

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JULIEANNE AUSTIN, *et al.*,)
Plaintiffs,)
v.)
THE BOARD OF EDUCATION OF)
COMMUNITY UNIT SCHOOL DISTRICT)
#300, *et al.*,)
Defendants.)

2021-CH-500002

Judge: *Raylene DeWitte Grischow*

FILED
AUG 12 2022
David DeWitte
Clerk of the
Circuit Court 36

ORDER ON MOTION TO DISMISS SECOND AMENDED COMPLAINT

This matter is before the Court on the motions to dismiss plaintiffs’ second amended verified complaint for declaratory and injunctive relief filed on April 8, 2022. This Court having jurisdiction heard arguments on August 10, 2022. The Court having considered the record, including arguments of counsel, all filed pleadings and applicable case law, finds as follows:

Count I of plaintiffs’ second amended verified complaint for declaratory and injunctive relief (the “SAC”) asserts the mask requirement and exclusion requirement are unlawful because students may not be excluded from school premises or be required to wear a face covering without parental consent unless the procedures established pursuant to Section 2 of the Illinois Department of Public Health Act, 20 ILCS 2305/1 *et seq.* (“IDPH Act”) are followed. (SAC ¶¶314-326). In Count II, plaintiffs insist that the State Parties lack authority to promulgate and/or implement the mask requirement or exclusion requirement. (SAC ¶¶327-335). In Count III, plaintiffs seek an injunction barring the enforcement of any rules relating to mask-wearing or exclusion from school for the purposes of combating infectious disease. (SAC ¶¶ 336-350).

LEGAL STANDARD

Some defendants move to dismiss the SAC under 735 ILCS 5/2-615 and others move to dismiss under 735 ILCS 5/2-619. “The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted.” *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). In reviewing the sufficiency of a complaint, a court must “accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). “Moreover, Illinois is a fact-pleading jurisdiction.” *Beahringer*, 204 Ill. 2d at 369. As such, a plaintiff “must allege facts that set forth the essential elements of the cause of action” and may not rely on “conclusions of law [or] conclusory allegations not supported by specific facts.” *Visvardis v. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007). However, “the plaintiff is not required to set out evidence.” *Chandler v. Illinois Cent. R.R.*, 207 Ill. 2d 331, 348 (2003). Instead, the plaintiff need only allege the ultimate facts to be proved, “not the evidentiary facts tending to prove such ultimate facts.” *Id.* Therefore, “[t]o survive a [section 2-615] motion to dismiss, a complaint must present a legally recognized claim as its basis for recovery, and it must plead sufficient facts which, if proved, would demonstrate a right to relief.” *Derby Meadows Util. Co. v. Inter-Cont'l Real Estate*, 202 Ill. App. 3d 345, 358 (1st Dist. 1990). Further, a court should dismiss a cause of action on the pleadings “only if it is clearly apparent that no set of facts can be proven which will entitle the plaintiff to recovery.” *Chanel v. Topinka*, 212 Ill. 2d 311, 318 (2004).

A § 2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” *Cohen v. Compact Powers*

Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under § 2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” *Id.* Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

Generally, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). A matter is moot “if an actual controversy no longer exists in the interests or rights of the parties are no longer in controversy.” *Novak v. Rathnam*, 106 Ill. 2d 478, 482 (1985). A motion to dismiss for mootness is properly presented under section 2-619(a)(9). *Johnson v. Du Page Airport Auth.*, 268 Ill. App. 3d 409, 414 (2d Dist. 1994); 735 ILCS 5/2-619(a)(9).

OPINION AND ANALYSIS

The Court finds that plaintiffs’ claims against the Governor, in his official capacity, the Illinois Department of Public Health (“IDPH”), the Illinois State Board of Education (“ISBE”), ISBE Superintendent Dr. Carmen Ayala, in her official capacity, and IDPH director Dr. Sameer Vohra, in his official capacity, (collectively, the “State Parties”) as well as the school districts who filed motions to dismiss, are moot, and that no exception to mootness applies. *See, e.g., Austin v. Bd. of Educ.*, 2022 IL App (4th) 220090-U, ¶ 6.

The State Parties are not mandating mask mandates or exclusion policies and the school districts are not implementing mask mandates and/or close contact exclusion policies, therefore plaintiffs’ claims are moot. *See, e.g. Austin v. Bd. Of Education of Cmty. Unit Sch. Dist. 300*, 2022 IL App (4th) 220090-U, ¶4, appeal denied, 2022 IL 128205, ¶4, Executive Order 2022-06. The new joint guidance issued by IDPH and ISBE, that supersedes all prior COVID-19 guidance, is

exactly that - guidance. School districts are encouraged to follow the joint guidance; but there is no mandate. When events makes it impossible for the court to render effectual relief or no actual controversy exists, a case is moot. *In re: Marriage of Peters-Farrell*, 216 Ill. 2d 287 (2005). Illinois courts, as a general rule, do not decide moot questions or render advisory opinions. *See Commonwealth Edison Co. v. Illinois Commerce Commission*, 2016 IL 118129, ¶10. Here, no relief can be granted as the school districts do not have any policies that mandate masks or exclusion from school due to being a close contact. Moreover, neither Executive Order, nor the ISBE guidance mandate masks be worn by school personnel or students, nor does the joint guidance dictate exclusion from school due to being a close contact anymore.

The Court further finds that no exception to public-interest exception applies. The exception only applies when one of the following three requirements are established: “(1) the question presented is one of a public nature; (2) an authoritative determination of the question is desirable for future guidance of public officers; and (3) the question is likely to reoccur.” *In re: Shelby R.*, 2013 IL 114994, ¶16. The public interest exception may not be invoked if any one of the criteria is not established. *See Commonwealth Edison*, 2016 IL 118129 ¶13. Counsel for plaintiffs argued that the issues were most certainly a question of public nature but then failed to satisfy the other necessary elements. As such, plaintiffs did not sustain their burden.

Turning to the 2-615 motions, the Court further finds that plaintiffs have failed to state a claim upon which relief can be granted. “A well-pleaded complaint praying for injunctive relief must contain on its fact a clear right to relief and state facts which establish the right to such relief in a positive certain and precise manner.” *Sadat v. Am. Motors Corp.*, 104 Ill. 2d 105 (1984). The right to injunctive relief rests on actual or presently threatened interference with another’s rights. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry. Co.*, 195 Ill. 2d 364, 371 (2001).

The SAC makes conclusory allegations with no specific facts to support those conclusions. Plaintiffs fail to allege the school districts have policies in place and are implementing those policies that presently threaten plaintiffs' rights, and which plaintiffs are threatened. According to the pleadings, school districts have not enforced masking and/or close contact exclusions rules with respect to any plaintiffs since this Court's Order of February 4, 2022, nor does the SAC allege that any of the school districts have enforced mask mandates and/or close contact exclusion policies since February 4, 2022. Rather, plaintiffs have pled conclusions that the school districts have "temporarily" suspended their mask and exclusion policies. (SAC ¶313). There are no facts alleged to support these conclusions. The Fourth District Appellate Court refused to consider challenges to COVID-19 mitigation policies that were not in place at the time of the Order. *See, e.g. Austin v. Bd. Of Education of Cmty. Unit Sch. Dist. 300*, 2022 IL App (4th) 220090-U, ¶6, appeal denied, 2022 IL 128205, ¶6. Plaintiffs also fail to allege that they are or are likely to suffer any harm due to the school districts' or State parties' conduct. Plaintiffs only allege speculative or possible damages, which is insufficient to plead a claim for injunctive relief.

The motions to dismiss are GRANTED. All claims against the State Parties and the defendants identified below are hereby dismissed with prejudice: Board of Education Glenview Community Consolidated School District #34, Carthage Elementary School District #317, Hamilton County Community Unit School District #10, Honoegah Community High School District #207, Jacksonville School District #17, Jersey Community Unit School District #100, Mattoon Community Unit School District #2, PORTA Community Unit School District #22, Prairie Central Community Unit School District #8, Ramsey Community Unit School District #204, Schuyler-Industry Community Unit School District #5, Trico Community Unit School District #176, Cumberland Community Unit School District #77, Valley View Community Unit

School District #365-U, Board of Education of Yorkville Community Unit School District #115 and Superintendent Dr. Timonthy Shimp, Board of Education of Woodstock Community Unit School District #200, Board of Education of North Mac Community Unit School District #34, and Superintendent Dr. Jay Goble, Minooka Community Unit School District #111, Eureka Community Unit School District #140, Metamora Township High School District #122, Metamora Community Unit School District #1, Channahon School District #17, Worth School District # 127, Erie Community School District #1, Dunlap Community Unit School District #323, Limestone Community Unit School District #310, Riverview Community Unit School District #2, Roanoke Community Unit School District #60, River Bend Community School District #2, Germantown #69, Brimfield Community Unit School District #309, Morton Community School District #709, Elmwood #203, West Central Community School District #235, Board of Education of Antioch School District #34, Board of Education of Arlington Heights School District #25, Board of Education of Cary School District #26, Board of Education of Crystal Lake School District #47, Board of Education of Marion Community Unit School District #2, Board of Education of Mt. Prospect School District #57, Board of Education of Prairie Grove School District #46, Board of Education of Township High School District #117, Board of Education of Township High School District #155, Board of Education Triad Community Unit School District #2, Board of Education Waterloo Community Unit School District #5, Board of Education of Herscher Community Unit School District #2, Board of Education of Central A&M Community Unit School District #21, Board of Education of Staunton Community Unit School District #6, Board of Education of United Community Unit School District #304, Board of Education of Rockridge School District #300, Board of Education of Medinah School District #11, Board of Education of St. Anne Community Consolidated School District #256, Board of Education of South Central Community Unit School

District #401, Carlinville Community Unit School District # 1, Board of Education of the City of Chicago School District #299, Board of Education of Community High School District #99, Board of Education of Community Unit School District #308, Board of Education of Macomb Community Unit School District #185, Board of Education of Maine Township High School District #207, Board of Education of Mascoutah Community Unit School District #19, Board of Education of New Lenox School District #122, Board of Education of Plainfield School District #202, Board of Education of Township High School District #211, Board of Education of Wesclin Community Unit School District #3, Bradley Bourbonnais Community Unit School District #307, North Palos School District #117, Sandwich Community Unit School District #430, Mahomet-Seymour Community Unit School District #3, Southwestern Community School District #9, Board of Education of Consolidated High School District #230, Board of Education of Homer Community Consolidated School District #33C, Board of Education of Illini West School District #307, Board of Education of Dieterich Community Unit School District #30, Board of Education of Addison School District #4, Board of Education of Barrington Community Unit School District #220, Board of Education of Belvidere Community Unit School District #100, Board of Education of Community High School District #128, Board of Education of Community Unit School District #200, Board of Education of Community Unit School District #300, Board of Education of DuPage High School District #88, Board of Education of Elmhurst Community Unit School District #205, Board of Education of Geneva Community Unit School District #304, Board of Education of Glencoe School District #35, Board of Education of Hinsdale Community Consolidated School District #181, Board of Education of Huntley Community Unit School District #158, Board of Education of Indian Prairie Community Unit School District #204, Board of Education of Indian Springs School District #109, Board of Education of Lake Forest High School District #115, Board


of Education of Lake Forest School District #67, Board of Education of Lemont-Bromberek Community School District #113A, Board of Education of Lemont Township High School District #210, Board of Education of Lincolnshire-Prairie View School District #103, Board of Education of Lockport Township High School District #205, Board of Education of McHenry Community Consolidated School District #15, Board of Education of Minooka Community Consolidated School District #201, Board of Education of Naperville Community Unit School District #203, Board of Education of Palos Community Consolidated School District #118, Board of Education of School District #45 (DuPage County), Board of Education of St. Charles Community Unit School District #303, Board of Education of Warren Township High School District #121, Board of Education of Wauconda Community Unit School District #118, Board of Education of Winnetka School District #36, Board of Education of Woodland Community Consolidated School District #50, Governor Pritzker, Illinois Department Public Health and Interim Director Dr. Sameer Vohra, Illinois School Board of Education, and Superintendent Dr. Carmen Ayala, Manhattan School District #114, Orlando School District #135, Community High School District #218, Board of Education of Central Community Unit School District #4, and Frankfort Community Consolidated School District #157-C, Board of Education of Burbank School District #111 and Board of Education of Lombard School District #44.

The Clerk is directed to terminate the aforementioned movant school districts and State Parties as defendants in this action.

There is no just reason for delaying either enforcement or appeal or both of this Order. This is a final and appealable order pursuant to 304(a).

IT IS SO ORDERED.

Date: August 12, 2022

By: 
Raylene DeWitte Grischow
Circuit Court Judge