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**FOR SETTLEMENT PURPOSES ONLY**

September 7, 2021

**VIA EMAIL TO COUNSEL AND CERTIFIED MAIL**

Pam Stranathan  
Via Counsel Curtis Tideman  
Gardner Edgerton School District 231  
231 E. Madison Street  
Gardner, KS 66030  
[curtis.tideman@lathropgpm.com](mailto:curtis.tideman@lathropgpm.com)

***RE: Gardner-Edgerton School Board COVID-19 Protocols***

Dear Ms. Stranathan:

I represent individual students attending school in the Gardner Edgerton School District, USD 231 (“USD 231”), and their parents. My clients are extremely concerned that USD 231 is either actively or imminently at risk of violating the law in the enforcement of its COVID-19 quarantine and public health protocols (“COVID protocols”). These include at least four areas of immediate concern; specifically, the COVID protocols currently: 1) illegally distinguish between vaccinated and unvaccinated students in violation of 2021 Senate Bill 159 (“SB 159”); 2) illegally discriminate against students with medical disability exemptions in violation of federal and state anti-discrimination laws; 3) allow for discriminatory and subjective harassment of particular students based on “proper mask wearing” techniques; and 4) allow district employees to issue quarantine “directives” to students and families without legal basis under K.S.A. 65-129b.

This letter provides notice to the district of these violations of law and any ongoing enforcement of the COVID protocols in this manner will be considered evidence of willful illegal conduct imposed against students under color of state law, thereby possibly implicating 42 U.S.C. 1983 and other statutes. We demand you **CEASE AND DESIST** from all such conduct and amend your protocols and the enforcement thereof to ensure all students, regardless of medical or vaccination status, receive a quality education in a nondiscriminatory and lawful manner.

***Violation of SB 159 Vaccine Discrimination Ban on State-Funded Entities.***

In reviewing your quarantine procedures, including those reflected in the district’s “Preventing Quarantines, Together” protocol (attached hereto as **Exhibit A**), it appears that USD 231 is violating the budget proviso in SB 159, the general appropriations bill passed by the

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Kansas State Legislature in May 2021. Sections 59 and 60 of that bill do not allow state appropriated funds to be used to: “(1) [i]ssue a COVID-19 vaccination passport to any individual without such individual's consent; (2) require an individual to use a COVID-19 vaccination passport within this state for any purpose; or (3) . . . or refuse access to a place accessible to the general public, or separate from others in a place accessible to the general public, including entry, education, travel and services within this state, based on such individual's COVID-19 vaccination status. Under the bill, "COVID-19 vaccination passport" is defined as “written or electronic documentation of an individual's COVID-19 vaccination status; and (2) "screening protocol" is defined as “a non-invasive method to determine whether an individual has symptoms or other risk factors for developing COVID-19, including, but not limited to, temperature checks, self-reporting of exposure, self-reported vaccination status and questionnaires.” See 2021 SB 159.<sup>1</sup>

USD 231 receives public funds from state appropriations and is subject to the ban on refusing student access to certain public education facilities or otherwise separating students “based on such [students’] vaccination status.” See *id.* However, the “Preventing Quarantines, Together” policy document clearly state’s the district policy to “quarantine” (i.e. refuse access to and separate from others) students based on their vaccination status. Moreover, our clients are aware of instances in the district during the current school year where students have been subjected to discriminatory treatment based on their vaccination status. This policy is likely illegal under 2021 SB 159 and must immediately and publicly be rescinded. We have copied the Attorney General’s Office, State Budget Director, and legislative leadership in the Kansas Senate and House to apprise them of this situation. In addition, based on your response to this letter, we reserve the right to respectfully request legislative leadership task post-audit to determine the amount of state funds that have been used in violation of this proviso and legislatively address this issue next session, including a possible decrease of future funding to each district violating this proviso by the amount expended in violation.

***Disparate Treatment Against Students Based on Health Status Violates Federal and State Anti-Discrimination Laws.***

Both federal and state laws prohibit discrimination on the basis of disability in relation to free and public accommodations, including public education. Specifically, Section 504 and Title II of the Americans with Disabilities Act prohibits public schools from discriminating on the basis of a student’s medical disability. The Americans with Disabilities Act Amendments Act of 2008 amended the definition of disability to be construed broadly.<sup>2</sup> At the state level, K.S.A. 44-1001 et seq. prohibits such discriminatory behavior under the Kansas Acts Against Discrimination.

Students with medical disability mask exemptions cannot be treated in a discriminatory manner by school officials under these laws, yet the “Preventing Quarantines, Together” policy document clearly states that the lack of a mask, combined with the consideration of a student’s

<sup>1</sup>Available at [http://kslegislature.org/li/b2021\\_22/measures/documents/sb159\\_enrolled.pdf](http://kslegislature.org/li/b2021_22/measures/documents/sb159_enrolled.pdf).

<sup>2</sup>See Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools, US Dept. of Ed., *available at*

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html> (last accessed Sept. 3, 2021).

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vaccination status, will subject a student to potential quarantine. While quarantine is not defined in the document, discriminatory and segregating treatment even within a school building can constitute illegal discriminatory behavior. Our clients demand that USD 231 ensure equal educational access to all students, regardless of their medical disability status affecting their ability to wear a mask as determined by their medical professional. To the extent any discriminatory conduct against such students has occurred, occurs or continues to occur, violations will be reported to the Office of Civil Rights within the U.S. Department of Education and/or the Kansas Human Rights Commission.

***Subjective Enforcement of “Proper Mask Wearing” Techniques Constitutes Harassment or Bullying***

“Preventing Quarantines, Together” policy document clearly states that failure to “properly wear” a face covering is a basis for disparate “quarantine” treatment by school officials. To the extent objective standards exist, my clients are aware of specific instances where school officials have engaged in inconsistent, subjective, and targeted enforcement against perceived mask propriety standards. Additionally, we would note that USD 231 district guidance regarding “proper” mask wearing technique would include a prohibition on more effective N95 masks. USD 231 must ensure that it’s officials, teachers, and employees are trained in fair treatment of students, as any willful or targeted harassment of students based on their may constitute bullying under K.S.A. 72-6147.<sup>3</sup>

***School Officials Cannot Legally Quarantine Students Under State Public Health Laws***

Unfortunately, over the past year we have witnessed a troubling trend across Kansas where school and county officials have issued what purported to be orders of quarantine/isolation against students and county residents *en masse*.<sup>4 5</sup> When challenged, most of these officials have

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<sup>3</sup>“Bullying” means: (A) Any intentional gesture or any intentional written, verbal, electronic or physical act or threat either by any student, staff member or parent towards a student or by any student, staff member or parent towards a staff member that is sufficiently severe, persistent or pervasive that such gesture, act or threat creates an intimidating, threatening or abusive educational environment that a reasonable person, under the circumstances, knows or should know will have the effect of: (i) Harming a student or staff member, whether physically or mentally; (ii) damaging a student's or staff member's property; (iii) placing a student or staff member in reasonable fear of harm to the student or staff member; or (iv) placing a student or staff member in reasonable fear of damage to the student's or staff member's property; . . . ; or (C) any other form of intimidation or harassment prohibited by the board of education of the school district in policies concerning bullying adopted pursuant to this section or subsection (e) of K.S.A. 72-1138, and amendments thereto.

<sup>4</sup> See eg. James Howey, *No Resolution Thursday Concerning Proposed Benedictine Quarantine*, Atchison Globe (Sept. 4, 2020) available at [https://www.atchisonglobenow.com/news/breaking\\_news/no-resolution-thursday-concerning-proposed-benedictine-quarantine/article\\_bf86ee8-ed94-11ea-a11f-0bf554ecc4db.html](https://www.atchisonglobenow.com/news/breaking_news/no-resolution-thursday-concerning-proposed-benedictine-quarantine/article_bf86ee8-ed94-11ea-a11f-0bf554ecc4db.html) (last accessed Oct. 12, 2020).

<sup>5</sup> See eg. Jessica Eley, *Dozens Protest after more than 100 asked to Quarantine at Timber Creek Elementary*, Fox 4 News (September 20, 2020) available at <https://fox4kc.com/news/dozens-protest-after-more-than-100-asked-to-quarantine-at-timber-creek-elementary/> (last accessed Oct. 12, 2020). See also Dave Trabert, *Kansas Justice Institute Questions Legality of Timber Creek School Quarantine*, the Kansas Sentinel (September 18, 2020) available at <https://sentinelksmo.org/kansas-justice-institute-questions-legality-of-timber-creek-school-quarantine/> (last accessed October 12, 2020).

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clarified that their issuances constituted “recommendations” and that they did not issue official “orders under K.S.A. 65-129b.”<sup>6 7 8</sup>

My clients intend to hold USD 231 to a strict compliance standard under K.S.A. 65-129b regarding the imposition of any purported “quarantine” orders issued by school officials against students. K.S.A. 65-129b requires all quarantine orders to be issued by the county local health officer (“LHO”) of a particular county. K.S.A. 65-129b does not permit the LHO to delegate any authority under this statutory scheme or otherwise allow the issuance of such an order “by direction” or indirectly in another way. We reserve all legal and equitable rights to respond to any attempt by USD 231 to “quarantine” students suspected of COVID-19 exposure through an unlawful school directive.

Because of the nature of this situation, time is of the essence. **Accordingly, we request your response as soon as possible but no later than 5:00pm, Friday, September 10, 2021,** so we may determine how to proceed in order to preserve my client’s rights. We, therefore, reserve all rights to proceed in any way we determine appropriate based on the law and equity without further notice to you, including injunctive relief and relief in *quo warranto*, if we determine it necessary and advisable.

Thank you for your time and I look forward to working with you through this challenging time.

Sincerely,

/s/ Ryan A. Kriegshauser  
Ryan A. Kriegshauser

cc: State Budget Director  
Attorney General Derek Schmidt  
Senate President Ty Masterson  
Speaker of the House Ron Ryckman  
Representative Kristey Williams, Chair, House Committee on K-12 Education Budget  
Senator Rick Billinger, Chair, Senate Ways and Means Committee  
Senator Rob Olson  
Representative Bill Sutton  
USD 231 School Board Members

<sup>6</sup> See eg. Mary Meyers, *BC and Atchison County Negotiate a COVID-19 Mitigation Plan*, Atchison Globe (Sept. 4, 2020) available at [https://www.atchisonglobenow.com/news/bc-and-atchison-county-negotiate-a-covid-19-mitigation-plan/article\\_47a704a4-ccd8-11ea-ad4a-0fd0a87bea3e.html](https://www.atchisonglobenow.com/news/bc-and-atchison-county-negotiate-a-covid-19-mitigation-plan/article_47a704a4-ccd8-11ea-ad4a-0fd0a87bea3e.html) (last accessed October 12, 2020).

<sup>7</sup> See eg. Patrick Richardson, *Blue Valley Backs Away from Timber Creek Quarantine Order*, the Kansas Sentinel (October 6, 2020) available at <https://sentinelksmo.org/blue-valley-backs-away-from-timber-creek-quarantine-order/> (last accessed October 12, 2020).

<sup>8</sup> See eg. Patrick Richardson, *Kansas Schools Continue to Issue Bogus Quarantine Orders*, the Kansas Sentinel (October 20, 2020) available at <https://sentinelksmo.org/kansas-schools-continue-to-issue-bogus-quarantine-orders/> (last accessed December 24, 2020).

# PREVENTING QUARANTINES, TOGETHER

Help us protect in-person learning for students!

These scenarios are for close contact with a COVID-19 positive individual who does not have respiratory symptoms at school, maintains 3-feet of distance for students and 6-feet for adults, and:

COVID-19 positive individual IS properly wearing a face covering:

COVID-19 positive individual IS NOT properly wearing a face covering:

CLOSE CONTACT



Fully Vaccinated  
Properly Wearing Face Covering



No Quarantine



No Quarantine

CLOSE CONTACT



Fully Vaccinated  
Not Wearing Face Covering



No Quarantine



No Quarantine

CLOSE CONTACT



Not Fully Vaccinated  
Properly Wearing Face Covering



No Quarantine



QUARANTINE

CLOSE CONTACT



Not Fully Vaccinated  
Not Wearing Face Covering



QUARANTINE



QUARANTINE

**NOTE: Quarantine will be required if secondary cases occur.**

**USD231**  
Gardner Edgerton School District



# PROPER MASK USE

(ACCORDING TO CDC GUIDELINES)



## DO choose masks that



Have two or more layers of washable, breathable fabric



Completely cover your nose and mouth



Fit snugly against the sides of your face and don't have gaps

## DO NOT choose masks that



Are made of fabric that makes it hard to breathe, for example, vinyl



Have exhalation valves or vents, which allow virus particles to escape



Are intended for healthcare workers, including N95 respirators or surgical masks

## Caution: Gaiters & Face Shields



Evaluation is on-going but effectiveness is unknown at this time



Evaluation is on-going but effectiveness is unknown at this time

## Do NOT wear a mask



Around your neck



On your forehead



Under your nose



Only on your nose



On your chin



Dangling from one ear



On your arm

