

**IN THE SUPREME COURT OF WISCONSIN**

No. \_\_\_\_\_

WISCONSIN COUNCIL OF RELIGIOUS AND INDEPENDENT SCHOOLS,  
SCHOOL CHOICE WISCONSIN ACTION, ABUNDANT LIFE CHRISTIAN  
SCHOOL, HIGH POINT CHRISTIAN SCHOOL, LIGHTHOUSE CHRISTIAN  
SCHOOL, PEACE LUTHERAN SCHOOL, WESTSIDE CHRISTIAN  
SCHOOL, CRAIG AND SARAH BARRETT, ERIN AND KENT HAROLDSON,  
KIMBERLY HARRISON, SHERI AND ANDREW HOLZMAN, MYRIAH  
MEDINA, LAURA AND ALAN STEINHAUER, JENNIFER AND BRYANT  
STEMPSKI, AND CHRISTOPHER AND HOLLY TRUITT,

*Petitioners,*

v.

JANEL HEINRICH, IN HER OFFICIAL CAPACITY AS PUBLIC HEALTH  
OFFICER AND DIRECTOR OF PUBLIC HEALTH OF MADISON & DANE  
COUNTY

AND

PUBLIC HEALTH OF MADISON & DANE COUNTY,

*Respondents.*

---

**EMERGENCY PETITION FOR AN ORIGINAL ACTION  
AND APPENDIX**

---

RICHARD M. ESENBERG (WI Bar No. 1005622)  
ANTHONY LOCOCO (WI Bar No. 1101773)  
LUCAS VEBBER (WI Bar No. 1067543)  
ELISABETH SOBIC (WI Bar No. 1103379)  
Wisconsin Institute for Law & Liberty, Inc.

330 East Kilbourn Avenue, Suite 725  
Milwaukee, Wisconsin 53202-3141  
Phone: (414) 727-9455  
Facsimile: (414) 727-6385  
Rick@will-law.org  
AloCoco@will-law.org  
Lucas@will-law.org  
Libby@will-law.org

*Attorneys for Petitioners*

## ISSUES PRESENTED

1. Whether Wis. Stat. § 252.03 empowers a local health officer to issue an order closing schools for in-person instruction for select grade levels?

2. Whether indefinitely closing all public and private schools buildings to in-person student instruction for grades 3 through 12 is “reasonable and necessary for the prevention and suppression” of COVID-19 and/or “necessary to prevent, suppress and control” COVID-19 where, among other things, less than 10% of all COVID cases in Dane County were among children aged 0-17 and no deaths have occurred among those children testing positive in the County?

3. Whether Emergency Order #9 unconstitutionally infringes upon the state constitutional rights of parents to direct the education and upbringing of their children? *See* Wis. Const. art. I, § 1.

4. Whether Emergency Order #9 unconstitutionally infringes upon the state constitutional rights of parents to the free exercise of religion? *See* Wis. Const. art. I, § 18.

## **INTRODUCTION**

5. This case challenges the authority of one unelected bureaucrat to upend the education plans of thousands of students and families and their schools located throughout Dane County via the stroke of a pen.

6. That pen stroke occurred on a Friday afternoon just days before a number of schools in Dane County were planning to reopen after months of meticulous planning. Without warning, Respondents issued Emergency Order #9, which among other things, prohibits schools throughout Dane County from offering in-person instruction to students in grades 3 through 12, causing significant hardship, confusion, and chaos for families, students, teachers and administrators throughout the County.

7. This case is about whether or not the statutes and state constitution allow this unilateral action. Petitioners ask this

Court to declare that they do not and to enjoin Section 4 of Emergency Order #9, and to allow thousands of students to go back to school and to allow schools throughout Dane County to execute education and safety plans that have been in the works for months.

### **PARTIES**

8. Petitioners are a group of parents of students in Dane County schools, several of the schools themselves, and several membership associations representing schools throughout Wisconsin, including in Dane County.

9. Petitioner Wisconsin Council of Religious and Independent Schools (“WCRIS”) is a membership based association of religious and independent schools. Petitioner WCRIS maintains its principal office at 110 East Main Street, Suite 802, in the City of Madison, Dane County, Wisconsin. Petitioner WCRIS has member schools throughout Wisconsin, including members throughout Dane County. Because of Emergency Order #9, WCRIS members in Dane County may only offer in person instruction to students in kindergarten through 2<sup>nd</sup>

grade, and are prohibited from offering in-person instruction at any other grade level.

10. Petitioner School Choice Wisconsin Action is a membership based association of schools enrolled in one of Wisconsin's parental choice programs. School Choice Wisconsin Action maintains its principal office at 350 Bishops Way, Suite 104, in the City of Brookfield, Waukesha County, Wisconsin. School Choice Wisconsin Action has members throughout Wisconsin, including members in Dane County. Because of Emergency Order #9, School Choice Wisconsin Action members in Dane County may only offer in person instruction to students in kindergarten through 2<sup>nd</sup> grade, and are prohibited from offering in-person instruction at any other grade level.

11. Petitioner Abundant Life Christian School is a school located at 4901 East Buckeye Road, in the City of Madison, Dane County, Wisconsin. Petitioner Abundant Life Christian School serves approximately 259 students in kindergarten through 12<sup>th</sup> grade. Because of Emergency Order #9, Abundant Life Christian

School is not allowed to offer in-person instruction to students in grades 3-12.

12. Petitioner High Point Christian School is a school located at 7702 Old Sauk Road, in the City of Madison, Dane County, Wisconsin. Petitioner High Point Christian School serves approximately 272 students in preschool through 8<sup>th</sup> grade. Because of Emergency Order #9, High Point Christian School is not allowed to offer in-person instruction to students in grades 3-8.

13. Petitioner Lighthouse Christian School is a school located at 6402 Schroeder Road, in the City of Madison, Dane County, Wisconsin. Petitioner Lighthouse Christian School serves approximately 199 students in K4 through 8<sup>th</sup> grade. Because of Emergency Order #9, Lighthouse Christian School is not allowed to offer in-person instruction to students in grades 3-8.

14. Petitioner Peace Lutheran School is a school located at 1007 Stonehaven Drive, in the City of Sun Prairie, Dane County, Wisconsin. Peace Lutheran serves approximately 125 students in

kindergarten through 8<sup>th</sup> grade. Because of Emergency Order #9, Peace Lutheran School is not allowed to offer in-person instruction to students in grades 3-8.

15. Petitioner Westside Christian School is a school located at 6815 Schneider Road, in the City of Middleton, Dane County, Wisconsin. Westside Christian School serves approximately 157 students in prekindergarten through 8<sup>th</sup> grade. Because of Emergency Order #9, Westside Christian School is not allowed to offer in-person instruction to students in grades 3-8.

16. Petitioners Craig and Sarah Barrett reside at 6610 Ridge Point Run, in the City of Sun Prairie, Dane County, Wisconsin. The Barretts are the parents of three children who will be entering 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> grade this upcoming school year. Because of Emergency Order #9, the Barrett's 3<sup>rd</sup> and 6<sup>th</sup> graders will not be allowed to attend school in-person.

17. Petitioners Erin and Kent Haroldson reside at 642 Perry Center Road, in the Town of Perry, Dane County, Wisconsin. The Haroldsons are the parent of a child who will be entering 3<sup>rd</sup>

grade this upcoming school year. Because of Emergency Order #9, the Haroldsons' child will not be allowed to attend school in-person.

18. Petitioner Kimberly Harrison resides at 3205 Bailey Road, in the City of Sun Prairie, Dane County, Wisconsin. Petitioner Harrison is the parent of two children who will be entering 4<sup>th</sup> and 6<sup>th</sup> grade this upcoming school year. Because of Emergency Order #9, Petitioner Harrison's children will not be allowed to attend school in-person.

19. Petitioners Sheri and Andrew Holzman reside at 3931 Mueller Road, in the Village of Windsor, Dane County, Wisconsin. The Holzmanns are the parents of three children who will be entering 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup> grades this upcoming school year. Because of Emergency Order #9, the Holzmanns' children will not be allowed to attend school in-person.

20. Petitioner Myriah Medina resides at 46 Apple Hill Drive, in the Village of Blue Mounds, Dane County, Wisconsin. Petitioner Medina is the parent of one child who will be entering

7<sup>th</sup> grade this upcoming school year. Because of Emergency Order #9, Petitioner Medina's child will not be allowed to attend school in-person.

21. Petitioners Laura and Alan Steinhauer reside at 3718 Arapaho Court, in the City of Verona, Dane County, Wisconsin. The Steinhauers are the parents of a child who will be attending 5<sup>th</sup> grade this upcoming school year. Because of Emergency Order #9, the Steinhauers' child will not be allowed to attend school in-person.

22. Petitioners Jennifer and Bryant Stempski reside at 1836 Barrington Drive, in the City of Sun Prairie, Dane County, Wisconsin. The Stempskis are the parents of three children who will be attending 2<sup>nd</sup>, 5<sup>th</sup> and 7<sup>th</sup> grades this upcoming school year. Because of Emergency Order #9, the Stempskis' 5<sup>th</sup> and 7<sup>th</sup> graders will not be allowed to attend school in-person.

23. Petitioners Christopher and Holly Truitt reside at 6217 Harvest Lane, in the Village of De Forest, Dane County, Wisconsin. The Truitts are the parents of a child who will be

entering 10<sup>th</sup> grade this upcoming school year. Because of Emergency Order #9, the Truitts' child will not be allowed to attend school in-person.

24. As set forth herein and in the accompanying memorandum and affidavits, the Petitioners are harmed by Order #9, among other ways, by being unable to attend or operate schools, by financial loss, and by injury to constitutional rights.<sup>1</sup>

25. Respondent Janel Heinrich is the Public Health Officer and Director of Public Health of Madison & Dane County, and is named in her official capacity. Respondent Heinrich maintains her principal office at 210 Martin Luther King Jr. Blvd., Room 507, in the City of Madison, Dane County, Wisconsin. Respondent Heinrich issued Emergency Order #9 that is the subject of this Petition.

26. Respondent Public Health of Madison & Dane County is a city-county health department serving the City of Madison and

---

<sup>1</sup> Fourteen of the fifteen affidavits are signed and notarized. Due to the exigency of the matter, one affidavit is unsigned. Counsel for Petitioners intend to supplement with an identical but signed and notarized affidavit at the earliest possible opportunity.

the rest of Dane County. Respondent Public Health of Madison & Dane County maintains its principal office at 210 Martin Luther King Jr. Blvd., Room 507, in the City of Madison, Dane County, Wisconsin. Respondent Public Health of Madison & Dane County is the entity responsible for administering Emergency Order #9, which is the subject of this Petition.

### **STATEMENT OF FACTS**

27. In February of this year the COVID-19 pandemic hit our country. On March 12, Wisconsin Governor Tony Evers issued Executive Order #72 declaring a statewide public health emergency due to COVID-19. Governor Evers and DHS then issued a number of emergency orders designed to contain the spread of COVID-19.

28. On May 11, the state of emergency declared by Governor Evers expired, but COVID-19 has continued to spread throughout Wisconsin.

29. Days later on May 13, in *Legislature v. Palm*, 2020 WI 42, 942 N.W.2d 900, this Court found that certain orders issued by

DHS were, in fact, rules that were not promulgated via that statutory rulemaking process, and thus, were invalid.

30. Following that, health officers in several communities, including Dane County, have issued local emergency health orders, requiring the wearing of face coverings, limiting the capacity of businesses, and more.

31. On July 7, Respondents issued “Emergency Order #8” which, among other things, mandated the wearing of face coverings throughout Dane County.

32. On July 30, Governor Evers issued Executive Order #82, proclaiming for a second time that a statewide public health emergency related to COVID-19 exists.

33. On August 21, more than six months after the COVID-19 crisis began in Wisconsin, and approximately 60 hours before most of the Petitioners (or their children, or member schools) were scheduled to begin in person instruction, Respondent Heinrich issued Emergency Order #9 which, among other things, forbids the opening of schools for in-person instruction in grades 3 through 12.

A true and correct copy of Emergency Order #9 is attached hereto as Exhibit A.

34. The legality of Emergency Order #9, and specifically section 4 which relates to schools, is the subject of this Petition.

35. Petitioners are a group of parents whose children cannot attend school as planned, schools who cannot educate those children in person, and associations of schools whose members' educational programs are being impaired by the order.

36. Petitioner schools have either already opened and were offering in-person instruction or were planning to open on August 24 for in person instruction.

37. Petitioners bring this action to challenge the legality of those provisions of Emergency Order #9, Section 4, which prohibit in-person instruction in grades 3 through 12.

#### **STATEMENT OF RELIEF SOUGHT**

38. This Court should grant this petition, immediately enjoin respondents from enforcing those provisions of Emergency Order #9 which purport to prohibit schools from providing in-

person instruction to pupils in grades 3-12, declare those provisions void, and permanently enjoin them.

### **REASONS WHY THIS COURT SHOULD TAKE JURISDICTION**

39. This case involves significant questions relating to the authority of local public health officers to totally shut down the in-person education of children, a matter of paramount import for parents as well as one of constitutional dimension.

40. The issue in this case is whether the Wisconsin statutes permit a local health authority to completely close schools to in-person instruction simply on its say-so that the public health requires it and, if they do, whether the Wisconsin Constitution permits a local health authority to issue such an order.

41. Recognizing the statewide importance of ensuring that sweeping government actions to combat COVID-19 do not go unchecked but instead receive rapid, thorough, and definitive review by the Wisconsin judiciary, this Court recently exercised its original jurisdiction in analogous circumstances. *See Wisconsin Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900.

42. This Court should do the same here. On the eve of a new school year, with virtually no notice, and contrary to the reasonable expectations of the Petitioners, Respondents Heinrich and Public Health of Madison and Dane County (collectively “PHMDC”) simply barred the Petitioners from sending their children to school and operating those schools for in-person instruction.

43. PHMDC did so on the apparent belief that the mere invocation of the word “COVID-19,” like an incantation, imbued it with the authority to significantly intrude upon one of the most fundamental obligations parents have to their children: ensure their education and formation. But no statute authorizes what PHMDC has done, and even if the Legislature had authorized such a radical action, the state constitution requires that such a substantial burden on the right of parents to direct the education of their children and to freely exercise their religion by choosing a religious school be supported by the most exceptional of justifications. PHMDC cannot meet that standard.

44. PHMDC admits that less than 10% of all COVID cases in Dane County involve children aged 0-17 and it admits *no* deaths have occurred among those children testing positive in the County. Further, its own actions to date—including Order #9 itself—establish that far less extreme alternatives are available.

45. Aside from the public importance of the questions raised in this case, this case is appropriate for this Court’s original action jurisdiction because time is of the essence.

46. The new school year is already upon Wisconsin, and the state’s children need certainty as soon as possible. Litigating this case through the ordinary process could result in multiple reversals, seriously disrupting student, parent, and teacher class and work schedules.

47. Resolution by this Court in the first instance, on the other hand, will give all parties involved the finality needed to ensure that students’ educations are disturbed as little as possible in a fraction of the time. *Petition of Heil*, 230 Wis. 428, 284 N.W. 42, 50 (1938) (original jurisdiction appropriate where “the

questions presented are of such importance as under the circumstances to call for [a] speedy and authoritative determination by this court in the first instance”).

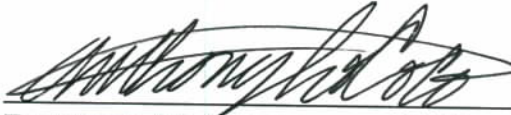
48. Finally, and as shown in the accompanying Memorandum, the questions in this case are legal—they relate to the interpretation of the state constitution and the Wisconsin Statutes. This Court will not need to resolve any factual disputes better suited for a circuit court’s attention. *See, e.g. State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978) (disposition via original action was appropriate insofar as “no fact-finding procedure [was] necessary”).

## CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant this Emergency Petition for an Original Action, immediately enjoin Respondents from enforcing those provisions of Emergency Order #9 which purport to prohibit schools from providing in-person instruction to pupils in grades 3-12, declare those provisions void, and permanently enjoin them.

Dated this 26th day of August, 2020.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard M. Esenberg", written over a horizontal line.

RICHARD M. ESENBERG (WI Bar No. 1005622)

ANTHONY LOCOCO (WI Bar No. 1101773)

LUCAS VEBBER (WI Bar No. 1067543)

ELISABETH SOBIC (WI Bar No. 1103379)

Wisconsin Institute for Law & Liberty, Inc.

330 East Kilbourn Avenue, Suite 725

Milwaukee, Wisconsin 53202-3141

Phone: (414) 727-9455

Facsimile: (414) 727-6385

Rick@will-law.org

ALoCoco@will-law.org

Lucas@will-law.org

Libby@will-law.org

*Attorneys for Petitioners*

## **CERTIFICATE OF SERVICE**

A copy of this Petition is being served on all opposing parties via electronic mail and first-class mail.

Dated: August 26, 2020

A handwritten signature in black ink, appearing to read "Anthony F. LoCoco", written over a horizontal line.

Anthony F. LoCoco

---

## PETITIONERS' APPENDIX

---

### TABLE OF CONTENTS

<u>Document Name</u>	<u>Pet.App. Page Nos.</u>
Emergency Order #9.....	101-115

## ORDER OF PUBLIC HEALTH MADISON & DANE COUNTY

**DATE OF ORDER:** August 21, 2020  
Goes into effect on August 24, at 12:01 a.m.

### EMERGENCY ORDER #9

This remains a critical time for Dane County to decrease the spread of COVID-19, keep people healthy, and maintain a level of transmission that is manageable by health care and public health systems. While research on school-aged children continues to emerge and evolve, a number of systematic reviews have found that school-aged children contract COVID at lower rates than older populations. This is particularly pronounced among younger school-aged children. Locally, as of August 20, 2020, nine (9) percent of all COVID cases were among children aged 0-17 in Dane County. This population comprises 22% of the county population overall. Cases among 0-4 year olds comprised 1.3% of all cases; 5-10 year olds comprised 2.7% of overall cases; and 11-17 year olds comprised 5.3% of all cases. Outbreaks and clusters among cases aged 5-17 have been rare; of the 401 cases within this age group, 32 (8.0%) were associated with an outbreak or cluster. A recent analysis also showed a higher proportion of adults with COVID in Dane County had symptoms compared to school-aged children and that the most common risk factor among school-aged children was household contact with a confirmed case. No deaths among children who have tested positive for COVID-19 have occurred in Dane County. Based on current data and our reopening metrics, PHMDC is allowing in-person student instruction for grades kindergarten through second grade (K-2) at this time.

This Order also continues the face covering requirements and limitations on taverns and mass gatherings for the reasons explained in Order 8.

Based upon the foregoing, I, Janel Heinrich, Public Health Officer of Madison and Dane County, by the authority vested in me by the Laws of the State, including, but not limited to, Wis. Stats. Secs. 252.03(1), (2) and (4), order the following as necessary to prevent, suppress, and control the spread of COVID-19:

- 1. Safety of individuals.** All individuals should take precautions when leaving their homes to ensure their safety, the safety of the members of their household, and the safety of the public.

- a. **All individuals.** For individual safety and the safety of the community, all individuals should:
    - i. Maintain physical distancing of six (6) feet between individuals who are not members of the same living unit or household, to the greatest extent possible.
    - ii. Wash hands with soap and water for at least twenty (20) seconds as frequently as possible or use hand sanitizer.
    - iii. Cover coughs or sneezes (into the sleeve or elbow, not hands).
    - iv. Frequently clean high touch surfaces and objects.
    - v. Not shake hands.
    - vi. Follow all PHMDC requirements.
    - vii. Consider wearing a face covering when outside.
  - b. **Individuals experiencing homelessness.** Individuals experiencing homelessness are strongly urged to obtain shelter.
  - c. **Unsafe homes.** Individuals whose homes or residences are unsafe or become unsafe, such as victims of domestic violence, are urged to leave their home and stay at a safe alternative location.
2. **Face Coverings.** Face covering means a piece of cloth or other material that is worn to cover the nose and mouth completely. A face covering includes but is not limited to a bandana, a cloth face mask, a disposable or paper mask, a neck gaiter, or a religious face covering. A face covering does not include face shields, mesh masks, masks with holes or openings, or masks with vents.
- a. **Face Covering Required.** Every individual, age five (5) and older, shall wear a face covering when:
    - i. In any enclosed building where other people, except for members of the person's own household or living unit are present.
    - ii. In line to enter any enclosed building.
    - iii. Driving or riding in any vehicle where other people, except for members of the person's own household or living unit are present.
    - iv. Outdoors at a restaurant or tavern.

Face coverings are strongly recommended in all other settings, including outdoors when it is not possible to maintain physical distancing.

Children between the ages of two (2) and five (5) are encouraged to wear a face covering when physical distancing is not possible. Children under the age of two (2) should never wear a face covering.

- b. Exceptions.** Individuals who are otherwise required to wear a face covering may remove the face covering in the following situations:

  - i. While eating or drinking.
  - ii. When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.
  - iii. While obtaining a service that requires the temporary removal of the face covering, such as dental services.
  - iv. While sleeping.
  - v. While swimming or on duty as a lifeguard.
  - vi. When engaging in work where wearing a face covering would create a risk to the individual, as determined by government safety guidelines.
  - vii. When necessary to confirm the individual's identity, including when entering a financial institution.
  - viii. When federal or state law or regulations prohibit wearing a face covering.
- c.** The following individuals are exempt from the face covering requirement in Section 2.a. of this Order:

  - i. Children under the age of 5.
  - ii. Individuals who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.
  - iii. Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.
- 3. Mass Gatherings.** A Mass Gathering is a planned event with a large number of individuals in attendance, such as a concert, festival, meeting, training, conference, performance, show, or sporting event. Individuals that are members

of the same household or living unit do not count towards the mass gathering numbers in their own household or living unit.

- a. **Mass Gatherings Inside.** A Mass Gathering inside any property is permitted with ten (10) individuals or less not including employees. Individuals must maintain physical distancing.
- b. **Mass Gatherings Outside.** A Mass Gathering outside is permitted with twenty-five (25) individuals or less not including employees. Individuals must maintain physical distancing.

**4. Child care, youth, education, libraries, public spaces, and sports.**

- a. **Child care and youth settings.**
  - i. Child care settings and youth settings must continue to follow licensing and certification ratio requirements.
  - ii. Child care settings and youth settings include all licensed, recreational, and educational camps, licensed and certified childcare providers, unregulated youth programs, licensed-exempt public school programs, and four-year old kindergarten (4k).
  - iii. Individual groups or classrooms may not contain more than fifteen (15) children if the children are age twelve (12) or under.
  - iv. Individual groups or classrooms cannot contain more than fifteen (15) children if age thirteen (13) to seventeen (17).
  - v. There should be no interaction or contact between individual groups or classrooms.
  - vi. To the greatest extent possible, minimize amount of staff interaction between groups.
  - vii. For youth ages five (5) and above, maintain at least six (6) feet physical distancing to the greatest extent possible.
- b. **Public outdoor playgrounds and splash pads.** Public outdoor playgrounds and public splash pads are open. Physical distancing must be maintained.
- c. **Courts, Fields, and Sports.**
  - i. All courts and fields are open.
  - ii. Physical distancing between individuals not from the same household or living unit must be maintained at all times.

- iii. Games and competitions are allowed for low risk sports with physical distancing maintained at all times. Low-risk sports are sports that can be done individually, or with physical distancing, or no to minimal sharing of equipment or the ability to clean the equipment between use.
  - iv. Games and competitions are not allowed between teams for medium and high-risk sports. Games and competitions within teams are allowed for medium and high-risk sports if the games and competitions are modified to ensure physical distancing is maintained at all times. Medium risk sports are sports that involve close, sustained contact, but with protective equipment in place that may reduce the likelihood of respiratory particle transmission between participants or intermittent close contact or group sports or sports that use equipment that can't be cleaned between participants. High risk sports are sports that involve close, sustained contact between individuals, lack significant protective barriers, and have a high probability that respiratory particles will be transmitted between individuals.
  - v. All activities in this section for all individuals must abide by the Mass Gathering requirements in Section 3 of this Order.
- d. **Schools.** Public and private school buildings and grounds are open for in-person student instruction for grades kindergarten through second (K-2) only. Even if open for in-person instruction, public and private schools must provide a virtual option for students in grades K-2. Public and private schools also have the discretion to provide all virtual learning for grades K-2. Staff may be in all public and private school buildings as long as the requirements in section 4.d.i-4.d.iv are met. Public and private kindergarten through twelfth grade schools may be used for food distribution, health care services, as child care and youth settings, for pickup of student materials, and for government functions. Public and private kindergarten through twelfth grade schools must abide by the following:
- i. Develop and implement a written hygiene policy and procedure that includes:
    - 1. Establishing expectations that employees and students who have a fever or other symptoms of COVID-19 do not come or remain at school.

2. Establishing hand-washing expectations and ensuring supplies are available to employees and students.
    3. Describing proper cough and sneeze etiquette.
  - ii. Develop and implement a written cleaning policy and procedure that includes:
    1. Guidelines for cleaning and disinfecting frequently touched surfaces multiple times a day.
    2. Guidelines for cleaning common areas between use.
    3. Protocols for cleaning and disinfecting in the event of a positive COVID-19 case on site.
  - iii. Develop and implement a written protective measure policy and procedure that includes:
    1. Ensuring students ages five (5) and older wear face coverings when indoors and on buses.
    2. Ensuring employees are provided with and wear a face covering when indoors and on buses.
    3. Ensuring students and employees with face coverings are at least six (6) feet from others to the greatest extent possible when indoors and on buses.
    4. Ensuring that students who cannot wear a face covering maintain at least six (6) feet distancing at all times from other students when indoors and on buses.
    5. Ensure that students who cannot wear a face covering maintain six (6) feet distancing from employees to the greatest extent possible when indoors and on buses.
    6. Ensuring that employees who cannot wear a face covering maintain at least six (6) feet distancing at all times from other employees when indoors and on buses.
    7. Ensuring that employees who cannot wear a face covering maintain six (6) feet distancing from students to the greatest extent possible when indoors and on buses.
    8. Ensuring students and employees are at least six (6) feet from other students and employees to the greatest extent possible outside.
    9. Ensuring that student and employee groupings are as static as possible by having the same group of students

- stay with the same employees as much as possible.
- Restrict mixing between groups as much as possible.
- 10. Common areas such as cafeterias, auditoriums, and gymnasiums can be used as classrooms, to provide food, as child care and youth settings, and for government functions. Student groupings should be in distinct spaces within common areas and students groupings many not mix with other student groupings.
- iv. Implement PHMDC's action plan for COVID-19 case(s) at the school. Available at [https://publichealthmdc.com/documents/school\\_action\\_plan.pdf](https://publichealthmdc.com/documents/school_action_plan.pdf)
- v. Document staff receipt, acknowledgement, or training on the policies in Sections 4.d.i-4.d.iv of this Order.
- vi. Post PHMDC's Workplace requirements for employers and workers guidance document in a prominent location where all employees may access and view. Available at <https://publichealthmdc.com/coronavirus/forward-dane/requirements> (English, Spanish, and Mandarin versions are included)
- 7. **Continuing education and higher education institutions.** Continuing education and higher education institutions may determine policies and practices for safe operations. However, these institutions may not open congregate living situations including dormitories without strict policies that ensure safe living conditions. These institutions must maintain physical distancing to the greatest extent possible. These institutions must comply with Section 2 of this Order.
- 8. **Libraries and community centers.** Libraries and community centers shall comply with the requirements in Sections 2 and 5 of this Order.
- 5. **Businesses.** All businesses are subject to the following requirements:
  - a. Limit capacity to 50% of approved capacity levels.
  - b. Develop and implement a written hygiene policy and procedure that includes:

- i. Ensuring employees who have a fever or other symptoms of COVID-19 will not be allowed to work.
  - ii. Establishing hand-washing expectations and ensuring supplies are available to employees.
  - iii. Describing proper cough and sneeze etiquette.
- c. Develop and implement a written cleaning policy and procedure that includes:
  - i. Guidelines for cleaning and disinfecting frequently touched surfaces multiple times a day.
  - ii. Guidelines for frequently wiping down any shared equipment, such as work spaces, credit card machines, lunchroom items, carts, and baskets.
  - iii. Guidelines for cleaning common areas and equipment between use or shift changes.
  - iv. Protocols for cleaning and disinfecting in the event of a positive COVID-19 case on site.
- d. Develop and implement a written protective measure policy and procedure that includes:
  - i. Ensuring individuals are at least six (6) feet from others whenever possible.
  - ii. Ensuring employees are provided with and wear face coverings at all times when required under Section 2 of this Order.
- e. Document staff receipt, acknowledgement, or training on the policies in Sections 5b.-5.d of this Order.
- f. **Limit staff and customers in offices, facilities, and stores.** All businesses should, to the greatest extent possible, facilitate remote work and other measures that limit the number of individuals present at an office, facility, or store. Businesses to the greatest extent feasible should:
  - i. Offer online or virtual services, including for, meeting with clients, providing counsel, or other professional services.

- ii. Hold meetings and collaborate online or by phone.
  - iii. Alternate work teams or stagger shifts.
- g. Safe business requirements when remote work is not possible.** All businesses are required to take the following measures to limit exposure to COVID-19 to staff, customers, and the public when remote work is not possible:
- i. Where possible, offer curbside pick-up, curbside drop-off, and delivery of goods and services.
  - ii. Where possible, offer online or phone payments, appointments, and reservations.
  - iii. Door-to-door solicitation is allowed with physical distancing.
  - iv. Ensure spacing of chairs in waiting rooms to ensure physical distancing is maintained between individuals.
- h.** Meetings, trainings, and conferences are considered Mass Gatherings and must comply with Section 3 of this Order.
- i.** Adhere to PHMDC requirements and strongly consider implementing the PHMDC recommendations and guidelines.
- j.** Businesses must establish lines outside to regulate entry, with markings indicating where customers should stand to remain six (6) feet apart from one another while waiting to enter. Businesses should also offer alternatives to lines, including allowing customers to wait in their cars for a text message or phone call and scheduling pick-ups or entries to stores.
- k.** Post PHMDC's "Workplace Requirements for Employers and Workers" guidance document in a prominent location where all employees may access and view. Available at <https://publichealthmdc.com/coronavirus/forward-dane/requirements>
- l.** Follow all Equal Employment Opportunity Commission guidelines with regards to face coverings.
- m.** Post PHMDC's "Face Covering" sign (or a similar sign) about face coverings being required that is visible upon entering the property. All

residential properties (eg: apartment buildings and condominiums) that have shared common indoor spaces (eg: mailrooms, lobbies, hallways) are required to post PHMDC's "Face Covering" sign (or a similar sign) about masks being required that is visible upon entering the property. Available at <https://publichealthmdc.com/coronavirus/forward-dane/requirements>

**6. Industry-specific requirements.** In addition to complying with Section 5, the following businesses have additional requirements:

**a. Stores that sell food or groceries,** including grocery stores, bakeries, farm and produce stands, supermarkets, food banks and food pantries, convenience stores, and other establishments engaged in the retail sale of groceries, prepared food, alcoholic and non-alcoholic beverages. Such establishments shall:

- i. Encourage pickup and delivery options.
- ii. Prohibit customer self-dispensing of unpackaged bulk food items (e.g. bulk bakery, condiments, or foods where the use of tongs, tissues, or scoops are used). Beverage stations, coffee grinding stations, and unpackaged foods stored in enclosed dispensing units that use a spigot, spout, nozzle or control valve for dispensing are exempt from this requirement.
- i. Except for produce areas, cease any customer self-service operations of all unpackaged food, such as salad bars, and buffets.
- ii. Limit indoor dine-in capacity to 25% of approved seating capacity levels. Space tables and chairs to ensure at least six (6) feet physical distancing between customers who are not members of the same household or living unit. Limit each table to six (6) customers who are members of the same household or living unit.
- iii. Outdoor seating is allowed. Space tables and chairs to ensure at least six (6) feet physical distancing between customers who are not members of the same household or living unit. Limit each table to six (6) customers who are members of the same household or living unit.
- iv. Sampling of food is prohibited.

**b. Restaurants and taverns. Restaurants and taverns shall:**

- i. "Restaurant" has the meaning as defined in Wis. Stats. Ch. 97.01 (14g) and whose sale of alcohol beverages accounts for 50% or less

of the establishment's gross receipts. A "tavern" is an establishment in which alcohol beverages are sold for consumption on said premises and whose sale of alcohol beverages accounts for 51% or more of the establishment's gross receipts. "Tavern" includes breweries, brewpubs, wineries and distilleries. Wis. Stat. Sec. 125.07(3)(a)6 presumes that an establishment operated under both a Class "B" or "Class B" license or permit and a license under Wis. Stat. Sec. 97.30 for a restaurant, is a tavern. This presumption may be rebutted by competent evidence. To determine whether an establishment is a restaurant or a tavern, gross receipts for the period July 1, 2019 to June 30, 2020 will be considered. A restaurant or tavern shall provide receipts showing their gross sales of food and alcohol to PHMDC within seventy-two hours of a request by PHMDC for said receipts.

- ii. Encourage pick-up and delivery options.
- iii. Cease any customer self-service operations of all unpackaged food, such as salad bars and buffets. Beverage stations are exempt from this requirement.
- iv. At restaurants, limit indoor dine-in capacity to 25% of approved seating capacity levels. Space tables and chairs to ensure at least six (6) feet physical distancing between customers who are not members of the same household or living unit. Limit each table to six (6) customers who are members of the same household or living unit.
- v. Customers may enter taverns only for the purposes of ordering, pick-up, and payment of food or beverage or while in transit.
- vi. Outdoor seating is allowed. Space tables and chairs to ensure at least six (6) feet physical distancing between customers who are not members of the same household or living unit. Limit each table to six (6) customers who are members of the same household or living unit.
- vii. In restaurants, maintain at least six (6) feet between each stool for customers that are not members of the same household or living unit.
- viii. Customers must be seated at all times when not in transit.
- ix. Sampling of food is prohibited.

**c. Retail stores. Retail stores shall:**

- i. Limit the number of individuals in the business (excluding employees) up to 50% of approved capacity levels.

- ii. Retail stores larger than 50,000 square feet must offer at least two hours per week of dedicated shopping time for vulnerable individuals. Vulnerable individuals include people over sixty-five (65) years of age, people that are pregnant, people in long-term care facilities, people with compromised or weakened immune systems, and people with serious underlying health conditions including high blood pressure, chronic lung disease, serious heart conditions, liver disease, kidney disease requiring dialysis, diabetes, obesity, or asthma.
  - iii. Sampling of goods (ex. food or make-up) is prohibited.
- d. **Salons and spas.** Facilities including hair salons, barber shops, nail salons, day spas, electrolysis providers, waxing salons, eyebrow-care establishments, tattoo and piercing parlors, body art establishments, tanning facilities and similar facilities shall:
  - i. Limit the number of customers or clients to 50% of approved capacity levels. If capacity level is four (4) or less, one (1) client or customer is permitted.
  - ii. Space customer or client chairs, tables, or stations at least six (6) feet apart from each other.
- e. **Gyms and fitness centers.** Gyms, fitness centers, and similar facilities shall:
  - i. Provide materials for members to disinfect equipment before and after exercise at each piece of equipment or station.
  - ii. Limit the number of individuals in the business (excluding employees) to 50% of the approved capacity limit.
  - iii. Increase frequency of cleaning of all equipment, common areas, locker rooms, and restrooms.
  - iv. To the extent possible, space equipment at least six (6) feet apart, especially for treadmills and other high-exertion aerobic fitness equipment.
  - v. Use floor markings to indicate spacing of individuals, particularly in areas where individuals congregate or cluster including drinking fountains, the front desk or reception area, and cleaning stations.
  - vi. Group exercise classes may only be offered if physical distancing can be maintained at all times and there is no person-to-person

contact. Group exercises classes must comply with Section 3 of this Order.

- vii. Activities where physical distancing cannot be maintained are not allowed unless they are between individuals from the same household or living unit.
- viii. Saunas and steam rooms are closed.

f. **Places of amusement and activity.** Places of amusement and activity including water parks, licensed public or private swimming pools, aquariums, zoos, museums, bowling alleys, amusement parks, outdoor miniature golf, movie theaters, theaters, concert and music halls, golf courses and similar places shall:

- i. To the extent possible, all reservations and payments must be made in advance online or by phone.
- ii. Businesses shall limit the number of individuals on the premises (excluding employees) to 50% of approved capacity limits. Events such as, but not limited to, concerts, festivals, carnivals, fairs, parades, movies, performances, and shows are subject to Section 3 of this Order.
- iii. Tee times, appointments, performances, shows, or other scheduled events must be scheduled to ensure that physical distancing can be maintained between all individuals, not within the same household or living unit, at all times.
- iv. Seating, stations, or recreational areas must be spaced to ensure at least six (6) feet of physical distancing between individuals not within the same household or living unit.
- v. All equipment provided or rented should be cleaned in between each customers use.

g. **Lodging,** including hotels, motels, campgrounds, B&B, and vacation rentals.

- i. Prohibit guests from congregating in lobbies or other common areas, including providing adequate space to adhere to physical distancing while queuing for front desk services.
- ii. Adopt cleaning protocols for guest rooms and common areas based on PHMDC guidelines. Provide training for housekeeping

associates for proper handling of linens and cleaning/disinfecting supplies and provide appropriate personal protective equipment.

iii. Follow all requirements in Section 6 of this Order.

h. **Drive-in Activities.** Drive-in movie theaters and other drive-in activities may occur, with the following restrictions:

i. Drive-in activities may not offer outdoor seating.

ii. Individuals may leave their vehicles to purchase or pick up food or drink or to use the restroom. Individuals must remain in their vehicles at all other times.

iii. Any food or drink sales must comply with Sections 6.b. ii., iii., iv. and x.

iv. Food may be delivered to individuals patrons waiting in their vehicles.

v. To the extent possible, reservations and payments should be made in advance online or over the phone.

vi. Drive-in activities are exempt from Section 3 of this Order.

7. **Health care operations, public health operations, human services operations, infrastructure operations, manufacturing and government functions.** These operations, as defined in Emergency Health Order #2, are required to only follow Sections 2, 5.b through 5.g. and 5.i. through 5.m. of this Order. Long-term care and assisted living facilities must follow all applicable Wisconsin Department of Health Services recommendations, all applicable U.S. Centers for Disease Control and Prevention recommendations, and all applicable Centers for Medicare and Medicaid Services recommendations for prevention of COVID-19 in these facilities.

8. **Religious Entities and Groups.** Religious entities and groups are entities that are organized and operated for a religious purpose. Examples include, but are not limited to mosques, synagogues, temples, religious studies, churches and nondenominational ministries. Religious entities and groups shall comply with Sections 2, 5.a. through 5.g. and 5.i through 5.m. of this Order. Religious entities are exempt from mass gathering requirements for religious services and religious practices only. Religious entities are not exempt from the mass gathering requirements for other events outside of a religious service or practice such as picnics or staff meetings.

9. **Leased Premises.** Landlords or rental property managers may enter leased residential premises and show properties if all individuals are wearing face coverings and maintaining physical distancing.
10. Businesses must follow all regulatory and licensing requirements. If this Order contains provisions that are more restrictive than otherwise permitted in any regulatory or licensing requirement, the provisions of this Order shall control.

#### ENFORCEMENT AND APPLICABILITY

11. **Enforcement.** Violation or obstruction of this Order is a violation of Madison Municipal Ordinance Sec. 7.05(6), Dane County Ordinance Sec. 46.40(2) and any subsequent or similar ordinance adopted by a local municipality in conformity therein.
12. **Severability.** If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
13. **Duration.** This Order shall become effective Monday, August 24, 2020 at 12:01 a.m. This Order shall remain in effect until further notice.

IT IS SO ORDERED.



Janel Heinrich  
Health Officer, Public Health Madison & Dane County