



KANSAS JUSTICE INSTITUTE

September 18, 2020

Sent via Electronic Mail Only

Dr. Pam Bakke
Principal, Timber Creek Elementary School
16451 Flint Street
Overland Park, Kansas 66221

Re: Purported Quarantine Order Issued on Sep. 17, 2020, at 10:53 a.m. by Timber Creek Elementary

Dear Dr. Bakke,

According to a recent report, Timber Creek Elementary issued a purported quarantine order (Order) to approximately 200 students on September 17, 2020. *See* e-mail from Leasi Frye on behalf of Dr. Pam Bakke to “Timber Creek Elementary Recipients” (Sep. 17, 2020, at 10:53 a.m.) (“[Y]our child must quarantine for 14 days through September 29, returning to school on Oct. 5. Individuals in quarantine should stay home for the duration of the 14 days regardless of test results.”).

Kansas Justice Institute¹ has serious concerns with this purported quarantine Order. Given the nature of an Order purporting to quarantine students *en masse*, we request an immediate response, in writing.

In Kansas, the quarantine process is outlined in KSA §§ 65-129b, 129c. The statute empowers a *local health officer* or the *Secretary of the Kansas Department of Health* to issue quarantine orders under certain, limited, circumstances. The statute does not expressly or implicitly authorize school districts or school employees to issue such an Order.²

Moreover, a *local health officer’s* power to issue a quarantine order is not limitless. For example, KSA § 65-129b does not allow a local health officer to issue an isolation or quarantine order

¹ Kansas Justice Institute is a non-profit, public-interest litigation firm committed to protected individual liberty and the constitutional rights of all Kansans.

² KJI recognizes this is a rapidly developing situation. As such, if you believe this is inaccurate, please respond by setting forth what you believe to be inaccurate; and, please set forth the accurate facts.

unless it is “medically necessary” and “reasonable to prevent or reduce the spread of the disease or outbreak[.]” This “129b Order” must be specific and must inform the public of their ability to contest the order. KSA § 65-129c sets forth a procedure for challenging the order.

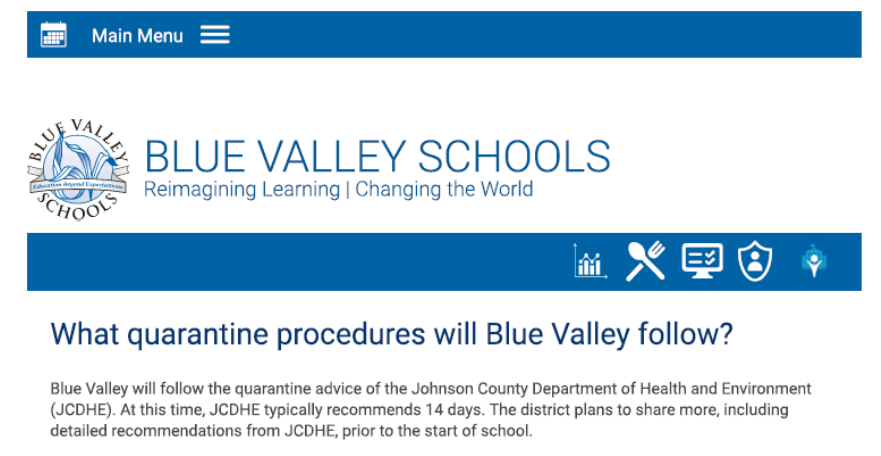
Individuals isolated or quarantined may request “a hearing in district court contesting the isolation or quarantine[.]” KSA § 65-129c(d)(1).

Courts “shall appoint counsel” to represent individuals who “are not otherwise represented by counsel.” KSA § 65-129c(d)(10). A challenge to the health officer’s order must take place within 72-hours (KSA § 65-129c(d)(3)) absent extraordinary circumstances. KSA § 65-129c(d)(4)(A). At the hearing’s conclusion, the judge must lift the quarantine order “unless the court determines that the isolation or quarantine order is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease.” KSA § 65-129c(d)(4)(C)(i).

There is no doubt COVID-19 is serious and cause for public concern. Your commitment to the safety of the Timber Creek students is laudable and there is no doubt your intentions were noble. However, it is unclear under what legal authority anyone besides a local health officer or the KDHE secretary can issue a quarantine order.

Please immediately provide all written documentation or information that you believe authorizes the purported quarantine Order issued on September 17, 2020. This request is made pursuant to the Kansas Open Records Act.

Given the time and circumstances, I quickly reviewed the Timber Creek Elementary Handbook and the Blue Valley School District website. Instead of clarity, it raised even more concerns. From the website:³



³ Accessible at <https://www.bluevalleyk12.org/site/default.aspx?PageType=3&ModuleInstanceID=41271&ViewID=9fc4dc78-f943-4224-8465-6c780e58f4df&RenderLoc=0&FlexDataID=51629&PageID=35655> (accessed on Sep. 18, 2020).

In our view, there can be no reasonable dispute that an Order purporting to quarantine students *en masse* raises a myriad of statutory and constitutional issues.

Please immediately advise whether you intend to continue ordering the quarantine of students at Timber Creek, the purported legal justification for doing so, and any other information you feel is pertinent. Again, this request is made pursuant to the Kansas Open Records Act.

KJI recognizes this is a rapidly developing situation. As such, if you believe that anything contained in this letter is inaccurate, please respond by setting forth what you believe to be inaccurate; and, please set forth the accurate facts in writing.

Thank you for your time and consideration. If you wish to discuss this matter, I will make myself available to you at any time, including this evening. If you call my direct line listed in the below signature block, it will automatically forward to my mobile phone. If for some reason I do not immediately answer, please leave a message and I will return the call.



Samuel G. MacRoberts
Kansas Justice Institute
12980 Metcalf Avenue, Suite 130
Overland Park, Kansas 66213
(913) 213-5018
Sam.MacRoberts@KansasJusticeInstitute.org

Cc: Mr. Tom Mitchell (Blue Valley School Board President)
Dr. Joseph LeMaster (Johnson County Public Health Officer)