



Court: Shawnee County District Court
Case Number: 2021-CV-000592
Case Title: Liberty Hutchinson - Obo vs. Sn County Health
Department
Type: MEMORANDUM DECISION AND ORDER

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written in a cursive style.

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE**

LIBERTY HUTCHINSON, et al.,

Petitioner

2021-CV-592

SHAWNEE COUNTY HEALTH DEPARTMENT,

Respondent

MEMORANDUM DECISION AND ORDER

This case involves a challenge to a quarantine order issued to a student in Unified School District 345 (Seaman), in Shawnee County, Kansas. Petitioner Liberty Hutchinson seeks review of the quarantine order on behalf of her minor child, L.H., pursuant to K.S.A. 65-129c(d).

PROCEDURAL HISTORY.

Hutchinson filed her petition on November 15, 2021, and initially named two respondents – USD 345 and the Shawnee County Health Department. Hutchinson made clear in her petition that she sought to appeal a quarantine order under K.S.A. 65-129c. On November 16, 2021, the court appointed an attorney to represent Hutchinson in the quarantine appeal as required by K.S.A. 65-129c(d)(10). The hearing date was scheduled by agreement of the parties for November 30, 2021. The court granted Hutchinson’s motion to dismiss USD 345 from the case without prejudice.

After presentation of evidence at the hearing, the court took the matter under advisement. The court granted the parties' requests to submit briefs prior to its decision.

FINDINGS OF FACT

SHAWNEE COUNTY HEALTH OFFICER.

Dr. Erin Locke is the Shawnee County Health Officer. She was appointed by the Shawnee County Board of County Commissioners in February 2021. She has a medical degree and a master's degree in public health, is board certified in family medicine, and is licensed to practice medicine in the state of Kansas.

Dr. Locke testified that COVID-19 is the disease caused by the novel virus SARS-CoV-2. It is considered novel because it has not been observed in humans before. She said this means humans do not have historical immunity to the virus, and as a result, it has spread rapidly across the globe. The SARS-CoV-2 virus has an incubation period of 14 days, and those infected are contagious two days before symptoms appear. During the incubation period, the virus can be present but not rise to the level of producing noticeable symptoms.

Dr. Locke testified that certain measures are taken to slow the spread of the virus, including vaccination, wearing masks, physical distancing, hand washing and general disinfection, improving ventilation, and imposing isolation for those infected and quarantines for those exposed to the virus. These measures are part of the guidance given to local health departments by the Kansas Department of Health and Environment ("KDHE") for controlling the spread of the virus. Dr. Locke said isolation is a ten-day period of separation for those who have tested positive for COVID-19. Quarantine is a 14-day period of separation for those who have been exposed to the virus. The isolation and quarantine timelines come from the Centers for Disease Control ("CDC")

at the federal level, down to KDHE, and then are passed on to local health departments. The court takes judicial notice that CDC guidelines regarding isolation and quarantine have changed since the hearing in this matter, but the details of such changes are not relevant to the analysis here.

GUIDELINES FOR SHAWNEE COUNTY SCHOOLS.

Dr. Locke testified that the Shawnee County Health Department provided a set of COVID-19 guidelines to Shawnee County K-12 schools prior to the beginning of the 2021-22 school year. There are six public school districts in Shawnee County, including USD 345, with 65 different schools. There are 10 additional private schools. Altogether there are 30,000 school children and 6,500 school staff members in Shawnee County. The K-12 guidelines state that they are “recommendations” that contain “the key COVID-19 control measures that should be considered by school leaders as they continue the 2021-22 school year.”

The guidelines were developed based on a review of other federal government, state government, and private entity guidelines, and vetted through the Shawnee County Public Health Technical Advisory Board. The Advisory Board was created by the Board of County Commissioners to assist the Shawnee County Health Officer, and it included a local physician and representatives of two hospitals and a mental health and substance abuse treatment center.

Dr. Locke testified that the guidelines were updated in October 2021. These updated guidelines were admitted into evidence and are labeled as the Fall 2021 Update. Dr. Locke said that the guidelines were updated because “the situation is ever-evolving,” as is the guidance from KDHE, and a new variant of COVID-19 had appeared since the guidelines were first adopted.

Dr. Locke said the Shawnee County Health Department has an employee, Marla Wurtz, who acts as a liaison to local schools. There is a meeting every other week involving the Shawnee

County Health Department and local school officials to share information on spread of the virus in the community and discuss how to implement the K-12 guidelines in the schools. The liaison is available to schools at any time to answer questions or discuss how to apply the guidelines to specific scenarios in the school setting.

The Fall 2021 Update to the K-12 guidelines for quarantine are as follows. Under the guidelines, a close contact with someone who has a laboratory confirmed case of COVID-19 means, among other things, being within six feet of that person for ten minutes or more (cumulative) over a 24-hour period or in direct contact with the “infectious secretions” of the person. The Fall 2021 Update adopted a shortened 10-day quarantine period if the person remains without symptoms. In the alternative, the quarantined person may return to school on Day 8 with a negative PCR test taken on or after Day 6. There are several exemptions from the quarantine requirements, but the person with the exemption must wear a mask indoors and test for COVID during the quarantine period. The exemptions apply where the person exposed is fully vaccinated or has tested positive for COVID-19 in the past six months, the close contact occurred outdoors, or where both parties were wearing masks during close contact. If no exemptions apply, an exposed student is offered the Test to Learn, Test to Play option if available. This is a program where the student comes to school but must take a COVID test each morning, and with a negative test the student is allowed to stay at school if the student wears a mask.

Dr. Locke testified that when the school becomes aware of a positive COVID test, the school conducts the contact tracing to determine the existence of close contacts. The school reports to the Shawnee County Health Department the identity of those who test positive for COVID as well as that person’s close contacts.

Jennifer Crowell is the health services director for USD 345. She has a bachelor's degree in nursing and a master's degree in nursing with an emphasis in public health and school nursing. She supervises a department of 11 employees including school nurses throughout the district. She is the district's point of contact with the Shawnee County Health Department. Crowell's contact at the Health Department is Wurtz. Crowell and the other school nurses, including Holmberg, conduct contact tracing on cases involving COVID-19.

Crowell said contact tracing is performed by first identifying the COVID-positive student and determining when symptoms occurred. The contact tracer begins at a point two days prior to onset of symptoms, gathering schedules and seating charts for that student to see who might have been present and a close contact, defined as one within six feet of the positive student for more than 10 minutes (cumulative) within a 24-hour period. Those who have been fully vaccinated are excluded as close contacts. Those who have tested positive for COVID-19 in the past six months are not considered close contacts. The contact tracer then develops a list of close contacts and reports these names to the Shawnee County Health Department for issuance of quarantine orders.

Crowell testified that she received information from Holmberg that L.H. was identified as a close contact of a student who tested positive for COVID-19. Crowell did not personally perform the contract tracing for L.H. She said L.H.'s quarantine was one of several imposed at that time related to a larger cluster of students exposed to COVID-19 in connection with the school's wrestling team. Crowell identified an exhibit at the hearing marked Respondent's Exhibit 1 and it was admitted into evidence. It is a chart (redacted) titled "Quarantine Information for Close Contact Identification." The chart lists the name of the person who tested positive for COVID, and the close contact names, dates of birth, dates of exposure, vaccine status, return to school date, and

parent contact information. The chart does not include the specific facts of each person’s exposure.

Crowell testified:

“This is our quarantine information sheet that we use. This is where we list the positive case with all the close contacts that were associated with that positive case. It states the student's name, date of birth, mailing address, and the date of exposure. And then, this document is sent to the health department so that the quarantine orders can be issued.”

QUARANTINE OF L.H.

At the time of the quarantine, L.H. was an eighth grade student at Seaman Middle School. L.H. is hearing impaired. She attends a study hall program for 1.5 hours after school each day during which she can complete homework under school supervision. L.H. had earlier tested positive for COVID-19 in September 2020 during her seventh grade year. L.H. has not been vaccinated against COVID-19.

During the first full week of eighth grade, in August 2021, L.H. was placed in quarantine based on her exposure to another student at school who had tested positive for COVID-19. Hutchinson received an email from the school nurse, Kathy Holmberg, explaining the quarantine protocol. Attached to the email was a copy of a “Public Health Order for Quarantine by the Shawnee County Health Officer.” The order bore the signature of Erin Locke, the Shawnee County Health Officer.

L.H. did not appeal the quarantine order. She did not attend school during the quarantine period. L.H. was offered the option of taking a “spit test” for COVID-19 near the end of the 10-day quarantine period. L.H. took the test, tested negative, and was allowed to return to school one day early. Seaman Middle School did not offer online learning. L.H. was instructed to email her

teachers for homework and assignments. Seaman Middle School did not require that masks be worn at school and L.H. did not wear one.

Hutchinson testified that once L.H. returned to school, it took her two to three weeks to catch up on work she missed, and L.H. suffered several more weeks of stress connected to her absence. Hutchinson said L.H. missed an important time in her math class where foundational concepts were taught that were building blocks for the rest of the math curriculum. During the quarantine period, L.H. never exhibited signs of illness, nor did anyone in L.H.'s family.

On November 15, 2021, Hutchinson received a text from Seaman Middle School telling her to check her email for a message from the school nurse, Holmberg. The email, sent during the evening of November 14, 2021, said L.H. "was identified as a close contact to a student who tested positive for COVID-19," and the exposure occurred in the classroom or the lunch room on November 11, 2021. The email said L.H. "will not be able to attend school for 10 days from the date of exposure," but could return to school Monday, November 22, 2021. L.H. was offered two options to eliminate or shorten the quarantine period: 1) participate in the Test to Learn program; or 2) take a COVID PCR test, and if negative, return to school on Day 8 of the quarantine period.

The email described the Test to Learn program as an "opportunity to attend school while in quarantine to avoid missed class time." It required that the parent bring the student to a site outside the school building between 7 and 7:45 a.m. each school day for a rapid antigen test. The test requires the student to insert a cotton swab inside each nostril and rotate five times to obtain nasal secretions. The parent and student then wait 15 minutes in the parking lot for test results. If negative, the student is allowed to attend school, afterschool activities, and ride the bus home, as long as the student wears a mask properly at all times. The second option allows the student to

take a COVID-19 PCR test at an outside testing site on Day 6 or 7, and if negative, return to school on Day 8 with proof of the negative test.

The email also explained that if the student had tested positive for COVID-19 within the last six months, the student would be allowed to attend school during the quarantine period. If the student had two doses of a COVID-19 vaccine and more than two weeks had elapsed since the second dose, the student would be allowed to attend school during the quarantine period.

L.H. declined the Test to Learn option and the PCR test. Hutchinson said she does not believe that PCR tests are accurate. She said she believes that the swabs used in the Test to Learn program and for PCR tests are coated in carcinogenic chemicals, and since cancer runs in Hutchinson's family, she did not want to expose L.H. to those chemicals. L.H. said she did not want to take a PCR test because the nasal swab was painful.

After Hutchinson read the email from the school nurse on November 15, 2021, she took L.H. up to the school to dispute the quarantine directive. L.H. and Hutchinson met with Holmberg and Seaman Middle School principal Joshua Snyder. They provided no specifics about why L.H. was deemed a close contact to a COVID-positive student. They said the quarantine directive was only a recommendation. Hutchinson said she chose not to take the recommendation and wanted L.H. to remain in school. Snyder and Holmberg said they had to make some phone calls and left.

After approximately an hour and a half, Snyder and Holmberg returned with the school resource officer, Phil McKay. McKay asked if Hutchinson would comply with a quarantine order. Snyder said he was getting an order from the Shawnee County Health Department. Snyder referenced a statute and a copy of a statewide emergency declaration from 2020. Hutchinson asserted that those items did not support the quarantine directive. Holmberg then gave Hutchinson

a copy of the “Public Health Order for Quarantine by the Shawnee County Health Officer” that had been faxed to the school. It was dated November 15, 2021. Hutchinson said the order was not valid because there had been no medical assessment of L.H., no investigation of the close contact issue, and the order did not bear the original signature of the Shawnee County Health Officer.

The quarantine order was a document addressed to L.H. on Shawnee County Health Department letterhead. It contained the photocopied signature of Erin Locke, MD, MPH, Shawnee County Health Officer. It said in pertinent part:

“The Shawnee County Health Officer believes you to be at high risk of developing COVID-19 as a result of one or more of the following: An exposure to infectious COVID-19 from a non-household contact on 11/11/21.

...

You are exempted from this quarantine if you have COVID-19 immunity [vaccine immunity or natural immunity documented by a PCR or antigen test] and do not have symptoms.

...

Terms of Quarantine

Beginning: 11/12/21

Ending: please see below for guidelines.

1. You are confined to your home [address omitted] for the duration of the quarantine period identified below.
2. You may not have visitors to your home unless authorized by SCHED.
3. The incubation period for COVID-19 is 14 days. Though quarantine may end prior to, you must self-monitor for symptoms for a full 14-day incubation period. See below for further shortened quarantine guidance.
4. If symptoms of COVID-19 develop, such as fever, cough or shortness of breath, you must contact the Shawnee County Health Department (SCHED) at (785) 251-5668. In addition, SCHED may monitor your condition through daily phone calls and/or electronic communication.

...

Duration of Quarantine

...

10-Day: you are released from quarantine on Day 11 if no symptoms develop.

...

7-Day: You must complete a PCR test on or after Day 6. If the PCR test is negative and no symptoms have developed, you are released from quarantine on Day 8. Antigen and/or antibody tests will not be sufficient for this purpose.

Quarantine Law

It is very important that you comply with this quarantine order. Your health and the health of others depends upon it. If necessary, this quarantine order may be enforced by law enforcement at the direction of the Shawnee County Health Officer.

...

If you have any questions regarding this quarantine order, please contact the Shawnee County Health Department at 785-251-5668 or the Shawnee County COVID-19 Hotline at 785-251-4949."

Hutchinson asked Holmberg if she would complete a medical assessment of L.H. Holmberg declined. Hutchinson asked if the Shawnee County Health Officer would perform an assessment of L.H. McKay said no. Hutchinson testified that McKay said he was "done," would not debate the issue further, and Hutchinson and L.H. must leave or he would arrest both of them for trespassing. L.H. said she felt intimidated and scared, and she started crying. Hutchinson was allowed to call an attorney for advice, and ultimately decided to leave.

Hutchinson said she later received an email from someone at the Shawnee County Health Department (not Dr. Locke) with a copy of the "Public Health Order for Quarantine by the Shawnee County Health Officer" attached. In a separate, previous quarantine appeal before this court, Dr. Locke testified that she provided the schools this electronically fillable quarantine order

with her pre-printed signature to issue to students and parents when the school determines the student is a close contact. Dr. Locke said she authorized the schools to fill in the date blanks on the quarantine form with her pre-printed signature, then provide it to the affected students and parents. See *Jill Foster-Koch v. Shawnee County Health Department*, case nos. 2021-CV-459 and 2021-CV-460 (Dr. Locke’s testimony incorporated by agreement of the parties.) But in this case, the school did not use this form to communicate its decision to exclude L.H. from school. In this case, Dr. Locke said Wurtz, an employee of the Shawnee County Health Department, filled out the pre-printed order and sent it to Hutchinson.

Dr. Locke said she did not conduct the contact tracing on L.H. and did not provide the order to Hutchinson. She did not personally sign the order. Wurtz sent the order to Hutchinson. Dr. Locke testified at the hearing she was “familiar with the circumstances surrounding the issuance of that order.” Namely, that L.H. was reported by USD 345 as a close contact of someone who tested positive for COVID-19 at school. Dr. Locke said she did not personally issue the order, but Wurtz sent the order pursuant to the K-12 guidelines. Dr. Locke agreed with her attorney’s assertion that the order was sent “under her direction.” Dr. Locke said there is no document or other agreement in place to transfer or delegate her authority as Shawnee County Health Officer to another person or entity.

Hutchinson said that L.H. returned to school after the quarantine expired on November 22, 2021, for a full day, and on November 23, 2021, for a half day. The rest of the week there was no school due to Thanksgiving break. Hutchinson said L.H. is “severely behind” in math, missing 10 assignments during the most recent quarantine period. She said L.H. had to take an English test when she returned despite missing English class during the quarantine period, earning a “C” on

the test, which is lower than her usual grades. She said L.H. missed band practice and has been excluded from the winter concert because she is too far behind to perform. She said some of L.H.’s teachers were not responsive to requests for lesson plans and homework assignments while L.H. was at home. Hutchinson said L.H. is stressed, withdrawn, not sleeping well, and depressed because she missed so much school.

CONCLUSIONS OF LAW

Before addressing the arguments made by the parties, it is necessary to understand the contours of Kansas law relating to the powers and duties of certain government officials and others at the state and local levels when it comes to matters of public health.

A. OVERVIEW.

1. KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT – DUTIES AND POWERS.

The secretary of KDHE “shall exercise general supervision of the health of the people of the state.” K.S.A. 65-101. The secretary has the power to, among other things, “investigate the causes of disease, including especially, epidemics and endemics” and “take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state.” K.S.A. 65-101(a)(2) and (5).

“The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions of subsection (a). In addition to other remedies provided by law, the secretary is authorized to apply to the district court, and such court shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction to compel compliance with such rules and regulations.” K.S.A. 65-101(b).

“The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.” K.S.A. 65-128(b).

“Whenever the county or joint board of health or the local health officer neglects to properly isolate and quarantine infectious or contagious diseases and persons afflicted with or exposed to such diseases as may be necessary to prevent the spread thereof, the secretary of health and environment may quarantine any area in which any of these diseases may show a tendency to become epidemic.” K.S.A. 65-126.

2. LOCAL HEALTH OFFICERS – DUTIES AND POWERS.

“The board of county commissioners of each county shall act as the county board of health for the county. Each county board shall appoint a person licensed to practice medicine and surgery, preference being given to persons who have training in public health, who shall serve as the local health officer and who shall act in an advisory capacity to the county board of health.” K.S.A. 65-201(a). This provision applies to counties with populations of 100,000 people or more, and this includes Shawnee County. Dr. Locke is the duly appointed Shawnee County Health Officer. There is no dispute that she meets the statutory qualifications.

The local health officer “shall make an investigation of each case of . . . contagious or communicable diseases as may be required, and shall use all known measures to prevent the spread of any such infectious, contagious or communicable disease. . . .” K.S.A. 65-202(c)(1). A local

health officer may be removed from office or convicted of a misdemeanor for failure or neglect in performing statutory duties. K.S.A. 65-202(c)(2).

K.S.A. 65-119(a) sets forth additional duties and powers:

“Any county or joint board of health or local health officer having knowledge of any infectious or contagious disease, or of a death from such disease, within their jurisdiction, shall immediately exercise and maintain a supervision over such case or cases during their continuance, seeing that all such cases are properly cared for and that the provisions of this act as to isolation, restriction of communication, quarantine and disinfection are duly enforced. The county or joint board of health or local health officer shall communicate without delay all information as to existing conditions to the secretary of health and environment. The local health officer shall confer personally, if practicable, otherwise by letter, with the person in attendance upon the case, as to its future management and control. The county or joint board of health or local health officer is hereby empowered and authorized to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease.”

“Any disclosure or communication of information relating to infectious or contagious diseases required to be disclosed or communicated under subsection (a) of this section shall be confidential and shall not be disclosed or made public,” with certain exceptions. K.S.A. 65-119(b).

The secretary of KDHE and local health officers are empowered to order isolation and quarantine as well as order certain persons to obtain medical evaluation and treatment. K.S.A. 65-129b says:

“(a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123, 65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1)(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically 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, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.”

The law contains certain requirements for the contents and delivery of isolation and quarantine orders. K.S.A. 65-129c says in part:

“(a) If the local health officer or the secretary requires an individual or a group of individuals to go to and remain in places of isolation or quarantine under K.S.A. 65-129b, and amendments thereto, the local health officer or the secretary shall issue an order to the individual or group of individuals.

(b) The order shall specify:

- (1) The identity of the individual or group of individuals subject to isolation or quarantine;
- (2) the premises subject to isolation or quarantine;
- (3) the date and time at which isolation or quarantine commences;
- (4) the suspected infectious or contagious disease causing the outbreak or disease, if known;
- (5) the basis upon which isolation or quarantine is justified; and
- (6) the availability of a hearing to contest the order.

(c)(1) Except as provided in paragraph (2) of subsection (c), the order shall be in writing and given to the individual or group of individuals prior to the individual or group of individuals being required to go to and remain in places of isolation and quarantine.

(2)(A) If the local health officer or the secretary determines that the notice required under paragraph (1) of subsection (c) is impractical because of the number of individuals or geographical areas affected, the local health officer or the secretary shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(B) If the order applies to a group of individuals and it is impractical to provide written individual copies under paragraph (1) of subsection (c), the written order may be posted in a conspicuous place in the isolation or quarantine premises.”

There are criminal penalties for violation of KDHE rules and regulations, violation of an isolation order, breaking or evading quarantine, or knowingly concealing a case of infectious disease. K.S.A. 65-129 says:

“Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.”

Those convicted of a class C misdemeanor face penalties of up to one month in jail, K.S.A. 21-6602(a)(3), and a fine of up to \$500, K.S.A. 21-6611(b)(3).

3. SCHOOL OFFICIALS – DUTIES AND POWERS.

Teachers and school administrators, among others, are mandatory reporters of those who are “suffering from” or have died from infectious or contagious disease. K.S.A. 65-118(a) says:

“Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse, administrator of a hospital, licensed adult care home-administrator, licensed physician assistant,

licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease.”

These mandatory reporters are immune from civil and criminal liability and participation in judicial proceedings for reports made in good faith and without malice. K.S.A. 65-118(b). Information required to be reported under K.S.A. 65-118(a) shall be confidential and not be disclosed or made public, upon subpoena or otherwise, with certain exceptions. K.S.A. 65-118(c).

K.S.A. 65-122 concerns the exclusion of children and other persons “afflicted with an infectious or contagious disease dangerous to the public health” from school and child care facilities. Parents, along with a person in charge of any school or child care facility, have a duty to exclude children or other persons “affected with a disease suspected of being infectious or contagious” from these places. K.S.A. 65-122 says:

“No person afflicted with an infectious or contagious disease dangerous to the public health shall be admitted into any public, parochial or private school or licensed child care facility. It shall be the duty of the parent or guardian, and the principal or other person in charge of any public, parochial, private school or licensed child care facility to exclude therefrom any child or other person affected with a disease suspected of being infectious or contagious until the expiration of the prescribed period of isolation or quarantine for the particular infectious or contagious disease. If the attending person licensed to practice medicine and surgery or local health officer finds upon examination that the person affected with a disease, suspected of being infectious or contagious is not suffering from an infectious or contagious disease, he or she may submit a certificate to this effect to the person in charge of the public, parochial, private school or licensed child care facility and such person shall be readmitted to school or to the child care facility.”

4. CHALLENGING AN ORDER MADE UNDER K.S.A. 65-129C.

An individual quarantined under the authority of K.S.A. 65-129c may request a hearing in district court to challenge the quarantine order. K.S.A. 65-129c(d)(1). Hutchinson requested a hearing on behalf of her minor child, L.H., who was subject to the quarantine order at issue. “The court shall grant the request for relief 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.” K.S.A. 65-129c(d)(4)(C)(i). Further, “[i]f feasible, in making a determination under this paragraph (C), the court may consider the means of transmission, the degree of contagion, and, to the extent possible, the degree of public exposure to the disease.” K.S.A. 65-129c(d)(4)(C)(ii).

B. MOOTNESS.

Shawnee County moved to dismiss this case on the basis that the quarantine period at issue had expired prior to the hearing, thus rendering Hutchinson’s challenge moot. “Kansas appellate courts do not decide moot questions or render advisory opinions.” *State v. Montgomery*, 295 Kan. 837, 840, 286 P.3d 866 (2012). A case is moot when “it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights.” *Id.* at 840-41. But the mootness doctrine is not jurisdictional, and it is amenable to exceptions. *Id.* at 841. See also *State v. Roat*, 311 Kan. 581, 590, 466 P.3d 439 (2020).

One common exception arises when an issue “is capable of repetition and raises concerns of public importance.” *State v. DuMars*, 37 Kan.App.2d 600, 605, 154 P.3d 1120, *rev. denied* 284 Kan. 948 (2007). “Public importance means more than that certain members of the general public

are interested in the decision of the appeal from motives of curiosity or because it may bear upon their individual rights or serve as a guide for their future conduct.” *State v. Hayden*, 52 Kan. App. 2d 202, 206, 364 P.3d 962 (2015).

Here, Hutchinson challenges the legal authority of the quarantine order under the circumstances surrounding its issuance, namely that school officials identified her child as a close contact to someone who tested positive for COVID-19, reported the matter to Wurtz, and Wurtz issued a quarantine order under the signature of Dr. Locke, the Shawnee County Health Officer. Dr. Locke and others testified that this was a procedure contemplated by the Shawnee County Health Department’s guidelines applicable to K-12 schools in Shawnee County. Given the number of K-12 schools, staff, and students in Shawnee County, the fact that this procedure was directed for use in the schools, and the continuing presence of COVID-19 in the community, the issuance of such quarantine orders under similar circumstances is certainly capable of repetition. Indeed, three additional similar cases have been filed with this court. Hutchinson’s challenge raises issues of public importance because the quarantine order not only restricts or prevents the student’s attendance at school, but purports to confine the student to her home for a certain period of time under penalty of law.

For these reasons, the court concludes that Hutchinson’s challenge to the quarantine order is not moot. Shawnee County’s motion to dismiss on this basis is denied.

C. ANALYSIS.

Shawnee County seeks to limit the court’s review of this matter to the question of whether the quarantine order was necessary and reasonable to prevent or reduce the spread of COVID-19. See K.S.A. 65-129c(d)(4)(C)(i). But the thrust of Hutchinson’s argument is that the quarantine

order was issued without legal authority, rendering it void from the outset. The court will focus its analysis on the issue of legal authority. This requires interpretation and application of the various statutes set forth above.

The most fundamental rule of statutory construction is that the intent of the legislature governs. *Harsay v. University of Kansas*, 308 Kan. 1371, 1381, 430 P.3d 30 (2018). The court discerns legislative intent through the statutory language, giving common words their ordinary meanings. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019). When a statute is plain and unambiguous, the court should not speculate about legislative intent, nor should it read something into the statute that is not readily found in its text. *Harsay*, 308 Kan. at 1381. Indeed, “the best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used.” *Gannon v. State*, 298 Kan. 1107, 1143, 319 P.3d 1196 (2014) (internal quotations and citations omitted).

Teachers and school administrators, among others, are mandatory reporters when the reporter “knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease.” K.S.A. 65-118(a). Further, “[n]o person afflicted with an infectious or contagious disease dangerous to the public health shall be admitted into any public, parochial or private school or licensed child care facility.” And a person in charge of any school or child care facility has a duty to exclude children or other persons “affected with a disease suspected of being infectious or contagious” from these places. K.S.A. 65-122. It follows, then, that schools have the statutory authority to exclude certain persons from a school under the circumstances described in these statutes. There is no law that allows a school official to issue an order of quarantine confining a student to her home for any period of time under penalty of law.

By contrast, the local health officer may issue an order to quarantine. This is an order to confine a person to a particular place until the local health officer determines the person no longer poses a substantial risk of spreading the disease. K.S.A. 65-129b(a)(1)(B). The local health officer has at her disposal any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of the order. K.S.A. 65-129b(a)(2). Further, breaking the quarantine order is a crime, punishable as a class C misdemeanor with the possibility of jail time and a fine. K.S.A. 65-129.

But the power of the local health officer to quarantine is circumscribed. The local health officer may issue a quarantine order only when “the local health officer . . . determines that it is medically 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.” K.S.A. 65-129b(a)(1)(B). Hutchinson argues that the statute means what it says – that the local health officer, not someone else, and certainly not someone without requisite credentials, must make the determination about medical necessity and reasonableness and issue the order. This makes sense in light of the requirements that the local health officer: 1) have medical education and training, K.S.A. 65-201(a); 2) make an investigation of each case of contagious disease and use all known measures to prevent the spread of the disease, K.S.A. 65-202(c)(1); and 3) immediately exercise and maintain supervision over each case of contagious disease during its continuance, seeing that all such cases are properly cared for and that any quarantine is duly enforced, K.S.A. 65-119(a).

The Shawnee County Health Department asserts that because schools are “mandatory reporters,” the Health Department is entitled to rely on close contact lists from school districts as the only necessary justification for quarantine orders. But there appears to be a disconnect between

this argument and the statutory language. School officials are mandatory reporters when the reporter “knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease.” K.S.A. 65-118(a). The duty is to report a person “suffering from” the disease. The plain language does not impose upon schools a duty to report potential exposure, here known as close contacts. This is consistent with K.A.R. 28-1-2(a)(19) (teachers and school administrators, among others, shall report each “suspected case” of disease by providing detailed demographic and diagnostic information).

Under the facts of this case, Dr. Locke did not determine that a quarantine order for L.H. was medically necessary and reasonable to prevent or reduce the spread of COVID-19. Dr. Locke’s testimony does not suggest she knew the underlying facts of L.H.’s exposure before the quarantine order was issued, neither she nor the Shawnee County Health Department did any investigation or contact tracing, she did not prepare the order, she did not review the order before it went out, and she did not sign the completed order. Instead, Dr. Locke testified that Wurtz received a report that L.H. was a close contact of someone who had tested positive for COVID-19. Pursuant to the K-12 guidelines, Wurtz filled in the blanks on the pre-printed quarantine order under Dr. Locke’s signature and emailed it to Hutchinson.

To the extent the Shawnee County Health Department argues that the order was issued under the general authority of Dr. Locke on a blank form with a photocopied signature under the vague auspices of the K-12 guidelines, it is nonetheless void. A close contacts list from a school district alone is not enough under the statutes to trigger or justify the issuance of a quarantine order by a Health Department employee. The local health officer, Dr. Locke, is authorized under certain circumstances to issue quarantine orders, with the attendant power to confine a person to her home

and ban visitors, among other things. The orders are enforceable by law, and violations are punishable with jail time and fines. But here, Dr. Locke did not make the determination required by statute to issue the order to L.H. The law does not allow delegation of that task to school officials, the K-12 guidelines, a Health Department employee, or some combination of these.

CONCLUSION

The quarantine order was issued to L.H. without statutory or other legal authority and is void. Hutchinson's request for relief is granted and the order is vacated. This concludes the litigation in favor of Hutchinson on behalf of her child, and no further journal entry is necessary.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically providing notice to counsel of record.

/s Angela Cox
Administrative Assistant