harm and an inadequate remedy at law.... The cost of life of teachers and their family members cannot be readily calculated.” Ex. 10 at *13. The court also noted that “the most widely prevailing standard for determining whether the virus is under control and it is safe to reopen schools is a 5% positivity rate in the affected area, in this case the local school district.” *Id.* While Respondents will present an alternative standard, there is not a scintilla of credible evidence supporting a threshold of 15–20% positivity as a safe or reasonable metric for schools

reopening. Respondents will not be able to show that their alternative standard is likely to prevent the irreparable harm alleged by DMPS.

As the families of more than 175,000 Americans and 1,044 Iowans have already learned, there is no replacing a lost child, parent, spouse, or sibling who dies from COVID-19. No other relief that Petitioners seek or could seek can prevent the devastating, irreparable injury that would result from the death of a student, employee, or family member. The only available relief is a temporary injunction to stop Respondents from forcing DMPS to reopen when it is unsafe to do so or penalizing them for refusal to comply.

Beyond the human cost of forcing DMPS to return to at least 50% in-person instruction when it is not safe to do so, Respondents have threatened that any days spent in primarily remote learning without a waiver from the DE/IDPH will not count toward DMPS's Requiring DMPS to make up those days would be financially disastrous. Ex. 9, ¶ 8. It costs nearly \$1.5 million dollars *per day* to operate DMPS. *Id.* DMPS's budget for the 2020–2021 school year was set on May 19, 2020. *Id.* It presumed 1,080 hours (the equivalent of 180 days) of student instruction. *Id.* Due to shortfalls in state funding, DMPS is in the midst of a three-year process of making \$75 million in budget cuts while preserving essential educational services and functions. *Id.* ¶ 9. DMPS would reasonably expect this measure to directly lead to program cuts and staff layoffs. *Id.* ¶ 10. Respondents' actions, if not enjoined, would cause irreparable harm to DMPS and its students and employees. *See id.*

Aside from the financial harm of requiring DMPS to “make up” days spent in primarily remote learning, there is a limit to the number of days that could be made up at the end of the 2020–2021 school year, which is currently scheduled to end on June 2, 2021. *Id.* ¶ 11. If DMPS

is unable to make up all days by June 30, 2021, and if the Governor declares that DMPS did not meet the requirements of Iowa Code § 279.10 because of her interpretation of Senate File 2310, DMPS students could be denied credit for courses that they took and completed during the 2020–2021 school year, resulting in irreparable harm to them. *See id.*

Respondent Reynolds has egregiously threatened to pursue baseless licensure attacks against the school administrators whose school districts oppose her edicts. Respondent Reynolds' threats are calculated to coerce school districts into compliance out of fear of irreparably harming their superintendents and other school administrators. Superintendent Ahart is a career public servant who is in his 24th year of service to Iowa's public schools. Ex. 9, ¶ 1. He holds a Professional Administrator License from the Iowa Board of Educational Examiners. *Id.* ¶ 5. He is in good standing with the BOEE and has never been subject to professional discipline against his license. *Id.* A Professional Administrator License is a mandatory requirement to serve as Superintendent of DMPS or any other school district in the State of Iowa. *Id.* ¶ 6. Loss of this license would do irreparable harm to Superintendent Ahart's employment with DMPS, his career as a professional educator and administrator, and his professional reputation. *Id.* It would not only unlawfully interfere with his contract with DMPS but would also interfere with his ability to seek employment as a Superintendent elsewhere. *See id.* This harm would be irreparable. It is inexcusable to threaten such action against a career educator who is carrying out his duties in accordance with, not in violation of, the BOEE Rules of Professional Conduct and Ethics. *See* 282 Iowa Admin. Code r. 25.3(c) (Iowa BOEE Standard VI: "Unethical practice toward other members of the profession, parents, students, and the community. Violation of this standard includes: Failing to make reasonable effort to protect the health and safety of the student or creating

conditions harmful to student learning.”).

Thus, if DMPS is forced to return to in-person learning, as Respondents would have it, irreparable harm will result to DMPS and its students and staff. This harm, in turn, will be attributable to DMPS and expose it to liability. *See Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 69 (Iowa 2002) (citation omitted); *Mitchell v. Cedar Rapids Community School District*, 832 N.W.2d 689, (2013).

If they occur, none of these harms can be undone. In addition, because Petitioners do not anticipate recovery of any money damages against the Respondents under the petition for judicial review, injunctive relief is the only meaningful way for Petitioners to obviate the harm. Petitioners will suffer irreparable harm if the injunction is not issued.

C. The Balance of Harms Weighs in Favor of Finding for Petitioners

The third factor to address in considering whether a temporary injunction is appropriate is the balance between harm to Petitioners and the harm granting the injunction would cause to the Respondents. The balance between Petitioners’ very real harm, and the likely harm to the health and safety of DMPS students, staff, and their families, compared to Respondents’ lack of any harm, reinforces issuance of the injunction.

As discussed above, Petitioners will suffer significant irreparable harm. Respondents cannot demonstrate any harm, let alone greater harm than Petitioners. The balance of harms weighs strongly in favor of Petitioners.

D. The Public Interest Weighs in Favor of Granting the Requested Injunction

The fourth and final factor to address in considering whether a temporary injunction is appropriate is the public interest. The public interest supports the granting of Petitioners' requested injunction.

As outlined in Section II.A of this brief, the statutory scheme for Iowa public schools assigns local school boards the power to provide education services to local school boards. It is in the public interest to uphold Petitioners' authority to decide the manner in which those services will be delivered.

As outlined in Section II.B of this brief, there are significant risks to bringing students and staff together in the largest school district in Iowa. It is in the public interest to allow Petitioners to rely on personal familiarity with its unique circumstances to decide the manner in which education services will be delivered.

As the court stated in *Florida Education Association v. DeSantis*, “[a]n injunction in this case will allow local school boards to make safety determinations for the reopening of schools without financial penalty. This is what the local school boards were elected to do.... Reasoned and data-driven decisions based on local conditions will minimize further community spread of COVID-19, severe illness, and possible death of children, teachers, and school staff, their families, and the community at large. ***Such local decisions unequivocally serve the public interest.***” Ex. 10 at * 14 (emphasis added). The court added that “[s]chools should reopen when the local decision-makers determine upon advice of medical experts, that it is safe to do so.” *Id.* at *15.

If the constituents of DMPS are not satisfied with the decision of the Board of Education, then they will hold the Board accountable at the time of school board member elections. *See Clay*

v. Independent School Dist. of Cedar Falls, 174 N.W. 47, 53 (Iowa 1919) (“In the long run all disputes over questions of policy with reference to schools in any given district are solved at the polls.”). For now, however, it is in the public interest that Petitioners be permitted to proceed with its school business as planned. It is plainly not in the public interest for the Respondents to demand that Petitioners acquiesce to a one-size-fits-all approach that does not respect the important role of local school board decision-making and local conditions relating to COVID-19. The public interest weighs overwhelmingly in favor of granting a temporary injunction.

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant its request for temporary injunctive relief enjoining Respondents from:

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

Petitioners additionally request this matter be set for an expedited hearing by this Court.

Respectfully submitted,

/s/ Miriam Van Heukelem

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