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PLEASE REPLY TO MISSOURI OFFICE
Via Regular U.S. Mail & Electronic Mail

December 16, 2021

VIA ELECTRONIC MAIL: illegalmandates@ago.mo.gov

Office of the Attorney General
Mr. Eric Schmitt
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Re: School District of Clayton

Dear Attorney General Schmitt:

School District of Clayton and its superintendent, Dr. Nisha Patel, have received your December 7, 2021 letter to "Missouri School Districts" and your December 9, 2021 letter to Dr. Patel. We have been retained to reply to your correspondence as to the District's authority in light of the Nov. 22, 2021 Judgment in *Robinson v. Missouri Dept. of Health and Senior Services*, No. 20AC-CC00515. Please direct all future correspondence regarding this matter to me as the District's legal counsel.

The District's custodian of records will respond separately to the records request you make in your December 9 letter.

In your December 7 letter, you quote the injunctive portion of the *Robinson* judgment:

7) Consistent with Plaintiffs' request for relief that this Court deems just and proper, this Court orders that any and all discretionary orders or rules, whether written or verbal, that have been issued outside the protections of the Missouri Administrative Procedure Act and constitute a statement of general applicability that implements, interprets, or prescribes law or policy, or close a business based on the opinion or discretion of an agency official without any standards or guidance, by Director of the Department of Health and Senior Services and all local health authorities as defined by 19 CSR 20-20.010(26), are null and void.

That decision, on its face, does not apply to the School District of Clayton. The circuit court expressly limited its judgment to actions taken "by the Director of the Department of Health and Senior Services and all local health authorities as defined by 19 CSR 20-20.010(26)." The cited regulation defines "local health authorities" as follows:

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Local health authority is the city or county health officer, director of an organized health department or of a local board of health within a given jurisdiction. In those counties where a local health authority does not exist, the health officer or administrator of the Department of Health and Senior Services district in which the county is located shall serve as a local health authority.

Neither the School District of Clayton nor Dr. Patel is a “city or county health officer, director of an organized health department or of a local board of health.” Thus, the *Robinson* judgment does not apply directly to the School District of Clayton.

Following the quoted language from the *Robinson* Judgment, you make two statements that are broader than the Judgment itself—statements suggesting that you believe the Judgment has some indirect impact on the District.

First, you reference “local public health authorities,” and insist that school districts “stop relying on, enforcing, or publicizing any ... orders [of such health authorities] immediately.” School District of Clayton is not, however, “relying on, enforcing, or publicizing any” public health order from the pertinent “local public health authority,” *i.e.*, the St. Louis County Department of Public Health. The District has consulted with that Department in developing the District’s policies, and the Department’s guidelines have informed the District’s policies. But nothing in the *Robinson* judgment bars public health authorities from providing information and guidance to school districts and others. Indeed, it seems apparent that providing information and guidance is a principal responsibility of a local public health authority—entirely independent of the issues addressed in *Robinson*.

Second, you assert that “state law does not delegate authority to school officials to issue mask mandates, quarantine orders, or other public health orders,” and demand that the “school district should stop enforcing and publicizing any such orders immediately.” You cite no legal authority, and provide no logical explanation for that broad assertion. Were it true, it would threaten a broad range of District policies—from the use of tobacco and vaping products on campus, to student discipline, to student dress. In fact, school districts have always exercised both express (*e.g.*, §§ 171.011, 177.031, 162.261, and 167.191, RSMo.) and implicit policy authority. That authority is broad enough to allow the District to protect the health and safety of students and staff, which includes not only requirements regarding face coverings, but also the exclusion of students who have a contagious disease or who are liable to transmit a contagious disease after exposure. We are not aware of any support in statute, the Missouri Constitution, or caselaw for the proposition that such exercise of the District’s authority is impermissible under Missouri law.

In your December 9 letter, you note receipt of “a complaint from a parent whose child is a student in your school district alleging that school officials are in active non-compliance with a judgment of a Missouri court regarding mandates determined to be unlawful and invalid under the Missouri Constitution and under state statute.” And you allege the existence of “a court order reinforcing their right to determine what is best for their own children” that, you say, addresses masking and other COVID-related issues. We are not aware of any such order. Certainly, the *Robinson* judgment does not fit that description. And there has been no suit involving the School District of Clayton – or any other public school districts - in which such an order has been entered. We presume that you would have previously provided local school districts with a copy of such an order, which you have not. However, if there is such an order that we are not aware of, please provide a copy to us immediately.

You then assert that masking and other requirements “inhibit or prohibit a student from exercising their right to a free and open education as guaranteed by the Missouri Constitution.” We are aware, of course, of the promise in Art. IX, § 1(a), to provide “free public schools for

the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.” We are also aware of the caselaw interpreting and applying that provision. But we are not aware of any caselaw suggesting that when a school district takes steps to protect its students, faculty, and staff, it must let some students, at their own choice or the choice of their parents, ignore those steps. Again, if there is such authority, please call it to our attention.

In your December 7 letter you threaten “enforcement action against you to remove orders the court has determined are unconstitutional and illegal.” No public school district was a party to the Cole County Court case. And, as you are most certainly aware, even if the *Robinson* judgment applied to School District of Clayton, it would not become a final decision until December 22, 2021, and is subject to appeal. (We are surprised that your office has apparently decided not to appeal this loss on behalf of the State of Missouri, despite its collateral impact on the long-term authority of the Department of Health and Senior Services.) But again, we are not aware of any court having determined that any policy of the School District of Clayton related to its COVID mitigation strategies – or of any other public school district in the State of Missouri – is unconstitutional or illegal. Therefore, while we acknowledge receipt of your cease and desist letter, we respectfully disagree with the assertions made therein. We look forward to the withdrawal of your request.

Finally, we note the unjustified adverse impact of your broad public statements about the relationship between the Robinson judgment and the school districts that were never parties to that lawsuit. Misrepresenting the impact of that judgment on school districts has disrupted the education of students in the State of Missouri, spreading confusion amongst parents, students, staff and boards of education. We understand the frustration of parents who believe the public statements that you have made and consequently, believe that school officials and board members are not in compliance with the law. This has fractured the positive relationships that public school districts work so hard to sustain with their communities. We urge you not only to withdraw your cease and desist “order,” but to do what the people of the State of Missouri should expect a responsible attorney for the State to do: to accurately describe the limited impact of the Robinson judgment and reaffirm the longstanding authority of public school districts to provide a safe environment for all students.

The District will continue to review its COVID mitigation strategies and make decisions locally in the best interest of all students and staff.

Sincerely,



Celynda L. Brasher

CLB:lv

