

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

NORTHLAND PARENT ASSOCIATION, )  
A Missouri nonprofit corporation, )  
 )  
Plaintiff, )

v. )

Case No. 4:21-cv-00623-FJG )

Excelsior Springs School District #40, et al., )  
Board of Education of Excelsior Springs )  
School District # 40; )  
Kearney R-I School District; )  
Board of Education of Kearney R-I )  
School District; )  
Liberty 53 School District; )  
Board of Education of Liberty 53 )  
School District; )  
North Kansas City School District #74; )  
Board of Education of North Kansas City )  
School District #74; )  
Smithville R-II School District; )  
Board of Education of Smithville R-II )  
School District; )  
Park Hill School District )  
Board of Education of Park Hill )  
School District; )  
Platte County School District R-III )  
Board of Education of Platte County )  
School District R-III; )  
Quinton Lucas, Mayor of Kansas City, )  
Missouri, in his Official Capacity; )  
City Council of Kansas City, Missouri; )  
Bryant DeLong, Mayor of North Kansas )  
City, Missouri, in his Official Capacity; )  
City Council of North Kansas City, Missouri; )  
 )  
Defendants. )

**PLAINTIFF'S SUBSTITUTE MOTION FOR LEAVE TO AMEND COMPLAINT**

In accordance with Federal Rule of Civil Procedure 15 and Local Rule 15.1, Plaintiff, the Northland Parent Association, through counsel, respectfully moves the Court for leave to file the attached Amended Complaint.

Rule 15 provides that a party may amend its pleading with the court's leave and that the "the court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Allowing Plaintiff to file an Amended Complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility. A Scheduling Order with a deadline to amend pleadings has not been entered, so the Amended Complaint would be timely. Neither have the parties engaged in discovery, so the Amended Complaint would not prejudice any party or any party's efforts to discover facts to support or defend the claims.

Through the Amended Complaint, plaintiff seeks to add three new Defendants: (1) Gary Zaborac, Director of Public Health, Clay County, Missouri, in his official capacity; (2) Mary Jo Vernon, Director of Public Health, Platte County, Missouri, in her official capacity; and (3) Frank Thompson, Interim Director, Kansas City, Missouri, Health Department, in his official capacity. Plaintiff believes these parties are necessary because they have issued COVID-19 quarantine rules that School Defendants follow and believe they must follow. Based on the Declarations that School Defendants submitted in opposition to Plaintiff's preliminary-injunction motion, School Defendants have implemented their mask mandates in large part due the quarantine and isolation rules issued by the local health departments, which allow for modified and shortened quarantine time periods if a school district has universal indoor masking for students, teachers, staff, and visitors in schools.

In the attached Amended Complaint, Plaintiff also includes two new counts:

- Count XXII (School Defendants and City Defendants) -- School Defendants' and City Defendants' Mask Mandates violate the Missouri Constitution because they allow no

exemptions for individuals based on sincerely held religious beliefs. In the original Complaint, Plaintiff alleged violation of religious liberties based on the First Amendment of the U.S. Constitution and Missouri's Religious Freedom Restoration Act. During the course of the early stages of this litigation, it became clear that Section 5 of Article I of the Missouri Constitution is also applicable, which provides protection for the right to religion and right of conscience.

- Count XXIII (Local Health Directors, School Defendants) -- The quarantine and isolation rules issued by the Local Health Directors and enforced by School Defendants are unconstitutional under the United States Constitution and Missouri Constitution and unlawful under Missouri statutory and administrative law. Recently, a Missouri Circuit Court found that state regulations that purport to authorize local health agency directors to create and enforce public health laws violate separation-of-powers principles of Article II, Section 1 of the Missouri Constitution, violate the Missouri Administrative Procedure Act, and violate the equal protection clause of the Missouri Constitution. *Robinson v. Mo. Dep't of Health & Senior Servs.*, No. 20AC-CC00515, Judgment (Cole County Cir. Ct. Nov. 22, 2021). These are the same regulations, upon information and belief, that the Local Health Directors have relied on in issuing the COVID-19 quarantine and isolation rules that School Defendants adhere to. Thus, the new Count XXIII in the Amended Complaint alleges that the COVID-19 quarantine and isolation rules are unconstitutional, unlawful, and invalid.

Plaintiff also seeks to amend the complaint in order to challenge the recently revised mask mandates of Kansas City, Missouri, and North Kansas City, Missouri, which rescinded the mask mandates for everyone except K-12 students and other persons inside school buildings and on school

buses. In Plaintiff's motion to expand the preliminary-injunction motion (doc. 60), Plaintiff asked the Court to consider the recent KC ordinance as part of Plaintiff's preliminary-injunction motion. The Court denied the *Motion to Expand* and stated: "If plaintiff wishes to amend the Complaint or seek alternative or additional relief due to changed factual circumstances (such as the passage of new City Ordinances), the proper procedure is to file a Motion for Leave to Amend and attach a copy of the proposed Amended Pleading." Doc. 71 at 3. Thus, Plaintiff seeks to amend the Complaint in accordance with the Court's instruction. Likewise, further facts with regard to implementation all of the mask mandates are set forth in the Amended Complaint.

Finally, in response to Defendants' *Joint Motion to Dismiss All Claims*, Plaintiff requested the Court to allow it to amend its Complaint if the Court determines that the allegations of certain claims in the Complaint to be insufficient.<sup>1</sup> Plaintiff continues to oppose Defendants' motion to dismiss for the reasons set forth in Plaintiff's Opposition. Nevertheless, because the early stages of the litigation have provided greater clarity regarding the claims, even while opposing Defendants' motion to dismiss and without conceding that the original Complaint is deficient, Plaintiff desires to amend its pleading for the sake of clarity as follows:

- **Standing.** Among other allegations, the Amended Complaint alleges that the NPA has members who have children who are English-language learners, have hearing or speech impairments, or otherwise have special needs. Additionally, the Amended Complaint alleges that NPA has members who have children who have been subjected to a quarantine. The Amended Complaint further alleges that the NPA has members who are parents of students with disabilities

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<sup>1</sup> Pl.'s Response in Opp'n to Defs.' Jt. Mot. to Dismiss All Claims (Oct. 28, 2021).

with IEPs or Section 504 plans and that those students either have been denied mask exemptions or have been given inadequate accommodations for the masks. Although the fact is already alleged in the original Complaint, Plaintiff seeks to amend the pleading to assert further that the NPA has members who have children who have sought and been denied a mask exemption based on medical reasons. Lastly, although the fact is already alleged, Plaintiff seeks to amend the pleading to assert further that the NPA has members who have children with religious beliefs against wearing face masks.

- **Associational standing.** To further demonstrate that the NPA has associational standing, Plaintiff seeks to amend the Complaint to allege that there are members of the NPA who would have standing to sue in their own right.

- **Claim that mask-exemption policies are unlawful and involve an abuse of discretion** (former Count XIV/Count XV in Amended Complaint)). Plaintiff seeks to amend Count XIV of the Complaint to expressly cite § 536.150 RSMo as the legal claim for relief.

- **IDEA and Section 504 Claims** (former Count XVII/Count XVIII in Amended Complaint)). Plaintiff seeks to amend the complaint to alleged that Mask Mandates and mask-exemption policies are unlawful under § 536.150 RSMo. because they violate the federal Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. In regards to this claim, Plaintiff amends the pleading to allege that the NPA has members who have children with disabilities (including those with IEPs and Section 504 plans) who have sought but have been denied exemptions to the Mask Mandates, that School Defendants failed to adequately consider and account for their needs when the districts denied exemptions or offered inadequate accommodations under the mask-exemption policies, and that the school districts have

failed to conduct adequate reviews and case-by-case analyses for those students under the IDEA and Section 504.

- **Unauthorized practice of medicine** (former Count XVIII/Count XIX in Amended Complaint). Plaintiff seeks to amend the pleading to make clear that this count is a claim that the mask-exemption policies are unlawful and arbitrary under § 536.150, RSMo. for the additional reason that the policies cause school personnel to engage in the unauthorized practice of medicine.

For all these reasons, Plaintiff respectfully requests the Court to grant Plaintiff leave to file an Amended Complaint, which is attached. Plaintiff will send a proposed order to chambers in keeping with the local rules.

Dated: November 26, 2021

Respectfully submitted,

PATHGUIDE LAW LLC

s/ Kevin R. Corlew

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ATTORNEY FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of November, 2021, I electronically filed the above and foregoing Motion for Leave to Amend with the clerk of the court by using the CM/ECF system that will send a notice of electronic filing to all counsel of record.

/s/ Kevin R. Corlew